SUPPORTING STATEMENT
Animal Welfare; Marine Mammals
0579-XXXX

JUSTIFICATION **2016**

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The Laboratory Animal Welfare Act (AWA) (Public Law 89-544) enacted August 24, 1966, and amended December 24, 1970 (Public Law 91-579); April 22, 1976 (Public Law 94-279); and December 23, 1985 (Public Law 99-198) requires the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. This legislation and its amendments were the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals.

USDA, Animal and Plant Health Inspection Service, Animal Care (AC) has the responsibility to enforce the AWA and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the AWA.

The stated purpose of the AWA, Section 1(b), includes the following:

(1) to ensure that animals intended for use in research facilities or exhibition purposes or for use as pets are provided humane care and treatment;

(2) to ensure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen..."

Section 21 of the Act authorizes the Secretary to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of the Act.

Sections 10, 11, 12, and 13 of the AWA authorize and require certain record keeping requirements for regulated facilities. Title 9 CFR Subchapter A, Part 3 stipulates certain conditions that must be documented in order for dealers, exhibitors, research facilities, etc. to hold, buy, sell and/or ship animals. Records of these conditions and their use must be kept for a period of at least one year. These records are necessary for APHIS to review to ensure that the animals are cared for in the prescribed manner that is required by the regulations.

Part 3, Subpart E of Subchapter A addresses the specifications for the humane handling, care, treatment, and transportation of marine mammals. This includes areas such as facilities construction, veterinary care, personnel, feeding, water quality, sanitation, space requirements, transportation enclosures, and handling and care in transit.

APHIS published a proposed rule to amend the AWA regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed changes would affect sections in the regulations relating to variances, indoor facilities, outdoor facilities, space requirements, and water quality. APHIS is also proposing to revise the regulations that relate to swim-with-the-dolphin programs. These proposed amendments may increase paperwork by requiring more records pertaining to water quality and by creating more frequent requests concerning variances and variance extensions from space requirements and other requirements for marine mammals.

APHIS is asking OMB to approve its use of these information collection activities for 3 years.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The records and reports herein provide APHIS with the data necessary for the review and evaluation of program compliance by regulated facilities, and provide a workable enforcement system to carry out the requirements of the AWA, and the intent of Congress, on a practical daily basis without resorting to more detailed and stringent regulations and standards which could be more burdensome to regulated facilities.

(*)Section 3.100(b) – MM Space Variance Request (business) – Reporting and Recordkeeping – Facilities may request a variance from one or more specified provisions of §3.104. A request for a variance must be made to the Animal Care Deputy Administrator (APHIS). The request for variance must include the species, numbers and gender of the animals involved, a statement from the attending veterinarian certifying health status of the animals and the benefits of the variance, the provision of §3.104 the variance is needed for, the length request for the variance, and specific reasons for the variance. The request for variance must also include a cost estimate for coming into compliance. These requests must be maintained and available during facility inspections.

(*)Section 3.100(b) –Veterinarian Statement (business) – Reporting – A statement from the attending veterinarian certifying the age and health status of the animals involved and how the granting of a variance would be beneficial or detrimental to the marine mammals involved.

(*)Section 3.100(c) – Report by Experts – Space Variance (business) – Reporting and Recordkeeping – A written report by two recognized marine mammal experts selected by APHIS may be required to outline the potential negative impacts of the variance if granted. Licensees or registrants are responsible for the report. These reports must be maintained and available during facility inspections.

(*)Section 3.100(d) - MM Space Variance Extension Request (business) – Reporting and Recordkeeping – If granted, the variance may be up to the life of life of the marine mammals involved. Otherwise, variances will be granted for a period of not more than 8 years after the effective date of the final rule. A further extension of the variance for a maximum of 1 year may

be granted to attain full compliance by the Animal Care Deputy Administrator. These requests must be maintained and available during facility inspections.

(*)Section 3.100(g) – MM Space Variance – Research Facility (business) – Reporting and Recordkeeping – A research facility may be granted a variance for other sections of this subpart, if necessary for research purposes, is explained fully in the experimental design, and is for research protocols approved by the Institutional Animal Care and Use Committee (IACUC) and permitted under the Marine Mammal Protection Act (MMPA). These requests must be maintained and available during facility inspections.

(*)Section 3.100(h) – MM Other Variance Request (business) – Reporting and Recordkeeping – Any facility may request a variance from a specific requirement of this subpart due to emergency or temporary circumstances. The request must meet the requirements of §3.100(b). These requests must be maintained and available during facility inspections.

(*)Section 3.106(b)(6) - Water Quality Records (business) – Reporting and Recordkeeping- Water quality records must contain information about where and when the samples were collected and all water quality records must be maintained on site for at least 1 year and made readily available to APHIS inspectors. This information is used to document instances of violations for possible legal action. Daily water sampling and recording of levels is required for pH, salinity, and any chemicals added to the enclosure pools. Natural lagoon/coastal enclosures are exempt from testing for pH.

(*)Section 3.111(d)(5) – Interactive Program Written Instructions (business) – Third Party Disclosure and Recordkeeping – Prior to participation in an in-water interactive program, members of the public must be provided with written rules and instructions for the session, including contact information for USDA, APHIS, AC. A copy of the rules must be available for APHIS inspectors.

(*)Section 3.111(d)(8) – Written Session Termination Retaining Criteria (business) – Reporting and Recordkeeping – Marine Mammals that exhibit unsatisfactory, undesirable, or unsafe behaviors, must be removed from the in-water interactive session immediately. If it cannot be removed, the session must be terminated. This document must be made available to APHIS inspectors. The document must address the procedures to be used to maintain compliance with 3.111(e)(4) during such disruption.

(*) Section 3.104 (e) – Attending Veterinarian Program Records Review (business) – Reporting and Recordkeeping - The attending veterinarian must observe an interactive session at least once a month or each interactive session if they are offered less frequently than twice a month, and review the feeding records, behavior records, and water quality records biannually or more often if needed to assure the health and well-being of the marine mammals. This observation must be documented and maintained to be made available to APHIS inspectors.

(*)Section 3.111 (f)(1) – Description of Interactive Program (business) – Reporting and Recordkeeping -A description of the in-water interactive program, must be submitted at least 30 days to APHIS prior to the start of any program from each facility. For existing programs that

have already submitted such information, only changes to the information must be submitted. The information required includes identification of each animal in the program, an outline of the agenda for the program (including the information distributed, behaviors expected to be presented or used), a description of the program enclosures (all), verification from the trainer that all program animals have received appropriate interactive program training, documentation of experience and training of the trainer, handler, attendants, and attending veterinarian. This documentation is submitted once from each facility. This information is also used in documenting instances of violations for possible legal action.

(*)Section 3.111 (f) (3) – Interactive Program Public Participation (business) – Reporting and Recordkeeping - Records of individual animal participation times must be maintained at the facility for at least 1 year and made available to APHIS inspectors. This information is also used in documenting instances of violations for possible legal action.

(*)Section 3.111 (f) (4) – Animal and Human Incident Reports (business) Reporting and Recordkeeping - Incidents resulting in injury to either a marine mammal, a member of the public, or the facility staff during an interactive or training session must be reported to APHIS within 24 business hours of the incident (written or verbal). A detailed written report of the incident must be submitted within 7 calendar days. This information is also used in documenting instances of violations for possible legal action.

(*)Section 3.111 (f) (5) – Interactive Program Changes (business) – Reporting and Recordkeeping - Any changes in the in-water interactive program (personnel, program animals, facilities, behaviors used, etc.) must be documented and submitted to APHIS within 30 calendar days of the changes. This information is also used in documenting instances of violations for possible legal action.

(*)Section 3.104 (d)(3) - Veterinary Care (business) – Reporting and Recordkeeping – Marine mammals undergoing veterinary treatment may be used in interactive sessions only with the written approval of the attending veterinarian. These written approvals must be maintained and made available to APHIS inspectors.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

At this time, there is no IT system that would improve APHIS' methods of attaining necessary information from the public mainly due to extreme differences in the operations of the various licensees and registrants (vast difference in the physical plants and the economic administrative structure). However, these licensees and registrants may maintain their records electronically. In addition, APHIS tracks inspections of these facilities via an internal IT system called Animal Care Information System (APHIS personnel conduct the inspections).

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.

APHIS is the only Agency charged with the enforcement of the AWA; therefore, no other agencies require the retention or collection of this information.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The information collected is the minimum required to ensure that the AWA is being enforced. APHIS is requesting comments from the public to better estimate the number of small entities impacted by this information collection; however, APHIS estimates that 50% of the respondents could be considered small entities.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If APHIS did not collect this information or collected it less frequently, the effectiveness of APHIS' enforcement of the AWA would be severely compromised, and it would be impossible for APHIS to confirm or enforce facility compliance with the regulations for animal health, adequate veterinary care, and animal identification.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information guidelines in 5 CFR 1320.5.

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

- **(*)Section 3.111 (f)(1) – Description of Interactive Program** A description of the in-water interactive program, must be submitted at least 30 days to APHIS prior to the start of any program from each facility. This information can be used in documenting instances of violations for possible legal action and is needed in this timely manner to permit enough time to ensure safety of the animals and humans involved.
- **(*)Section 3.111 (f) (4) – Animal and Human Incident Reports** - Incidents resulting in injury to either a marine mammal, a member of the public, or the facility staff during an interactive or training session must be reported to APHIS within 24 business hours of the incident (written or verbal). A detailed written report of the incident must be submitted within 7 calendar days. This information is also used in documenting instances of violations

for possible legal action and is needed in this timely manner to permit enough time to ensure safety of the animals and humans involved.

- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

No other special circumstances exist that would require this collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, soliciting comments on the information collection prior to submission to OMB.

Individual consultation and contact include the following:

Ms. Marilee Menard
Alliance of Marine Mammal Parks and Aquariums
703-549-0137

Ms. Kristin Vehrs
American Zoo and Aquarium Association
301-562-0777

Mr. Brad Andrews
Sea World of Florida

407-351-3600

APHIS' proposed rule, Docket No. APHIS-2006-0085, published in the Federal Register on Wednesday, February 3, 2016, pages 5629-5657, describes its information gathering requirements, and also provides a 60-day comment period. During this time, interested members of the public will have the opportunity to provide APHIS with their input concerning the usefulness, legitimacy, and merit of information collection activities APHIS is proposing.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

This information collection activity involves no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No additional assurance of confidentiality is provided with this information collection.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and others that are considered private.

This information collection activity asks no questions of a personal or sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

See APHIS Form 71 for the burden estimate. The estimates were developed from historical data, calculated average number of licensees and registrants, and from discussions with field personnel.

•Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

APHIS estimates the total annualized cost to these respondents to be $146,481. APHIS arrived at this figure by multiplying the total burden hours (4,559) by the estimated, average hourly wage of the respondents ($32.13) (facility management, facility personnel, and veterinarians).

This average hourly rate for the above respondents is derived from the U.S. Department of Labor; Bureau of Labor Statistics May 2014 Report – National Occupational Employment and Wage Estimates United States. See http://www.bls.gov/oes/current/oes_nat.htm#19-0000.

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in Items 12 and 14).

There is no additional cost burden to the respondents or recordkeepers.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

The estimated total cost for the Federal Government is $66,135. See APHIS Form 79.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

This is a new information collection resulting in 4,559 total burden hours.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

APHIS has no plans to tabulate or publish information resulting from this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reason that display would be inappropriate.

Not applicable. There are no forms in this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission", of OMB Form 83-I.

APHIS certifies compliance with all provisions under the Act.