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Part III

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3
Animal Welfare; Proposed Rules

to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

§ 2.132 Procurement of random source dogs and cats, dealers.

(a) A class "B" dealer may obtain live random source dogs and cats only from:

(1) Other dealers who are licensed under the Animal Welfare Act and in accordance with the regulations in Part 2;

(2) State, county, or city owned and operated animal pounds or shelters; and

(3) A legal entity organized and operated under the laws of the State in which it is located as an animal pound or shelter, such as a humane shelter or contract pound.

(b) A class "B" dealer shall not obtain live random source dogs and cats from individuals who have not bred and raised the dogs and cats on their own premises.

(c) Live nonrandom source dogs and cats may be obtained from persons who have bred and raised the dogs and cats on their own premises, such as hobby breeders.

(d) Any person subject to the Act shall not obtain live random source dogs or cats by use of false pretenses, misrepresentation, or deception.

(e) Any licensee or registrant under the Act who also operates a private or contract animal pound or shelter shall comply with the following:

(1) The animal pound or shelter shall be located on premises that are physically separated from the licensed or registered facility. The animal housing facility of the pound or shelter shall not be adjacent to the licensed or registered facility.

(2) Accurate and complete records shall be separately maintained by the licensee or registrant and by the pound or shelter. The records shall be in accordance with §§ 2.75 and 2.76, unless the animals are lost or stray. If the animals are lost or stray, the pound or shelter records shall provide:

(i) An accurate description of the animal;

(ii) How, where, from whom, and when the dog or cat was obtained;

(iii) How long the dog or cat was held by the pound or shelter before being transferred to the dealer; and

(iv) The date the dog or cat was transferred to the dealer.

(3) Any dealer who obtains or acquires a live random source dog or cat from a private or contract pound or shelter, including a pound or shelter they operate, shall hold the dog or cat for a period of at least 10 full days, not including the day of acquisition, excluding time in transit, after acquiring the animal, and otherwise in accordance with § 2.101.

Done at Washington, D.C., this 7th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5612 Filed 3-9-89; 2:10 pm]

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9 CFR Part 3

[Docket No. 87-004]

Animal Welfare—Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the humane handling, care, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. The regulations for dogs, cats, and nonhuman primates would be completely revised and rewritten. The regulations for guinea pigs, hamsters, and rabbits would be amended to revise the space requirements for primary enclosures; to amend the temperature requirements in cargo spaces in primary conveyances; and to reinstate various transportation requirements. These actions are necessary to update the regulations, to make them more consistent with other Federal regulations concerning the handling, care, treatment, and transportation of these animals, and to comply with the recent amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted December 23, 1985. Rewriting the regulations is also intended to make them easier to understand, thereby increasing compliance and making them more effective.

DATES: We will consider written comments postmarked or received on or before July 13, 1989.

ADDRESS: Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-004. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, 8:00 a.m to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

General Background and Statutory Information

Regulations on the humane handling, care, treatment, and transportation of (1) dogs and cats, (2) guinea pigs and hamsters, (3) rabbits, and (4) nonhuman primates, are contained in 9 CFR Part 3. Subpart A contains the regulations concerning dogs and cats; Subpart B contains the regulations concerning guinea pigs and hamsters; Subpart C contains the regulations concerning rabbits; and Subpart D contains the regulations concerning nonhuman primates. The regulations in each of these Subparts include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter, and veterinary care. The regulations are issued and enforced by the Animal and Plant Health Inspection Service (APHIS), of the United States Department of Agriculture (USDA), under authority of the Animal Welfare

Act, as amended (the Act) (7 U.S.C. 2131, *et seq.*).

On December 23, 1985, extensive amendments to the Act were enacted (see Pub. L. 99–198, "The Food Security Act of 1985.") Among other things, the amendments direct the Secretary of Agriculture to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, for exercise of dogs, and for a physical environment adequate to promote the psychological well-being of nonhuman primates.

Previously Proposed Regulations

In response to the 1985 amendments to the Act, we proposed, on March 31, 1987, to revise 9 CFR Parts 1 and 2. Part 1 includes definitions of terms used throughout our regulations. Part 2 includes general requirements for licensing and registration of facilities; recordkeeping and identification of animals; holding periods and facilities; Institutional Animal Care and Use Committees; adequate veterinary care, and other areas of general concern relevant to the humane care, handling, treatment and transportation of all animals and individuals subject to our regulations. (52 FR 10292–10322).

Documents containing Parts 1 and 2, as revised in accordance with our consideration of the nearly 8,000 comments we received in response to the March 31, 1987 proposal, our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies, and our experience in enforcing the regulations, appear elsewhere in this issue of the **Federal Register**. The revised rules for Parts 1 and 2 are published for the sole purpose of soliciting comments on the narrow issue of the interrelationship of Parts 1 and 2 with the Part 3 standards we are proposing in this document. All comments on this issue should not be combined with substantive comments on the Part 3 standards and must reference docket nos. 88–013 and 88–014. We will refer to those documents at various points in our discussion of the proposed amendments to Part 3.

The revised rule for Part 2 contains provisions and procedures for allowing exceptions by research facilities in compliance with the Animal Welfare regulations, including the standards proposed in this document, when necessary for the conduct of biomedical research. Exceptions or deviations from the regulations must first be explained, reviewed, and approved in accordance with the procedures set forth in Part 2. We refer the reader to 2.30(g), 2.35(b)(3), and 2.100, published elsewhere in this issue of the **Federal Register** for these provisions.

Consultation and cooperation with other Federal departments, agencies, or instrumentalities

The amendments to the Act also direct the Secretary of Agriculture to

> Consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter.

(Section 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a))

Accordingly, we consulted with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), which regulates transportation of wild birds and animals into the United States.

The amendments also specifically direct the Secretary of Agriculture to "consult with the Secretary of Health and Human Services prior to issuance of regulations." (See § 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a).) The Department of Health and Human Services, through the Public Health Service, National Institutes of Health (NIH), currently issues guidelines on the care and use of animals studied in biomedical research. The animals include dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. These NIH guidelines are contained in a document entitled "Guide for the Care and Use of Laboratory Animals" (NIH Guide or Guidelines).[1] The Guide is widely accepted by scientific institutions as a primary reference on animal care and use. Compliance with the NIH Guidelines is not mandatory except to obtain NIH funding, but most research laboratories in the United States do comply. While the Animal Welfare Act and regulations address a broader range of activities and facilities than the NIH Guide, Congress' intent in requiring consultation with the Department of Health and Human Services is to ensure that, whenever possible, the regulations and the NIH Guidelines are consistent:

> The Conferees expect the Secretary of Agriculture to have full responsibility for enforcement of the Animal Welfare Act. However, the Conferees also recognize that a portion of the nation's research facilities fall under regulation from more than one agency. While the legislative mandate of each agency is different, and they may regulate different aspects of animal care, it is hoped that the agencies continue an open communications to avoid conflicting regulations wherever possible or practice. [sic]

(*See* Conference Report, *Congressional Record* of December 17, 1985, at page H12422.)

We consider our mandate to consult with the Department of Health and Human Services to be extremely important. We realize that having harmonious regulations throughout the Federal government on animal welfare matters would eliminate confusion and simplify compliance for the individuals, including research institutions, subject to those regulations. However, our goal in proposing these regulations is to provide for the humane care, handling, treatment, and transportation of various animals. If we adopt regulations identical with those of other Federal Departments, but those regulations are ineffective or inadequate, then we have not met the statutory objective.

We have attempted in these proposed regulations to meet both goals wherever we have determined it is consistent with our responsibility to promote animal welfare. To achieve this, we have consulted extensively with NIH representatives concerning standards for the humane care, handling, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. We have reviewed our existing regulations and the NIH guidelines. In addition, we have considered comments raised by member agencies of the Interagency Research Animal Committee, which is comprised of federal agencies that conduct research using animals. We have also consulted with experts and professional organizations and have sought their recommendations on appropriate standards to accomplish our goal. After considering all this information, we are proposing extensive revisions to the regulations in 9 CFR Part 3, Subparts A, B, C, and D. In many cases, we are proposing regulations substantially identical to current NIH Guidelines. That is because, in these cases, we believe the NIH Guidelines are appropriate and adequate to provide for the humane care, handling, treatment, and transportation of the animals in question. In other cases, we

[1] The NIH Office for Protection from Research Risks publishes another document called the "Public Health Service Policy on Humane Care and Use of Laboratory Animals," under authority of the Health Research Extension Act of 1985 (Pub. L. 99–158, November 20, 1985). However, the regulations in that document concern mainly the use of tranquilizers and other drugs on animals being used in research, appropriate pre- and post-surgical veterinary care for animals being used in research, and the organization and operation of animal care committees. These subjects are not covered in this proposal, and we therefore do not discuss these NIH requirements in this document.

are proposing to adopt, as our regulations, standards that will provide for the humane handling and care of animals covered by the Act. We will discuss our proposed changes on a subpart-by-subpart basis.

We are proposing to revise Subparts A and D in their entirety in this document so that the regulations are complete and easier to read. However, we are not providing an explanation for nonsubstantive revisions.

Subpart A—Dogs and Cats

Regulations for humane handling, care, treatment, and transportation of dogs and cats are contained in 9 CFR Part 3, Subpart A. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

It should be noted that the proposed regulations apply only to live dogs and cats, unless indicated otherwise.

We are proposing to revise and rewrite the current regulations based on our experience administering them. We are also proposing to amend our regulations to add requirements for the exercise of dogs. This is specifically required by the 1985 amendments to the Act. (See Section 1752, 99 Stat. 1645, Pub. L. 99-198, amending Section 13 of the Act). We discuss each topic covered in our proposed regulations below.

Housing Facilities and Operating Standards

Current §§ 3.1 through 3.3 provide requirements for facilities used to house dogs and cats. Current § 3.1, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.2, "Facilities, indoor," and § 3.3, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the health, comfort, and well-being of dogs and cats. We are also proposing to add sections that provide regulations specifically governing two other types of facilities used to house dogs and cats, sheltered housing facilities, and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in Part 1, published elsewhere in this issue of the **Federal Register**, as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of pens or runs totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility" is also included in Part 1, and is defined as "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the regulations we are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.1. that would also include many of the provisions in current § 3.1. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

Housing facilities, general

In proposed § 3.1(b), we are proposing to add the requirements that a dealer's or exhibitor's housing facilities be physically separated from any other business. When more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the overall conditions. To avoid this difficulty, we are proposing to require that housing facilities other than those maintained by research facilities and federal research facilities be separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. For example, if a security fence is used, it would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through or under it. We are not imposing this requirement on research facilities because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with research facilities.

Proposed § 3.1(b) would also require that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, weeds, and discarded material, in order to prevent an unsanitary condition and problems with diseases, pests, and odors. The need for orderliness applies particularly to the areas where animals are maintained in the housing facilities. These areas would have to be kept free of clutter, including equipment, furniture, and stored material, and materials not necessary for proper husbandry practices.

We are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities in proposed § 3.1(c). We are proposing to include requirements specific to particular types of facilities in separate sections. In § 3.1(c)(1), we propose to require that the surfaces of housing facilities either be easily cleaned and sanitized, or be removable or replaceable when worn or soiled. These provisions would also apply to houses, dens, and other furniture-type fixtures or objects within the facility.

Proposed § 3.1(c)(1) would also require that any surfaces that come in contact with dogs and cats be free of jagged edges or sharp points that might injure the animals, as well as rust that prevents the required cleaning and sanitization. Because we recognize that as long as water is used to clean animal areas, metal parts will rust, we would allow rust on metal surfaces, as long as it does not reduce structural strength or interfere with proper cleaning and sanitizing.

Section 3.1(c)(2) would require that all surfaces be maintained on a regular basis and that surfaces that cannot be easily cleaned and sanitized be replaced when worn or soiled.

Section 3.1(c)(3) would require that hard surfaces that come in contact with dogs or cats be cleaned daily and sanitized at least every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Section 3.10(b) provides for various methods of sanitizing primary enclosures and food and water receptacles. Because these methods are effective in general for sanitization of hard surfaces that cats and dogs come in contact with, any of them could be used for the sanitization required by § 3.1(c). Floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot-cleaned daily, since sanitization is not practicable, and the flooring material would have to be replaced if raking and spot-cleaning are not sufficient to eliminate odors, diseases, pests, insects, or vermin infestation. All other surfaces would have to be cleaned daily and sanitized when necessary to satisfy generally accepted professional and husbandry practices.

In the current regulations, § 3.1(b) provides regulations for water and electric power. It specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this

subpart." In this proposed rule, provisions concerning water and electric power are set forth in § 3.1(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* that all facilities have reliable and adequate electric power and mechanically pressurized potable running water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements. Based on our inspections of dealer, exhibitor, and research facilities, we believe that dog and cat facilities subject to the regulations cannot be properly cleaned and maintained without electric power and potable water under pressure. We would require that a pressurized water system be used to ensure that the water supply is of sufficient quantity and availability to meet the needs of the animals and the facility.

We are proposing in § 3.1(e) to expand the regulations in current § 3.1(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. Additionally, we are proposing requirements to ensure further the quality of the food and bedding used by animals, and therefore of the area in which the animals are housed. We would specify that supplies of food and bedding be stored in containers to protect the supplies from spoilage as well as from infestation and contamination. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them. All food would have to be stored so as to prevent contamination or deterioration of its nutritive value. Open supplies of food and bedding would have to be stored in leakproof containers with tightly fitting lids. Substances toxic to dogs and cats would not be allowed to be stored in animal areas or in food storage and preparation areas.

Proposed § 3.1(f) would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.1(d). We are proposing to clarify this requirement so that it includes all fluid wastes and to include a provision that arrangements must be made for removal and disposal of wastes at least daily, and more often if necessary. The proposed regulations would also require that trash containers be leakproof and be tightly closed when not in use, and that no forms of animal waste, including dead animals, be kept in food and animal areas.

Requirements for drainage are currently contained in §§ 3.2(e) and 3.3(d), under the sections concerning indoor facilities and outdoor facilities, respectively. Since all types of animal housing facilities, including our proposed categories of sheltered housing facilities, and mobile or traveling housing facilities, must have some way of disposing of waste and liquids, we would consolidate all drainage and waste disposal requirements in proposed § 3.1(f).

Both current §§ 3.2(e) and 3.3(d) require that a suitable method of eliminating excess water be provided. That requirement would be retained and expanded to pertain to sheltered and to mobile or traveling housing facilities as well. Current § 3.2(e) requires that any drains used be properly constructed and kept in good repair to guard against foul odors. Additionally, where closed drainage facilities are used, they must be equipped with traps and be installed so that they prevent any backup of sewage onto the floor. Those requirements would be retained and expanded for indoor facilities, and the proposed expanded provisions would also apply to other types of facilities where such drainage is appropriate. We would require that disposal and drainage systems also minimize vermin and pest infestation, and disease hazards. As part of this safeguard, we would require that any sump or settlement pond, or similar system for drainage and animal waste disposal, be located an adequate distance from the animal area of the housing facility. We would also require that puddles of water in animal areas be promptly mopped up or drained so that the animals stay dry.

The requirement in current § 3.1(e) that washing facilities be available to animal caretakers for their own cleanliness would be retained and would appear in proposed § 3.1(g).

Categories of Housing Facilities

The current regulations specify two kinds of housing facilities, "indoor" and "outdoor." These terms are defined in Part 1 of the Animal Welfare regulations, published elsewhere in this issue of the **Federal Register**. (*See* companion docket no. 88-013). Briefly, an indoor housing facility is defined as an enclosed structure or building with environmental controls that is used to house animals. An outdoor housing facility is defined as a structure, building, land, or premises, used to house animals, that cannot be temperature controlled and that does not have a completely enclosed temperature-controlled shelter. We recognize that these two categories of housing facilities do not cover all of the wide variety of facilities used to house dogs and cats. For example, certain facilities, such as those in which animals have access to pens in a building, but also have access from their pens to outside runs, fall somewhere between "indoor" or "outdoor" facilities. Another "grey area" involves traveling animal shows. In order to clarify the intent and applicability of the regulations, we are proposing to add provisions for two additional types of housing facilities that are used to house dogs and cats: "sheltered housing facilities," and "mobile or traveling housing facilities." A sheltered housing facility is defined in Part 1 of the regulations to mean a facility that provides animals with shelter and protection from the elements and temperature extremes at all times, such as a building with a connecting inside/outside run or pen. A mobile or traveling housing facility is defined in Part 1 to mean a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.)

Temperatures in Housing Facilities

Enclosed housing facilities—that is, indoor facilities, the sheltered portion of sheltered housing facilities, and mobile or traveling facilities—would be required to provide heating, cooling, and ventilation for the health, comfort, and well-being of dogs and cats housed there. The heating and cooling requirements would be set forth for each of the above categories in §§ 3.2(a), 3.3(a), and 3.5(a) respectively. The ventilation requirements would be set forth in §§ 3.2(b), 3.3(b), and 3.5(b) respectively.

In establishing minimum temperatures for these facilities, the proposed regulations take into account whether a particular dog or cat housed there is acclimated to relatively low temperatures, and whether for some other reason, either because of breed, age, or condition, a dog or cat should not be subjected to certain low temperatures. In § 3.2(a) of the current regulations for indoor facilities, the minimum temperature allowed is 50 °F for all dogs and cats in those facilities that are not acclimated to lower temperatures. We are proposing that in indoor, sheltered, and mobile or traveling housing facilties, the minimum temperature allowed continue to be 50

°F (10 °C) for dogs or cats not acclimated to lower temperatures. Because some dogs cannot be acclimated to lower temperatures, we would also apply the 50 °F minimum to breeds of dogs or cats that cannot tolerate lower temperature without stress and discomfort (e.g., short-haired breeds such as beagles, greyhounds, and Doberman), and to dogs and cats that are sick, aged, young, or infirm. The minimum temperature for all other dogs and cats would be 35 °F (1.7 °C), except in indoor facilities, where the minimum temperature for all other dogs and cats would be 45 °F (7.2 °C)

In the current regulations, there is no maximum temperature specified for indoor housing facilities, although auxiliary ventilation is required when the temperature rises to or above 85 °F (29.5 °C). In this proposed rule, we establish a maximum temperature of 95 °F (35 °C) for indoor facilities, mobile or traveling facilities, and the sheltered part of sheltered housing facilities, when those facilities contain dogs or cats. For each of those categories of shelters, auxiliary ventilation, such as fans or air conditioning, would have to be used when the temperature rises to or above 85 °F (29.5 °C).

Because outdoor facilities cannot be temperature-controlled, we believe it is necessary to judge a dog's or cat's suitability for outdoor housing on an individual basis. As provided in proposed § 3.4(4)(1), a dog or cat could not be kept in an outdoor facility if (1) it is not acclimated to the temperatures prevalent in the area or region where the facility is located; (2) it is of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); or (3) it is aged, young, sick or infirm. We recognize that in some situations, particularly in the case of dogs or cats obtained from pounds, it will not be known whether animal has been acclimated to prevailing temperatures. Therefore, in proposed § 3.4(a)(2), we provide that if a dog's or cat's acclimation status is unknown, it must not be kept in an outdoor facility in any month in which, during the preceding 5 years, the temperature at the facility has been less than 35 °F (1.7 °C).

Ventilation of Housing Facilities

The requirements for ventilation of indoor housing facilities that are set forth in § 3.2(b) of the current regulations would be retained in the proposal, and would be extended to apply to all sheltered portions of sheltered, and mobile or traveling, housing facilities to provide for the health, comfort, and well-being of dogs and cats. Based on our inspections of dealer, exhibitor, and research facilities, we are proposing to add (1) that ventilation must also be provided to minimize ammonia levels in these housing facilities; (2) that ventilation in mobile or traveling facilities must minimize exhaust fumes; and (3) that in indoor housing facilities, the relative humidity must be maintained between 30 and 70 percent. Although the 30–70 percent range would apply to all dogs and cats, we expect generally accepted professional and husbandry practices to be followed in providing humidity levels appropriate to particular breeds of dogs and cats. The 30–70 percent range corresponds to the recommendations contained in the NIH Guide. We are not proposing to require that precise humidity levels be maintained in sheltered housing facilities or mobile or traveling facilities. The configuration of many sheltered facilities makes humidity control impracticable, and mobile or traveling housing facilities may travel into many different parts of the United States, with varying levels of humidity.

Lighting in Housing Facilities

The proposed regulations would retain the requirement in § 3.2(c) of the current regulations that indoor housing facilities have ample light to permit routine cleaning and inspection. We are proposing to extend this requirement to all of the enclosed housing facilities included in the proposed regulations. We are also proposing to require in each case that either natural or artificial light be provided for at least 8 hours each day, corresponding to the natural period of daylight. Our experience inspecting licensees' and registrants' facilities has shown us that in the past some licensees and registrants have kept dogs and cats in darkened rooms throughout most of the day. In the case of indoor housing facilities and mobile or traveling housing facilities, we would require that if only artifical light, such as fluorescent light, is used, it must provide full-spectrum illumination. Sheltered facilities, by their nature, allow the animals access to natural light, so the requirement for full-spectrum illumination would not be necessary for those facilities. Also, we would retain the requirement in the current regulations for indoor facilities that primary enclosures be placed so as not to expose to the animals in them to excessive light, and we would extend that requirement to sheltered enclosures. An example of excessive light would be a situation where an animal is housed in the top cage of a stack of cages, near a lighting fixture.

Specific Provisions for Indoor Housing Facilities

Section 3.2(d) of the current regulations, regarding the interior surfaces of indoor housing facilities, requires that those surfaces be substantially impervious to moisture and readily sanitized. In § 3.2(d) of the proposed regulations, we would retain the requirement that all surfaces be impervious to moisture, but would make an exception in the case of ceilings that are replaceable. An example of this would be a suspended ceiling with replaceable panels. The proposed requirements concerning interior surfaces are more stringent for indoor housing facilities than for any other type of facility. Only in indoor facilities, for example, would ceilings have to be either impervious to moisture or replaceable. This is because indoor facilities generally operate on one ventilation system, and any disease organisms or excessive odors that occur in the facility might spread throughout the facility, requiring a thorough cleaning or replacement of all interior surfaces.

Specific Provision for Sheltered Housing Facilities

In proposed § 3.3(d) regarding sheltered housing facilities, we would require that dogs and cats be provided with adequate shelter and protection from the elements.

In order to maintain sanitary conditions in sheltered housing facilities, we would estabish the following requirements in § 3.3(e). The following areas would have to be impervious to moisture: (1) indoor floor areas in contact with the animals; (2) outdoor floor areas not exposed to the direct sun or made of a hard material such as wire, wood, metal, or concrete, in contact with the animals; and (3) all walls, boxes, houses, dens, and other surfaces in contact with the animals. Outside floor areas in contact with the animals and exposed to the direct sun could consist of compacted earth, sand, gravel, or grass.

Specific Provisions for Outdoor Housing Facilities

The intent of § 3.3 of the current regulations is to provide adequate standards for the care of animals housed outdoors. However, our inspections of dealers' and exhibitors' facilities in climates with temperature extremes have indicated that some licensees are not meeting what we believe should be

minimum standards for the treatment of dogs and cats. Specifically, we believe that the regulations need to be made more stringent regarding the types of dogs and cats that can be kept outdoors, and regarding what shelter is necessary for dogs and cats kept outdoors. Therefore we are proposing to revise the current requirements for outdoor facilities, to make them more clearly defined and more stringent.

We have discussed earlier in this document the categories of dogs and cats that must not be kept in outdoor housing facilities. With regard to the type of shelter required for dogs and cats housed outdoors, we believe that the current regulations should be expanded to specify what is necessary for better and more humane treatment of the dogs and cats. In essence, the current regulations require that dogs and cats be provided with sufficient shade to protect them from the direct rays of the sun, shelter to keep them dry during rain or snow, and shelter when the atmospheric temperature falls below 50 °F. (10 °C). Additionally, bedding or some other protection is required when the ambient temperature falls below that to which the dog or cat is acclimated.

In § 3.4(b) of this proposed rule, we require that all outdoor facilities housing dogs or cats include a shelter structure that is accessible to all animals in the facility, and that is large enough to allow all animals in the structure to sit, stand, and lie in a normal manner, and to turn about freely. As proposed in § 3.4(d), the shelter structure would have to: (1) Provide adequate shelter and protection from the cold and heat; (2) be protected from the direct rays of the sun and the direct effect of wind, rain, or snow; (3) have a wind break and a rain break at its entrance; and (4) contain clean dry, bedding material. We are also proposing in § 3.4(b) that in addition to the shelter structure, there would have to be a separate outside area of shade provided, large enough to contain all the animals at one time and to protect them from the direct rays of the sun. This shaded area would give the animals relief on hot days, when they would be unlikely to seek shelter in an unventilated structure.

In proposed § 3.4(c), we would require that all building surfaces that are in contact with dogs or cats in outdoor housing facilities be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like would not be permitted as shelter structures. The floors of outdoor housing facilities could be of compacted earth, sand, gravel, or grass, but would have to be kept clean.

Primary Enclosures

We are proposing to amend current § 3.4, "Primary enclosures." The current section provides general requirements for construction and maintenance of primary enclosures, uniform space requirements for each dog or cat housed in a primary enclosure, and provisions regarding litter and resting surfaces for cats and the tethering of dogs on chains. We are proposing to expand the current general requirements, to add some new requirements, and to clarify the existing requirements in accordance with the intent of the amendments to the Act.

The proposed regulations regarding primary enclosures, contained in proposed § 3.6, would require that all primary enclosures meet certain minimum requirements that we believe are necessary for the safety and well-being of dogs and cats. A primary enclosure is defined in Part 1 as "any structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. Proposed § 3.6(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out. We would also require that the primary enclosure keep unauthorized humans out. We would continue to require that the primary enclosures enable the animals to remain dry and clean, that they provide the animals with convenient access to food and water, that they provide sufficient space for the dogs and cats to have normal freedom of movement, and that their floors be constructed in a manner that protects the animals from injury. We would add the requirements that the primary enclosures be constructed without sharp points or edges, and that they provide sufficient shade to the animals in the enclosures and protect them from temperature extremes and other weather conditions that might be uncomfortable or hazardous to the animals. We would also require that the primary enclosures be easily cleaned and sanitized.

However, if the floors of primary enclosures consist of earth, sand, gravel, or grass, we would require that they be replaceable, rather than easily cleaned and sanitized.

Additional Primary Enclosure Requirements for Cats

We are proposing to change the space requirements for cats. In general, the proposed regulations would base how much space a cat should have on the animal's weight, and whether it is a nursing mother. The space requirements in §§ 3.4(b) (1) and (3) of the current regulations are uniform for all cats, regardless of size, and require that each cat be given a minimum of 2.5 ft^2, with room to turn about freely, and to easily stand, sit, and lie in a confortable normal position. We believe, based on our inspections of research facilities, that the current minimum space requirements should be increased for all cats. Additionally, because the weight of a cat is a good indicator of its overall size, we believe that floor space requirements should distinguish between cats of different weights. Our proposed standards would provide cats with the space we believe is necessary and at the same time make our regulations correspond to the NIH Guide for the Care and Use of Laboratory Animals. In proposed § 3.6(b)(1), we would require that weaned cats weighing 8.8 lbs (4 kg) or less be provided with at least 3.0 ft^2 (0.28 m^2) of floor space, and that cats weighing over 8.8 lbs (4 kg) be provided with a minimum of 4.0 ft^2 (0.37 m^2) of floor space. Additionally, we would require that each queen with nursing kitten be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kittens in the litter. For example, five nursing kittens would require a 25-percent increase and 10 nursing kittens would require a 50-percent increase. The minimum floor space required would be exclusive of any food, water, or litter pans, and the height of the primary enclosure for cats would have to be at least 24 inches (60.96 cm).

All cats housed in the same primary enclosure would have to be compatible. The requirement in current § 3.4(b)(3) that no more than 12 adult nonconditioned cats be housed in the same primary enclosure would be retained and set forth in proposed § 3.6(b)(2). In addition, the following restrictions would apply: queens in heat could not be housed in the same primary enclosure with sexually mature males, except for breeding; queens with litters and kittens under 4 months of age could not be housed in the same primary enclosure with any other adult cats, except when maintained in a breeding colony; and cats with a vicious or

aggressive disposition would have to be housed separately.

In § 3.6(b)(3), we are proposing to retain the current requirement that a receptacle with litter be provided to contain excreta.

The current standards for cats in § 3.4(a)(2)(ii) state that there must be a solid resting surface in each primary enclosure that will comfortably hold all occupants at the same time, and that the resting surface be elevated if the enclosure holds two or more cats. We are proposing to require in § 3.6(b)(4) that all such resting surfaces be elevated, even if only one cat is in the enclosure, and to clarify that the resting surfaces not be counted as part of the minimum floor space. The resting surfaces would have to be impervious to moisture, and would have to be either easily cleaned and sanitized, or easily replaceable when soiled or worn.

We are proposing to provide, in § 3.6(b)(5), that cats in mobile or traveling shows or acts may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the cats would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When not traveling, however, the cats would have to be placed in primary enclosures that comply with the minimum space requirements and other requirements of § 3.6.

Additional Primary Enclosure Requirements for Dogs

In proposed § 3.6(c), we would retain the formulas in § 3.4(b)(2) of the current regulations for calculating the floor space for dogs [(length of dog in inches + 6) × (length of dog in inches +6) = required square inches of floor space; required square inches/144 = required square feet]. Because of the great variation in size and body conformation among the various species of dogs, we believe the present formula for calculating space based on body length is more appropriate than a formula based on the weight of the dog. Space requirements based on weight do not allow for the differences in body conformation among different breeds of dogs, such as bulldogs and whippets or greyhounds. Space requirements based on body length do allow for differences in body conformation and would therefore be retained as a more appropriate method for determining minimum space requirements. We are also proposing the require that the minimum height of a primary enclosure be at least 6 inches above the highest point of the body (normally the ears) of the tallest dog in the enclosure when standing in a normal position.

As with cats, nursing mothers would have to be provided with additional space. In proposed § 3.6(c)(1)(ii), we would require that each bitch with nursing puppies be provided with an additional amount of floor space, equal to 5 percent of her minimum floor space, for each nursing puppy in the litter.

In § 3.4(b)(2)(ii) of the current regulations, requirements are set forth for dog houses with chains used as primary enclosures for dogs kept outdoors. In § 3.6(c)(2) of the proposed regulations, we would expand those regulations and would apply the expanded regulations to apply to dogs that are tethered by any means, and not just by chains. We would retain the current requirement that a dog that is tethered be kept from being entangled, and would add the requirements that the dog not be able to come into physical contact with other dogs in the housing facility, and be able to roam to the full range of the tether. We would retain the current requirement that the tether be of the type commonly used for the size dog involved, and that the tether be attached to the dog by a well-fitted collar. Additionally, we propose to explicitly require that the collar must not cause trauma or injury to the dog. The proposed regulations include the following examples of types of collars that would be prohibited: collars made of wire, flat chains, chains with sharp edges, and chains with rusty or nonuniform links. As in the current regulations, the tether would have to be at least three times the length of the dog as measured from the tip of its nose to the base of its tail. We would require that the tether be attached to the front of the dog's shelter structure or to a post in front of the shelter structure, and that it allow the dog convenient access to the shelter structure and to food and water containers.

We are also proposing that dog housing area where chains or tethers are used must be enclosed by a perimeter fence at least 6 feet in height, so as to protect the dogs, to contain them, and to keep animals that size of dogs, racoons, and skunks from going through or under it.

All dogs housed in the same primary enclosure would have to be compatible. The provision in § 3.4(b)(2) limiting to 12 the number of nonconditioned adult dogs permitted to be housed in the same primary enclosure would be retained in proposed § 3.6(c)(3). Additionally, that proposed paragraph would contain the following provisions: bitches in heat must not be housed in the same primary enclosure with sexually mature males, except for breeding; bitches with litters must not be housed in the same primary enclosure with other adult dogs, and puppies under 4 months of age must not be housed in the same primary enclosure with adult dogs, except when maintained in a breeding colony; and dogs with a vicious or aggressive disposition must be housed separately.

We are also proposing to provide, in § 3.6(c)(4), that dogs in mobile or traveling shows or acts may be kept, while the show or act is being transported from one temporary location to another, in transport containers that comply with all requirements of proposed § 3.14 of this subpart, other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the dogs would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When stopped and not traveling, however, the dogs must be placed in primary enclosures that comply with the minimum space and other requirements of § 3.6. As explained above, we are also proposing similar provisions regarding cats in mobile or traveling shows or acts.

Variance

We understand that the proposed minimum space requirements for dogs and cats might require persons subject to the Animal Welfare regulations to rebuild or remodel their facilities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances, major structural modifications might be required to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with

a facility's fiscal year, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for dogs and cats, including minimum space requirements for the exercise of dogs.

The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling dogs or cats, having dogs or cats on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.6, could apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective would not be eligible for a variance, since they could adapt their construction to comply with them. However, a facility that is so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administrator if he or she determined that it was necessary, based upon the facts presented in the application for extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations, it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of dogs and cats that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance, and addressing whether granting the variance would be detrimental to the affected dogs and cats.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and well-being of the affected dogs and cats. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.6(d)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.6(d)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation in the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if detrimental to the health and well-being of the dogs or cats affected.

Exercise and Socialization for Dogs

In accordance with the 1985 amendments to the Act, we have developed standards for the exercise and socialization of dogs and are proposing a new § 3.7, titled "Exercise and socialization for dogs." This section would be divided into four subsections: social contact while being housed, held, or maintained; release for exercise and socialization; methods and period of exercise; and exemptions from exercise.

Social Contact for Dogs

Under the provisions for social contact in proposed § 3.7(a), we would require that all dogs housed, held or maintained by any dealer, exhibitor, or research facility be maintained in compatible groups. We are proposing exceptions to this provision however, for certain situations that involve either the provisions of an animal care and use procedure approved by a research facility's Committee, or the health and well-being of the dogs. Because of the social nature of dogs, we are also proposing to require, with similar exceptions, that all dogs be able to see and hear other dogs. If a dog is unable to see and hear other dogs simply because it is the only dog in a facility, we would require that it receive positive physical contact with humans at least once a day. "Positive physical contact" is defined in Part 1 as "petting, stroking, or other touching, which is beneficial to the well-being of the animal." (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) This contact would have to total at least 60 minutes each day and could be given in one or more periods.

Release for Exercise and Socialization

Provisions for the release of dogs for exercise and socialization are set forth in proposed § 3.7(b). With certain exceptions that are explained below, we are proposing to require that the following categories of dogs, if housed, held, or maintained by any dealer, exhibitor, or research facility, be released at least once a day for exercise and socialization: (1) Dogs that are kept in individual cages or that are kept individually in pens or runs that provide less than four times the space required for that dog, and that do not allow visual and physical contact with other dogs; and (2) dogs housed, held, or maintained in groups that are not provided with the

greater of 80 sq. ft. of space or 150 percent of the minimum space required for all dogs in the group. In some cases, a dog could be physically restricted from other dogs and still receive what we consider adequate social contact with other dogs. For instance, the required socialization could include a dog's being able to nuzzle another dog through a chain link fence.

However, dogs housed, held, or maintained individually would not have to be released if they are kept in pens or runs that provide at least four times the required space for that dog, and that allow the dogs visual and physical contact with other dogs. Also, in certain cases, the approved animal care and use procedure might prohibit the dogs' release for exercise and socialization. In those cases, the dogs would have to be maintained in pens or runs that provide each dog with at least twice the minimum floor space set forth in § 3.6(c)(1) of the proposed subpart with regard to primary enclosures. The exercise area would have to be at least 80 square feet, except that the area would have to provide each dog with at least twice the minimum floor space required by proposed § 3.6(c)(1).

Dogs housed, held, or maintained in groups would not have to be released for exercise if the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require under proposed § 3.6(c)(1) if maintained separately. The exercise area would have to be the greater of 80 square feet or 150 percent of the minimum space requirement in § 3.6(c)(1), as calculated for all dogs in the exercise area. For example, the following calculations might be used in the case of six beagles housed together. A 28-inch beagle would require a minimum floor space of 8 square feet. Therefore, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. Since that is less than 80 square feet, the larger space would be required. We believe that 80 square feet is a generally accepted minimum standard, based on comments we received from interested parties in response to a request for information.

The exercise period for all dogs that are released for exercise would have to be at least 30 minutes each day, and could be provided in one or more release periods. The consensus of APHIS veterinarians with training and experience in the care of dogs is that 30 minutes of daily exercise is a reasonable minimum for maintenance of a dog's health and well-being.

Methods of Exercise

Proposed § 3.7(c) provides that the method or type of exercise or release period used may be determined by the attending veterinarian and may consist of one or more methods. Suitable methods would include: walking on a leash; release into a room; release into a run or pen with more than 80 square feet of floor space; or some other similar type of arrangement. While forced exercise methods such as treadmills, carousels, or swimming would not be prohibited, they would not be considered acceptable forms of exercise for the release periods. Congressional intent with regard to the Act was to give dogs an *opportunity* for exercise, not to *force* them to exercise.

Record of Exercise

Under proposed § 3.7(d), the licensee or registrant would have to keep a record of each dog's release for exercise. These records would be subject to APHIS inspection.

Exemptions from Exercise

We recognize that certain situations will require an immediate response from facility personnel when a dog's welfare requires that it be provided less than the minimum standards for release for exercise. We are therefore including a provision in proposed § 3.7(e) that would authorize an attending veterinarian to exempt or restrict a particular dog from its required exercise and social release period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption would have to be recorded by the attending veterinarian, who would be required to review the grant of exemption at least every 30 days to determine if it is still warranted.

Feeding

In proposed § 3.8(a), concerning feeding requirements for dogs and cats, we are proposing to make minor changes to the feeding requirements in current § 3.5(a). In addition to the current provisions, we would require that food given to a dog or cat be appropriate for the animal's age.

We are proposing to make minor additions in § 3.8(b) to clarify that food receptacles must be used for dogs and cats, and must be located so as to minimize contamination by pests as well as by excreta, and so as to be protected from rain or snow. Feeding pans would either have to be made of a durable material that can be easily cleaned and sanitized, or be disposable and discarded after each use. We are proposing to require that food containers that are not discarded be cleaned daily and be sanitized before being used to feed a different dog or cat or social grouping of dogs or cats, and, as currently required, be sanitized at least once every two weeks. Self-feeders for the feeding of dry food would have to be cleaned and sanitized regularly. Measures would have to be taken to prevent molding, deterioration, and caking of the food. Any of the sanitization methods allowed in proposed § 3.10(b)(3) could be used for the sanitization required in proposed § 3.8.

Watering

Currently, § 3.6 contains provisions for offering liquids to dogs and cats and for the cleaning and disinfection of watering receptacles. Section 3.9 of the proposed rule would continue to require that potable water be offered at least twice daily, if it is not continually available, and would add the requirement that water receptacles be sanitized before being used to water a different dog or cat or social grouping of dogs or cats.

Cleaning of Primary Enclosures

We are proposing to revise and reword the provisions in current § 3.7, and to include them in proposed § 3.10, to clarify the intended requirements for sanitation and other forms of hygiene. The revised section would be titled "Cleaning, Sanitization, Housekeeping, and Pest Control."

Currently, § 3.7(a) requires that excreta must be removed from a primary enclosure "as often as necessary to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors." This wording has resulted in differences of opinion between inspectors and regulated persons as to what constitutes "as often as necessary." Therefore, in § 3.10(a), we are proposing to change this wording to require that excreta and food waste be removed from primary enclosures or from under primary enclosures at least daily and as often as necessary. This daily cleaning requirement would apply to all types of housing facilities and to primary enclosures with grill-type floors, and to the ground areas under raised runs with wire or slatted floors. Our experience indicates that daily cleaning is necessary to prevent the accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors. We are also proposing to require that when a primary enclosure is cleaned by steam or water, any dog or cat in the enclosure be removed during

the cleaning process, to prevent the animal from being involuntarily wetted or injured.

Sanitization of Primary Enclosures and Food and Water Receptacles

The provisions of proposed § 3.10(b) regarding sanitization of primary enclosures and food and water receptacles would be basically the same as those in § 3.7(b) of the current requirements, except that we would allow the option of sanitizing with live steam under pressure. Additionally, we would make minor editorial changes to the current regulations.

Housekeeping

In proposed § 3.10(c), we would revise and reword § 3.7(c) of the current regulations regarding housekeeping to clarify that paragraph's intent. The current regulations require that premises be kept free of trash accumulations and be kept clean enough and in good enough repair to protect the animals and facilitate the husbandry practices required by Subpart 3 of the regulations. We would retain the current requirements, but would add language to clarify that one of the aims of the housekeeping provisions is to keep premises rodent-free; additionally, we would specify what we would require as good housekeeping practices. We would specify that premises must be kept free of accumulations of trash, junk, waste products, and discarded matter such as wood, bricks, and abandoned cars. Weeds, grasses, and bushes would have to be controlled so as to facilitate cleaning and pest control, and to protect the dogs' and cats' health and well-being from hazards such as fox tails, burrs, sharp twigs, and fires.

Pest Control

The provisions of proposed § 3.10(d) regarding pest control would be basically the same as those in § 3.7(d) of the current requirements. We are proposing some minor revisions to simplify the language used. We are also proposing to clarify that a pest control program is necessary to promote the health and well-being of the dogs and cats at a facility and to reduce contamination by pests in animal areas.

Employees

Current § 3.8 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart A and that husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing minor revisions to this section in proposed § 3.11 to make clear that this requirement is imposed upon every person subject to the regulations and that the burden of verifying and ensuring that the supervisor and other employees are appropriately qualified is on the employer subject to the regulations. We are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandry practices.

Social Grouping

We are proposing to slightly revise current § 3.9 regarding social grouping of dogs and cats in order to reduce the stress suffered by certain dogs and cats. Under proposed § 3.12(d), we would allow dogs and cats to be maintained together in the same primary enclosure, or to be maintained in the same primary enclosure with other species of animals, if they are compatible. The present regulations require that dogs and cats be kept separate from each other, and from other animals, regardless of how well they get along together, or whether they are distressed by separation because they have been raised together and are compatible. If dogs and cats are not compatible with each other or with other animals, keeping them in the same primary enclosure would continue to be prohibited.

Transportation Standards

Consignments to Carriers and Intermediate Handlers

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations) would be expanded to ensure the well-being of dogs and cats during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept dogs and cats for transport in commerce. Additionally, the carriers and intermediate handlers had certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.11 and 3.14. We are proposing to consolidate them in one section, proposed § 3.13, and to add some additional ones that are necessary for the dogs' and cats' welfare.

The reader should note that our proposed regulations do not specifically refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

We would remove from the regulations the requirements that certifications accompanying shipments of dogs and cats include an "assigned accreditation number" (as provided in current § 3.11(c)(4)), because the program under which accreditation numbers are assigned has not been implemented.

Proposed § 3.13(c) would require that written instructions concerning food and water requirements for each dog and cat in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler can accept it for transport. This requirement is contained in current § 3.14(d). The instructions would have to be easily noticed and read. Current § 3.14 also requires that adult dogs and cats be given food at least once every 24 hours after acceptance for transportation, and water at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a dog or cat could have been fed up to 24 hours before being consigned for transport in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, we are proposing to add a certification requirement to proposed § 3.13(d) that would require that a carrier or intermediate handler not accept a dog or cat for transport in commerce unless certification by the consignor accompanies the animal and specifies in writing the date and time each dog and cat was last provided food and water before acceptance for transport. Proposed § 3.16 would require that the time periods for feeding and watering the dogs after acceptance for transport begin with the time of the last feeding and watering before acceptance for transport. To avoid situations where the carrier or intermediate handler would have to provide food and water immediately after accepting the animals, we would require that the certification also state that the dogs and cats were provided water within the 4 hours before delivery to the carrier or

intermediate handler, and were provided food within 12 hours before delivery to the carrier or intermediate handler.

Carriers and intermediate handlers would not be allowed to accept dogs and cats for transport unless the certification described above is signed and dated by the consignor, and the time of the execution of the certification is included. This certification as well as others required in proposed § 3.13 would have to include the tag number or tattoo assigned to each dog and cat under § 2.50 of the regulations.

The certifications of the consignor regarding the acclimation of a dog or cat to lower temperatures than those prescribed in current §§ 3.16 and 3.17 of the regulations (included in proposed §§ 3.18 and 3.19) would be clarified. Proposed § 3.14(f) would clarify the provisions in § 3.11(c) to require that the temperatures to which a dog or cat is exposed must meet generally accepted temperature ranges for the age, condition, and breed of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations. A carrier or intermediate handler would not be permitted to expose a dog or cat to temperatures lower than those prescribed by the regulations, unless a veterinarian certifies that the animal is acclimated to such lower temperatures, and unless the veterinarian includes in the certification the minimum temperature to which the animal may be exposed.

Proposed § 3.13(g) would retain the provision in current § 3.11(d) that requires the carrier or intermediate handler to attempt to notify the consignee of the arrival of the animal upon arrival, and every 6 hours after arrival. Proposed § 3.13(g) would also include limitations on how long a dog or cat can be held at a terminal facility while waiting to be picked up by the consignee. The same time limitations are imposed under Part 2 of the regulations, § 2.80, "C.O.D. shipments" (*see* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**), so that the carrier or intermediate handler must attempt to notify the consignee for 24 hours after arrival, then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. If the consignee is notified and does not take physical delivery of the dog or cat within 48 hours of notification, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates. Proposed § 3.13(g) would also require that carriers and intermediate handlers continue to maintain dogs and cats in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or to the consignor or to whomever the consignor designates. We would require that the carrier or intermediate handler obligate the consignor to pay for expenses incurred by the carrier or intermediate handler in returning the animal to the consignor.

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for dogs and cats and accordingly are necessary for their general welfare and well-being.

Primary Enclosures Used to Transport Dogs and Cats

We are proposing to reformat current § 3.12, which concerns primary enclosures used to transport dogs and cats, and to move those provisions to proposed § 3.14. Additionally, we are proposing to revise the contents of several paragraphs in the section, and add requirements for surface transportation. When the transportation standards were rewritten in 1978 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were inadvertently omitted. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of dogs and cats, and in the prosecution of persons who have improperly handled and transported dogs and cats by private surface vehicle. We are therefore proposing to reinstate the surface transportation standards that were inadvertently omitted in 1978.

We would require in § 3.14(a) that dogs and cats be shipped in primary enclosures. In addition to the requirements in current § 3.12(a) regarding construction of primary enclosures used for transportation, we are proposing to require in § 3.14(a) that the primary enclosure be constructed so that: (1) The animal being transported is at all times securely contained within the enclosure and cannot put any part of its body outside of the enclosure in a way that could injure the animal or people; (2) any material used in or on the enclosure is nontoxic to the animal; and (3) if a slatted or wire mesh floor is used in the enclosure, it be constructed so that the animal cannot put any part of its body through the spaces between the slats or through the holes in the mesh. Unless the dogs and cats are on raised floors made of wire or other nonsolid material, the primary enclosure would have to contain enough previously unused litter to absorb and cover excreta.

In addition to retaining the cleaning and sanitization requirements that currently appear in § 3.12(e), we would also require in proposed § 3.14(b) that if the dogs or cats being transported are in transit for more than 24 hours, either the enclosures be cleaned and the litter replaced, or other means, such as moving the animals to a different enclosure, be used to prevent the soiling of the dogs or cats by body wastes.

In proposed § 3.14(c), we set forth ventilation requirements more restrictive than those in the current regulations by removing two of the current options for primary enclosure configurations with regard to ventilation. The current regulations allow the primary enclosures to have ventilation openings on either two, three, or four sides. Studies made by the Civil Aeromedical Institute, Federal Aviation Administration, Oklahoma City, OK, indicate that maximized ventilation with regard to transportation crates is beneficial to the well-being of dogs, by allowing them to adjust better to the high temperatures and humidity encountered when shipped in warm weather. These studies also indicate that, within reason and for short periods of time, increased ventilation in transportation crates is not detrimental to dogs during cold weather. Therefore, we are proposing to require that there be ventilation openings on each of the four walls of primary enclosures used to transport dogs and cats, and that the ventilation openings total at least 8 percent of the total surface of each wall, with the total combined surface area of the ventilation openings comprising at least 14 percent of the total combined surface area of all the walls of the primary enclosure.

Section 3.12(h) of the current regulations requires that a primary enclosure that is permanently affixed to a primary conveyance so that the front opening of the enclosure is its only source of ventilation must face either the outside of the conveyance or an unobstructed aisle or passageway. Because primary enclosures that open directly to the outside of the conveyance may expose the animals in the enclosure to the elements, we are proposing in § 3.14(c)(3) to require that enclosures

with a front opening open only to an unobstructed aisle or passageway. We are also proposing in § 3.14(c)(3) to require that the ventilation openings of primary enclosures permanently affixed to a conveyance be covered with bars, mesh, or smooth expanded metal having air spaces. Under the current regulations, § 3.12(b) requires that live dogs or cats transported in the same primary enclosure be of the same species and be maintained in compatible groups. We are proposing to retain this wording in proposed § 3.14(d), with the added provision that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported together in the same primary enclosure. Based on our observations of shipments of dogs and cats and on information received from pet owners and dealers, we have determined that shipping companion animals individually may cause them more stress than shipping them together.

We are also proposing in § 3.14(d) that: (1) Puppies or kittens 180 days of age of less may not be transported in the same primary enclosure with adult dogs or cats other than their dams; (2) dogs or cats that are aggressive or vicious must be transported individually in a primary enclosure; and (3) female dogs or cats in season (estrus) must not be transported in the same primary enclosure with any male dog or cat.

The requirement in § 3.12(c) that each dog or cat transported in a primary enclosure have sufficent space to turn about freely in a standing position, and to sit, and lie in a natural position would be retained and moved to proposed § 3.14(e)(1).

Transportation by Air

Because certain requirements for primary enclosures used in surface transportation were omitted from the 1978 revisions to the regulations, the provisions in current § 3.12(d) regarding the number of animals that may be transported in a primary enclosure are designed only for air transportation. We are therefore proposing to set forth the provisions of current § 3.12(d), with some amendments, in proposed § 3.14(f), titled "Transportation by air." We are proposing that a maximum of two live dogs or cats, 6 months of age or more, that are comparable in size, may be transported in the same primary enclosure when shipped by air. The present standard allows only one dog or cat, 6 months or more of age, to a container. Although the current regulations were establish to minimize stress on animals being shipped, we have determined from our observations at airports, and from information received from pet owners and dealers, that it is often more stressful for a dog or cat to travel alone than in an enclosure with a companion animal.

We are also proposing that a maximum of two live puppies, 8 weeks to 6 months of age, of comparable size, and weighing over 20 lb (9 kg) each may be transported in the same primary enclosure. Present standards allow only one such puppy per primary enclosure. The present standards also allow only two live puppies and kittens, 8 weeks to 6 months of age, but not weighing over 20 lb (9 kg) each, to be shipped in the same primary enclosure. We are proposing that it be permissible to transport a maximum of three such puppies or kittens in the same primary enclosure. As we noted above, we believe it is appropriate to allow an animal being shipped the opportunity for companionship, and the small size of the animals described by this provision would allow three animals to be shipped comfortably in standard air shipping enclosures. In proposed § 3.14(f)(4), we would retain the provision in current § 3.12(d) that weaned puppies or kittens less than 8 weeks old and of comparable size, or puppies or kittens that are less than 8 weeks old and are littermates accompanied by their dam, may be shipped in the same primary enclosure to research facilities. This provision is limited to research facilities by the Act.

Transportation by Surface Vehicle

We are proposing to add a new § 3.14(g) regarding transportation by surface vehicle. These provisions would reinstate primary enclosure requirements that were inadvertently omitted when the standards for the commercial transportation of dogs and cats were revised in 1978. We are proposing that a maximum of four dogs or cats may be transported in the same primary enclosure when shipped by surface vehicle, provided all other transportation requirements in proposed § 3.14 are complied with. We would allow shipment of more dogs and cats in surface vehicle enclosures than in air shipping enclosures for several reasons. First, standard enclosures for surface transportation are larger than than those customarily used for air transportation. Additionally, when animals are transported by surface vehicle, there is more opportunity for the driver or another person to check on the animals to ensure that their health is being maintained and that the animals are compatible.

Weaned live puppies or kittens less than 8 weeks of age, or puppies or kittens that are less than 8 weeks of age, are littermates, and are accompanied by their dam, would be permitted to be transported in the same primary enclosure when shipped to a research facility, including federal research facilities.

Documents Accompanying Animals

Proposed § 3.14(h) would require that shipping documents accompanying the shipments either be maintained by the operator of the conveyance or be securely attached in a readily accessible manner to the outside of the primary enclosures in a way that allows them to be detached for examination and securely reattached. Instructions for food and water and for administration of drugs, medication, and other special care would have to be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

Primary Conveyances

To protect the health of dogs and cats during transportation in commerce, the regulations in current §§ 3.16 and 3.17 prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range. Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1978, requirements concerning allowable temperatures in primary conveyances were included in § 3.13 of the regulations. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1978.

The intervening years have demonstrated the need to reinstated these requirements for two principal reasons: (1) The current requirements concerning temperatures in primary conveyances are inconsistent, because dogs and cats in transporting devices and in holding areas of terminal facilities must not be exposed to temperature outside a specified range, but dogs and cats in animal cargo spaces of primary conveyance—mainly cars and trucks—are not afforded the the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision that the animals are not subjected to extremes of temperature.

Under the requirements for air transportation in proposed § 3.15(d), we would specify that during transportation, including time spent on the ground, live dogs and cats must be transported in cargo areas that are

heated or cooled as needed to maintain the required ambient temperature. The cargo areas would also have to be pressurized while the conveyance is in the air. In proposed § 3.15(e), we would require that during surface transportation, auxillary ventilation, such as fans, blowers or air conditioning, be used in animal cargo spaces containing live dogs or cats when the ambient temperature within the animal cargo space is 85 °F (29.5 °C) or higher. Additionally, the ambient temperature would not be permitted to exceed 95 °F (35 °C) at any time; nor to exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor to fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor to fall below 35 °F (1.7 °C) at any time. We are proposing to add requirements in proposed § 3.15(c) that a primary conveyance in a way that provides protection from the elements. Current § 3.13(f) requires that dogs and cats not be transported with any material, substance or device that may reasonably be expected to harm the animals. In proposed § 3.15 (h), we would clarify the intent of that requirement to indicate that the material, substance or device must not accompany the animals only the shipment is conducted "in a such a manner" that might be reasonably be expected to harm the dogs and cats.

Food and Water Requirements

Requirements regarding food and water for dogs and cats being transported, currently contained in § 3.14, would be set forth in proposed § 3.16. We would remove the provision concerning the minimum amount of water that must be offered to dogs or cats under 16 weeks of age. The current regulations require that these dogs and cats be offered at least 60 cc (approximately 2 oz) of potable water within a prescribed time. The minimum amount in the current regulations is so small that we believe the young dogs and cats would be better served by simply falling under the general requirements concerning the offering of potable water.

Current § 3.14(a) requires that dogs and cats be offered water within 12 hours after the start of transportation or acceptance for transportation. Current § 3.14(b) requires that puppies and kittens be provided food at least once every 12 hours, and dogs and cats over 16 weeks of age be provided food at least once every 24 hours. The current regulations specify that these time periods begin at the time the animals are accpeted for transport or the time transport begins, depending on who is carrying out the transport. This method of calculating when the time begins, however, could result in some dogs and cats not being provided water and food for unacceptably lengthy periods of time—in those cases where the animals were provided food and water the maximum time allowed before transport or acceptance for transport, and then not again until the maximum time allowed after transport or acceptance for transport. Therefore, we are proposing in §§ 3.16 (a) and (b) that the time periods for providing food and water to the animals *after* transport or acceptance for transport begin at the time the dog or cat was last provided food and water before initiation of transport or acceptance for transport.

In order to minimize the instances where carriers and intermediate handlers have to provide food and water to the animals immediately after accepting them for transport, consignors subject to the regulations would be required to certify that each dog or cat was provided water within 4 hours before delivery for transportation and that each dog or cat was provided food within 12 hours before delivery for transportation. The proposed regulations would require that the certification include the date and times the food and water was offered.

The provisions in current § 3.14(d), concerning a carrier or intermediate handler's responsibility regarding written feeding and watering instructions, would be set forth in proposed § 3.13(c). We are proposing to add the provision that food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. We are proposing this provision based on information from carriers and intermediate handlers, which indicates that when a primary enclosure is opened to provide food or water to the animal inside, there is often a significant risk of the animal escaping from the enclosure.

§ 3.17 *Care in Transit.* The provisions regading care in transit in current § 3.15 would be set forth in proposed § 3.17. We are proposing some minor reformatting for readability, and three additions to the current provisions. The current regulations require that the driver of a surface vehicle check on the dogs or cats he or she is transporting. In proposed § 3.17(a), we would allow this observation to be conducted either by the operator of the conveyance or a person accompanying the operator, but would make it the responsibility of the regulated person transporting the dogs and cats to ensure that this observation is carried out. Additionally, in proposed § 3.17(a), we would use language that specifies that dogs and cats in obvious physical distress be given veterinary care at the closest available veterinary facility. We are proposing to make this change to clarify our intent as to the meaning of "as soon as possible" in the current regulations.

In proposed § 3.17(c), we would add an exception to the current regulations that prohibit transport in commerce of a dog or cat in physical distress, to allow transport for the purposes of obtaining veterinary care for the condition.

We are proposing to add a subsection § 3.17(e), that would specify that these transportation standards remain in effect and must be complied with until the animal reaches its final destination, or the consignee accepts delivery of the animal. We believe this provision is necessary to prevent any gap in care for the dog or cat and in responsibility for its care.

Terminal Facilities

Current § 3.16 imposes duties on carriers and intermediate handlers holding dogs or cats in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. There is currently no similar obligation imposed on other persons who transport these animals. As a result, under the current regulations, animals could be held in animal holding areas under hazardous conditions.

We are proposing to move the provisions regarding terminal facilities to proposed § 3.18, and would require that the same duties be imposed on any person subject to the regulations who transports dogs or cats and who holds them in the animal holding areas. Because the animals require this minimum level of care no matter which regulated persons are moving them, it is illogical to place these duties only on carriers and intermediate handlers. Also, the length of time that dogs and cats can be maintained in terminal facilities upon arrival after transportation would be the same as that proposed in § 3.13(g).

Additionally, we are proposing to add in § 3.18(d) the provision that the ambient temperature in the animal holding area of terminal facilities may not fall below 35° F (1.7° C) at any time live dogs or cats are present. The proposed regulations would specify a procedure for measuring the ambient temperature. In cases where a terminal

facility contains more than one primary enclosure, it is possible that several temperature readings would have to be made to determine the ambient temperature at each primary enclosure. Also, proposed § 3.19(e) contains those provisions contained in current § 3.17 that require shelter from the elements for dogs and cats, because the current provisions apply to persons holding a dog or cat in an animal holding area of a terminal facility.

Handling

Current § 3.17 also imposes duties on carriers and intermediate handlers for proper handling and movement of dogs and cats. For reasons explained above under "Terminal facilities," proposed § 3.19 would also impose the same duties on any person subject to the regulations when handling a dog or cat at any time during the course of transportation in commerce, so that the animals' health, safety and well-being will be protected at all times during transport. This would include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. This would also include movement of the dog or cat on a transporting device used to transfer the animal from a primary conveyance to an animal holding area and vice versa, movement from one primary conveyance to another, and movement from place to place within the terminal facility.

Proposed § 3.19(b) would require that care be exercised to avoid handling primary enclosures in such a way that dogs or cats in the primary enclosures are cuased physical or emotional distress. Because of problems and complaints concerning the handling of dog and cat shipments in baggage areas by airlines, we are proposing that primary enclosures containing dogs or cats must not be placed on unattended conveyor belts or on elevated conveyor ramps such as baggage claim conveyor belts and inclined conveyor ramps leading to baggage claim areas. We would allow primary enclosures to be placed on inclined conveyor ramps that are used to load and unload aircraft, if there is an attendant at each end of the conveyor belt.

Subparts B and C—Guinea Pigs, Hamsters, and Rabbits

Regulations on the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits are contained in 9 CFR Part 3, Subpart B for guinea pigs and hamsters, and Subpart C for rabbits. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, veterinary care, and transportation.

We propose to amend these regulations by revising the space requirements for primary enclosures and by prescribing minimum and maximum temperatures for cargo spaces in primary conveyances. These proposed amendments are discussed in detail below.

Space Requirements for Guinea Pigs

Our current requirements concerning space in primary enclosures used to house guinea pigs (contained in § 3.28(b)(2)) are as follows:

Weight/stage of maturity	Floor area/animal in²	Interior height in
Weaning to 350g	60	6.5
> 350g	90	6.5
Breeders	180	6.5

In May of 1987, the National Association for Biomedical Research (NABR) petitioned us to delete the requirement for additional space for breeder guinea pigs.

In its petition, the NABR cited a study performed at Charles River Laboratories, a major laboratory animal breeder located in Wilmington, Massachusetts. This study concerned the effect of cage size on reproductivity. As described in a report accompanying the petition, the study used three groups of 60 female guinea pigs each. One group was housed four guinea pigs to a cage of 720 square inches (180 square inches each), as prescribed by Animal and Plant Health Inspection Service (APHIS) regulations. Another group was housed six to a cage of 720 square inches (120 square inches each), and the third group was housed seven to a cage of 720 square inches (102.86 square inches each). The study showed no significant difference in the reproductive performance (gross litter averages, live births, average weaning litter sizes, and total number of pups weaned during the same timeframe) between the breeder guinea pigs housed according to APHIS regulations and the breeder guinea pigs housed in less space. These results indicate that breeder guinea pigs, including nursing females with litters, do not require floor space in excess of that required for nonbreeder guinea pigs.

The NABR also cited a study performed by the Department of Comparative Medicine of the Milton S. Hershey Medical Center at the Pennsylvania State University at Hershey, Pennsylvania. This study was conducted to determine the percent of available floor space used by groups of breeder guinea pigs. The study compared a group of four guinea pigs housed in a cage of 720 square inches (180 square inches each) with a group of seven guinea pigs housed in a cage the same size (102.86 square inches each). The study hypothesized that a decrease in floor area per animal would lead to increased use of the available floor area as animals tried to avoid stress associated with overcrowding. Conversely, the study also hypothesized that if herding or family grouping were important to the well-being of the animals, a decrease in floor space would not lead to an increased use of the available floor area. A computer-coupled video tracking system recorded the movement of the guinea pigs over 12-hour light and dark cycles. The study revealed that both groups of breeder guinea pigs used the periphery of the cage almost to the exclusion of the center floor space. These results provide a basis for changing our regulations concerning space requirements for breeder guinea pigs.

We have carefully reviewed and analysed the material submitted to us. We believe the data is sound and the petition has merit. Therefore, we propose to delete our requirement for additional space for breeder guinea pigs and to require the same minimum floor space for breeder guinea pigs, including nursing females with litters, as for nonbreeder guinea pigs.

We also propose to revise the space requirements in primary enclosures for nonbreeder guinea pigs weighing more than 350 grams.

Our current regulations require a minimum floor space of 90 square inches for nonbreeder guinea pigs weighing more than 350 grams. By comparison, the NIH Guide recommends 101 square inches for each guinea pig weighing over 350 grams, only slightly less than the 102.86 square inches provided each breeder guinea pigs housed in groups of seven in the Charles River and Hershey Medical Center studies.

Based on all the data available to us, we believe that more floor space for nonbreeder guinea pigs weighing over 350 grams would be beneficial, giving them more space for moving about. Therefore, we propose to increase, from 90 square inches to 101 square inches, the minimum floor space we require for guinea pigs weighing over 350 grams.

We also propose to require that primary enclosures used to house guinea pigs have a minimum interior height of 7 inches. This is an increase of ½ inch

over our current requirement of 6½ inches. We believe than an extra ½ inch in height would benefit guinea pigs by providing additional space for them to make normal postural adjustments.

Space Requirements for Hamsters

Our current requirements concerning space in primary enclosures used to house hamsters (contained in § 3.28(b)(3)) are as follows:

Age	Floor area/animal		Interior height		Maximum population per enclosure
	Dwarf in²	Other in²	Dwarf in²	Other in²	
Weaning to 5 wks	5.0	10.0	5.0	5.5	20
5 to 10 wks	7.5	12.5	5.0	5.5	16
> 10 wks	9.0	15.0	5.0	5.5	13

In addition, § 3.28(b)(3) requires that a nursing female hamster, together with her litter, be housed in a primary enclosure that contains no other hamsters and that provides at least 25 square inches of floor space for dwarf hamsters and at least 121 square inches of floor space for hamsters other than dwarf.

We believe that increasing both floor area and cage height would benefit hamsters by providing additional room for them to move about and make normal postural adjustments. We have carefully considered the space recommendations contained in the NIH Guide. We believe that they are an improvement over our current regulations. Therefore, we are proposing to adopt the same floor area and cage height requirements as are currently in the NIH Guide. Our requirements for females with litters would not be amended.

The NIH Guide contains the following minimum space recommendations for hamsters:

Weight g	Floor area/animal		Cage height	
	in²	cm²	in	cm
60	10	64.52	6	15.24
60 to 80	13	83.88	6	15.24
80 to 100	16	103.23	6	15.24
> 100	19	122.58	6	15.24

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to delete our requirements concerning maximum population per enclosure because we believe that population is not a critical factor affecting the well-being of hamsters, as long as each hamster has at least the minimum amount of floor space that we have proposed.

Space Requirements for Rabbits

Our current requirements concerning space in primary enclosures used to house rabbits (contained in (§ 3.53(b)) are as follows:

Category	Weight/animal		Floor area/animal	
	lbs	(kgs)	in²	(ft²)
Groups	3-5	(1.4-2.7)	144	(1)
	6-8	(2.7-4.0)	288	(2)
	>9	(>4.0)	432	(3)
Individual adults	3-5	(1.4-2.7)	180	(1.25)
	6-8	(2.7-4.0)	360	(2.50)
	9-11	(4.0-5.4)	540	(3.75)
	>12	(>5.4)	720	(5.00)
Nursing females	3-5	(1.4-2.7)	576	(4.00)
	6-8	(2.7-4.0)	720	(5.00)
	9-11	(4.0-5.4)	864	(6.00)
	>12	(>5.4)	1080	(7.50)

We believe that rabbits, like guinea pigs and hamsters, would benefit from additional space. Based on all the data available to us, we believe that the current NIH guidelines would provide them with adequate space. These guidelines are different from our current regulations in two ways, which we have carefully considered and believe are improvements over our current regulations: (1) Space recommendations are for individual rabbits only; and (2) there is a minimum interior cage height of 14 inches. Under our proposal, this would mean that rabbits housed in groups would have to be provided the same amount of floor space per rabbit as those housed individually. It would also mean that rabbits would have adequate overhead space to accommodate normal physical posturing.

The NIH Guide contains the following minimum space recommendations for rabbits:

Weight kg	Floor area/animal		Cage height	
	ft²	m²	in	cm
2	1.5	0.14	14	35.56
2–4	3.0	0.28	14	35.56
4–5.4	4.0	0.37	14	35.56
>5.4	5.0	0.46	14	35.56

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to revise our space requirements for females with litters to the following:

	Weight of female rabbit		Minimum area/female & litters [1]		Minimum interior hgt	
	lbs	kgs	ft²	m²	in	cm
Females with litters	4.4	2	4.0	0.37	14	35.56
	4.4–8.8	2–4	5.0	0.46	14	35.56
	8.8–11.9	4–5.4	6.0	0.56	14	35.56
	>11.9	>5.4	7.5	0.70	14	35.56

[1] The minimum floor spaces indicated in the table above are for the nursing female, together with her litter.

The proposed minimum space requirements for females with litters are roughly the same as the current requirements for nursing females. We are proposing new weight categories and a new term for nursing females to make the format of the proposed space requirements for females with litters parallel the format of the proposed space requirements for other rabbits.

Ambient Temperature Requirements in Primary Conveyances

To protect the health of guinea pigs, hamsters, and rabbits during transportation in commerce, the regulations in 9 CFR in Part 3, §§ 3.40, 3.41, 3.65, and 3.66, prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range.

Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1977, requirements concerning allowable ambient temperatures in primary conveyances were part of the regulations in 9 CFR Part 3, §§ 3.37 and 3.62. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1977.

The intervening years have demonstrated the need to re-adopt these requirements for two principal rseasons: (1) The current requirements concerning ambient temperatures are inconsistent, because guineas pigs, hamsters, and rabbits in transporting devices and in holding areas of terminal facilities may not be exposed to temperatures outside a specified range, but guinea pigs, hamsters, and rabbits in animal cargo spaces of primary conveyances—mainly cars and trucks—are not afforded the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision to ensure that the animals are not subjected to extremes of temperature.

We therefore propose to reinstate requirements concerning ambient temperatures in primary conveyances. The proposed requirements, which would be applicable to all types of primary conveyances (motor vehicle, air, rail, and marine), would require animal cargo spaces in primary conveyances transporting live animals to be mechanically sound and to provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. We also propose to require that auxiliary ventilation be used in any animal cargo space containing live guinea pigs, hamsters, or rabbits if the ambient temperature is 75° F (23.9° C) or higher. Furthermore, we propose to require that the ambient temperature in the animal cargo space be maintained at or below 85° F (29.5° C) but no lower than 45° F (7.2° C), except that temperatures below 45° F (7.2° C) would be allowed for hamsters and rabbits if the animals are accompanied by a certificate of acclimation to lower temperatures. Requirements concerning the certificate of acclimation are contained in § 3.35 of the regulations for hamsters and in § 3.60 of the regulations for rabbits. We do not propose to allow guinea pigs to be transported in cargo spaces where the ambient temperature falls below 45° F (7.2° C) because guinea pigs cannot tolerate such low temperatures.

These proposed requirements concerning fresh air and auxiliary ventilation are necessary to ensure that the animals have adequate ventilation. The maximum and minimum ambient temperatures would help ensure that the animals are not subjected to extremes of temperature during transportation in commerce. We recognize, however, that some hamsters and rabbits may be comfortable at temperatures below the lower limits proposed; the provisions concering the certificate of acclimation would allow them to be transported at temperatures below 45° F (7.2° C).

Miscellaneous

We propose to revise §§ 3.40, 3.41, and 3.66 of the regulations, which contain transportation requirements, to clarify that responsibility for meeting these requirements rests with any person who is subject to the Animal Welfare regulations and who transports live guinea pigs, hamsters, or rabbits. Currently, the regulations place this responsibility only with carriers and intermediate handlers. However, other persons, including dealers, exhibitors, and research facilities, including federal research facilities, hold animals in terminal facilities and move animals in transporting devices, and the same temperature restrictions are necessary for the well-being of the animals.

We propose to revise §§ 3.36 and 3.61 of the regulations, which contain requirements for primary enclosures used to transport live guinea pigs, hamsters, and rabbits, to clarify that the responsibility for meeting these requirements rests with any person who

is subject to the Animal Welfare regulations and who offers a live guinea pig, hamster, or rabbit for transportation in commerce.

Subpart D—Nonhuman Primates

Regulations on the humane handling, care, treatment, and transportation of nonhuman primates are contained in 9 CFR Part 3, Subpart D. These regulations include minimum standards for handling, housing, social grouping and separation of species, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

We are proposing to revise and rewrite the current regulations based on our experience administering the Act and them. We are also proposing to amend our regulations to add requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates. This is specifically required by the 1985 amendments to section 13 of the Act. (See § 1752, 99 Stat. 1645, Pub. L. 99-198, amending 7 U.S.C. 2143.) We discuss each topic covered in our proposed regulations below.

In preparing to revise and amend Subpart D, we engaged in extensive study of the environmental needs of nonhuman primates that must be met to promote their psychological well-being. We actively sought input from various professional communities that are subject to the regulations. We formed a committee to study the psychological needs of nonhuman primates maintained by the research community and to make specific recommendations to us concerning the various issues presented by the 1985 amendments to the Act. This committee was comprised of APHIS representatives and ten members of the scientific research community. The members were experts recommended by the National Institutes of Health and were appointed by APHIS to formulate recommendations for means of providing an environment to promote the psychological well-being of nonhuman primates. Observers from NIH were also present during committee deliberations, although they were not members of the committee.

We also sought and obtained input from organizations, such as the National Association for Biomedical Research, which represent facilities utilizing nonhuman primates in their research.

We invited animal exhibitors to participate in the development of regulations to promote the psychological well-being of nonhuman primates. The American Association of Zoological Parks and Aquariums, a nonprofit, tax-exempt organization dedicated to the advancement of zoological parks and aquariums for conservation, education, scientific studies and recreation, formed a Primate Study Committee to develop materials concerning space requirements and the various environmental enrichments required by different species of nonhuman primates, based upon their social behavior and species-typical activity, in order to promote their psychological well-being.

The results of these efforts are explained in greater detail below in our discussion of proposed minimum space and environmental requirements.

The regulations we are proposing in this revision of Subpart D are minimum standards to be applied to all species of nonhuman primates. We are continuing to include current footnote 1 of Subpart D in this proposal, although it is revised to reflect the need to promote the psychological well-being of nonhuman primates. Rather than stating that "discretion" must be used due to the variation in species, we are proposing to require that these minimum standards be applied in a manner that is considered appropriate for the relevant species in accordance with customary and generally accepted professional and husbandry practices.

The Act applies to all nonhuman primates, whether living or dead. The standards we are proposing are principally applicable to live nonhuman primates. As stated in proposed footnote 1, the proposed regulations apply only to live nonhuman primates, unless stated otherwise.

Housing Facilities and Operating Standards

Current sections 3.75 through 3.77 provide requirements for facilities used to house nonhuman primates. Current § 3.75, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.76, "Facilities, indoor," and § 3.77, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the psychological well-being of nonhuman primates. We are also proposing to add sections that provide regulations specifically governing two other types of housing facilities used to house nonhuman primates, sheltered housing facilities and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in Part 1 (*see companion docket no. 88-013, published elsewhere in this issue of the Federal Register*) as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility", also defined in Part 1, means "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the requirements we are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.75, which would also include many of the provisions in current § 3.75. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases, where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

Housing facilities, general

Because nonhuman primates vary widely in size, weight, and range of activity, the design, composition and structural strength required of housing facilities varies as well. We are proposing to require in proposed § 3.75(a) that the design, composition, and structural strength of a housing facility be appropriate for the particular species housed in it. For example, the actual structural requirements for a housing facility would differ depending upon whether it is used to house marmosets, a small nonhuman primate species, or great apes, a typically large species weighing more than 88 lbs. (40 kg.).

In proposed § 3.75(b), we are proposing to add the requirement that a dealer's or exhibitor's housing facilities be physically separated from any other business. When a housing facility is located on the same premises as any other business there is likely to be increased traffic and activity which is known to be distressful to nonhuman primates. Also when more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the conditions of the facility. This has made inspection and enforcement of the regulations difficult. To avoid these difficulties we are proposing to require that housing facilities, other than those maintained by research facilities and federal

research facilities, be physically separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. The means of separation used would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it. For example, if a security fence is used, it would have to be at least 6-feet high and constructed in a manner that restricts any unauthorized entry. We are not imposing this requirement upon research facilities because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with research facilities.

We are also proposing in subsection (b) that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, weeds, and discarded material in order to prevent unsanitary conditions, diseases, pests, and odors. The need for orderliness applies particularly to animal areas inside of housing facilities, and we are proposing that they must be kept free of clutter, including equipment, furniture, or stored material, and materials not necessary for proper husbandry practices.

In proposed § 3.75(c) we are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities. The current regulations require that interior surfaces of indoor housing facilities be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized. They do not specify frequency of sanitization. They also do not provide any requirements for building surfaces used in outdoor housing facilities.

Under our proposal, any surfaces that come in contact with nonhuman primates must be maintained regularly so that they are kept in good condition. Interior surfaces and furniture-type fixtures or objects within the facility, such as perches, swings, and dens, must be made so that they can be readily cleaned and sanitized, or removed or replaced when worn or soiled. We are proposing to add this requirement because we would no longer require impervious surfaces under our proposal in an effort to encourage provision of more natural environments for the animals. Because porous surfaces may not be adequately sanitized, we are requiring instead that they be removed or replaced when worn or soiled. This requirement appears in proposed § 3.75(c)(2). Otherwise, the manner of construction and the materials used must allow for cleaning and sanitization.

Proposed § 3.75(c)(1) would require that surfaces that come in contact with nonhuman primates be free of jagged edges or sharp points that could injure the animals, as well as rust that prevents the required cleaning and sanitization or affects the structural integrity of the surfaces. Because we recognize that as long as water is used to clean animal areas metal parts will rust, we would allow some rust on metal areas, as long as it does not reduce structural strength or interfere with proper cleaning and sanitization because that could present hazards to the animals.

Proposed § 3.75(c)(3) would require that hard surfaces that come in contact with nonhuman primates be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, in accordance with generally accepted husbandry practices, unless the nonhuman primates engage in scent marking. Scent marking is an inborn method used by certain species of nonhuman primates in nature (such as species of prosimians, marmosets, tamarins, and callimico) to establish their territory and for identification by other members of the species. Animals can detect that another member of the species has occupied a site by the scent left behind and can locate companions in this manner. It is distressful for these primates to have their scent marks eliminated since they lose their territorial claims and their frame of reference. We are therefore proposing that hard surfaces that come in contact with nonhuman primates that scent mark be spot cleaned daily and that they be sanitized at regular intervals that would be determined in accordance with generally accepted professional and husbandry practices. We invite comments on the length of intervals that should be allowed to pass between regular cleanings for those species engaging in scent marking.

We are proposing to remove the requirement that housing facilities have impervious surfaces because many can simulate more natural environments by providing dirt floors and planted areas that are beneficial to the nonhuman primates' psychological well-being. Proposed § 3.75(c)(3) would provide that outdoor floors could be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned and is removable.

Proposed § 3.84(b)(3) provides various methods of sanitizing primary enclosures. Because these methods are effective in general for sanitization of hard surfaces that nonhuman primates come in contact with, except for dirt floors and planted areas, any of them could be used for the sanitization required by proposed § 3.75(c)(3). The method of sanitization would be determined by the housing facility operator. Planted enclosures and floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot cleaned daily, since sanitization is not practicable. Contaminated flooring material would have to be removed if raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. The material could then be replaced or a different material could be used.

In the current regulations, § 3.75(b) provides requirements for water and electric power. It specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this subpart." In this proposed rule, provisions concerning water and electric power are set forth in § 3.75(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* reliable electric power that is adequate for heating, cooling, ventilation, lighting, and other husbandry requirements, and mechanically pressurized potable running water for the nonhuman primates' drinking needs and adequate for cleaning and for carrying out other husbandry requirements. Based upon our inspections of dealer, exhibitor, and research facilities, we believe that nonhuman primate facilities subject to the Animal Welfare regulations cannot be properly cleaned and maintained without electric power and running potable water under pressure.

We are proposing in § 3.75(e) to expand the regulations in current § 3.75(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. We are proposing requirements to ensure further the quality of the physical environment surrounding nonhuman primates. We are proposing to add a requirement that food and bedding be stored in leakproof containers to protect the supplies from spoilage, contamination, and vermin infestation, and that open food and bedding supplies be kept in leakproof

containers with tightly fitting lids to prevent spoilage and contamination. Proposed § 3.75(e) would require that substances that would be toxic to nonhuman primates be stored away from animal areas and food storage and preparation areas. Only the food and bedding in use could be kept in animal areas and we would require that when they are not in use they must be properly stored. In addition, all food would have to be stored so as to prevent contamination or deterioration of its nutritive value. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them.

The proposed regulations would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.75(d). We are proposing to clarify this requirement so that it clearly applies to all fluid wastes and to include a requirement that arrangements must be made for prompt daily removal and disposal of wastes. Removal and disposal must be done more than once each day if necessary to avoid problems with odors, pests, insects, and diseases. The proposed regulations would also require that trash containers be leakproof and tightly closed when not in use, and that all forms of animal waste, including dead animals, be kept out of food and animal areas.

Requirements for drainage systems are currently provided in §§ 3.76(e) and 3.77(d) for indoor and outdoor facilities, respectively. Because all types of animal housing facilities, including sheltered housing facilities and mobile or traveling housing facilities, require a proper disposal facility and drainage system, we are proposing to consolidate all drainage and waste disposal requirements in proposed § 3.75(f). The requirements for drainage systems would be expanded to provide that in all types of housing facilities whether open or closed drains, waste sump ponds, or settlement ponds are used they must be properly constructed, installed, and maintained, and they must minimize vermin and pest infestation, insects, odors, and disease hazards. As part of this safeguard, we would require that waste sump ponds and settlement ponds be located an adequate distance from the animal area of the housing facility to prevent problems with vermin, pests, odors, insects, and disease hazards. Drainage systems must also rapidly eliminate animal wastes and water so that the animals can stay dry. This is necessary because it is known to be distressful to nonhuman primates to be involuntarily wetted.

The requirement contained in current § 3.75(e) that washing facilities be available to animal caretakers for their cleanliness would be retained and would appear in proposed § 3.75(g).

Requirements for different types of housing facilities

The current regulations specify two kinds of housing facilities, indoor and outdoor. These terms are defined in Part 1 of the regulations. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) An indoor housing facility is defined as "any structure or building with environmental controls housing or intended to house animals" that is fully enclosed and has a continuous connection between the floor, ground, and ceiling, is capable of being temperature and humidity controlled, and has at least one door for entry and exit. An outdoor housing facility is defined as "any structure, building, land, or premise, housing or intended to house animals, and which does not meet the defintion of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits. We are proposing to add two additional sections containing requirements for sheltered housing facilities and mobile or traveling housing facilities, previously defined in this document.

Requirements for enclosed or partially enclosed housing facilities

Three of the four types of housing facilities that may be used to house nonhuman primates are either enclosed or partially enclosed. They are indoor housing facilities, mobile or traveling housing facilities, and the sheltered portion of sheltered housing facilities. We are proposing to require that all of these enclosed types of housing facilities be required to provide heating, cooling, and ventilation, and to maintain temperatures within the temperature limits provided in current paragraphs (a) and (b) of § 3.76 "Facilities, indoor" as follows:

1. Temperature requirements

Under our proposal, there must be sufficient heat provided to protect nonhuman primates from cold temperatures. The ambient temperature (defined in Part 1 of the regulations as the temperature surrounding the animal) must not fall below 50 °F (10 °C). We would require cooling to protect nonhuman primates from high temperatures. The ambient temperature must not rise above 85 °F (29.5 °C), except that for mobile or traveling housing facilities only, the upper temperature limit is 95 °F (35 °C) when nonhuman primates are present, however auxiliary ventilation such as fans or air conditioning must be provided if the temperature is 85 °F (29.5 °C) or higher. Because the various species of nonhuman primates have different optimal ambient temperatures and different tolerances for higher and lower temperatures, we are proposing to require that the actual ambient temperature maintained be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

2. Ventilation

The current requirement in § 3.76(b) for ventilation of indoor housing facilities would be applicable to the three types of enclosed housing facilities to provide for the health, comfort, and well-being of nonhuman primates. For sheltered housing facilities the requirement would only apply to the sheltered portion of the facility since the outdoor portion could not be humidity controlled. We are proposing to add that ventilation must also be provided to minimize ammonia levels in these housing facilities and that mobile or traveling housing facilities must be ventilated to minimize exhaust fumes, to protect the well-being of the nonhuman primates.

3. Relative humidity level

Except in mobile or traveling housing facilities, we would also require that the relative humidity in enclosed facilities be maintained between 30 and 70 percent. The actual relative humdity maintained would depend upon the species housed and must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. For example, certain species of nonhuman primates are known to be less tolerant of a wide range of humidity levels and therefore should be maintained at more specific humidity levels. The NIH Guide provides precise humdity levels for certain species. Individuals subject to our regulations can refer to the NIH Guide for these animals because use of the Guide will maintain actual humidity levels within the requirements of these regulations and conforms with generally accepted professional and husbandry practices.

We are not proposing to require that a precise range of humidity levels be maintained in mobile or traveling

housing facilities since they travel into all parts of the United States which have varying levels of humidity. Typically, the species of nonhuman primates that travel in these facilities are chimpanzees used in circuses and trained animal acts. Chimpanzees can tolerate a wider range of relative humidity levels than most species of nonhuman primates and would not be exposed to an undue health hazard if there is no range of humidity levels specified in the regulations. However, we would require that the relative humidity level be maintained at a level that ensures the health and the well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Operators of mobile or traveling housing facilities as well as all other housing facility operators would still be subject to the general requirement contained in footnote 1 which provides that these regulations must be applied in accordance with customary and generally accepted professional and husbandry practices considered appropriate for each species and accordingly could not expose nonhuman primates to relative humidity levels that are considered hazardous to that species' physical well-being without violating the regulations.

4. Lighting

The proposed regulations would continue the requirement presently imposed upon indoor facilities in current § 3.76(c) to provide adequate light to premit routine inspection and cleaning of the housing facility, and observation of nonhuman primates. This requirement would apply to the three types of enclosed housing facilities included in the proposed regulations. We are proposing in proposed §§ 3.76(c), 3.77(c), and 3.79(d) to require a daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness each day in order to maintain a normal lighting cycle for the nonhuman primates' well-being. A diurnal lighting cycle is known to be necessary for nonhuman primates to maintain normal breeding practices and to promote their psychological well-being. We would continue to allow artificial light to be used, but the proposed regulations would specify that it must provide full-spectrum illumination. Safeguards against exposing nonhuman primates to excessive light would be retained and would apply to all enclosed housing facilities

Requirements for outdoor or partially outdoor housing facilities

1. Shelter from the elements.

Outdoor housing facilities cannot be temperature controlled. Our proposal would allow only those nonhuman primates that are acclimated to the prevailing seasonal temperature and that can tolerate without stress or discomfort the range of temperatures, humidity, and climactic conditions known to occur at the facility at the time of year they are housed there to be housed in outdoor facilities, in order to protect their physical welfare.

As in current § 3.77(a)–(c) outdoor housing facilities must provide shelter from the elements and protection from various weather conditions, such as sun, wind, rain, cold air, and snow. For example, nonhuman primates must be provided with shade from the sun and protection from precipitation so that they remain dry. This requirement appears in proposed § 3.78(b). We would require that the shelter provided be maintained in good repair, and that it be constructed in a manner and made of material that can be radily cleaned and sanitized in accordance with proposed § 3.75(c). The shelter provided in an outdoor or sheltered housing facility would be required to provide heat to prevent the temperature from falling below 50 °F (10 °C).

The requirement to provide protection from the elements would also be applicable to sheltered housing facilities. We would require that nonhuman primates be provided shelter from the elements at all times. Accordingly, unless the nonhuman primates have continual ready access to the sheltered portion of the facility, some additional form of shelter must be provided that satisfies the requirements contained in paragraphs (a) through (e) of proposed § 3.77.

Proposed §§ 3.77(e) and 3.78(c) would require that the shelters in both sheltered and outdoor housing facilities be large enough to provide protection comfortably to all the nonhuman primate housed in the facility at the same time. Sheltered housing facilities and outdoor housing facilities would be required to have multiple shelters if there are aggressive or dominant animals present that might deter other nonhuman primates from utilizing the shelters when they so desire. We considered multiple shelters necessary under these circumstances in order to prevent the destress that would result if a nonhuman primates was prevented from occupying a shelter because it was intimidated.

2. Perimeter fence.

We are proposing additional requirements for housing facilities having outdoor areas, in order to protect the safety of nonhuman primates and to provide for their well-being. In proposed §§ 3.77(f) and 3.78(d), we would require that unless a natural barrier exists that would restrict the animals to the housing facility and prevent unauthorized humans and animals from having contact with the nonhuman primates, a perimeter fence at least 6 feet in height be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities, and that it be placed at least 3 feet from the outside wall of the primary enclosure. In certain settings a perimeter fence is not needed because the animals are protected by natural barriers, such as moats or swamps surrounding the facility. The exception for natural boundaries would be subject to the Administrator's approval. The perimeter fence could be slatted, latticed or of other similar design, as long as it is designed and constructed in a manner that restricts unauthorized humans and animals from entering or have contact with the nonhuman primates, including animals capable of digging underneath it, and that prevents small animals the size of dogs, raccoons, and skunks from entering through it. We would require that it be placed at least 3 feet from the outside wall of the primary enclosure because this is considered to be a sufficient safety zone between the nonhuman primates and the public and would allow sufficient room to use cleaning equipment necessary for cleaning the waste and refuse that nonhuman primates throw into it. The fence would not be required if the outside walls of the primary enclosure are high enough and built in a manner that prevents contact with or entry by other animals. To avoid the need for a perimeter fence we would require that the outside walls of the primary enclosure be made of a heavy duty material such as concrete, wood, metal, plastic, or glass, that prevents unauthorized entry by and contact with humans and animals.

Additional safety requirement

We are also proposing to add a requirement for facilities that are at least partially outdoors and are accessible to the public in order to protect nonhuman primates from the public and to protect the public from nonhuman primates. Public barriers would be required for sheltered housing facilities under proposed § 3.77(g).

outdoor housing facilities under proposed § 3.78(e), and for mobile or traveling housing facilities under proposed § 3.79(e). The proposed regulations would require barriers preventing unauthorized physical contact between the public and nonhuman primates for fixed public exhibits and traveling animal exhibits, at any time the public is present, both to protect the public and the nonhuman primates. We are also proposing to require that nonhuman primates used in trained animal acts or uncaged public exhibits be under the control and supervision of an experienced handler or trainer whenever the public is present. The proposed regulations would permit trained nonhuman primates used in animal acts and uncaged public exhibits to have physical contact with the public, as allowed under § 2.131, but only if the nonhuman primates are under the direct control and supervision of an experienced handler or trainer at all times during the contact, in order to prevent injury to both the nonhuman primates and the public.

Primary enclosures

We are proposing to revise completely current § 3.78, "Primary enclosures." We are doing so in accordance with the 1985 amendments to the Act. Under the amendments, the Secretary of Agriculture is directed to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." The standards must include minimum requirements "for a physical environment adequate to promote the psychological well-being of primates." (7 U.S.C. § 2143(a)(2)(B)) Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. As explained in greater detail below, we are proposing different minimum space and environment requirements for research facilities, dealers, exhibitors, and traveling or mobile animal act exhibitors, in order to promote the psychological well-being of nonhuman primates and to provide for the primates' minimum needs. All primary enclosures would be required to meet the proposed minimum requirements. We consider the proposed requirements to be the minimum necessary for nonhuman primates' health, safety, and psychological well-being.

Our proposal is in contrast to current § 3.78, which provides general requirements for construction and maintenance of primary enclosures and uniform space requirements for every nonhuman primate housed in a primary enclosure.

We are also proposing to add a subsection on social grouping of nonhuman primates within primary enclosures.

General requirements

Primary enclosures are defined in Part 1 of the regulations as "any structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." Proposed § 3.80(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out, that they enable the animals to remain dry and clean, that they provide the animals with convenient access to clean food and water, that their floors be constructed in a manner that protects the animals from injury, and that they provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

We are also proposing in proposed § 3.80(a) to require specifically that the primary enclosures have no sharp points or edges that could injure the animals, that they keep unauthorized people and predators from entering the enclosure or having physical contact with nonhuman primates, that they provide shelter and protection from extreme temperature and weather conditions that can be dangerous to the animals' health and welfare, that they provide sufficient shade to protect all the animals contained in the enclosure at one time, and that they enable all surfaces to be readily cleaned and sanitized or replaced if worn or soiled.

These additional requirements are intended to provide more specific minimum criteria that must be satisfied by regulated persons maintaining nonhuman primates in order to provide for the welfare of the animals.

Social grouping

We are proposing to include a new subsection of proposed § 3.80 "Primary enclosures" to emphasize that nonhuman primates must be grouped in a primary enclosure with compatible members of their species or with other nonhuman primate species, either in pairs, family groups, or other compatible social groupings, whenever possible and consistent with providing for the nonhuman primates' health, safety, and well-being, unless social grouping is prohibited by an animal care and use procedure and approved by the facility's Committee. Compatibility would be based upon generally accepted professional practices and upon observation of the nonhuman primates to determine that they are in fact compatible. We are proposing this requirement based upon scientific evidence and our experience, both of which indicate that nonhuman primates are social beings in nature and require contact with other nonhuman primates for their psychological well-being. The expert committee convened by APHIS also recommended social grouping to promote the psychological well-being of nonhuman primates. Social deprivation is regarded by the scientific community as psychologically debilitating to social animals. Where social grouping is not possible or is determined by the attending veterinarian to be contrary to providing for the nonhuman primates' health, safety, and well-being as explained below, or is prohibited by an animal care and use procedure approved by the research facility's Committee in accordance with Part 2 of the regulations, we are proposing to require that nonhuman primates be at least able to see and hear other nonhuman primates, unless this is also prohibited by an animal care and use procedure approved by the research facility's Committee. In this case, the isolated individually housed nonhuman primates would be required to have positive physical contact or other interaction with their keeper or with another familiar and knowledgeable person for at least one hour each day. We invite comments addressing the different measures that may be taken to satisfy the requirement to provide positive physical contact or other interaction to individually housed nonhuman primates.

Space and physical environment

As stated above, we are completely revising the minimum space requirements for nonhuman primates set forth in current paragraphs (1) and (2) of § 3.78(b). The current requirements specify that primary enclosures be "constructed and maintained so as to provide sufficient space to allow each nonhuman primate to make normal postural adjustments with adequate freedom of movement" and provide a minimum floor space equal to an area of at least three times the area occupied by each animal when standing on four feet, regardless of the size or condition of the animal. We are also proposing to add requirements for enhancing the environment of the primary enclosures used for maintaining nonhuman

primates, in accordance with the 1985 amendments to the Act.

In preparing our proposal of minimum requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates, we utilized the Agency's expertise and experience in regulating the humane handling, care, and treatment of nonhuman primates. Because this is the first occasion the Agency has been charged with responsibility for regulations to promote the psychological well-being of nonhuman primates, we considered it important and instructive to consult with experts and representatives of regulated industries. We requested their advice on the minimum space and other environmental requirements they considered necessary to meet the psychological needs of nonhuman primates.

As stated previously in this Supplementary Information, the National Institutes of Health (NIH), Public Health Service recommended experts to advise us regarding minimum standards for promoting the psychological well-being of nonhuman primates. A group of 10 nonhuman primate experts was selected and was asked to formulate a recommendation for these minimum standards. We also requested the American Association of Zoological Parks and Aquariums (AAZPA) to recommend minimum requirements. Both groups presented us with a comprehensive report consisting of their recommendations for appropriate space requirements, environmental enhancements, social grouping and interaction, and other minimum standards they considered necessary to promote the psychological well-being of nonhuman primates. The consensus of opinion was that nonhuman primates need physical and mental stimulation for their psychological well-being, to enhance their developmental growth, and to make them better socially adjusted. The reports indicated that the need for stimulation could be met by allowing them sufficient space to engage in species-typical behavior, by providing enclosure complexities such as perches and swings, by providing manipulable objects (such as balls and other objects), and by varying the methods of feeding (such as allowing the primates to forage for food). The reports indicated that social interaction and exercise are equally necessary to promote their psychological well-being and that social grouping increases the primates' physical activity. The reports differed, however, in their recommendations of the precise means, or combination of means, considered necessary to promote the primates' psychological needs. Based on these reports and our observation of and experience with nonhuman primates, and considering the differences of opinion among the various professional communities maintaining nonhuman primates, we have determined that nonhuman primates have an acknowledged need for physical and mental stimulation, and that their needs can be met in various ways.

We have considered the environmental conditions under which nonhuman primates are maintained by regulated persons, and are proposing minimum standards for primary enclosures used by research facilities (including federal research facilities), dealers, exhibitors, and traveling or mobile animal act exhibitors. We have proposed four sets of minimum standards because the environment in which a nonhuman primate is maintained may satisfy some of its needs and may require providing other forms of stimulation or environmental enhancements to satisfy other needs. For example, grouping by families and compatible nonhuman primate species would meet the need for social interaction of primates maintained in permanent zoo exhibits, while creating other needs, such as the need of exhibited animals to have privacy from each other and from the public. In other cases, environmental conditions may restrict the opportunity to provide stimulation through otherwise accepted means because it may not be in the best interest of the primates' safety, health, and well-being to do so. For example, dealers may need to individually house newcomers if placing them in an enclosure with an established group would cause aggressive behavior among the other nonhuman primates. The psychological needs of the individually housed primates would have to be met through other means.

Accordingly, as explained in greater detail below, we are proposing that primary enclosures used to maintain nonhuman primates must provide sufficient space, as set forth in our proposal, and that nonhuman primates must have exercise, social interaction (or human interaction), and environmental enrichments, consistent with their safety, health, and well-being. The minimum amount of space that would be required for each nonhuman primate, and the kind and amount of other means of meeting psychological needs that would be required under our proposal would vary among the four sets of minimum standards and would depend upon all the forms and opportunities for physical and mental stimulation presented to nonhumn primates in the environments typically provided by research facilities, dealers, exhibitors, and mobile or traveling animal act exhibitors, respectively. Under our proposal, when an acknowledged means of providing the stimulation considered necessary for the primates' psychological well-being is amply supplied because of the environment in which the primates are maintained, other requirements for providing stimulation may be affected, as long as a sufficient amount and variety of stimulation is provided to meet the animals' psychological needs.

The proposed space requirements are minimum standards that must be provided to *each* nonhuman primate contained in a primary enclosure, unless otherwise specified. Consequently, if two nonhuman primates are housed together in one enclosure maintained by a research facility, the minimum floor area would be the sum of the minimum floor area space requirements that must be provided to each animal. The minimum height for the animal would likewise be increased, up to twice the greatest height required for any of the nonhuman primates contained in the primary enclosure but not to exceed 84 inches in height. This is because taller enclosures would not fit in most rooms and would not be necessary as long as each animal has a sufficient volume of space. Also, the proposed regulations would not allow the size of a primary enclosure to be reduced because it contains a suspended fixture, such as a swing or a perch.

1. Research facilities, federal research facilities

Our observations of nonhuman primates maintained in research facilities and the advice of the expert committee convened by APHIS, indicate that nonhuman primates used in research typically interact regularly with their human caretakers. Studies involving nonhuman primates often require observation by and physical contact with a principal investigator, perhaps several times each day. In fact, it has been shown that even intrusive procedures, such as drawing blood, are not stressful to chimpanzees maintained in research facilities, if performed by a familiar, trusted caretaker. Interaction with human caretakers, if a positive experience, is considered significant in alleviating distress under experimental conditions and helps promote the psychological well-being of nonhuman

primates maintained in research environments.

Although human interaction provides a primary source of stimulation to nonhuman primates maintained by research facilities, we have determined that other forms of physical and mental stimulation must also be provided. The need for environmental enrichments is explained under the heading, "Additional requirements for research facilities." Specific requirements are proposed in § 3.81, "Additional requirements for research facilities."

We have also determined that nonhuman primates need greater space than that required under the current regulations, so that they can engage in species-typical physical activity that is necessary for their psychological well-being. As stated above, the minimum space requirements we are proposing must be provided to *each* nonhuman primate in an enclosure. Accordingly, nonhuman primates maintained in groups will have larger enclosures in which to engage in physical activity. Communally-housed primates engage in increased physical activity, prompted by their interaction. Those housed individually will have to be released into larger primary enclosures (at least three times the minimum area and twice the minimum height up to 84 inches) for exercise unless they are housed in primary enclosures that provide twice the minimum volume required. This release requirement is also explained in greater detail under the heading, "Additional requirements for research facilities."

We are proposing minimum primary enclosures space requirements that we consider sufficient to promote the psychological well-being of nonhuman primates, in light of the social interaction they receive and the additional environmental enhancements that must also be provided. The minimum enclosure sizes proposed are based on the typical weight of the species, except for brachiating species, in accordance with the following table:

Group	Weight		Floor Area/Animal		Height	
	lbs.	(kg.)	ft.²	(m²)	in.	(cm.)
1	2.2	(1)	1.6	(0.15)	20	(50.8)
2	2.2–6.6	(1–3)	3.0	(0.28)	30	(76.2)
3	6.6–20.0	(3–10)	4.3	(0.40)	30	(76.2)
4	20.0–33.0	(10–15)	6.0	(0.56)	32	(81.28)
5	33.0–55.0	(15–25)	8.0	(0.74)	36	(91.44)
6	55.0–88.0	(25–40)	25.1	(2.33)	84	(213.36)
7	>88.0	(>40 kg.)	50.0	(4.65)	84	(213.36)

The proposed enclosure sizes are similar to those provided in the NIH Guide, except that the NIH Guide categorizes nonhuman primates by weight into six categories, combining Groups 6 and 7 into one category for all nonhuman primate species over 55.0 pounds. We do not believe it would be appropriate to require the same minimum floor area and height for the larger great apes weighing over 88.0 pounds, such as gorillas, as for the smaller great ape species, since the former are substantially larger in size and consequently require more space for their psychological well-being. Our decision to propose seven weight groups for determining minimum space requirements is in accordance with the recommendations we received from the expert committee on nonhuman primates.

The proposed minimum floor area and height that must be provided by research facilities, including federal research facilities, were also recommended by the committee as sufficient to promote the psychological well-being of nonhuman primates.

Nonhuman primates would be categorized into these seven groups by the typical weight of animals of their species, except for infants (up to 6 months of age) and juveniles (6 months to 3 years of age) of various species that may weigh so much less than adults of their species that they are grouped with lighter weight species unless they obviously require greater space to make normal postural adjustments and movements, and except for brachiating species. Brachiating species are those that typically hang or swing by their arms so that they are suspended in the air and fully extended. The following are examples of the types of nonhuman primates that fall into each group:

Group 1—Marmosets, Tamarins, and infants of various species.

Group 2—Capuchins, Squirrel Monkeys and species of similar size, and juveniles of various species.

Group 3—Macaques and African species.

Group 4—Male Macaques and large African species.

Group 5—Baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).

Group 6—Great Apes up to 88.0 lbs. (40 kg.) and brachiating species.

Group 7—Great Apes greater than 88.0 lbs. (40 kg.).

We determined it appropriate to provide guidelines to research facilities by proposing these seven weight groups. In most instances, the specified dimensions for the various species will be sufficient to promote the primates' psychological well-being, and the table can be used to determine the minimum space requirements for each species. However, if a nonhuman primate is unable to make normal postural adjustments and movements, or cannot do so without difficulty, notwithstanding the table, it must be provided greater space.

We encourage the design and development of pimary enclosures that promote the psychological well-being of nonhuman primates by providing them with sufficient space and unrestricted opportunity for movement and exercise, and by allowing them to interact physically and socially with other nonhuman primates. Accordingly, we are proposing to allow the use of primary enclosures that do not precisely meet the space requirements otherwise required of research facilities upon application to the Administrator for permission. An applicant would be required to demonstrate both in writing and through use of photographic aids that the proposed primary enclosure provides sufficient space and is designed so that the nonhuman primates can express species-typical behavior. The Administrator would grant the application if he or she determines it meets our requirements for promoting the psychological well-being of the nonhuman primates, or would deny it if he or she determines that it is detrimental to the health and psychological well-being of the nonhuman primates proposed to be housed in the enclosure. The nonhuman primates housed in the enclosure would be excused from the required social release period required in proposed

§ 3.81(a)(3) if the applicant demonstrates that the primary enclosure is designed and constructed in a manner that provides for the nonhuman primates' psychological well-being by allowing them sufficient exercise and social interaction.

Additional requirements are imposed upon research facilities to provide environmental enrichments whenever possible in accordance with the mandate of the Act, as amended, and Part 2 of the Animal Welfare regulations. Since there are unique considerations in many instances because of the necessities of animal care and use procedures, we are proposing to place these additional requirements in a separate section, proposed § 3.81, which follows this discussion of minimum space and environmental requirements. We believe that the space requirements of proposed § 3.80(c)(1) together with the requirements proposed in § 3.81 will promote the psychological well-being of nonhuman primates used in research.

2. Dealers

From our experience in regulating dealers, we have determined that dealers obtain nonhuman primates from various parts of the country and the world. These nonhuman primates are of various species and may have been transported individually or with an established group. In most instances, the time period nonhuman primates are held by dealers is relatively brief. Generally, dealers hold the animals until they are sold, which usually occurs quickly, or until arrangements are made for transferring them to their new owner. Accordingly, nonhuman primates maintained by dealers are typically subject to the stresses of travel and transiency.

Unlike nonhuman primates maintained by research facilities, that have been conditioned so that their health status is stable and known, newly imported are transported nonhuman primates can carry disease organisms requiring quarantine and/or veterinary care. Some may carry disease organisms that do not affect it, but that may affect others primates of the same species from different locales, and other species that may be suspectible. This risk exists even after they have completed a quarantine period. In addition, the stress of shipment makes them more susceptible to disease. Accordingly, health concerns frequently require that nonhuman primates be individually housed, to promote their well-being. These concerns would not impact upon established groups, since all the animals in the group would have been exposed to the same disease hazards and would generally have the same immunities.

Established groups of nonhuman primates are known to have defined social structures, with dominant animals at the head of the pecking order. When new primates of the same or different species are introduced into an established group, aggression among the primates frequently results as they attempt to establish the newcomer's status in the social structure. This aggressive behavior is dangerous for the nonhuman primates and for their caretakers. We believe that the hazards attendant to altering the social composition of an established group for what is generally a brief period may require that individual nonhuman primates obtained by dealers be housed apart from established social groups for the primates' safety, and that they should not be introduced into the group.

Accordingly, we believe that these health and safety concerns justify requiring that nonhuman primates' needs be met through means that do not include physical interaction with other nonhuman primates, in accordance with the determination of the attending veterinarian, unless the primates are part of an established group. Under our proposal, dealers would remain subject to the requirements of paragraph (b), "Social grouping," and must ensure that individually housed nonhuman primates can see and hear other nonhuman primates of their own or compatible species, or have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour a day.

Because social interaction among nonhuman primates maintained by dealers may be restricted for health and safety reasons, we would require that dealers provide multiple enrichments of the physical environment of the primary enclosures that are appropriate for the nonhuman primates' species and age, in order to satisfy the animals' psychological needs. The proposed enrichments are essential for providing sufficient physical and mental stimulation to the nonhuman primates, particularly if they are individually housed. Examples of enrichments we would require include providing perches, swings, mirrors, or other increased cage complexities; providing toys, balls, and objects for the animals to play with or manipulate; and varying the method of feeding to make it more interesting to the primates or to stimulate feeding in nature. We would require multiple enrichments for each animal housed in a primary enclosure.

We are proposing minimum space requirements for individually housed nonhuman primates held by dealers that are twice the minimum floor area and twice the minimum height (up to a maximum of 84 inches) that research facilities would be required to provide. We believe the increase in minimum space requirements over that required of research facilities is necessary to promote physical activity because individually housed nonhuman primates may not be released for exercise and are not as active as those housed in social groups. The reader should note that nonhuman primates maintained in research facilities housed in enclosures providing twice the minimum floor area and twice the minimum height, up to a maximum of 84 inches, are not required to be released for exercise under our proposal. Nonhuman primates held by dealers also have less social interaction with other species than those maintained in research facilities, for reasons cited above, and have less interaction with humans. Increasing the required minimum space will provide an opportunity for greater physical activity and stimulation.

We would require that nonhuman primates housed in pairs, families, or other social groups be provided the same minimum space as research facilities would be required to provide. Unlike the requirements we are proposing for individually housed nonhuman primates, we are not proposing to require twice the minimum space that research facilities must provide to pairs, families, or other social groups, because the nonhuman primates will receive increased physical and mental stimulation through interaction with other group members.

The different species of nonhuman primates would be categorized into the same 7 groups as for research facilities. Because of the increased space provided, the brief time they are held by dealers, and the health and safety reasons cited above, we would not require that the animals be released for exercise or social interaction.

The proposed regulations would allow dealers to provide the same minimum space required of research facilities under certain specifically identified circumstances, when necessary. These purposes are limited to: holding the animal for a required quarantine period, having the animal receive veterinary care as directed by the attending veterinarian, and transporting the animal to or from an auction sale and holding it at the sale. All of these

occasions would be brief. Based on our observation of and experience in regulating dealers we believe that it is necessary to restrict the animals' space under these circumstances so that the dealers can properly observe and handle the nonhuman primates. It would also reduce the possibility of injury to both the nonhuman primate and its handler. The requirement to provide environmental enrichments would remain in full force to provide for the animals' psychological needs during these short-term periods.

3. Exhibitors

We believe that many of the psychological needs of nonhuman primates maintained in zoos are satisfied because they are housed in primary enclosures in social groups in more naturalistic environments. Because of their communal housing they have greater opportunity for physical activity and mental stimulation. Perches and climbing structures are often provided to them in their naturalistic environment so that the viewing public can observe their species-typical behavior. However, we have determined, based upon the information available to us, that their environment necessitates environmental enrichments to accommodate other needs in promoting their psychological well-being. For example, some species of nonhuman primates maintained in permanent zoo exhibits may require privacy and refuge from the public, and from each other, as a result of daily public exposure. Also, unlike nonhuman primates maintained by research facilities and dealers, primates maintained in permanent zoo exhibits are encouraged to mate and reproduce. It has been scientifically shown that nonhuman primates in psychological distress do not engage in normal reproductive behavior. Accordingly, their physical environment must be enriched to promote their psychological well-being, so that they may do so.

We are proposing minimum space and environmental enrichment requirements that are similar to this recommendations presented to us by the American Association of Zoological Parks and Aquariums (AAZPA) in its report. This study was compiled at our request and was the result of a collective effort of a committee of AAZPA members. The AAZPA study categorizes nonhuman primates into seven groups based upon the known social behavior of the animals, as opposed to typical weight of the species. Each nonhuman primate species has different needs, based upon its typical social behavior and physical activity that must be satisfied for their psychological well-being in a zoo or exhibition environment.

The minimum space, environmental enrichments, and social grouping required in the proposed regulations for each group of nonhuman primates is based upon our experience in regulating exhibitors and the industry's recommendations after observation of and experience with the animals. We believe they will be appropriate to promote the psychological well-being of each of the species.

The specific minimum space and environmental requirements are set forth in the rule portion of this document at proposed § 3.80(c)(3), and appear in chart form. The chart divides the various species into 7 groups and offers examples of the types of nonhuman primates included in each. For each grouping, the chart specifies the minimum number of nonhuman primates to be housed together in a primary enclosure, the minimum space requirements for that group, whether shelters are required and if so how many and of what size and the furnishings that are required to enrich the environment in the primary enclosure and provide for the animals' psychological well-being. Except for great apes, we are proposing minimum space requirements for groups of nonhuman primates, in accordance with the AAZPA recommendations, and not for individual animals.

4. Mobile or traveling animal act exhibitors

Our proposal for minimum space and environmental requirements applicable to mobile or traveling animal act exhibitors is in two parts. One part pertains to nonhuman primates that participate daily in animal acts, shows, or training periods outside of their primary enclosure. The second pertains to nonhuman primates that are permanently contained in their primary enclosure. We are proposing regulations in accordance with these two classifications because we have determined, based upon observation and our experience in regulating mobile or traveling animal act exhibitors, that animals used in trained animal acts are generally released daily for training or for performances, except during brief layovers between shows, and that untrained animals are used primarily for public exhibition and are not released. We are not aware of any nonhuman primates used in traveling exhibitions that would justify proposing an additional set of requirements.

Trained, performing nonhuman primates receive a great deal of mental and physical stimulation on a daily basis. Their lives are enriched and varied through multiple performances on a daily basis, and training sessions in between. When performing, the primates are in a close, working relationship with their trainer, and with any other animals in the act. Between performances, the nonhuman primates are given training sessions to sharpen their performances and to learn new routines. We believe that these nonhuman primates' psychological needs are met by their interaction and activity. Accordingly, we do not consider it necessary to require additional environmental enrichments in their primary enclosures. We are proposing in § 3.80(c)(4)(i) that mobile or traveling animal act exhibitors provide the minimum space required of research facilities. We believe this space is sufficient to promote the psychological well-being of the nonhuman primates when they are contained in primary enclosures.

Nonhuman primates used in mobile or traveling animal act exhibits that are not trained and are used for static or stationary exhibits do not receive daily interaction with their caretakers, unlike those maintained in research facilities. Often they are solitary exhibits, such as gorillas held for public viewing, and do not interact with other nonhuman primates. Unlike the nonhuman primates held by dealers, the animals are maintained under these circumstances for long periods, without being released, and therefore require more environmental stimuli and opportunities for physical activity to promote their psychological well-being than nonhuman primates maintained by research facilities, dealers, and exhibitors. We are therefore proposing to require multiple environmental enrichments that allow the different species of nonhuman primates to engage in species-typical behavior. The enrichments required would be similar in kind to those that dealers and exhibitors are required to provide, and they too must be appropriate for the species and age of the animal. We are proposing that the minimum space that must be provided to these nonhuman primates be at least three times the floor area and twice the height (up to a maximum height of 84 inches) that research facilities are required to provide. We believe that enclosures providing this minimum space would be appropriate for housing up to three nonhuman primates under these circumstances, since their social interaction will provide greater opportunity for physical stimulation. The minimum space provided would be required to be increased in accordance

with paragraph (d) of proposed § 3.80 for each additional 1–3 nonhuman primates also housed in the primary enclosure. We believe that the increased minimum space is necessary to encourage and allow greater physical activity and would also be consistent with highway travel restrictions. We believe that if these requirements are met, the psychological needs of these nonhuman primates will be satisfied.

Except where otherwise stated, the minimum space requirements provided in proposed § 3.80(c) are mandatory for each individual nonhuman primate housed in a primary enclosure. Accordingly, the minimum space provided must be increased when nonhuman primates are housed in multiples in a primary enclosure so that each has a sufficient volume of space in which to express species-typical behavior since overcrowding is known to result in nonhuman primates becoming agitated and to cause them to express abnormal behavior. We are proposing to require that primary enclosures be increased in size by the floor area required for each nonhuman primates if it were housed individually and that the minimum height provided by twice that required for the largest nonhuman primate in the enclosure, up to a maximum height of 84 inches. We are not proposing to require that the minimum height provided be increased for each additional animal housed in the primary enclosure since the enlarged area coupled with the doubled height should provide sufficient volume for the nonhuman primates' activity. Also, the maximum height ceiling of 84 inches is a practical limitation since enclosures of greater height would not fit in many rooms.

Based upon the cited authorities and our experience, we believe that these proposed minimum space and environmental enrichment requirements are sufficient to promote the psychological well-being of nonhuman primates maintained by regulated persons.

Variance

We understood that the proposed minimum space requirements for nonhuman primates might require persons subject to the Animal Welfare regulations to rebuild or remodel their facialities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances major structural modifications might be required in order to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with a facility's fiscal years, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for nonhuman primates. A variance would be limited to the proposed minimum space requirements. It would not allow noncompliance with the proposed environmental enrichment, social grouping, and release requirements; these requirements would have to be complied with upon the effective date of the regulations. The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling nonhuman primates, having nonhuman primates on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.80, would have to apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective, would not be eligible for a variance since they could adapt their construction to comply with them. However, a facility that was so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administator if he or she determined that it was necessary, based upon the facts presented in the application for an extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of nonhuman primates that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance, and addressing whether granting the variance would be detrimental to the affected nonhuman primates.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and psychological well-being of the affected nonhuman primates. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.80(e)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental

to the health and psychological well-being of the nonhuman primates affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.80(e)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation on the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if they were detrimental to the health and psychological well-being of the nonhuman primates affected.

Additional requirements for research facilities

In proposed § 3.81, "Additional requirements for research facilities," we are proposing environmental enrichments that research facilities would be required to provide, in addition to the minimum space requirements contained in proposed § 3.80(c)(1). We are doing so because the Animal Welfare Act, as amended, and the regulations contained in Part 2 of the Animal Welfare regulations (*see* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register** impose specific duties on research facilities holding animals for research, testing, or teaching that are not imposed upon other regulated persons or industries, and that can affect their determination of the specific means employed to promote the psychological well-being of nonhuman primates. For example, § 2.30(h) requires that research facilities provide for the psychological well-being of nonhuman primates in accordance with the regulations and standards and that they maintain a record system indicating that they are complying with the regulations. Also, under the regulations in Part 2, Subpart C—"Institutional Animal Care and Use Committee and Other Requirements for Research Facilities," each facility's Committee must, among other things, review and approve a proposed animal care and use procedure [ACUP] before research, testing, or teaching can commence, inspect the facility for compliance with these regulations in accordance with § 2.35, and report deficiencies. Research facilities must also establish a written policy ensuring that the attending veterinarian is consulted in ACUP planning and development. Accordingly, in addition to prescribing the environmental enrichments that research facilities would be required to provide, proposed § 3.81 includes reference to the role of the Committee and the attending veterinarian in promoting the psychological well-being of nonhuman primates.

After considering all the information available to us, including the report of the expert committee on nonhuman primates, we are proposing the following minimum requirements to promote the psychological well-being of nonhuman primates in accordance with the Act, as amended. These requirements are in addition to the minimum space requirements set forth in proposed § 3.80(c)(1).

As explained above under the heading, "Space and physical environment," many of the psychological needs of nonhuman primates used in research facilities are met through their regular interaction with their human caretakers. However, we believe that environmental enrichments must also be provided by research facilities so that the primates can engage in species-typical behavior and receive sufficient physical and mental stimulation at all times. Proposed § 3.81(a)(1) provides examples of the kinds of enrichments that would be required under our proposal. These include: (1) Perches, swings, mirrors, and other cage complexities; (2) toys or objects to manipulate; and (3) varied methods of feeding. We would require a combination of environmental enrichments and that at least one form of enrichment from each type listed be provided. Proposed § 3.81 would also require that research facilities house nonhuman primates in social groupings in primary enclosures whenever possible, to increase their physical activity and for their psychological well-being.

We are proposing additional requirements applicable to individually housed nonhuman primates. In order to ensure that these primates have sufficient opportunity for physical activity, we would require that they be released for at least four hours of exercise each week into an area that has at least three times the floor area and twice the height of their primary enclosure. Release would not be required if they are maintained in a primary enclosure with other nonhuman primates, or if they are maintained in a primary enclosure that is at least twice as great as that required for the species, because they would have greater opportunities to engage in physical activity on an ongoing basis. Under our proposal, nonhuman primates may be placed with compatible species during the required release period. This social interaction would promote their psychological well-being and is known to increase their physical activity.

Proposed § 3.81(a)(4) would also require research facilities to provide for the special psychological needs of individually housed nonhuman primates that are infants or juveniles, that are used in research that does not provide for much activity, and those showing signs of psychological distress. We would require that they consult with the attending veterinarian who would instruct the facility as to the additional environmental enrichments that must be provided to provide for the primates' psychological well-being. These three categories of nonhuman primates are specifically identified in the proposed regulations because we concur with the expert committee on nonhuman primates that they require additional consideration of their needs to promote their psychological well-being. Infants and juveniles are in the formative period of their developmental growth and require physical and mental stimulation for normal development. They also require social interaction with other nonhuman primates so that they can function in accordance with the typical social behavior for their species. Similarly, those required to be inactive lack the physical activity and stimulation considered important for their psychological well-being, and their needs must be provided for in different ways. The special needs of those showing signs of psychological distress must also be individually addressed to prevent the development of psychological disorders. Because the needs and circumstances of individually housed nonhuman primates falling under any of these categories will differ on an individual basis, we believe it is appropriate to require that research facilities consult with their attending veterinarian, who has expertise in the care and treatment of the species being attended, and can prescribe the additional measures deemed necessary to satisfy the primates' psychological needs. We would require the attending veterinarian to keep records of these additional instructions, and they would be subject to APHIS inspection under proposed § 3.81(c).

We are proposing to add a prohibition against confining nonhuman primates in chairs, unless required by an animal care and use procedure and approved by the Committee in accordance with Part 2 of the Animal Welfare regulations, and unless the animal is

released daily for exercise for at least one continuous hour each day during the period of confinement unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved we are proposing to require that the nonhuman primate be released for exercise for at least one hour before and one hour after the period of restraint. We are proposing to include this prohibition because of the importance of physical activity in promoting the psychological well-being of nonhuman primates.

The proposed regulations would also require that documentation of the release of nonhuman primates and of additional environmental enrichments ordered under paragraph (a)(4) be kept by the attending veterinarian, subject to inspection by APHIS inspectors, and in the case of federal research facilities, to review by officials of any federal funding agency. These records would also be subject to inspection by the Committee in accordance with the regulations in Part 2. (*See* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.)

We recognize that certain situations will require an immediate response from facility personnel when it is necessary to provide less than the minimum standards to a nonhuman primate, due to the condition of the animal, in order to provide for its welfare. We are proposing to include a provision in proposed § 3.81 that would authorize attending veterinarians to exempt or restrict a particular nonhuman primate from its required exercise and social release period if he or she determines that it is necessary for the nonhuman primate's health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption would be for a period of up to 30 days and must be recorded by the attending veterinarian and subject to APHIS inspection and in the case of federal research facilities, to review by officials of any federal funding agency. We would require that the research facility be responsible for having the attending veterinarian review the grant of exemption at least every 30 days to determine if it is still warranted under the circumstances. Exemptions would be required to be included in the research facility's annual report and in the Committee's inspection report under § 2.35(b)(2)(i)(C). (*See* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.) We believe that this exemption procedure would fill the need to have short-term authorization for deviation from these proposed standards due to unusual or unanticipated circumstances.

Feeding

We are proposing to revise the provisions of current § 3.79 "Feeding," to include means of enhancing the psychological well-being of nonhuman primates by varying the types of food and the methods of feeding, such as by using task-oriented feeding or allowing the animals to forage for food as in nature. We believe that requiring variation in the nonhuman primates' feeding on a daily basis is a necessary means of providing necessary mental and physical stimulation.

Proposed § 3.82 would require multiple feeding sites if members of dominant nonhuman primate or other species are fed together with other nonhuman primates and would require observation of the feeding practices of the animals to determine that each receives a sufficient amount of food. We believe that this will also enhance the psychological well-being of nonhuman primates by ensuring that each has access to food and will not be prevented from obtaining food due to the aggressive behavior of others.

We are proposing minor changes to current § 3.79 to provide that the amount of food, type of food, and frequency of feeding must be appropriate for the species, size, age, and condition of the nonhuman primate, and must be in accordance with generally accepted professional and husbandry practices and nutritional standards. In accordance with those practices and standards, consideration would also be given to the conditions under which the animal is kept, such as whether it is maintained in a primary enclosure allowing it frequent vigorous activity or if it is maintained in a primary enclosure that is more limiting, and whether it is maintained outdoors in a cold environment or in a warm environment, since these variables may affect the amount of food that is appropriate for the animal. Also, in accordance with Part 2 of the Animal Welfare regulations, any deviation from these standards due to the necessities of research must be justified by an animal care and use procedure approved by the facility's Committee. (See companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.)

Proposed § 3.82 would also require that nonhuman primates be fed at least once each day unless otherwise required to provide adequate veterinary care to the animals.

We would continue to require sanitization of food containers at least once every two weeks and would also require that food containers be sanitized anytime they are used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Approved methods for sanitization would be those methods provided in proposed § 3.84(b) for sanitization of primary enclosures.

Watering

We are proposing minor changes to current § 3.80 to require that sufficient potable water be provided to the nonhuman primates. We are retaining the requirement that if water is not available to the nonhuman primates at all times, it must be offered to them at least twice a day and we are proposing to add a requirement that the water be offered for at least one hour each time it is offered. The attending veterinarian could vary these requirements if he or she determines it is necessary to provide adequate veterinary care to the nonhuman primates. The proposed regulation would continue to require sanitization of water containers at least once every two weeks and would also require sanitization when used to provide water to a different nonhuman primate or social grouping of nonhuman primates. Approved methods of sanitization would be those methods provided in proposed § 3.84(b)(3) for sanitization of primary enclosures.

Cleaning, sanitization, housekeeping, and pest control

In proposed § 3.84 we are proposing requirements similar to those in current § 3.81 concerning cleaning, sanitization, housekeeping, and pest control, in order to provide for the welfare and well-being of nonhuman primates. The proposed revisions to current § 3.81 include requiring removal of excreta and food waste from primary enclosures and from pans underneath primary enclosures with grill-type floors at least daily and as often as necessary, rather than merely "as often as necessary" as in the current regulations, and requiring removal of the animals from a primary enclosure when a cleaning method using water is performed so that they will not be involuntarily wetted or injured. We are proposing to require that fixtures inside of primary enclosures, such as bars and shelves, must be kept clean and be replaced when worn. In addition to requiring sanitization of planted areas inside of primary enclosures and gravel, sand, and dirt surfaces by removing contaiminated material, the proposed regulations would require that they be raked and spot cleaned daily. As explained above under the heading "Facilities, general" if the nonhuman primates engage in scent marking, the

primary enclosures must be spot cleaned daily and sanitized at regular intervals established in accordance with generally accepted professional and husbandry practices, so as not to cause those animals psychological distress.

We believe that these additional requirements will enhance the physical environment in which nonhuman primates are maintained through cleanliness and that they are necessary for their general welfare.

We are proposing nonsubstantive changes to current subsections (a)–(d) for purposes of clarity. We believe that these clarifications will make the regulations easier to understand and comply with.

Employees

Current § 3.82 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart D and the rendering of husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing minor revisions to this section in proposed § 3.85 to make clear that this requirement is imposed upon every person subject to the Animal Welfare regulations, and that the burden of making certain that the supervisor is appropriately qualified is on the employer regulated under the Act. We are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandary practices.

Social grouping and separation

We are proposing to revise current § 3.83 concerning social grouping of nonhuman primates in primary enclosures in order to promote their psychological well-being. The current regulations provide that when nonhuman primates are housed together they must be maintained in compatible groups and must not be housed in the same enclosure with animal species other than nonhuman primates. We are proposing to allow nonhuman primates to be housed with other nonhuman primate species and with other animal species as long as they are compatible, do not compete with the other species for food and shelter, and will not be hazardous in any way to the health and well-being of each other.

We are proposing to add the following regulations requiring separation of nonhuman primates in the following circumstances: (1) Nonhuman primates exhibiting vicious or overly aggressive behavior must be housed separately and (2) nonhuman primates under quarantine or treatment for a communicable disease must be housed separately. We believe the requirements to house nonhuman primates separately under these limited circumstances are necessary to allow nonhuman primates to peacefully coexist in primary enclosures, as is required for their psychologial well-being, and to protect their physical health and welfare.

The proposed regulations would include provisions for keeping families together and for keeping compatible groups constant. This is because studies of nonhuman primates have shown that they are socialized in a family-oriented manner in nature and that varying a group's composition may lead to distress or aggressive behavior towards new members of the group. Accordingly, we believe these regulations are necessary to promote the psychological well-being of nonhuman primates.

Transportation standards

In preparing our proposal to amend the transportation standards we consulted the "Interagency Primate Steering Committee Guidelines" developed by the United States National Institutes of Health-sponsored Interagency Primate Steering Committee. The Interagency Primate Steering Committee is composed of an inter-agency group of scientists concerned with the care and handling of nonhuman primates. The introduction to the Guidelines states the following:

> Shipment of nonhuman primates by a carrier from one location to another is stressful, even under the best of conditions. The purpose of these guidelines is to minimize the effects of transportation stress on these animals and to have them arrive at their destination in as good a physical condition as possible, with a minimal degree of illness or mortality. Secondly, the guidelines are intended to serve as a reference for adequate care of nonhuman primates for all persons involved with the shipping of these animals.

We also considered the transportation standards proposed by the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) for nonhuman primates imported from abroad.

Based upon our experience enforcing the current regulations, and our consideration of the information available to us, we are proposing the following revisions to the transportation standards in order to safeguard the health, safety, and psychological well-being of nonhuman primates transported in commerce.

As part of this revision, we are proposing to include requirements that were previously part of the Animal Welfare regulations but were inadvertently omitted from the 1977 revision of the regulations. When the transportation standards were rewritten in 1977 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were not included in the regulations. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of nonhuman primates and in the prosecution of persons who have improperly handled and transported nonhuman primates by private surface vehicle. The reinstated regulations particularly affect provisions concerning ambient temperature specifications during surface transportation that should result in improved traveling conditions for nonhuman primates. They also impose similar requirements on all persons subject to the Animal Welfare regulations engaged in the transportation of nonhuman primates, so that the animals will be afforded necessary protections whenever they are transported in commerce.

Consignments to Carriers and Intermediate Handlers for Transportation

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations and published elsewhere in this issue of the **Federal Register**) would be expanded to ensure the well-being of nonhuman primates during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept nonhuman primates for transport in commerce. Additionally, the carriers and intermediate handlers have certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.85 and 3.88. We are proposing to consolidate them in one section, proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' welfare.

The reader should note that our proposed regulations do not specifically

refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

In sum, the requirements imposed on carriers and intermediate handlers in current § 3.85 are as follows: (1) Current § 3.85(a) requires that carriers and intermediate handlers not accept a live nonhuman primate for shipment from any person subject to the regulations more than 4 hours before the scheduled departure time of the primary conveyance in which the animal will be shipped, except that this time may be extended by agreement to 6 hours if specific prior scheduling of the shipment has been made. (2) Current § 3.85(b) requires that carriers or intermediate handlers accept a nonhuman primate for shipment only if it is in a primary enclosure meeting the requirements of current § 3.85 "Primary enclosures used to transport live nonhuman primates," except that they may accept a nonhuman primate if it is consigned by a person subject to the regulations who provides a certificate stating that the primary enclosure conforms with § 3.85, unless the enclosure is obviously defective. The information required to be in the certificate is stated in the regulation. Current § 3.85(c) states that carriers and intermediate handlers whose facilities do not meet the minimum temperature requirements provided in the regulations may accept a nonhuman primate for transport if the consignor furnishes a certificate executed by a veterinarian accredited by USDA within 10 days before delivery of the animal for transport stating that the nonhuman primate is acclimated to air temperatures lower than those prescribed in current §§ 3.90 and 3.91. The information required to be in the certificate is likewise stated in the regulation. Current § 3.85(d) requires carriers and intermediate handlers to notify the consignee of the animal's arrival at least once every 6 hours following arrival of the nonhuman primate at the animal holding area of a terminal facility and to record the time, date, and method of attempted and final notification on the shipping document.

Current § 3.88 requires the following: (1) § 3.88(a) requires that nonhuman primates be offered potable water within the four hours preceding transport in commerce. Dealers, exhibitors, and research facilities are required to provide water to nonhuman primates transported in their own primary conveyance at least every 12 hours after transportation is begun and carriers and intermediate handlers are required to do so at least every 12 hours after they accept the animal for transport.

(2) Current § 3.88(b) provides requirements concerning the frequency of feeding nonhuman primates and similarly distinguishes between those persons transporting nonhuman primates in their own primary conveyances, and carriers and intermediate handlers.

(3) Current § 3.88(c) requires any dealer, research facility, exhibitor, or operator of an auction sale consigning nonhuman primates for transport to affix written instructions concerning the animals' food and water requirements on the outside of the primary enclosure used for transporting the nonhuman primate.

(4) Current § 3.88(d) states that no carrier or intermediate handler shall accept a nonhuman primate for transport in commerce unless written instructions concerning food and water requirements are affixed to the outside of its primary enclosure.

We are proposing to place the various prerequisites that must be satisfied before carriers and intermediate handlers can accept a nonhuman primate for transport in commerce in proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' well-being. We are also proposing nonsubstantive changes to current § 3.85(a) in proposed § 3.87(a).

Proposed § 3.87(c) would contain the requirements of current § 3.88(d) by requiring that written instructions concerning the food and water requirements for each nonhuman primate in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler may accept it for transport.

As stated above, current § 3.88(a) provides that nonhuman primates must be provided water at least every 12 hours after acceptance by carriers and intermediate handlers for transportation. Current § 3.88(b) provides that nonhuman primates more than 1 year of age be offered food at least once every 24 hours after acceptance by carriers and intermediate handlers for transportation and that nonhuman primates less than 1 year of age be offered food at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a nonhuman primate would have been fed up to 24 hours before being consigned for transportation in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, and to be sure that nonhuman primates are given water as often as required for their well-being, we are proposing to add a certification requirement in proposed § 3.87(d) that would state that each nonhuman primate in a primary enclosure delivered for transport was last offered food during the 12 hours before delivery to a carrier or intermediate handler and was last offered water during the 4 hours before delivery to a carrier or intermediate handler. It must also state the date and time each nonhuman primate in the primary enclosure was last offered food and water. Carriers and intermediate handlers would not be allowed to accept nonhuman primates for transport unless this certification accompanies the animal, is signed and dated by the consignor, and the date and time it was executed is stated. This certification, as well as the others required in proposed § 3.87, would also have to specify the species of nonhuman primate contained in the primary enclosure.

In addition, as provided under proposed § 3.90, "Food and water requirements," the time periods applicable to carriers and intermediate handlers for feeding and watering the nonhuman primates would begin with the time the animal was last offered food and water, in accordance with the certification. The proposed requirement that the consignor certify that the nonhuman primates were provided water within the 4 hours before delivery to the carrier or intermediate handler, and were offered food within 12 hours before delivery to the carrier or intermediate handler accepting the animals, would avoid situations where the carrier or intermediate handler would have to provide food and water immediately upon acceptance. We are adding these requirements so that carriers and intermediate handlers will be better able to provide any needed care and so that the nonhuman primates being transported will not go more than 12 hours without water or 24 hours without being offered food, if they are 1 year of age or more, and will not go more than 12 hours without being offered food, if they are less than 1 year

of age. We believe these timeframes are appropriate for the health and well-being of nonhuman primates.

We would clarify the certifications required from the consignor regarding conformance of the primary enclosure with the regulations in Subpart D and acclimation of a nonhuman primate to temperatures lower than those prescribed in the regulations. We would require that the certification of acclimation be signed by a veterinarian, that it specify a minimum temperature that the nonhuman primate can safely be exposed to, and that it specify each of the animals contained in the primary enclosure to which the certification is attached, rather than referring to the shipment of animals as a whole. The contents of the certifications are provided in subsections (e) and (f) of proposed § 3.87, respectively. We would clarify current § 3.85(c) by requiring that the temperatures to which a nonhuman primate is exposed must not be lower than the minimum temperature specified by the veterinarian and must be reasonably within the generally and professionally accepted range for the nonhuman primate as determined by the veterinarian, considering its age, condition, and species of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations.

We are proposing to add limitations on how a nonhuman primate can be held at a terminal facility while waiting to be picked up by the consignee. We are proposing to adopt the time limitations provided in Part 2, § 2.80, "C.O.D. shipments". (*See* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.) Accordingly, the consignor must attempt to notify the consignee upon arrival, and at least once every 6 hours for 24 hours after arrival, and then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. If the consignee is notified and does not take physical delivery of the nonhuman primate within 48 hours of its arrival, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates.

We are proposing to revise current § 3.85(d) to specifically require that carriers and intermediate handlers continue to maintain nonhuman primates in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or returned to the consignor or to whomever the consignor designates. We would require the carrier or intermediate handler to obligate the consignor to reimburse it for the expenses incurred by the carrier or intermediate handler in returning the animal. These requirements appear in proposed § 3.87(g).

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for nonhuman primates and are necessary for their general welfare and psychological well-being during travel.

Primary Enclosures Used to Transport Nonhuman Primates

We are proposing to reorganize the provisions of current § 3.86 and to make nonsubstantive changes to this section for clarity. We are proposing the following substantive changes as well.

We are proposing to completely revise the current regulations concerning the number of nonhuman primates that can be transported together in one primary enclosure. The current regulations allow up to ten nonhuman primates to be transported in one primary enclosure. The guidelines issued by the Interagency Primates Steering Committee for the transportation of nonhuman primates state that, as a general principle, nonhuman primates should be transported in individual compartments to avoid transmission of disease except when necessary to minimize social stress. Based upon our experience in regulating the transportation of nonhuman primates and upon consideration of the information available, we have determined that placing this number of nonhuman primates together in a situation that is unusual to and therefore stressful to the animals is dangerous for the animals and to the humans handling them. We are proposing that each nonhuman primate be transported individually in separate primary enclosures that may be connecting, except that the following social groupings may be maintained during transportation: (1) A mother with her nursing infant, (2) an established male-female couple (unless the female is in estrus) or a family group, and (3) a pair of juveniles that have not reached puberty.

The requirements for ventilation openings for primary enclosures that are not permanently affixed to the primary conveyance would be competely revised to provide substantially greater ventilation openings for the nonhuman primates' comfort during travel. The current regulations require that if ventilation openings on two opposite walls of the primary enclosure are present, they comprise at least 16 percent of the surface area of each wall, and if there are ventilation openings on four walls, they comprise at least 8 percent of the surface area of each wall. We are proposing that these requirements be increased to 30 percent and 20 percent, respectively, and that the ventilation openings be located above the midline of the enclosure, since this is safer for the animals and for the humans handling the primary enclosures. The ventilation opening requirements for permanently affixed enclosures that have only one front opening would remain at 90 percent of the surface of the front opening. The proposed revision to the ventilation opening requirements would result in healthier and more comfortable transportation conditions for nonhuman primates, and would therefore promote their psychological well-being.

We are proposing an additional construction requirement that would allow the floor of a primary enclosure to be wire mesh or slatted but it must be designed and constructed so that the nonhuman primate contained inside cannot put any part of its body between the slats or through the mesh in order to prevent injury to the nonhuman primates. Also we would require that primary enclosures be constructed of materials that are nontoxic to the animal and will not otherwise harm their health or well-being.

In proposed § 3.88(f), we are proposing additional marking requirements for the outside of primary enclosures to better ensure that they are handled carefully and in a manner that avoids causing the nonhuman primates additional stress.

We are also proposing that the documents that must accompany the nonhuman primates be held by the operator of the primary conveyance if it is a surface conveyance, or attached to the outside of the primary enclosure. If they are attached to the primary enclosure, they must be placed in a secure but accessible manner so that they can be removed and securely returned, and so that they are easily noticed. We would require that instructions for food and water, and for administration of drugs, medication, and other special care be attached to the primary enclosure. These requirements would help ensure that the animals are treated and handled in accordance with their individual requirements.

Primary Conveyances

Prescribed ambient temperature limits in primary conveyances used to transport nonhuman primates were part of the standards before the 1977

revisions to the regulations, but were inadvertently omitted from those revisions. We are proposing to reinstate them for surface transportation in these proposed regulations in order to prevent nonhuman primates from being transported under intolerable temperature conditions that would be harmful to their health and physical well-being. The current regulations prescribe upper and lower ambient temperature limits for nonhuman primates held in terminal facilities and prescribe lower temperature limits for nonhuman primates placed on transporting devices. It is equally important for the health and well-being of nonhuman primates that these limits be followed while the animals are in transport as well as when they are on either end of their journey. Under our proposed regulations, all persons subject to the Animal Welfare regulations would be required to maintain the temperature inside a primary conveyance between 45 °F (7.2 °C) and 85 °F (30 °C) during surface transportation at all times a nonhuman primate is present. Because it would be impracticable to monitor the ambient air temperature inside the cargo area during air transportation, we would require instead that it be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present. We are also proposing to add requirements that a primary enclosure must be positioned in a primary conveyance in a manner that provides protection from the elements, such as rain, wind, snow, and sun, and that is far enough away from animals that are generally considered to be natural predators or enemies of nonhuman primates so that the nonhuman primates cannot reach, see, or smell them. These added precautions would avoid exposing nonhuman primates to known causes of distress and would make traveling less stressful for the animals.

Food and Water Requirements

We are proposing to make nonsubstantive changes to the current regulations to make it clear that carriers and intermediate handlers must provide food and water to nonhuman primates being transported within a prescribed number of hours from the time the animals were last offered food and water. We would require consignors subject to the Animal Welfare regulations to certify the date and time the nonhuman primates were last offered food and water. Carriers and intermediate handlers would be required to determine the appropriate time for providing food and water based upon the information in the certification. Everyone else transporting a nonhuman primate must provide food and water within a prescribed number of hours after they last offered the animal food and water. We are proposing this requirement so that nonhuman primates will not go longer than 24 hours without food or longer than 12 hours without water. The prescribed number of hours differs based upon the age of the nonhuman primate and is the same as in the current regulations. We would also require that nonhuman primates must be offered food within 12 hours before being transported in commerce so that carriers and intermediate handlers would not have to provide food and water immediately upon acceptance. Proper food must be provided, in accordance with § 3.82, however we realize that the necessities of travel may require less variation in the types of food offered and in the method of feeding. Accordingly, footnote 6 of proposed § 3.90 has been added to take the exigencies of travel into account. Requirements for design, construction, and placement of food and water containers would be included for the nonhuman primates' safety, comfort, and well-being. The requirement that carriers and intermediate handlers must not accept nonhuman primates for transport unless written instructions concerning food and water requirements are affixed to the outside of the primary enclosure has been incorporated in proposed § 3.87, as previously discussed. Proposed § 3.90 would require consignors subject to the Animal Welfare regulations to attach securely to the primary enclosure all written instructions concerning the nonhuman primates' food and water requirements during transportation.

Care in Transit

We would clarify current § 3.89 to expressly require compliance with these regulations by any person subject to the Animal Welfare regulations who is transporting a nonhuman primate in commerce, regardless of whether the nonhuman primate is consigned for transport.

We are proposing nonsubstantive changes to this section for purposes of clarity along with the following substantive changes.

We are proposing to require that during surface transportation, regulated persons subject to the regulations must obtain any veterinary care needed for the nonhuman primate at the closest available veterinary facility. During air transportation, carriers or intermediate handlers must arrange for any veterinary care that is needed for the nonhuman primate as soon as possible.

We are also proposing to add an exemption to the current regulations that prohibit the transportation in commerce of a nonhuman primate in obvious physical distress that would allow transport for the purpose of providing veterinary care for the condition.

When nonhuman primates are initially removed from their primary enclosures after travel they may be unusually active or perhaps agitated. In order to avoid any resultant injury to the animals we are proposing a requirement that would allow only authorized and experienced persons to remove nonhuman primates from their primary enclosures during transport in order to protect both the nonhuman primates, which could injure themselves in frenzied movement, and the people handling them.

We are proposing to add a subsection that would specify that these transportation standards remain in effect and must continue to be complied with until the animal reaches its final destination, or until the consignee takes physical delivery of the animal if the animal has been consigned for transportation. We believe that this provision is necessary to prevent any gap in care for the nonhuman primate and in responsibility for its care.

Terminal Facilities

Current § 3.90 imposes duties on carriers and intermediate handlers holding nonhuman primates in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. Under the current regulations, there is no similar obligation imposed upon other persons who transport these animals. As a result, animals could be held in animal holding areas under hazardous conditions.

We are proposing that the same duties currently imposed upon carriers and intermediate handlers be imposed upon any person subject to the Animal Welfare regulations transporting nonhuman primates and holding them in animal holding areas, since the animals require the same minimum level of care regardless of which regulated persons is transporting the animals.

We would add restrictions to prevent regulated persons from holding nonhuman primates within physical and

visual reach of other animals and other species of nonhuman primates, since this is upsetting to them. We are also proposing that the length of time regulated persons be allowed to hold nonhuman primates in terminal facilities upon arrival be the same as that allowed for consigned animals under proposed § 3.87(g). We believe that this limitation on holding periods in terminal facilities is necessary to prevent regulated persons from leaving nonhuman primates in terminal facilities for any reason, such as to await additional shipments, and that it will help reduce the stress of travel for nonhuman primates.

Proposed § 3.92 would continue the temperature and ventilation requirements contained in current § 3.90 and would also contain the provisions requiring shelter from the elements for nonhuman primates that are currently in § 3.91 "Handling," because they are applicable to regulated persons holding nonhuman primates in animal holding areas of terminal facilities. The proposed regulations for handling would be limited to the safeguards that must be provided during physical handling and movement of nonhuman primates, as its heading suggests.

Handling

Current § 3.91 imposes duties on carriers and intermediate handlers for proper handling and movement of nonhuman primates. For the reasons explained above under "Terminal facilities," we are proposing that these same duties be imposed upon any person subject to the Animal Welfare regulations handling a nonhuman primate at any time during the course of transportation in commerce, so that the animals' health, safety, and well-being will be protected at all times during transport. The proposed regulations would continue to include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. It would also continue to provide requirements for movement of a nonhuman primate on a transporting device. We are proposing to broaden this section to include movement within and between primary conveyances, and movement within and between terminal facilities, because nonhuman primates may travel on several different primary conveyances and be moved around within terminal complexes in the course of their travel.

We are also proposing to require that transporting devices on which nonhuman primates are placed to move them must be covered to protect the nonhuman primates when the outdoor temperature falls below 45 ° (7.2 °C). The current regulations require this protection when the outdoor temperature falls below 50 °(10 °C). We believe that providing this protection becomes necessary at the lower temperature proposed, and that the proposed requirement will protect the health and well-being of nonhuman primates.

Air carriers commonly use conveyor belts and inclined belts for loading and unloading animals into airplane cargo space. These methods of loading can cause psychological distress to the animals. We are proposing to allow nonhuman primates to be placed on inclined conveyor belts used for loading and unloading aircraft only, if an attendant is present at each end of the conveyor belt in case an animal has an extreme adverse reaction. We are proposing to prohibit placing nonhuman primates on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts, since these forms of tilted movement cause nonhuman primates extreme distress and alternative means of moving the animals can generally be provided without great inconvenience.

Statutory Authority for This Proposed Rule

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress, in enacting the Food Security Act of 1985, Pub. L. No. 99–198, added significantly to the Secretary's existing responsibilities to promulgate standards for the care and treatment of animals covered under the Act. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that the Secretary of Agriculture promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, research facilities, and exhibitors. These standards are to include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation of species. The 1985 amendments to the Act specifically require the Secretary to promulgate standards for exercise of dogs and for a physical environment adequate to promote the psychological well-being of primates.

The proposed rule includes changes and additions to the standards required by the 1985 amendments as well as modifications based on the Department's experience in administering and enforcing the Act. The Act authorizes these changes specifically in section 13 (7 U.S.C. 2143) and in the grant of rulemaking authority contained in section 21 (7 U.S.C. 2151).

Executive Order 12291

This proposed action has been reviewed pursuant to the requirements of Executive Order 12291 and it has been determined that it will have an impact in excess of $100 million annually on the regulated industries and the general economy. The Administrator has therefore determined that it would be a "major rule." Some of the major costs to the regulated industries in complying with the proposed regulations would result from: (1) Renovating, equipping, replacing, or constructing animal housing facilities; (2) the exercise for dog requirements; and (3) the psychological well-being of nonhuman primates.

The economic impacts of this rule are discussed in more detail in a Regulatory Impact Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

Costs	Benefits
Direct	Direct
Regulated industry	Increased public satisfaction from improved animal welfare.*
Capital expenses:	
(all parts) $876 million	Improved research information.*
(parts 1–2) $142 million	Productivity gains for regulated industries.*
Annual costs:	
(all parts) $207 million	
(parts 1–2) $126 million	
APHIS program costs impact on federal sites* $2 million.	
Indirect	Indirect
Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*.	Market effects for suppliers of animal husbandry products.*

SUMMARY OF REGULATORY IMPACT ANALYSIS—Continued

Costs	Benefits
Increased federal financial support for biomedical community.* Non-market effects*	Non-market effects.*

*Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industry and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition, innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating expenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to exercise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended Animal Welfare regulations.

The Department will collect additional data and refine the analysis with regard to the proposed amendments to Part 3. The results will be available upon publication on the final rulemaking for Part 3. It is not expected that the revised analysis will affect the determination that this rule would have an impact in excess of $100 million annually.

Regulatory Flexibility Act

As part of the regulatory impact analysis performed by the Department in amending the Animal Welfare regulations, we have analyzed the potential impact on small entities of the proposed amendments to Part 3, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon this analysis, the Administrator has determined that the proposed amendments to Part 3, if implemented, would have a significant economic impact on a substantial number of small entities.

The economic impacts of this proposed rule on small entities are discussed in greater detail in the Regulatory Flexibility Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The principal findings of the analysis are summarized below.

Study results indicate that APHIS Animal Welfare regulations would place a significant burden on a substantial number of small licensees that breed, deal or exhibit regulated animals. Total capital expenditures required in the next two or three years are estimated to be approximately $93.9 million. These will affect 2,155 small breeders (77 percent of small licensed breeders), 371 small dealers (37 percent of small dealers) and 1,245 small exhibitors (92 percent of small exhibitors). The expected increase in variable operating costs is $6.8 million. Annual operating expenditures are significantly lower than the estimated capital expenditrues, however, these would affect all small licensees. In comparison to reported annual gross income estimates of $6.6 million for all small breeders and $0.8 million for all small dealers, the added expenditures represent significant impacts.

Of the small licensees, breeders will be most affected. Breeders represent about 57 percent of the small licensees and will incur approximately 66 percent of the total capital and variable cost impacts. An important distributional effect of the regulations is that the impact on breeders will be concentrated in the Central region. Eighty-five percent of small breeders, mainly dog breeders, are located in this region.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, we propose to amend Part 3 as follows:

PART 3—STANDARDS

1. The authority citation for Part 3 would be revised to read as follows, and the authority citation following all the sections would be removed.

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. The table of contents for Subpart A consisting of §§ 3.1 through 3.19, would be revised to read as follows:

Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats

Facilities and Operating Standards

Sec.
3.1 Housing facilities, general.
3.2 Indoor housing facilities.
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3.6 Primary enclosures.

Animal Health and Husbandry Standards

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3.11 Employees.
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Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats [1]

Facilities and Operating Standards

§ 3.1 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. Housing facilities other than those maintained by research facilities and federal research facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that unauthorized humans, and animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which the dogs or cats come in contact must be cleaned daily and sanitized at least once every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Floors made of dirt, sand, gravel, grass, or other similar material must be raked and spot-cleaned daily, and the contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned daily and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in § 3.10(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subject. The housing facility must provide adequate mechanically pressurized running potable water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in leakproof containers that protect the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Perishable food must be refrigerated, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is currently being used may be kept in the animal areas. Substances that are toxic to the dogs and cats must not be stored in animal areas or in food storage and preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Puddles of water in animal areas must be promptly mopped up or drained so that the animals stay dry. Trash containers in housing facilities and in food storage and food

[1] These minimum standards apply only to live dogs and cats, unless stated otherwise.

preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

(g) *Washrooms and sinks.* Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

§ 3.2 Indoor housing facilities.

(a) *Heating, cooling, and temperature.* Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from cold and hot temperatures and to provide for their health, and well-being. When dogs or cats are present, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 45 °F (7.2 °C) at any time, and must not rise above 95 °F (35 °C).

(b) *Ventilation.* Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs and cats are present to provide for their health, comfort, and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, vents, fans, or air-conditioning. Auxiliary ventilation or air-conditioning must be provided when the ambient temperature is 85 °F (29.5 °C) or higher. The relative humidity must be between 30 and 70 percent.

(c) *Lighting.* Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours a day, by either natural or artificial light, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Interior surfaces.* The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture, or be replaceable. An example of this would be a suspended ceiling with replaceable panels.

§ 3.3 Sheltered housing facilities.

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled to protect the dogs and cats from cold and hot temperatures and to provide for their health, comfort, and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not rise above 95 °F (35 °C).

(b) *Ventilation.* The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health, comfort, and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air-conditioning. Auxiliary ventilation, such as exhaust fans or air-conditioning, must be provided when the ambient temperature is 85 °F (29.5 °C) or higher.

(c) *Lighting.* Sheltered housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours a day by either natural or artificial light. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Shelter from the elements.* Dogs and cats must be provided with adequate shelter from the elements at all times.

(e) *Surfaces.* (1) The following areas in sheltered housing facilities must be impervious to moisture:

(i) Indoor floor areas in contact with the animals;

(ii) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(iii) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, sand, gravel, or grass.

§ 3.4 Outdoor housing facilities.

(a) *Restrictions.* (1) The following categories of dogs or cats must not be kept in outdoor facilities:

(i) Dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(ii) Breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(iii) Sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities during any month in which, during the preceding 5 years, the temperature at the facility's location has been less than 35 °F (1.7 °C).

(b) *Capacity.* Outdoor facilities for dogs or cats must include a shelter structure that is accessible to all the animals in each outdoor facility, and that is large enough to allow all animals in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structure, a separate outside area of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin.

(d) *Shelter from the elements.* Shelters in outdoor facilities for dogs or cats must:

(1) Provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) Provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) Be provided with a wind break and rain break at the entrance; and

(4) Contain clean, dry, bedding material.

§ 3.5 Mobile or traveling housing facilities.

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from cold and hot temperatures and to provide for their

health, comfort, and well-being. The ambient temperature in the mobile or traveling housing facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not exceed 95 °F (35 °C) for all dogs and cats.

(b) *Ventilation.* Mobile or traveling housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for the health, comfort, and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, must be provided by means of windows, doors, vents, fans or air-conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when the ambient temperature within the animal housing area is 85 °F (29 °C) or higher.

(c) *Lighting.* Mobile or traveling housing facilities for dogs and cats must be lighted well enough to permit proper cleaning and inspection of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours each day, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination.

§ 3.6 Primary enclosures.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats;

(ii) Protect the dogs and cats from injury;

(iii) Contain the dogs and cats securely;

(iv) Keep predators and unauthorized individuals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(viii) Provide the dogs and cats with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with § 3.10(b) of this subpart, or be replaceable when worn or soiled;

(x) Have floors that are constructed in a manner that protects the dogs' and cats' appendages from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' appendages to pass through any openings in the floor; and

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

(b) *Additional requirements for cats*—(1) *Space.* Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(i) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm);

(ii) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 ft^2 (0.28 m^2);

(iii) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft^2 (0.37 m^2);

(iv) Each queen with nursing kittens must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kitten in the litter (e.g., five nursing kittens require a 25-percent increase and 10 nursing kittens require a 50-percent increase); and

(v) The minimum floor space required by this paragraph is exclusive of any food or water pans.

(2) *Compatibility.* All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under 4 months of age may not be housed in the same primary enclosure with adult cats. Cats with a vicious or aggressive disposition must be housed separately.

(3) *Litter.* In all primary enclosures having a solid floor, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(4) *Resting surfaces.* Each primary enclosure housing cats must contain a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture, and be able to be easily cleaned and sanitized, or easily replaced when soiled or worn. The resting surfaces are not considered part of the minimum floor space.

(5) *Cats in mobile or traveling shows or acts.* Cats that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the cats must be placed in primary enclosures that meet the minimum requirements of this section.

(c) *Additional requirements for dogs*—(1) *Space.* (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space calculated as follows: find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches+6)×(length of dog in inches+6)=required floor space in square inches. Required floor space in inches/144=required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing puppy in the litter (e.g., five nursing puppies require a 25-percent increase and 10 nursing puppies require a 50-percent increase).

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the highest point of the body (normally the ears) of the tallest dog in the enclosure when it is in a normal standing position.

(2) *Dogs on tethers.* Dogs may be kept on tethers only in outside housing facilities that meet the requirements of § 3.4 of this subpart, and only when the tether meets the requirements of this paragraph. The tether must be attached to the front of the dog's shelter structure or to a post in front of the shelter structure and must be at least three times the length of the dog, as measured from the tip of its nose to the base of its

tail. The tether must allow the dog convenient access to the shelter structure and to food and water containers. The tether must be of the type and strength commonly used for the size dog involved and must be attached to the dog by a well-fitted collar that will not cause trauma or injury to the dog. Collars made of materials such as wire, flat chains, chains with sharp edges, or chains with rusty or nonuniform links are prohibited. The tether must be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the outside housing facility, and so the dog can roam to the full range of the tether. Dog housing areas where dogs are on tethers must be enclosed by a perimeter fence that is at least 6 feet high and that protects the dogs from other animals, contains them if they should free themselves of the tether, and prevents dogs, raccoons, skunks, and animals of similar size from going through it or under it.

(3) *Compatibility.* All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under 4 months of age may not be housed in the same primary enclosure with adult dogs. Dogs with a vicious or aggressive disposition must be housed separately.

(4) *Dogs in mobile or traveling shows or acts.* Dogs that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the dogs must be placed in primary enclosures that meet the minimum requirements of this section.

(d) *Variance from minimum space requirements*—(1) *Definition.* For the purposes of this subpart, a "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle dogs or cats, or that have dogs or cats on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is no nearly complete that a variance is necessary for the registrant or licensee to comply with the minimum space requirements.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (d)(2) of this section must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of dogs and cats that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance and addressing whether the granting of a variance would be detrimental to the affected dogs and cats must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it it he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and well-being of the dogs and cats affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and well-being of the dogs and cats affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than one extension will be granted. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extention will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and well-being of the dogs or cats affected. Revocation of a variance will be in writing and will be effective upon receipt.

Animal Health and Husbandry Standards

§ 3.7 Exercise and socialization for dogs.

(a) Social contact while being housed, held, or maintained. (1) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility including federal research facilities, must be maintained in compatible groups *unless*:

(i) Housing in compatible groups is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;

(ii) In the opinion of the attending veterinarian such housing would adversely affect the health or well-being of the dog(s); or

(iii) Any dog exhibits aggressive or vicious behavior.

(2) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be able to hear and see other dogs *unless*:

(i) Such contact is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;

(ii) In the opinion of the attending veterinarian, such contact would adversely affect the health or well-being of the dog(s); or

(iii) Only one dog is housed, held, or maintained by the dealer, exhibitor, or research facility. In such instances, the single dog must receive positive physical contact with humans at least once a day. The positive physical contact with humans must total at least 60 minutes each day and may be given in one or more periods.

(b) Release for exercise and socialization—(1) Dogs housed individually. (i) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be released at least once a day for exercise and socialization if they are:

(A) Kept individually in cages; or

(B) Kept individually in pens or runs that provide less than four times the floor space required for that dog by § 3.6(c)(1) of this subpart, and that do not allow visual and physical contact with neighboring dogs (for example, concrete block pens and runs).

(ii) The exercise area must be the larger of 80 square feet or twice the minimum floor space required by § 3.6(c)(1) of this subpart. However, dogs whose release for exercise and socialization is prohibited by an animal care and use procedure approved by the Committee are not subject to the 80-square-feet-minimum provision of this paragraph, but must be maintained in pens or runs that provide each dog with at least twice the minimum floor space required by § 3.6(c)(1) of this subpart.

(iii) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility do not need to be released each day for exercise and socialization if they are kept in pens or runs that:

(A) Provide at least four times the required space for that dog; and

(B) Allow visual and physical contact with neighboring dogs.

(2) Dogs housed, held, or maintained in groups by any dealer, exhibitor, or research facility, including a federal research facility, must be released at least once a day for exercise and socialization, unless the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require if maintained separately under the minimum floor space requirements of § 3.6(c)(1) of this subpart. If a run or open area is used for exercise for dogs housed in groups, it must be the greater of 80 square feet or 150 percent of the minimum space requirement for each dog in the exercise area. (For example, a 28-inch beagle requires a minimum floor space of 8 square feet. Therefore, for six beagles housed together, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. This is less than 80 square feet. Therefore, the larger floor space, 80 square feet, would be required.)

(3) Exercise periods must total at least 30 minutes each day and may be given in one or more release periods.

(c) Methods of exercise.

(1) The attending veterinarian must determine the type of exercise to be used. The exercise may be provided by:

(i) Walking on a leash;

(ii) Releasing the dog(s) into an open area;

(iii) Providing access to a run; or

(iv) Some other similar arrangement.

(2) Forced exercise methods or devices such as swimming, treadmills, or carousel type device do not meet the exercise requirements of this section.

(d) Documentation of the release of each dog for exercise must be kept by the registrant or licensee, and is subject to APHIS inspection.

(e) Exemptions. The attending veterinarian may exempt a particular dog from the exercise release period required for it under paragraph (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption or restriction must be recorded by the attending veterinarian. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary.

§ 3.8 Feeding.

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. It must be appropriate for the individual animal's age.

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain and snow. Feeding pans must either be made of durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable, they must be cleaned daily and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least every 2 weeks, and before being used to feed a different dog or cat or social grouping of dogs or cats. If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used, they must be cleaned and sanitized as needed in accordance with § 3.10(b)(3) of this subpart. Measures must be taken to ensure there is no molding, deterioration, and caking of feed.

§ 3.9 Watering.

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats at least twice daily for periods of not less than 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least once every 2 weeks, and before being used to water a different dog or cat or social grouping of dogs or cats.

§ 3.10 Cleaning, sanitization, housekeeping, and pest control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures, and from under primary enclosures, at least daily, or more frequently if necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When a primary enclosure is being cleaned by steam or by hosing or flushing with water, any dog or cat in the primary enclosure must be removed to prevent it from being involuntarily wetted or injured. All standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with wire or slatted floors must be

cleaned at least daily, and as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects and odors.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) A used primary enclosure must be cleaned and sanitized in accordance with this section before it can be used to house another dog or cat.

(2) Primary enclosures for dogs or cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excrete, and other disease hazards.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, as with a mechanical cage washer; or

(iii) Washing all soiled surfaces with a detergent solution so as to remove all organic material and mineral buildup, and by following the washing first with a safe and effective disinfectant rinse, then with a clean water rinse.

(4) Pen, runs and outdoor housing areas using material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as gravel, sand, grass, or earth, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

(d) Pest control. An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

§ 3.11 Employees.

Each person subject to the Animal Welfare regulations maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an animal caretaker who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

§ 3.12 Social grouping.

Dogs and cats housed in the same primary enclosure must be maintained in compatible groups, with the following restrictions:

(a) Females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes;

(b) Any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

(c) Puppies or kittens 180 days of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies;

(d) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible;

(e) Dogs and cats under quarantine or treatment for a communicable disease must be separated from other dogs and cats and other susceptible species of animals to minimize the risk of spread of the disease.

Transportation Standards

§ 3.13 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a dog or cat to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless they are provided with the name, address, and phone number of the consignee.

(c) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless written instructions concerning in-transit food and water requirements for each dog and cat in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the dog or cat was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the dog or cat was last offered food and water. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each dog or cat contained in the primary enclosure was offered food within 12 hours and water within 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce in a primary enclosure unless the primary enclosure meets the requirements of § 3.14 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.14 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a dog or cat for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the dog or cat without causing suffering or injury. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each primary enclosure in the shipment meets the standards for primary enclosures in § 3.14 of this subpart; and

(4) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.18 and 3.19 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the dog or cat is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(3) of this section. A copy of the certification must accompany the dog or cat to its destination and must include the following information:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by a veterinarian, and dated no more than 10 days before delivery, that to the best of his or her knowledge, each of the dogs or cats contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C), but now lower than a minimum temperature, specified on the certificate, that the veterinarian has determined is based on generally accepted temperature standards for the age, condition, and breed of the animals; and

(4) The signature of the veterinarian and the date the certification was signed.

(g) When a primary enclosure containing a dog or cat has arrived at the animal holding area at a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period thereafter. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the dog or cat has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. If the consignee is notified of the arrival and does not accept delivery of the dog or cat within 48 hours after arrival of the dog or cat, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the dog or cat, and maintain the dog or cat in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the dog or cat or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

§ 3.14 Primary enclosures used to transport live dogs and cats.

Any person subject to the Animal Welfare regulations must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

(a) *Construction of primary enclosures.* The dog or cat must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport dogs and cats must be constructed so that:

(1) The primary enclosure is strong enough to contain the dogs and cats securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The dog or cat is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animals nearby;

(4) The dog or cat can be easily and quickly removed from the enclosure in an emergency;

(5) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(6) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provided to the animal in accordance with paragraph (c) of this section; and

(9) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. Unless the dogs or cats are on raised slatted floors or raised floors made of wire mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.10(b)(3) of this subpart. If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes.

(c) *Ventilation.* (1) Unless the primary enclosure is permanently affixed to the conveyance, there must be ventilation openings on all four walls of the primary enclosure. The ventilation openings must total at least 8 percent of the surface area of each wall, and the total surface area of all the ventilation openings must be at least 14 percent of the total surface area of all four walls of the primary enclosure. Additionally, at least one-third of the total minimum area required for ventilation must be located on the upper one-half of the primary enclosure;

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 in. (1.9 cm) between the primary

enclosure and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Live dogs or cats transported in the same primary enclosure must be of the same species and be maintained in compatible groups, except that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported in the same primary enclosure.

(2) Puppies or kittens 180 days of age or less may not be transported in the same primary enclosure with adult dogs or acts other than their dams.

(3) Dogs or cats that are overly aggressive or exhibit a vicious disposition must be transported individually in a primary enclosure.

(4) Any female dog or cat in heat (estrus) may not be transported in the same primary enclosure with any male dog or cat.

(e) *Space and placement.* (1) Primary enclosures used to transport live dogs and cats must be large enough to ensure that each animal contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

(2) Primary enclosures used to transport dogs and cats must be positioned in the primary conveyance so as to provide protection from the elements.

(f) *Transportation by air.* (1) No more than two live dogs or cats, 6 months of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(2) No more than two live puppies, 8 weeks to 6 months of age, that are of comparable size, and weighing over 20 lb (9 kg) each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(3) No more than three live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lb (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(4) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(g) *Transportation by surface vehicle.* (1) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) and only if all other requirements of this section are met.

(2) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(h) *Accompanying documents and records.* Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used to transport dogs and cats must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing dogs or cats must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each dog or cat enough air for normal breathing.

(d) During air transportation, including time spent on the ground, dogs and cats must be held or transported in cargo areas that are heated or cooled as necessary to maintain anambient temperature that ensures the health and comfort of the dogs or cats. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground.

(e) During surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs and cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). Moreover, the ambient temperature may not exceed 95 °F (35 °C) at any time; nor exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor fall below 35 °F (1.7 °F) at any time.

(f) Primary enclosures must be positioned in the primary conveyance in a manner that allows the dogs and cats to be quickly and easily removed from the primary conveyance in an emergency.

(g) The interior of the animal cargo space must be kept clean.

(h) Live dogs and cats may not be transported with any material, substance (e.g., dry ice) or device in a manner that may reasonably be expected to harm the dogs and cats or cause inhumane conditions, unless proper precaution is taken to prevent the injury or inhumane conditions.

§ 3.16 Food and water requirements.

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Each dog or cat must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered food within the 12 hours preceding delivery of the dog or cat to a carrier or

intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.13(d).

(b) Each dog and cat must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce and at least once every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.13(d).

(c) Any dealer, research facility, including a federal research facility, or exhibitor offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the dog or cat, written instructions for the in-transit food and water requirements for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

§ 3.17 Care in transit.

(a) Surface transportation (ground and water). Any person subject to the Animal Welfare regulations transporting dogs or cats in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, observes the dogs or cats as often as circumstance allow, but not less than once every 4 hours, to make sure they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.15(e), and that all applicable standards of this subpart are being complied with. The regulated person must ensure that the operator or person accompanying the operator determines whether any of the dogs or cats are in obvious physical distress and obtains any veterinary care needed for the dogs or cats at the closest available veterinary facility.

(b) Air transportation. During air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstance allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the dogs or cats are in obvious physical distress, and arrange for any needed veterinary care as soon as possible.

(c) If a dog or cat is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) During transportation in commerce, a dog or cat must not be removed from its primary enclosure unless it is placed in another primary enclosure or facility that meets the requirements of § 3.6 or § 3.14 of this subpart.

(e) The transportation regulations contained in this subpart must be complied with until the dog or cat reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

§ 3.18 Terminal facilities.

(a) *Placement.* Any person subject to the Animal Welfare regulations must not commingle shipments of dogs or cats with inanimate cargo in animal holding areas of terminal facilities.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.10(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests to dogs and cats.

(c) *Ventilation.* Air, preferably fresh air, must be provided in any animal holding area in a terminal facility containing dogs or cats, by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning must be used in any animal holding area containing dogs and cats, when the ambient temperature is 75° F (23.9° C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing dogs or cats must not fall below 45° F (7.2° C) or rise above 75° F (23.9° C) for more than four consecutive hours at any time dogs or cats are present. The ambient temperature must not fall below 35° F (1.7° C) or rise above 85° F (29.5° C) at any time dogs or cats are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting dogs or cats who is subject to the Animal Welfare regulations, outside any primary enclosure containing a dog or cat at a point not more than 3 feet (0.91 m) away from an outside wall of the primary enclosure, and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations holding a live dog or cat in an animal holding area of a terminal facility must provide the following:

(1) Shelter from sunlight and extreme heat. Shade must be provided that is sufficient to protect the dog or cat from the direct rays of the sun.

(2) Shelter from rain or snow. Sufficient protection must be provided to allow the dogs and cats to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold dogs and cats in animal holding areas of terminal facilities upon arrival is the same as that provided in § 3.13(g).

§ 3.19 Handling

(a) Any person subject to the Animal Welfare regulations who moves (including loading and unloading) dogs or cats within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible and

must provide the following during movement of the dog or cat:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the dog or cat from the direct rays of the sun. The dog or cat must not be exposed to an ambient air temperature above 85° F (29.5° C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(2) *Shelter from rain and snow.* Sufficient protection must be provided to allow the dog and cat to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which live dogs or cats are placed to move them must be covered to protect the animals when the outdoor temperature falls below 50° F (10° C). The dogs or cats must not be exposed to an ambient temperature below 45° F (7.2° C) for a period of more than 45 minutes, unless they are accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(f). The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(b) Any person handling a primary enclosure containing a dog or cat must use care and must avoid causing physical or emotional distress to the dog or cat.

(1) A primary enclosure containing a live dog or cat must not be placed on unattended conveyor belts, or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a dog or cat must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a dog or cat from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

3. In § 3.28, paragraph (b)(2) (i) and (ii) and (b)(3) (i) and (iii) would be revised to read as follows:

§ 3.28 Primary enclosures.

* * * * *

(b) * * *

(2) * * *

(i) The interior height of any primary enclosure used to confine guinea pigs must be at least 7 inches (17.78 cm).

(ii) Each guinea pig must be provided a minimum amount of floor space in any primary enclosure as follows:

Weight or stage of maturity	Minimum floor space per hamster	
	in²	cm²
Weaning to 350 grams	60	387.12
>350 grams or nursing females with their litters	101	651.65

(3) * * *

(i) The interior height of any primary enclosure used to confine hamsters must be at least 6 inches (15.24 cm).

* * * * *

(iii) Except as provided in paragraph (b)(3)(ii) of this section, each hamster must be provided a minimum amount of floor space in any primary enclosure as follows:

Weight		Minimum floor space per hamster	
g	ozs	in²	cm²
60	2.1	10	64.52
60 to 80	2.1–2.8	13	83.88
80 to 100	2.8–3.5	16	103.23
> 100	> 3.5	19	122.59

4. In § 3.36, the introductory text would be revised to read as follows:

§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.

No person subject to the Animal Welfare regulations is allowed to offer for transportation, or transport, in commerce any live guinea pig or hamster in a primary enclosure that does not conform to the following requirements.

* * * * *

5. In § 3.37, a new paragraph (g) would be added to read as follows:

§ 3.37 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(g) The animal cargo space of primary conveyances used to transport guinea pigs or hamsters must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live guinea pigs or hamsters when the ambient temperature in the animal cargo space is 75° F (23.9° C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceedd 85° F (29.5° C) or to fall below 45° F (7.2° C), except that the ambient temperature in the cargo space may be below 45° F (7.2° C) for hamsters if the hamsters are accompanied by a certificate of acclimation to lower temperatures, as provided in § 3.35(c) of this part.

6. In § 3.40, the first two sentences would be revised to read as follows:

§ 3.40 Terminal facilities.

No person subject to the Animal Welfare regulations is allowed to commingle shipments of live guinea pigs or hamsters with inanimate cargo. All animal holding areas of a terminal facility where shipments of live guinea pigs or hamsters are maintained must be cleaned and sanitized as prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

7. In § 3.41 paragraph (a) introductory text would be revised to read as follows:

§ 3.41 Handling.

(a) Any person who is subject to the Animal Welfare Regulations and who moves live guinea pigs or hamsters from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare Act and holding any live guinea pig or hamster in an animal holding area of a terminal facility or transporting any live guinea pig or hamster to or from a terminal facility must provide the following:

* * * * *

8. In § 3.53, the table in paragraph (b) would be revised to read as follows:

§ 3.53 Primary enclosures.

* * * * *

(b) * * *

	Individual weights		Minimum floor space		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Individual rabbits (weaned)	2	4.4	0.14	1.5	35.56	14
	2–4	4.4–8.8	0.28	3.0	35.56	14
	4–5.4	8.8–11.9	0.37	4.0	35.56	14
	>5.4	>11.9	0.46	5.0	35.56	14

	Weight of nursing female		Minimum floor space/female & litter		Minimum interior height	
	kg	lbs	m^2	ft^2	cm	in
Females with litters	2	4.4	0.37	4.0	35.56	14
	2–4	4.4–8.8	0.46	5.0	35.56	14
	4–5.4	8.8–11.9	0.56	6.0	35.56	14
	>5.4	>11.9	0.70	7.0	35.56	14

9. In § 3.61, the introductory paragraph would be revised to read as follows:

§ 3.61 Primary enclosures used to transport live rabbits.

No person subject to the Animal Welfare regulations is allowed to offer for transportation or to transport in commerce any live rabbit in a primary enclosure that does not conform to the following requirements.

* * * * *

10. In § 3.62, a new paragraph (g) would be added to read as follows:

§ 3.62 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(g) The animal cargo space of primary conveyances used to transport rabbits must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to mimimize drafts, odors, and mositure condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live rabbits when the ambient temperature in the animal cargo space is 75 °F (23.9 °C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceed 85 °F (29.5 °C) or to fall below 45° (7.2 °C), except that the ambient temperature in the cargo space may be below 45°F (7.2 °C) if the rabbits are accompanied by a certificate of acclimation to lower temperatures, as described in § 3.60(c) of this part.

11. In § 3.65 the first two sentences would be revised to read as follows:

§ 3.65 Terminal facilities.

No person subject to the Animal Welfare regulations may commingle shipments of live rabbits with inanimate cargo. All animal holding areas of a terminal facility where shipments of rabbits are maintained must be cleaned and sanitized as prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

12. In § 3.66, paragraph (a) would be revised to read as follows:

§ 3.66 Handling.

(a) Any person who is subject to the Animal Welfare regulations and who moves live rabbits from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare regulations and holding any live rabbit in an animal holding area of a terminal facility or transporting any live rabbit to or from a terminal facility must provide the following:

* * * * *

13. Subpart D, consisting of §§ 3.75 through 3.93, would be revised to read as follows:

Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates

Facilities and Operating Standards

Sec.
3.75 Housing facilities, general.
3.76 Indoor housing facilities.
3.77 Sheltered housing facilities.
3.78 Outdoor housing facilities.
3.79 Mobile or traveling housing facilities.
3.80 Primary enclosure.
3.81 Additional requirements for research facilities.

Animal Health and Husbandry Standards

3.82 Feeding.
3.83 Watering.
3.84 Cleaning, sanitization, housekeeping, and pest control.
3.85 Employees.
3.86 Social grouping and separation.

Sec.
Transportation Standards

3.87 Consignments to carriers and intermediate handlers.
3.88 Primary enclosures used to transport nonhuman primates.
3.89 Primary conveyances (motor vehicle, rail, air, and marine).
3.90 Food and water requirements.
3.91 Care in transit.
3.92 Terminal facilities.
3.93 Handling.

Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates.[1]

Facilities and Operating Standards

§ 3.75 Housing facilities, general.

(a) *Structure; construction.* Housing facilities for nonhuman primates must be designed and constructed so that they are structurally sound for the species of nonhuman primates housed in them. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and

[1] Nonhuman primates include a great diversity of forms, ranging from the marmoset weighing only a few ounces, to the adult gorilla weighing hundreds of pounds, and including more than 240 species. They come from Asia, Africa, and Central and South America, and they live in different habitats in nature. Some have been transported to the United States from the natural habitats and some have been raised in captivity in the United States. Their nutritional and activity requirements differ, as do their social and environmental requirements. As a result, the conditions appropriate for one species do not necessarily apply to another. Accordingly, these minimum specifications must be applied in accordance with the customary and generally accepted professional and husbandry practices considered appropriate for each species, and necessary to promote their psychological well-being.

These minimum standards apply only to live nonhuman primates, unless stated otherwise.

restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, or stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. Housing facilities other than those maintained by research facilities and federal research facilities must be physically separated from any other businesses. If a housing facility is located on the same premises as any other businesses, it must be physically separated from the other businesses so that unauthorized humans, and animals the size of dogs, skunks, and raccoons, are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including perches, shelves, swings, boxes, houses, dens, and other furniture-type fixtures or objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Furniture-type fixtures or objects must be sturdily constructed and must be strong enough to provide for the safe activity and welfare of nonhuman primates. Outdoor floors may be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned, or can be removed or replaced whenever cleaning does not eliminate odors, diseases, pests, insects, or vermin. Any surfaces that come in contact with nonhuman primates must:

(i) Be free of rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) Maintenance and replacement of surfaces. All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which nonhuman primates come in contact must be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, unless the species housed in the facility engage in scent marking. If the species scent mark, the surfaces must be sanitized at regular intervals determined in accordance with generally accepted professional and husbandry practices and they must be spot cleaned daily. Floors made of dirt, sand, gravel, grass, or other similar material, and planted enclosures must be raked and spot-cleaned daily. Contaminated material must be removed or replaced whenever raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned daily and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done by any of the methods provided in § 3.84(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subpart. The housing facility must provide mechanically pressurized running potable water for the nonhuman primates' drinking needs. It must be adequate for cleaning and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in leakproof containers that protect the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Perishable food must be refrigerated, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. Only the food and bedding currently being used may be kept in animal areas, and when not in actual use, open food and bedding supplies must be kept in leakproof containers with tightly fitting lids to prevent spoilage and contamination. Substances that are toxic to a nonhuman primate must not be stored in animal areas, or in food storage or preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, dead animals, debris, garbage, water, and any other fluids and wastes. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal wastes and water are rapidly eliminated and the animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump ponds, settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located for enough away from the animal area of the housing facility to prevent odors, diseases, insects, pests, and vermin infestation. If drip or constant flow watering devices are used to provide water to the animals, excess water must be rapidly drained out of the animal areas by gutters or pipes so that the animals stay dry. Puddles of water in animal areas must be promptly mopped up or drained so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, and animal areas.

(g) *Washrooms and sinks.* Washing facilities, such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible

§ 3.76 Indoor housing facilities.

(a) *Heating, cooling, and temperate.* Indoor housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C) when nonhuman primates are present. Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* Indoor housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for their health, comfort, and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity must be maintained between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of

the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* Indoor housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

§ 3.77 Sheltered housing facilities.

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities must be sufficiently heated and cooled when necessary to protect the nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C). Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* The sheltered part of sheltered animal facilities must be sufficiently ventilated at all times to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity maintained in the sheltered part of the facility must be between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* The sheltered part of sheltered housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Shelter from the elements.* Sheltered housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur.

(e) *Capacity; multiple shelters.* Both the sheltered part of sheltered housing facilities and any other necessary shelter from the elements must be sufficiently large to provide protection comfortably to all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(f) *Perimeter fence.* The outdoor area of a sheltered housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the sheltered housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the sheltered housing facility, and the Administrator gives written permission.

(g) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present that prevents physical contact between the public and the nonhuman primates. Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.78 Outdoor housing facilities

(a) *Acclimation.* Only nonhuman primates that are acclimated to the prevailing temperature and humidity at the outdoor housing facility during the time of year they are at the facility, and that can tolerate the range of temperatures and climatic conditions known to occur at the facility at that time of year without stress or discomfort, may be kept in outdoor facilities.

(b) *Shelter from the elements.* Outdoor housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur. The shelter must provide heat to the primates to prevent the ambient temperature from falling below 50 °F (10 °C).

(c) *Capacity; multiple shelters.* The shelter must be sufficiently large to comfortably provide protection for all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(d) *Perimeter fence.* An outdoor housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the housing facility, and the Administrator gives written permission.

(e) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, in order to prevent physical contact between the public and the nonhuman primates. Nonhuman primates used in

trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.79 Mobile or traveling housing facilities.

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the traveling housing facility must not fall below 50 °F (10 °C) and must not rise above 95 °F (35 °C) when nonhuman primates are present. Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature in the traveling housing facility is 85 °F (29.5 °C) or higher.

(b) *Ventilation.* Traveling housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, must be provided by means of windows, doors, vents, fans, or air conditioning. The relative humidity must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* Mobile or traveling housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Public barriers.* There must be a barrier between a mobile or traveling housing facility and the public at any time the public is present, in order to prevent physical contact between the nonhuman primates and the public. Nonhuman primates used in traveling exhibits, trained animal acts, or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

§ 3.80 Primary enclosures.

Primary enclosures for nonhuman primates must meet the following minimum requirements:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound for the species of nonhuman primates contained in them. They must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they—

(i) Have no sharp points or edges that could injure the nonhuman primates;

(ii) Protect the nonhuman primates from injury;

(iii) Contain the nonhuman primates securely and prevent accidental opening of the enclosure, including opening by the animal, and unauthorized release of the nonhuman primates;

(iv) Keep predators and unauthorized individuals from entering the enclosure or having physical contact with the nonhuman primates;

(v) Enable the nonhuman primates to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the species of nonhuman primate contained;

(vii) Provide sufficient shade to shelter all the nonhuman primates housed in the primary enclosure at one time;

(viii) Provide the nonhuman primates with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with nonhuman primates to be readily cleaned and sanitized in accordance with § 3.84(b)(3), or replaced when worn or soiled;

(x) Have floors that are constructed in a manner that protects the nonhuman primates from injuring themselves or from having their appendages caught; and

(xi) Provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

(b) *Social grouping.* Nonhuman primates must be housed in primary enclosures with compatible members of the same species or with compatible members of other nonhuman primate species, in pairs, family groups, or other compatible social groupings, unless the attending veterinarian determines that doing so would endanger the health, safety, and well-being of the nonhuman primates. Compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observation to ensure that the nonhuman primates are in fact compatible. Individually housed nonhuman primates must be able to see and hear nonhuman primates of their own or compatible species, unless the attending veterinarian determines that it would endanger their health, safety, and well-being. If, in accordance with these regulations, this contact is not provided, the isolated individually housed nonhuman primates must have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour each day.

(c) *Minimum space and physical environment requirements.* Primary enclosures must meet the applicable minimum space and physical environment requirements provided in this subpart. These minimum space requirements must be met even if perches, swings, ledges, or other suspended fixtures are placed in the enclosure.

(1) Research facilities; federal research facilities.

(i) The minimum space that must be provided to *each* nonhuman primate, whether housed individually or with other nonhuman primates, is determined by the typical weight of animals of its species, except for brachiating species,[2] in accordance with the following table:[3]

[2] The different species of nonhuman primates are divided into seven weight groups for determining minimum space requirements, except that all brachiating species of any weight are grouped together since they require additional space to engage in species-typical behavior. The grouping provided is based upon the typical weight for various species and not on changes associated with obesity, aging, or pregnancy. These conditions will not be considered in determining a nonhuman primate's weight group unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure. Different species of prosimians vary in weight and should be grouped with their appropriate weight group. They have not been included in the weight table since different species typically fall into different weight groups. Infants and juveniles of certain species are substantially lower in weight than adults of those species and require the minimum space requirements of lighter weight species unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure.

[3] The following are examples of the kinds of nonhuman primates typically included in each group:

Group 1—marmosets, tamarins, and infants (up to 6 months of age) of various species.

Group 2—capuchins, squirrel monkeys and similar size species, and juveniles (6 months to 3 years of age) of various species.

Group 3—macaques and African species.

Group 4—male macaques and large African species.

Group 5—baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).

Group 6—great apes up to 88.0 lbs. (40 kg.) and brachiating species.

Group 7—great apes >88.0 lbs. (40 kg.).

Group	Weight		Floor Area/Animal		Height	
	lbs.	(kg.)	ft.²	(m²)	in.	(cm.)
1	2.2	(1)	1.6	(0.15)	20	(50.8)
2	2.2–6.6	(1–3)	3.0	(0.28)	30	(76.2)
3	6.6–20.0	(3–10)	4.3	(0.40)	30	(76.2)
4	20.0–33.0	(10–15)	6.0	(0.56)	32	(81.28)
5	33.0–55.0	(15–25)	8.0	(0.74)	36	(91.44)
6	55.0–88.0	(25–40)	25.1	(2.33)	84	(213.36)
7	>88.0	(>40)	50.0	(4.65)	84	(213.36)

(ii) Primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (c)(1)(i) of this section but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, such as primate pole housing, may be used with written permission from the Administrator. An application for permission must demonstrate in written and photographic detail why the primary enclosure should be allowed. Nonhuman primates housed in these types of primary enclosures that are also designed and constructed in a manner that provides for their psychological well-being by allowing exercise and social interaction may be excused from the release period required in § 3.81(a)(3) if it is sufficiently justified in the application. The Administrator may deny the application if he or she determines that granting it will be detrimental to the health and psychological well-being of the nonhuman primates to be housed in the primary enclosure. The Administrator will advise the research facility of his or her decision in writing.

(iii) Environmental enrichments must be provided in accordance with § 3.81.

(2) *Dealers.* (i) Individual nonhuman primates that are not part of an established pair, family, or other social group may be housed individually if the

attending veterinarian determines that it is necessary for their health, safety, and well-being. Except as provided in paragraph (c)(2)(v) of this section, the minimum space that must be provided to each nonhuman primate housed individually is twice the minimum floor area and twice the minimum height (up to a maximum height of 84 inches) that research facilities are required to provide in accordance with paragraph (c)(1) of this section.

(ii) Except when nonhuman primates must be individually housed for the purposes set forth in paragraph (c)(2)(v) of this section, established pairs, families, or other social groups of nonhuman primates must be maintained together in a primary enclosure. Primary enclosures used to house nonhuman primates in pairs, families, and other social groups must satisfy the minimum space requirements provided in paragraph (c)(1) of this section, in accordance with the requirements of paragraph (d) of this section for housing more than 1 nonhuman primate in a primary enclosure.

(iii) Dealers must enrich the environment in primary enclosures to promote the psychological well-being of nonhuman primates. This can be done by, among other things:

(A) Providing items such as perches, swings, mirrors, or other cage complexities that enable nonhuman primates to engage in activities typical of their age and species;

(B) Providing playthings and manipulative objects; and

(C) Using foraging or task-oriented feeding methods.

(iv) Multiple enrichments of the environment must be provided for each animal housed in a primary enclosure. The nature of the enrichments provided must be appropriate for the species of nonhuman primates housed in the enclosure.

(v) Dealers may meet the minimum space requirements required of research facilities in paragraph (c)(1) of this section, instead of the space requirements provided in paragraph (c)(2)(i) of this section, in the following instances:

(A) When holding a nonhuman primate for required federal, state, or local quarantine periods;

(B) When a nonhuman primate is receiving veterinary care as directed by the attending veterinarian; or

(C) While transporting a nonhuman primate to or from an auction sale and while holding it at the sale.

(3) *Exhibitors.* Nonhuman primates are grouped by species into the following 7 groups for purposes of determining the minimum space and environment requirements that exhibitors must provides:

Nonhuman Primate Group	Type	Example
1	Prosimian Primates	Tarsiers, Galagos, Pottos, Lorises, Lemurs, Mouse Lemurs Avahis, Indris, Sifakas, and Aye-ayes
2	Marmosets and Tamarins	Marmosets, Tamarins, and Callimico
3	Other New World Monkeys	Howler Monkeys, Owl Monkeys, Spider Monkeys, Woolly Spider Monkeys, Uakaris, Titi Monkeys, Capuchins, Said Monkeys, Woolly Monkeys, and Squirrel Monkeys
4	Langurs and Colobines	Proboscis Monkey, Langur, Colobus Monkey
5	Other Old World Monkeys	Baboons, Drills, Mandrills, Macaques, Guenons, Mangabeys, Talapoins, Patas Monkeys and Swamp Monkeys
6	Lesser Apes	Gibbons and Siamang
7	Great Apes	Orangutans, Chimpanzees, Gorillas

The minimum space and environmental enrichments that must be provided to each grouping of nonhuman primates housed in a primary enclosure must be appropriate for the species housed, as provided in this paragraph, and in accordance with the following chart:

Nonhuman Primate Group	Species/Type	Minimum No. Primates Per Enclosure	Minimum Primary Enclosure Size (Length, Width, Height)	Shelter Dens/Nest Boxes	Enclosure Furnishings or Equipment
Prosimians	Tarsiers	Pair	1m L × 1m W × 2m H (3.28ft) × (3.28ft) × (6.56ft).	12.7cm L × 12.7 cm W × 12.7cm H (5.0in) × (5.0in) × (5.0in) for each adult in upper half of exhibit.	1, 2, 3
	Loris & Galago: Smaller species.	Pair or family group	1.5cm L × 1.5cm W × 1.5cm H (4.92ft) × (4.92ft) × (4.92ft).	12.7cm L × 12.7cm W × 12.7cm H (5in) × (5in) × (5in) for each adult in upper half of exhibit.	1, 3
	Larger species		3m L × 3m W × 3m H (9.84ft) × (9.84ft) × (9.84ft).	76.2cm L × 47.2cm W × 47.7cm H (30in) × (18.6in) × (18.8in).	
	Lemurs	Pair	1.52m L × 1.52m W × 1.83m H (4.98ft) × (4.98ft) × (6.0ft).	0.46m L × 0.46m W × 0.46m H (1.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit.	1, 2

Nonhuman Primate Group	Species/Type	Minimum No. Primates Per Enclosure	Minimum Primary Enclosure Size (Length, Width, Height)	Shelter Dens/Nest Boxes	Enclosure Furnishings or Equipment
	Mouse Lemurs	Pair	1.22m L × 1.22m W × 1.22m H (4.0ft) × (4.0ft) × (4.0ft)	10.,16cm L × 10.16cm W × 10.16cm H. (4.0in) × (4.0in) × (4.0in) for each adult and in upper half of exhibit..	1
	Indris	Pair or family group	5m L × 5m W × 5m H (167.4ft) × (16.4ft) × (16.4ft)	One shelter for all.	1, 2, 4
	Avahis				
	Sifakas				
	Aye-Ayes	Pair	4m L × 3m W × 3m H (13.12ft) × (9.8ft) × (9.8ft)	76.2cm L × 47.7cm W × 47.7cm H (2.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit..	4, 7
Marmosets	Smaller < 500g	Pair	0.91m L × 0.91m W × 1.83m H (3ft) × (3ft) × (6ft)	One shelter for all. *Note:* Minimum temperature of 70°F.	1, 2, 5
Tamarins					
Callimico	Larger > 500g		1.22m L × 2.44m W × 2.44m H (4ft) × (8ft) × (8ft)		
Other New World Monkeys.	Titis, Owl, & Squirrel	Pair	2m L × 2m W × 2m H (6.56ft) × (6.56ft) × (6.56ft).	One shelter for all.	1, 2, 5, 6
		Up to 6	2.5m L × 2.5m W × 2.5m H (8.2ft) × (8.2ft) × (8.2ft).	*Note:* Sakis, Titis, & Owls are Monogamous..	
	Capuchin	Pair	2.5m L × 2m W × 2m H (8.2ft) × (8.2ft) × (8.2ft)		
	Ukaris				
	Sakis	Up to 5	4m L × 2.5m W × 2.5m H (13.12ft) × (8.2ft) × (8.2ft).		
	Howler	Pair	3m L × 3m × 3m H (9.84ft) × (9.84ft) × (9.84ft)		
	Wooly				
	Spider	Over 2	3.5m L × 3.5m W × 3.5m H (11.5ft) × (11.5ft) × (11.5f).		
Langurs, Colobines.	Proboscis, Langur, Colobus.	Pair or family group	Width, length, and height are to be at least 3 times the length from tip of nose to tip of tail for the largest animal.	Two boxes, each one at least 1½ times the length from tip of nose to tip of tail. *Note:* Temperature range should be 70–85°F..	1, 2, 6
Other Old Monkeys (Cercopithecids).	Baboons, Drills, Mandrills, Macaques Guenons, Mangabeys, Talapoins, Patas & Swamp Monkeys.	Pair or family group	Area = 54 times the head and body length of the largest adult. Height = 8ft minimum (2.44m).	Sufficient shelter for all.	1, 2, 3, 7
Lesser Apes	Gibbons	Pair	4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft).	One shelter for all.	1, 2, 8
	Siamangs		4.27m L × 5.48m W × 3.05m H (14ft × (18ft) × (10ft).	*Note:* These species are arboreal brachiators, are monogamous, and are strongly territorial..	
Greater Apes	Pygmy Chimpanzees	Pair	4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft).	Shelter for all by individual or group	7, 9, 10, 11
	Chimpanzee	One	4.27m L ×4.27m W × 3.05m H (14ft) × (14ft) × (10ft)		
	Gorilla				
	Orangutan	Pair	8.54m L × 8.54m W × 3.05m H (28ft) × (28ft) × (10ft) Space should be divided into separate areas or shift cages be available.		

1. Vertical and horizontal branches/poles of suitable size for the species.
2. Elevated perches/resting shelves of sufficient size to hold all primates.
3. Elevated pathways of tree branches/poles/or other material suitable for the species.
4. Multidirectional pathways of branches/poles/or other material of suitable size for the species.
5. Elevated feed and water stations.
6. Visual barriers.
7. Nontoxic hay/straw/leaves/branches/browse for foraging or nesting.
8. Three to four horizontal branches/poles about 2 feet apart throughout exhibit at heights that are greater than the body length of the animal when arms and legs are fully extended.
9. Climbing structures and elevated platforms at least 1 meter (3.28ft) apart and at varying heights.
10. Ropes anchored at each end which are taut enough to prevent being wrapped around an arm or leg.
11. Objects to manipulate such as tires, plastic drums, or "boomer" balls.

(4) *Mobile or traveling animal act exhibitors.* (i) Primary enclosures used to house nonhuman primates that participate daily in acts, shows, or training periods outside of their enclosure must satisfy the minimum space requirements provided in paragraph (c)(1) of this section for research facilities. No enhancements of the primary enclosure environment are required.

(ii) Primary enclosures used to house up to 3 nonhuman primates that are permanently contained in their primary enclosure must provide at least three times the floor space and twice the minimum height (up to a maximum height of 84 inches) required in paragraph (c)(1) of this section for research facilities. The minimum space provided must be increased in accordance with paragraph (d) of this section for each additional 1–3 nonhuman primates housed together in the primary enclosure. The environment in the primary enclosure must be enriched to promote the psychological well-being of the nonhuman primates in a manner that allows them to engage in activities that are typical for their age and species. The environment must be enriched by providing items such as perches, swings, mirrors, or other increased cage complexities; providing playthings or manipulative objects; and by using foraging or task-oriented feeding methods.

(d) Except for nonhuman primates housed by exhibitors in accordance with

paragraphs (c)(3), and as provided in paragraphs (c)(2)(ii) [dealers] and (c)(4)(ii) [mobile or traveling animal act exhibitor] of this section, when more than one nonhuman primate is housed in a primary enclosure, the minimum space requirement for the enclosure is the sum of the minimum floor area space requirements that must be provided for *each* nonhuman primate housed in the enclosure and double the minimum height requirement for the largest nonhuman primate housed in the enclosure (up to a maximum height of 84 inches).[4]

(e) *Variance from minimum space requirements.*—(1) *Definition.* For the purposes of this subpart, "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle nonhuman primates, or that have nonhuman primates on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations must comply with these standards and are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is so nearly complete that a variance is necessary for the registrant or licensee to fully comply with the minimum space requirements.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (e)(2) must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of nonhuman primates that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance and addressing whether the granting of a variance would be detrimental to the affected nonhuman primates must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it if he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and psychological well-being of the nonhuman primates affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request, if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than 1 extension will be granted. The grant or denial of an application for an extension will be in writing. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extension will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and psychological well-being of the nonhuman primates affected. Revocation of a variance will be in writing and effective upon receipt.

§ 3.81 Additional requirements for research facilities

(a) Research facilities, including federal research facilities, must comply with the following requirements in order to promote the psychological well-being of nonhuman primates:

(1) The physical environment in primary enclosures must be enriched by providing means of expressing species-typical activities. Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing toys or objects to manipulate; and using foraging or task-oriented feeding methods.

(2) Nonhuman primates must be housed in social groupings in accordance with § 3.80(b).

(3) An individually housed nonhuman primate must be released for a minimum of four hours of exercise and social interaction per week into an area that is at least three times the area and twice the height (up to a maximum height of 84 inches) required for that species in § 3.80(c)(1). Individually housed nonhuman primates may be placed with compatible species for their exercise periods. Nonhuman primates that are

[4] An example of how to determine the minimum space that must be provided for two nonhuman primates housed together in one primary enclosure would be: Assume a squirrel monkey (Group 2 of paragraph (1)) is housed with a baboon (Group 5 of paragraph (1)). The minimum floor area required would be the Group 2 minimum floor area (3.0 sq. ft.) plus the Group 5 minimum floor area (8.0 sq. ft.), or 11 square feet. The minimum height required would be double the Group 5 minimum height (36 in. ht. × 2—72 in. ht.), since the minimum height required for the largest nonhuman primate housed in the enclosure is doubled.

Assume a second squirrel monkey is added to the same primary enclosure. An additional Group 2 minimum floor area (3.0 sq. ft.) would be added to determine the total minimum floor area space requirement for that primary enclosure. [11 sq. ft. + 3 sq. ft.—14 sq. ft.] The minimum height would not be increased.

not housed individually and those that are housed individually in a primary enclosure that provides at least twice the volume required for that species in § 3.80(c)(1) do not have to be released for an exercise period.

(4) Research facilities must consult with the attending veterinarian with regard to the following individually housed nonhuman primates and must provide additional environmental enrichments, exercise, and social interaction, in accordance with the instructions of the attending veterinarian:

(i) Infants and juveniles;

(ii) Adults used in research for which the animal care and use procedure does not provide much activity;

(iii) Those that show signs of being in psychological distress through behavior or appearance.

(b) Primate chairs. Nonhuman primates must not be placed in chairs unless it is required by an animal care and use procedure and the Committee approves of it for a particular animal. If the use of chairs is approved for a nonhuman primate, it must be released daily for exercise for at least one continuous hour during the period it is placed in a chair, unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved for a nonhuman primate it must be released for exercise for at least one hour before it is restrained and for at least one hour after the period of restraint.

(c) Records. Documentation of the release of each nonhuman primate for exercise and social interaction and of additional environmental enrichments that must be provided under paragraph (a)(4) of this section must be kept by the attending veterinarian and is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency.

(d) Exemptions. The attending veterinarian may exempt a particular nonhuman primate from the exercise and social release period required for it under paragraphs (a)(3) and (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for its health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption or restriction must be recorded by the attending veterinarian and the documentation is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary. All exemptions and restrictions must be included in the Annual Report of the research facility.

Animal Health and Husbandry Standards

§ 3.82 Feeding.

(a) The diet for nonhuman primates must be appropriate for the species, size, age, and condition of the animal, and for the conditions in which the nonhuman primate is maintained, according to generally accepted professional and husbandry practices and nutritional standards. The diet must consist of varied food items. The food must be clean, uncontaminated, wholesome, and palatable to the animals. It must be of sufficient quantity and have sufficient nutritive value to maintain the normal condition and weight of the animal and to meet its normal daily nutrition and vitamin requirements.

(b) The method of feeding nonhuman primates must be varied daily in order to promote their psychological well-being, such as by using task-oriented feeding and allowing them to forage for food.

(c) Nonhuman primates must be fed at least once each day except as otherwise might be required to provide adequate veterinary care. Infant and juvenile nonhuman primates must be fed as often as necessary in accordance with generally accepted professional and husbandry practices and nutritional standards, based upon the animals' age and condition.

(d) Food and food receptacles, if used, must be readily accessible to all the nonhuman primates being fed. If members of dominant nonhuman primate or other species are fed together with other nonhuman primates, multiple feeding sites must be provided. The animals must be observed to determine that all receive a sufficient quantity of food.

(e) Food and food receptacles, if used, must be located so as to minimize any risk of contamination by excreta and pests. Food receptacles must be kept clean and must be sanitized in accordance with the procedures listed in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used food receptacles must be sanitized before they can be used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Measures must be taken to ensure there is no molding, deterioration, contamination, and caking or wetting of food placed in self-feeders.

§ 3.83 Watering.

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them at least twice daily for periods of not less than 1 hour each time, unless the attending veterinarian requires otherwise in order to provide adequate veterinary care to the animal. Water receptacles must be kept clean and free of waste of any kind, and must be sanitized in accordance with the methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

§ 3.84 Cleaning, sanitization, housekeeping, and pest control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed at least daily from inside each primary enclosure and from underneath it, and more frequently if necessary, to prevent accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors. When a steam, hosing, flushing, or other method involving water is used to clean the primary enclosures, nonhuman primates must be removed during the cleaning to prevent them from being involuntarily wetted or injured. Pans underneath primary enclosures with grill-type floors must also be cleaned at least daily, and as often as necessary to prevent accumulation of feces and food waste, and to reduce disease hazards, pests, insects, and odors. Primary enclosures with hard surfaces must be cleaned every day. Dirt floors and planted areas in primary enclosures must be raked and spot cleaned every day. Perches, bars, and shelves must be kept clean and replaced when worn. If the species of nonhuman primates housed in the primary enclosure engages in scent marking, the primary enclosure must be spot cleaned daily.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) A used primary enclosure must be sanitized in accordance with this section before it can be used to house another nonhuman primate.

(2) Primary enclosures must be sanitized at least once every 2 weeks and as often as necessary to prevent any accumulation of dirt, debris, waste, food waste, excreta, or disease hazard, using one of the methods prescribed in

paragraph (b)(3) of this section. However, if the species of nonhuman primates housed in the primary enclosure engages in scent marking, the primary enclosure must be sanitized at regular intervals determined in accordance with generally accepted professional and husbandry practices.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, such as in a mechanical cage washer; or

(iii) Washing all soiled surfaces with a detergent solution to remove all organic material and mineral buildup, followed by a safe and effective disinfectant rinse, and then a clean water rinse.

(4) Primary enclosures containing material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as sand, gravel, dirt, grass, or planted areas, must be sanitized by removing the contaminated materials necessary to prevent odors, diseases, pest, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

(d) Pest control. An effective program for control of insects, external parasites affecting nonhuman primates, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

§ 3.85 Employees.

Every person subject to the Animal Welfare regulations maintaining nonhuman primates must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide husbandry practices and care, or handle animals, must be supervised by an animal caretaker who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates to supervise others. The employer must be certain that the supervisor can perform to these standards.

§ 3.86 Social grouping and separation.

(a) Nonhuman primates housed in the same primary enclosure must be grouped with compatible members of the same or other nonhuman primate species, or with other compatible animal species, with the following restrictions:

(1) If a nonhuman primate exhibits vicious or overly aggressive behavior it must be housed separately;

(2) Nonhuman primates under quarantine or treatment for a communicable disease must be housed separately from other nonhuman primates and susceptible species of animals to minimize the risk of spread of the disease; and

(3) Nonhuman primates may not be housed with other species of primates or animals unless they are compatible, do not compete for food and shelter, and are not hazardous to the health and well-being of each other;

(b) Families must be housed together and compatible groups must remain constant.

Transportation Standards

§ 3.87 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a nonhuman primate to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless they are provided with the name, address, phone number, and telex number, if applicable, of the consignee.

(c) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless written instructions concerning in transit food and water requirements for each nonhuman primate in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the nonhuman primate was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the nonhuman primate was last offered food and water. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each nonhuman primate:

(1) The consignor's name and address;

(2) The species of nonhuman primate;

(3) A statement by the consignor certifying that each nonhuman primate continued in the primary enclosure was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the primary enclosure meets the requirements of § 3.88 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.88 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a nonhuman primate for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the nonhuman primate without suffering or injury. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure:

(4) A statement by the consignor certifying that each primary enclosure in the shipment meets the USDA standards for primary enclosures contained in § 3.88 of this subpart; and

(5) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.91 and 3.92 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.91 and 3.92 of this subpart. Even if the carrier or intermediate handler receives this

certification, the temperatures the nonhuman primate is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(3) of this section, and must be reasonably within the generally and professionally accepted temperature range for the nonhuman primate, as determined by the veterinarian, considering its age, condition, and species. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure;

(4) A statement by a veterinarian that to the best of his or her knowledge, each of the nonhuman primates contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C), but not lower than a minimum temperature specified on the certificate based on the generally and professionally accepted temperature range for the nonhuman primate considering its age, condition, and species; and

(5) The veterinarian's signature and the date the certification was signed.

(g) When a primary enclosure containing a nonhuman primate has arrived at the animal holding area of a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period after arrival. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the nonhuman primate has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consigner designates. If the consignee is notified of the arrival and does not take physical delivery of the nonhuman primate within 48 hours after arrival of the nonhuman primate, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the nonhuman primate, and maintain the nonhuman primate in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the nonhuman primate or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

§ 3.83 Primary enclosures used to transport nonhuman primates.

Any person subject to the Animal Welfare regulations must not transport or deliver for transport in commerce a nonhuman primate unless it is contained in a primary enclosure, such as a compartment, transport cage, carton, or crate, and the following requirements are met:

(a) *Construction of primary enclosures.* Primary enclosures used to transport nonhuman primates may be connected or attached to each other and must be constructed so that:

(1) The primary enclosure is strong enough to contain the nonhuman primate securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The nonhuman primate is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to the animal, to handlers, or to persons or animals nearby;

(4) The nonhuman primate can be easily and quickly removed from the enclosure in an emergency;

(5) The doors or other closures that provide access into the enclosure are secured with animal-proof devices that prevent accidental opening of the enclosure, including opening by the nonhuman primate;

(6) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provide to the nonhuman primate in accordance with paragraph (c) of this section;

(9) Ventilation openings are covered with bars, wire mesh, or smooth expanded methal having air spaces; and

(10) The primary enclosure has a solid, leak-proof bottom, or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. It must contain enough previously unused litter to absorbe and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the nonhumane primate and is appropriate for the species transported in the primary enclosure.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport nonhuman primates in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.84(b)(3) of this subpart.

(c) *Ventilation.* (1) If the primary enclosure is moveable, ventilation openings must be constructed in one of the following ways:

(i) If ventilation openings are located on two opposite walls of the primary enclosure, the openings on each wall must be at least 30 percent of the total surface areas of the wall and be located above the midline of the enclosure; or

(ii) If ventilation openings are located on all four walls of the primary enclosure, the openings of every wall must be at least 20 percent of the total surface area of the wall and be located above the midline of the enclosure.

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 inches (1.9 centimeters) between the primary enclosure and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside of the conveyance. The ventilation opening must be at least 90 percent of

the total area of the front wall of the enclosure, and must be convered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Only one live nonhumane primate can be transported in a primary enclosure, except as follows:

(i) A mother and her nursing infant may be transported together;

(ii) An established male-female pair or family group may be transported together, except that a female in estrus must not be transported with a male nonhuman primate;

(iii) A pair of juveniles of the same species that have not reached puberty may be transported together.

(2) Nonhuman primates of different species must not be transported in adjacent or connecting primary enclosures.

(e) *Space requirements.* Primary enclosures used to transport nonhuman primates must be large enough so that each animal contained in the primary enclosure has enough space to turn around freely in a normal manner and to sit in an upright, hands down position without its head touching the top of the enclosure. However, certain larger species may be restricted in their movements, in accordance with professionally accepted standards of care, when greater freedom of movement would be dangerous to the animal, its handler, or to other persons.

(f) *Marking and labeling.* Primary enclosures, other than those that are permanently affixed to a conveyance, must be clearly marked in English on the top and on one or more sides with the words "Wild Animals" or "Live Animals," "Do Not Tip," and "This Side Up," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure. Permanently affixed primary enclosures must be clearly marked in English with the words "Wild Animals" or "Live Animals," in the same manner.

(g) *Accompanying documents and records.* Shipping documents that must accompany shipments of nonhuman primates may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

§ 3.89 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used to transport nonhuman primates must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in it, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing nonhuman primates must be positioned in the animal cargo space in a manner that provides protection from the elements and that allow each nonhuman primate enough air for normal breathing.

(d) During air transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained at a level that ensures the heath and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present.

(e) During surface transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained between 45 °F (7.2 °C) and 85 °F (30 °C) at all times a nonhuman primate is present.

(f) A primary enclosure containing a nonhuman primate must be placed far enough away from animals that are predators or natural enemies of nonhuman primates, whether the other animals are in primary enclosures or not, so that the nonhuman primate cannot touch the other animals, see them or smell them.

(g) Primary enclosures must be positioned in the primary conveyance in a manner that allows the nonhuman primates to be quickly and easily removed from the primary conveyance in an emergency.

(h) The interior of the animal cargo space must be kept clean.

(i) Nonhuman primates must not be transported with any material, substance (e.g., dry ice), or device in a manner that may reasonably be expected to harm the nonhuman primates or cause inhumane conditions, unless proper precaution is taken to prevent the injury or inhumane conditions.

§ 3.90 Food and water requirements.

(a) Each nonhuman primate that is 1 year of age or more must be offered food [5] at least once every 24 hours. Each nonhuman primate that is less than 1 year of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Each nonhuman primate must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered food within the 12 hours preceding delivery of the nonhuman primate to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.87(d).

(b) Each nonhuman primate must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce, and every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.87(d).

(c) Any dealer, exhibitor, or research facility, including a federal research facility, offering a nonhuman primate to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the nonhuman primate, written instructions for the in-transit food and

[5] Proper food for purposes of this section is described in § 3.82 of this subpart, with the necessities and circumstances of the mode of travel taken into account.

water requirements of the nonhuman primate(s) contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside of the enclosure without opening the door. Food and water receptacles must be designed, constructed, and installed so that a nonhuman primate cannot leave the primary enclosure through the food or water opening.

§ 3.91 Care in transit.

(a) Surface transportation (ground and water). Any person subject to the Animal Welfare regulations transporting nonhuman primates in commerce must ensure that the operator of the conveyance or a person accompanying the operator of the conveyance observes the nonhuman primates as often as circumstances allow, but not less than once every 4 hours, to make sure that they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.89(d), and that all other applicable standards of this subpart are being complied with. The regulated person transporting the nonhuman primates must ensure that the operator or the person accompanying the operator determines whether any of the nonhuman primates are in obvious physical distress, and obtains any veterinary care needed for the nonhuman primates at the closest available veterinary facility.

(b) *Air transportation.* During air transportation of nonhuman primates, it is the responsibility of the carrier to observe the nonhuman primates as frequently as circumstances allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the nonhuman primates whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure that the nonhuman primates have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.89(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the nonhuman primates is in obvious physical distress, and arrange for any needed veterinary care for the nonhuman primates as soon as possible.

(c) If a nonhuman primate is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) During transportation in commerce, a nonhuman primate must not be removed from its primary enclosure unless it is placed in another primary enclosure or a facility that meets the requirements of § 3.80 or § 3.88 of this subpart. Only persons who are experienced and authorized by the shipper, or authorized by the consignor or the consignee upon delivery, if the animal is consigned for transportation, may remove nonhuman primates from their primary enclosure during transportation in commerce.

(e) The transportation regulations contained in this subpart must be complied with until the nonhuman primate reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

§ 3.92 Terminal facilities.

(a) *Placement.* Any persons subject to the Animal Welfare regulations must not commingle shipments of nonhuman primates with inanimate cargo or with other animals in animal holding areas of terminal facilities. Nonhuman primates must not be placed near any other animals, including other species of nonhuman primates, and must not be able to touch or see any other animals, including other species of nonhuman primates.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.84(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests of nonhuman primates.

(c) *Ventilation.* Air, preferably fresh air, must be provided in any animal holding area in a terminal facility containing nonhuman primates by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning, must be used in any animal holding area containing nonhuman primates when the ambient temperature is 75 °F (23.9 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) at any time nonhuman primates are present. The ambient temperature must not rise above 75 °F (23.9 °C) for more than four consecutive hours at any time nonhuman primates are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting nonhuman primates who is subject to the Animal Welfare regulations, out side any primary enclosure containing a nonhuman primate at a point not more than 3 feet (0.91 m.) away from an outside wall of the primary enclosure, on a level that is even with the enclosure and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations holding a nonhuman primate in an animal holding area of a terminal facility must provide the following:

(1) Shelter from sunlight and extreme heat. Shade must be provided that is sufficient to protect the nonhuman primate from the direct rays of the sun.

(2) Shelter from rain or snow. Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold a nonhuman primate in an animal holding area of a terminal facility upon arrival is the same as that provided in § 3.87(g).

§ 3.93 Handling.

(a) Any person subject to the Animal Welfare regulations who moves (including loading and unloading) nonhuman primates within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible, and must provide the following during movement of the nonhuman primate:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the nonhuman primates from the direct rays of the sun. A nonhuman primate must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(2) *Shelter from rain or snow.* Suffcient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which nonhuman primates are placed to move them must be covered to protect the animals when the outdoor temperature falls below 45 °F (7.2 °C). A nonhuman primate must not be exposed to an ambient air temperature below 45 °F (7.2 °C) for a period of more than 45 minutes, unless it is accompanied by a certificate of acclimation to lower temperatures as provided in § 3.87(f). The temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(b) Any person handling a primary enclosure containing a nonhuman primate must use care and must avoid causing physical or emotional distress to the nonhuman primate.

(1) A primary enclosure containing a nonhuman primate must not be placed on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a nonhuman primate must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a nonhuman primate from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

Done in Washington, DC, this 7th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

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