

(Secs. 242 and 243 of the I & N Act, as amended; 8 U.S.C. 1103 and 1253)

Dated: August 22, 1983.

Alan C. Nelson,
Commissioner of Immigration and
Naturalization.

[FR Doc. 83-23878 Filed 8-29-83; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

(Docket No. 83-098)

Animal Welfare, Marine Mammals

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the humane handling, care, treatment, and transportation of marine mammals in order to extend certain outstanding variances granted under these regulations until further action is taken by the Department. This action is needed to avoid the unwarranted imposition of restrictions on certain facilities which house marine mammals.

EFFECTIVE DATE: August 29, 1983.

FOR FURTHER INFORMATION CONTACT:
Dr. R. L. Crawford, Animal Care Staff,
VS, APHIS, USDA, Room 763, Federal
Building, 8505 Belcrest Road,
Hyattsville, MD 20782, 301-436-7883.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1983, a document was published in the Federal Register (48 FR 34710-34721) which proposed to amend the "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" regulations (contained in 9 CFR 3.100 *et seq.* and referred to below as the regulations). The amendments were proposed to update the regulations and to provide more appropriate requirements for the humane handling, care, treatment, and transportation of marine mammals.

Section 3.100 of the regulations, among other things, contains provisions for the granting of variances. Currently all variances granted under the regulations concern space requirements for marine mammals. A variance is written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of the

regulations. The current provisions relating to variances are set forth in § 3.100 and provide that:

(a) All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals in captivity must comply with the provisions of this Subpart, unless they are granted a variance, [footnote omitted] by the Deputy Administrator, from one or more specified provisions. The provisions of this Subpart shall not apply, however, in emergency circumstances where compliance with one or more requirements would not serve the best interest of the marine mammals concerned.

(b) From the effective date of the requirements of this Subpart, all facilities housing marine mammals which are not in full compliance with the standards shall have 60 days during which they may apply to the Deputy Administrator for a variance: *Provided, however,* That such variance may only be granted if application is made to the Deputy Administrator, in writing, listing in detail each requirement of this Subpart which cannot be met, the time period requested for the variance, and the justification for such variance.

(c) The Deputy Administrator shall deny any such application for variance if he determines that it is not justified under the circumstances or that allowing it will be detrimental to the health and well-being of the marine mammals concerned.

(d) Such variance shall not be granted for a period exceeding 3 years from the effective date of these provisions: *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator at least 60 days prior to the termination of the initial 3-year period. [footnote omitted]

(e) A research facility may be granted variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. The 3-year time limitation stated in paragraph (b) of this section shall not be applicable in such case.

Previously, any outstanding variances issued under these provisions, other than variances for research facilities, were scheduled to expire on September 20, 1983. The document of July 29, 1983, among other things, proposed to amend these provisions concerning variances. In essence, it was proposed to establish a mechanism that could allow facilities, other than research facilities, operating under variances to continue operating under such variances. When the proposal was published, it was anticipated that the rulemaking proceeding would be completed prior to September 20, 1983, and that a final rule would be in effect by that time. However, as explained in a companion document titled "Animal Welfare, Marine Mammals" and published in the proposed rule section of this issue of the

Federal Register, the comment period for the proposal of July 29, 1983, is extended to September 30, 1983. Therefore, a final rule based on that proposal cannot be published until after that date, and without a change in the regulations such variances would expire on September 20, 1983.

Accordingly, without an amendment to extend variances, certain facilities currently operating under a variance could not operate after September 20, 1983, without being in violation of the regulations. This could create an unfair situation since a final rule might allow for extension of these same variances.

It is therefore necessary to amend the regulations to allow facilities, other than research facilities, which are operating under variances that would have expired on September 20, 1983, to continue operating under such variances until action can be taken on the proposed rulemaking of July 29, 1983.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1, and has been determined to be not a major rule. The Department has determined that this action will not have any effect on the economy and will not result in any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have any adverse effects in competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that the action taken by this document will have a significant impact. This is merely an interim action and it is expected that a final rule, including action concerning variances, will be published in October or November of 1983. Further, this document only allows the extension of certain variances that are already in effect.

Based on these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic effect on a substantial number of small entities.

Emergency Action and Comments

Dr. E. C. Sharman, Assistant Deputy Administrator for VS, APHIS, USDA, has determined that the nature of this final rule warrants publication without opportunity for public comment. This

amendment must be made effective immediately on an emergency basis to avoid the unwarranted imposition of restrictions on certain facilities which house marine mammals and which are operating under variances which would otherwise expire September 20, 1983. Further, this action will extend certain variances until a final rule is established based on the proposal referred to above. It is expected that the final rule will be published in October or November of 1983.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

List of Subjects in 9 CFR Part 3

Animal welfare, Humane animal handling, Marine mammals.

PART 3—STANDARDS

Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

Accordingly, Subpart E of 9 CFR Part 3 is amended by revising § 3.100(d) to read as follows:

§ 3.100 Special consideration regarding compliance and/or variance.

(d) Variances, other than for research facilities which would have expired on September 20, 1983, are extended until further action is taken by the Department.

(Secs. 3, 5, 6, 10, 11, 12, 16, 17, 21, 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1564, 90 Stat. 418, 419, 420, 423, 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, D.C., this 24th day of August 1983.

K. R. Hook,

Acting Deputy Administrator Veterinary Services.

[FR Doc. 83-23657 Filed 8-26-83; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 70 and 150

Irretrievable Well-Logging Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to establish requirements to be accomplished in the event of an irretrievable well-logging source (any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well for which all reasonable effort at recovery has been expended). The final rule establishes requirements for sealing and protecting the well-logging source, identifying the well site, and reporting the occurrence. The Commission believes that uniform and adequate safety requirements contained in this rule are necessary to ensure that no subsequent damage to the source occurs that might result in the dispersal of radioactive material.

EFFECTIVE DATE: September 28, 1983.

ADDRESSES: Copies of the Regulatory Analysis and analysis of comments may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, Washington, DC 20555, telephone (301) 443-7902.

SUPPLEMENTARY INFORMATION: A well-logging operation consists of lowering into and raising from wells on a wireline a well-logging tool, a measuring device, which may contain sealed radioactive sources. The purpose of the well-logging operation is to obtain information about the underground strata. Currently, the Commission has approximately 160-170 licensees authorized to conduct well-logging activities and over 50,000 wells are logged each year. Sealed radioactive sources used in well-logging operations typically contain americium-241 or cesium-137 sources.

Occasionally a well-logging tool containing a radioactive source becomes disconnected from the wireline. In some instances, the well-logging tool is unrecoverable and is left in the well. An irretrievable well-logging source is any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended. A review of records indicates that an average of five irretrievable well-logging sources has occurred yearly.

A well containing an irretrievable well-logging source could continue in production. Operation such as redrilling could be performed in that well. If an irretrievable well-logging source was damaged by subsequent operation and

radioactive material was brought to the surface, contamination of the well-site, drilling equipment, vehicles, and personnel could occur.

Currently, the Commission treats the abandonment of an irretrievable well-logging source as a condition of the well-logger's license. The licensee is required to specify the procedures that will be used in the abandonment and identification of an irretrievable well-logging source. Because some logging companies operate on an interstate basis and because these activities are licensed by the Commission and the Agreement States, uniformity in the content and application of abandonment procedures is important. In addition, legally binding requirements are required to assure that the well owner or operator performs the required actions when neither the owner or operator is the licensee. This regulation is intended to provide the uniformity and assurance necessary to assure radiological safety in the event of an irretrievable well-logging source.

On September 28, 1978 the NRC published in the Federal Register (43 FR 44547) a notice of proposed rulemaking setting out amendments to 10 CFR Parts 30 and 70 that would require certain procedures be followed if a well-logging tool containing radioactive material was abandoned in a well. These procedures include sealing the source in place with a cement plug, mounting a permanent identification plaque at the surface of the well and reporting the circumstances concerning the irretrievable source to the Commission and to pertinent State agencies within 30 days after the source had been abandoned. The notice provided for a 60-day public comment period.

Ten letters of comment were received in response to the notice. All 10 commenters expressed general agreement with the purpose of the proposed regulations. However, most commenters did express concern about some aspect of the proposed amendments.

Six commenters observed that the definition of an irretrievable well-logging source required the Commission to determine when all reasonable effort at recovery had been expended. These commenters complained that the Commission had neither the expertise nor the resources to make this determination. Although it was never intended that the Commission unilaterally decide whether a source was irretrievable, the definition has been amended to delete the reference to unilateral Commission determination of the status of the source. Accordingly, the