DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

8 CFR Parts 1 and 3

Marine Mammals; Humane Handling, Care, Treatment, and Transportation

AGENCY: Animal and Plant Health Inspection Service (USDA).

ACTION: Final rule.

SUMMARY: This document sets forth regulations and standards under the Animal Welfare Act to govern the humane handling, care, treatment, and transportation of warmblooded aquatic animals or marine mammals. Such regulations and standards were proposed and published in the Federal Register on September 18, 1978. The public comment period ended November 20, 1978. Comments and recommendations were received from the public, interested industry groups, and the Marine Mammal Commission. This Department has evaluated the comments and recommendations and has prepared the regulations and standards which appear herein as final rulemaking.


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SUPPLEMENTARY INFORMATION: On September 19, 1978, the Animal and Plant Health Inspection Service (APHIS) published a proposed rulemaking under the Animal Welfare Act which contained regulations and standards for the humane handling, care, treatment, and transportation of marine mammals when maintained in captivity (43 FR 42200). This rulemaking proposed an amendment to Parts 1 and 3, Subchapter A, Chapter 1, of the Code of Federal Regulations. The Animal Welfare Act, as amended, 7 U.S.C. 2131 et seq., requires the Secretary to promulgate regulations and to set standards governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. Such standards must include minimum requirements with respect to handling, housing, feeding, watering, sanitation, and other areas specified in section 13 of the Act (7 U.S.C. 2143).

Following publication of the proposed rulemaking on September 19, 1978, the 60-day period designated for the purpose of inviting public comment ended on November 20, 1978. A total of 180 comments was received within the comment period. Many comments received were from the private sector of the public, including individuals who apparently do not have any direct interest in marine mammals. The major comments are summarized as follows:

One was opposed to APHIS proposals as too lenient; one was opposed to them as being too stringent; there were 143 which generally agreed with the proposals and suggested that several areas be strengthened; and there were four which agreed but suggested modifications in one specific area. Comments from the various humane and conservation groups consisted of 12 which agreed with the intent of the proposals but suggested several areas be clarified and/or strengthened, one which challenged the legality of the Department of Agriculture administering the marine mammal regulations, and one which generally opposed maintaining cetaceans in captivity. Twenty comments were received from the industries involved with animals, such as zoos, circuses, traveling acts, universities, research facilities, carriers, and other related groups. All of these comments requested modifications and/or clarification of one or more areas. The Department of Commerce, the Department of the Interior, and the Marine Mammal Commission supported the basic concept of the proposal but strongly urged modification and/or clarification of various areas.

The various comments that were received with regard to the proposed rulemaking and the recommendations of the Marine Mammal Commission were evaluated by this Department, and because of questions which were raised and valid suggestions which were made, some changes from the proposed regulations and standards are warranted. Certain other editorial changes were also made for accuracy and clarification.

Notice is hereby given in accordance with the administrative provisions in 5 U.S.C. 553, that, pursuant to the provisions of the Animal Welfare Act (7 U.S.C. 2131 et seq.), the regulations and standards (9 CFR 1.1, et seq.) are amended in the following respects: (1) The definition of "animal" is revised to include marine mammals; the term "pool" is added to the definition of "primary enclosure"; and the term "minimum horizontal dimension" is added to the definitions. (2) New standards are provided at 9 CFR 3.1, et seq., regarding the humane handling, care, treatment, and transportation of marine mammals.

Discussion of Comments

Comments Regarding Proposed Operating Standards and Proposed Standards Governing Facilities

There were numerous comments received pertaining to proposed section 3.100, "Special considerations regarding compliance." Most of these comments were from private individuals and humane/conservation groups requesting that the time limit for deviation from the standards or variance from full compliance be reduced from 4 years to either 1, 2, or 3 years. One comment from industry indicated that the variance from full compliance should be for a longer time period since marine mammals are being maintained successfully in existing facilities which do not meet all the requirements of the proposed standards. Another comment from industry indicated that compliance with the proposed standards would be financially unrealistic for tax supported facilities. There was also a suggestion that the Federal Government should defray the increased cost of compliance when awarding research grants to nonprofit facilities.

The Marine Mammal Commission and the Department of Commerce requested clarification of proposed § 3.100 with regard to the mechanism for granting variance or permission to operate as a licensee or registrant for up to 4 years without meeting all the requirements of the standards, whether or not the variance would be renewable at the end of 4 years and, if so, under what conditions; whether specific applicants would be granted continual variance from specific portions; and whether or not consideration would be given to those facilities engaged in research other than that concerned with maintenance of marine mammals. The Marine Mammal Commission also asked whether or not a list of those facilities granted a variance would be published in the Federal Register. Several comments were received from humane groups and industries suggesting that a review committee be appointed by the Secretary to review the applications for variance and to advise the Department concerning their validity.

After due consideration of all of these comments, the Department has determined that 3 years is sufficient time to attain full compliance. In the case of
authority to utilize consultants when expertise in a specific area is needed. Therefore, in keeping with governmental policy, the Department has decided against appointing a standing committee to advise on applications for variance. However, consultants will be utilized when it is apparent that additional expertise is necessary.

All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals will be required to become licensed or registered after the effective date of these regulations and standards. It is the intent of the Department to periodically list such licensees and registrants in the Federal Register, and those granted a variance other than for research will be identified.

In the comments relative to proposed § 3.101, "Facilities, general," several changes were requested for clarification. It was suggested that the word "employee" be deleted and the phrase "attendant responsible to management" be used in order to include those persons that assist on a voluntary basis without compensation. For the sake of clarification, it has been decided that the term "employee" and the phrase "attendant responsible to management" shall be used interchangeably in these regulations and standards.

Several comments indicated that the reference to "non-porous, waterproof surface" in proposed § 3.101[a][8] should be deleted as it was unnecessary in the context of the section. It is the intent of the Department to describe as clearly as possible the type of surface which must be present when mammal materials are utilized. The description will therefore remain unchanged. It should be noted that natural areas are exempt from such requirement.

Another comment indicated that the word "rapidly" in proposed § 3.101[c][1] should be deleted or clarified, as draining a pool too rapidly could be traumatic to the marine mammals housed therein. It was not the intent of this section to require that the pool must be drained rapidly, only that the capability to do so be available if needed, and the wording has therefore been changed accordingly.

In response to a comment, the phrase "or food preparation" has been deleted from proposed § 3.101[d] to clarify that toxic substances shall not be stored in food storage areas. The methods of storing toxic or potentially toxic substances such as cleaning agents and sanitizing agents in food preparation areas are now prescribed by § 3.107(b).

With respect to proposed § 3.102, several comments were received requesting that the vertical air space be increased from 1.83 meters (6 feet) to 2.44 meters (8 feet). The Department had originally proposed that the vertical air space must average 2.44 meters (8 feet) and subsequently reduced that requirement to 1.83 meters (6 feet) in response to previous comments and on the advice of technical and scientific advisers. It is therefore decided that the proposed minimum vertical air space requirement of 6 feet will remain unchanged.

A single comment regarding lighting indicated that the terms "optimum" and "excessive" were vague and subject to different interpretations. In an effort to clarify the intent of these terms, the term "optimum" has been changed to "adequate" and an explanatory footnote has been added to the section.

Several comments indicated that clarification was needed regarding the proposed requirements for outdoor pools housing ice or cold water dwelling species and warm water dwelling species of marine mammals. Therefore for the sake of clarity, paragraph (a) of proposed § 3.103 has been restructured into three subparagraphs. The content of the proposed paragraph has been slightly altered in response to valid requests contained in the comments. As requested, cold water dwelling species of pinnipeds have been included in paragraph (a)[1]. However, a request to add ice dwelling species of cetaceans to paragraph (a)[1] is rejected since the requirements for outdoor pools housing cetaceans appear in paragraph (a)[2]. Warm water dwelling species of cetaceans have been included in paragraph (a)[3] as requested.
requirements,” for the various orders and species of marine mammals. Most of the comments (145) were from private individuals and humane organizations which indicated that the proposed space requirements were too small. Most were of the opinion that the proposed primary enclosure size should be doubled, especially for the cetaceans. Others thought the enclosure size should be tripled. One comment stated that it should be increased 10 times. A marine mammal trainer commented that the proposed primary enclosure pool for cetaceans was larger than necessary. Of the remaining 18 comments regarding space requirements, 9 were from elements representing industry, universities, and other government agencies and 9 were from circuses and circus fan organizations.

The comments regarding the primary enclosure sizes being too small did not include any persuasive evidence to support that contention. Also, there were no comments received that could provide a valid reason for disagreeing with what the Department had proposed as space requirements. The space requirements, as proposed, represent extensive efforts of the Department in which it consulted and received information from recognized authorities on the housing of marine mammals in captivity. The advice received was based on many years of acquired knowledge regarding acceptable space requirements. The Department wishes to establish minimum humane standards for the maintenance of marine mammals in captivity which would be consistent with their good health and well-being. Anyone wishing to provide more than the space required by the standards for marine mammals is free to do so at their own risk. The Department is of the opinion that they are adequate, and they shall therefore remain unchanged.

The Marine Mammal Commission commented that there were no provisions for short-term holding facilities which do not meet the standards. The Department made allowances for this in proposed § 3.110, “Veterinary care.” Special holding facilities are allowed for isolation, medication, and treatment. Since these facilities are less than minimal, the good health and well-being of animals contained therein should be under the supervision of the attending veterinarian. Enclosures smaller than required by the standards to be used for purposes other than veterinary care, such as training, transfer, etc., were not specifically provided for by the proposal. However, the proposed standards were primarily intended to cover permanent housing facilities. To clarify this intent, appropriate language has been added to § 3.104, “Space requirements,” to allow for temporary holding, training, transfer, etc. pools. These enclosures can be used for a variety of reasons, but they must not be used as permanent housing or for any periods longer than allowed by the attending veterinarian.

There were several comments from universities and research facilities regarding the lack of provisions for experimentation and research whereby other methods of housing and maintaining marine mammals could be developed. Any facility which wishes to make application to become a registered research facility can do so and can conduct experimentation and research involving marine mammals. However, marine mammals in such facilities must be given the same essentials as required by the regulations and standards for exhibitors, unless the research protocol specifically indicates the need for a variance from the minimum standards in order to obtain the desired results of such research. The research protocol shall be available to USDA inspectors when visiting the premises for inspection purposes.

There were several comments regarding the Minimum Horizontal Dimension (MHD) of the primary enclosure pools. One comment stated that the MHD was too restrictive and made no allowances for square and rectangular shaped pools. As stated in the supplemental information of the proposed rulemaking, a circular pool with the required MHD is the smallest pool which would meet the standards. The pool can be of any size and shape, but in that pool, there must be a place that will meet or exceed the MHD, depth, surface area, and volume requirements. Another comment requested clarification of the term “primary enclosure” as it relates to holding pools which are connected to a larger performance pool. In response to this request, it should be restated that enclosures smaller than required by the standards may be used for holding animals for short periods of time at the discretion of the attending veterinarian. However, if the animals are confined in the holding pools for extended periods of time and do not have access to the larger performance pool, except during their performance, then the holding pool would be considered the primary enclosure and must meet or exceed all of the minimum requirements. When the animals have free access to the larger performing pool, other than during their performance, then the entire pool complex may be considered as the primary enclosure.

One comment stated that there was no mention of MHD for pools housing pinnipeds in the regulations although it was discussed in the supplementary information. This was an oversight and is now included. It was stated in the supplementary information of the proposal that “A pool of water whose MHD is twice the average adult length of the longest species of pinniped contained therein appears to have sufficient surface area for two such pinnipeds.” After consideration of all relevant factors, the Department has decided to base the MHD on 11/2 times the average adult length of the longest species of pinniped contained in a pool. This decision is partially based on the fact that pinnipeds consider a considerable amount of time outside of the water.

Several humane groups expressed the opinion that the MHD should be based on 4 times the average adult length for all cetaceans thereby making it the same for Group I cetaceans as for Group II cetaceans.

One government agency commented that pinnipeds should be measured from the tip of the nose to the rear-most part of the hind flipper. The information used by the Department in measuring pinnipeds is E. P. Walker’s book, Monographs of the World, Volume II, 2nd Edition, John Hopkins Press, page 1263. Mr. Walker has done extensive research regarding mammals under sponsorship of the New York Zoological Society and the National Institutes of Health. He was Assistant Director of the National Zoological Park and is considered by the Department to be an authority on the subject of mammals. According to Mr. Walker, the pinniped should be measured from the tip of the nose in a straight line to the tip of the tail. Although the tail is vestigial, all pinnipeds have tails. There was also a comment from the Marine Mammal Commission that the Monodon monoceros (narwhal) should be spelled “narwhal.” Webster’s Dictionary states that both versions are acceptable. Mr. Walker also calls them narwhales. Therefore, in keeping with governmental policy that regulations be written in understandable language, the Department has determined that the term “narwhal” is preferable to many other terms.

There were two comments stating that the proposed formulas for computing MHD were wrong. There was a typographical error in the proposed rulemaking when it was published in the
Federal Register. In all the formulas where the symbol \( r \) should have been used, "0" was used instead. Most people evidently recognized this as a printing error since the Department received only two comments in this regard. Some comments expressed difficulty understanding the formulas as printed. Specifically, there were questions regarding the determination of the radius of a pool. In the case of Group I cetaceans (where MHD must be 2 times the average adult length of the longest marine mammal) and Group II cetaceans (where MHD must be 4 times the average adult length), the MHD also represents the required minimum diameter of the pool. Therefore, in pools housing Group I or Group II cetacean, one-half the MHD of the pool represents the radius for further mathematical computations.

One agency's comments indicated some confusion regarding the relationship of surface area to volume when making computations. While it is true that surface area is not a specified factor in the formula for calculating volume, it is very important in determining pool size. A pool which meets either Group I or Group II MHD and depth requirements will satisfy the surface area and volume requirements for up to two Group I or up to four Group II cetaceans. As additional animals of either group are added to the pool, both volume and surface area required must be calculated independently for each animal added and the dimensions of the pool adjusted to meet both total surface area and volume requirements respectively. If surface area requirements were not considered in determining pool dimensions when adding additional animals, it would be conceivable that a situation could be created whereby numerous animals would be stacked one upon the other, all competing for the same surface area, in a pool which otherwise would meet all the requirements regarding the MHD, depth, and volume. Therefore, when computing the size of the pool, the total surface area must be figured based on the required surface area for each cetacean in the pool. To avoid any further confusion, appropriate changes have been made in the wording of proposed § 3.104(b)(2).

There was a comment that the word "adult" should be dropped when computing MHD because some facilities use adolescent or juvenile animals and never hold them till maturity. The Department is of the opinion that if MHD were based on various adolescent and juvenile sizes, as well as adult sizes of marine mammals, the standards would become too indefinite and burdensome for the industry and would be difficult to enforce. Therefore this suggestion is rejected.

There were also some comments regarding the proposed depth of the primary enclosure pool. One comment stated that the depth of the pool should be at least 11/2 times the length of the marine mammal contained therein. Another comment stated that it is common to have primary enclosure pools with sloping bottoms, and that these pools can meet the volume and surface area requirements. Pools are usually most shallow at the edges and deepen toward the center where the drain is located. Some pools, other than circular ones, might also have a shallow end which is less than minimum. Only that part of the pool that meets or exceeds the depth requirements can be used to compute the required space dimensions. Any part of the pool which is less than the minimum depth cannot be used when calculating pool size and cannot be used in calculating dry resting or socializing areas.

There were some comments that the formulas, working examples, and guidelines be published to assist in helping to understand the minimum space requirements. There was also a comment that the Department should furnish a list of the average adult lengths of all marine mammals maintained in captivity and give the dimensions for both the male and the female of the species.

The Department is planning to suggest guidelines and provide a better understanding of the space requirements for polar bears if the den were small. Another stated that there was no need to provide dens to females of breeding age if they were not placed in contact with males of breeding age. The Department proposed a den size of 6' × 6' × 5' high. The comment regarding the smaller den suggested 5' × 5' × 5'. One leading zoo commented on the den size and submitted a reprint from the International Zoo Yearbook, wherein the size of the dens are larger than the 6' × 6' × 5' proposed by the Department. In considering the size of adult polar bears, which can exceed 7 feet in length, the Department feels the den should adequately accommodate the animal and will therefore not reduce the proposed dimensions. The Department will not require a separate den for each female of breeding age in stationary exhibits unless such female is housed in the same primary enclosure with a male of breeding age.

There were nine comments received from circuses and circus fan groups expressing their concern that circuses and traveling marine mammal acts cannot survive because the regulations and standards as proposed would require the facilities to provide the traveling marine mammal with the same requirements as the permanently housed animal. A major concern expressed by these comments was that the space available in the vehicles transporting the marine mammals, such as railroad cars and trucks, would not legally
accommodate primary enclosures of such dimensions as required by the proposed standards. Also, there was concern that limited space on railroad car sidings at exhibition locations would prohibit the use of additional railroad cars for the purpose of transporting such enclosures. Other comments stated that the required dimensions in the proposed standards for primary enclosures for polar bears exceed those which are necessary for trained animals. The Department also received comments from humane groups which agreed that traveling animals should be provided with the same requirements as stationary animals. The Department has received input regarding this question from experts in the area of marine mammal care such as the Marine Mammal Commission, the Department of the Interior, Commerce, etc. They all agree that marine mammals in traveling exhibits should be subject to the same requirements as those marine mammals which are maintained in stationary exhibits. This requires that traveling exhibitors must comply with all the standards and regulations while their exhibit is en route, and each time the exhibit is set up at any location for a performance or other purpose. At this time, the Department does not intend to alter the requirements as stated in the proposed rulemaking for traveling marine mammal exhibits except that a separate den need not be provided for each female polar bear of breeding age until it is determined that she is pregnant. However, it is anticipated that traveling marine mammal exhibitors, who cannot presently comply with the standards as stated in the proposed rulemaking, will request a variance. If it is properly justified and consistent with the health and well-being of the animals concerned, if it is expected that such variance would be approved. Exhibitors requesting a variance will then have sufficient time to present evidence to the Department supporting any contention they may have that trained traveling marine mammals need not be maintained under the same conditions as those which are part of a stationary exhibit. If, upon evaluation by the Department, the evidence submitted is found to be valid, the regulations will be amended accordingly.

Comments Regarding Animal Health and Husbandry Standards

There were several comments with regard to feeding which recommended that the maximum temperature for storing frozen fish and other frozen food should be reduced by varying degrees to as much as -30°C. One comment quoted a reference. This reference is "The Draft Code of Practice for Frozen Fish" prepared for the Organization for Economic Cooperation and Development, International Institute of Refrigeration, Paris, 1969. In accordance with the quoted recommendation in the reference, the Department has decided to change the temperature requirement for maintaining frozen fish and other food from -15°C to -18°C (0°F.). Requests were also made to limit the length of times that food could be stored to 3 months. Rather than setting a specified time period for the storage of food, this Department made a modification in paragraph (d) of proposed § 3.105. The intent of such modification is to make it management's responsibility to ensure the nutritive value and wholesome quality of the food being fed, thereby providing reasonable flexibility regarding storage time.

One comment requested exemption from the daily feeding requirement for experimental procedures and suggested that the proposed 24-hour time limit for feeding of thawing food be increased (§ 3.105.d). As discussed previously, research facilities wishing to conduct research regarding feeding and nutrition may do so provided that such procedures are specified and described in their research protocol. Regarding the time period for feeding of thawing food, it is the Department's opinion that the requirement as stated is necessary to maintain marine mammals in good health.

Additional comments recommended that public feeding not be allowed and that diets should be required to be varied. These are both managerial decisions and must be based on good judgment with regard for the health and well-being of the animals. A final comment suggested that the content of the proposed section on feeding be expanded to include accepted practices for handling of frozen food in a manner consistent with those for handling food for human consumption. Since the intent of the section is to set standards for animal consumption, it does not seem appropriate to impose such standards.

With reference to water quality (proposed § 3.106), several comments were received requesting modification of the proposed coliform and pH testing requirements. Of these comments, two suggested that coliform monitoring be required daily, one suggested monitoring three times per week, one suggested weekly testing until a protocol is established and then monthly testing to check efficiency, and two suggested that natural seawater be exempted entirely from such monitoring. A single comment indicated that the need to monitor polar bear pools for coliforms was unnecessary. In response to these comments, it is the Department's contention that all water may be subject to contamination by sewage and, therefore, must be monitored for coliforms. Management should be responsible for monitoring water quality frequently enough to ensure the health and well-being of the animals; however, in an effort to set minimal standards, it is determined that coliform monitoring once per week is not unreasonable. The Department has decided that the need to monitor natural seawater for pH and chemicals is questionable and therefore has deleted these requirements provided that chemicals are not added to maintain water quality. In keeping with the recommendation of the Marine Mammal Commission, the Department is in agreement that no exception will be made for water quality requirements of polar bear pools.

There were numerous comments recommending that all marine mammals without exception be maintained in natural or reconstituted seawater. Although the Department agrees in principle with these comments, there are many examples of apparently healthy pinnipeds presently being successfully maintained in nonsalinated water. Therefore, the Department does not intend to change the salinity requirement of proposed § 3.106. All cetaceans shall be required to be provided with salinized water. Other marine mammals shall be provided salinized water if it is required for their health and well-being. The reference to harp seals which are pinnipeds has been deleted since any pinniped must be provided salinized water when necessary. The question of salinity will be pursued further, and if scientific evidence so indicates, the regulations will be amended accordingly. A request by the Marine Mammal Commission to change the range of salinity for those pools that contain salinized water from 15–36 parts per thousand to 20–36 parts per thousand has been considered. Although references indicate that cetaceans presently in captivity are often maintained at the 20–30 parts per thousand concentration, it is the Department's contention that the seawater of the natural habitat of some captive marine mammals is less concentrated. Therefore a higher concentration of 15–36 parts per thousand is deemed adequate for the purpose of these standards.

Recommendations indicating that additional requirements, including the type of filter to be used, be included in
the regulations have not been followed by the Department. These are the types of decisions that are best left to the discretion of management who will be held responsible for the quality of the water and for the health of the animals contained therein.

The only comment pertaining to the proposed section on sanitation (3.107) requested clarification of that section so as not to include areas where food is prepared for human consumption. In response to this comment, the wording has been changed to clarify the intent of the section.

A comment regarding proposed § 3.108, "Employees," recommended that provision be made for the education of new employees and students in working with marine mammals. The Department recognizes the validity of this comment, and this section is therefore changed to allow for training of marine mammals by new employees and students under the direct supervision of an experienced trainer.

Numerous comments pertaining to proposed § 3.109, "Separation," suggested clarification with respect to marine mammals having access to other animals. It was recommended that the Department require that marine mammals be always kept in groups of two or more. As was addressed in the discussion of the proposed rulemaking, the Department supports the principle of two or more marine mammals being maintained in the same primary enclosure if they are compatible.

However, as previously stated in the proposed rulemaking, the Department does not have jurisdiction over the system by which additional marine mammals are added to a facility and therefore would not be justified in requiring, by regulation, that two or more such mammals be maintained together. The intent of the Department is to promote as much contact as possible between compatible species of marine mammals or between marine mammals and other animals. This intent is reflected in § 3.109.

With regard to isolation, the term "temporarily" has been added as suggested by one comment; however, two requests to include research in this section were rejected because variance for research purposes is addressed in the section pertaining to compliance.

Proposed § 3.110, "Veterinary care," indicated that a program be established under the supervision of a veterinarian, and although the Department encourages periodic visits to the facility by the veterinarian, it does not wish to establish the frequency of such visits as one comment suggested. This is a decision that management and the veterinarian must make in order to meet their responsibility to ensure the health and well-being of the animals.

Three comments indicated that provision should be made to allow professionals, other than veterinarians, to perform necropsies. The standard for conducting necropsies as stated in the proposed rulemaking is not intended to preclude the participation by other professionals but is intended to require that a veterinarian conduct the necropsy and prepare the report. The Department feels the intent is valid and has determined that a provision for professionals other than a veterinarian to conduct the necropsy should not be included. This is because facilities maintaining marine mammals are required to have a program of veterinary care established and maintained under the supervision of an attending veterinarian and such necropsy is considered part of such program.

Several comments suggested that the necropsy report be submitted to APHIS with distribution to other involved governmental agencies and that it should be maintained for a period longer than 2 years. In response to these comments, the Department has extended the time period for retention of the reports from 2 years to 3 years but does not intend to require that the reports be submitted to APHIS or to other government agencies. It appears to the Department that submission is unnecessary since the reports will be on file at the facility and available when needed.

The Department, in the proposed rulemaking for handling, intended to allow for controlled public contact with marine mammals for such purposes as feeding and petting. Therefore, in response to a comment that the proposed section is unclear, the context has been changed to indicate that during those periods of limited contact for purposes of public feeding, petting, etc., a uniformed attendant will be present. This does not negate the fact that separation between the public and the marine mammal for other than controlled contact will be as described in the latter portion of the section. It should be noted that the word "uniformed" with reference to the attendant has been included in this section as requested by two comments. The type of uniform will be at the discretion of the facility, provided the attendant is readily identifiable by members of the public. Additional requests not to allow public feeding, to set specific time periods for display, and to expand the content of the section for emphasis are rejected since it is the opinion of the Department that adequate parameters have been established regarding management's responsibility for the health and well-being of the marine mammals.

Comments Regarding Transportation Standards

On October 17, 1978, the Department published a notice of proposed rulemaking containing changes and additions to Part 3, Chapter A, Chapter 1, Title 9 of the Code of Federal Regulations, which amended the transportation standards for all animals under the Animal Welfare Act. The final rule amending the standards became effective on January 2, 1979. As the proposed amendments to the transportation standards were published after the proposed standards and regulations for marine mammals, the Department was unable to incorporate the changes in the proposed rules for marine mammals.

In addition, several comments received made it apparent that the marine mammal transportation standards did not coincide with the format and, in some cases, content of the standards for other species under the Act. To rectify this situation, the transportation standards for marine mammals have been corrected in format and general content rearranged to make them consistent with the standards, as amended, for all other animals under the Animal Welfare Act. By virtue of these general changes, proposed § 3.119, "Ambient temperature within primary enclosures," has been eliminated and the requirements as proposed are now found in § 3.117, "Terminal facilities."

In response to a comment, and also to be consistent with standards for other animals under the Act, the provisions found in the standards for other animals stating that carriers or intermediate handlers may accept certificates pertaining to temperature acclimation and adequacy of primary enclosures have been incorporated herein (9 CFR 3.11, et seq.). Also, as several other comments requested, the term "live" instead of "wild" may now be used to describe animals on primary enclosures in transit, at the discretion of the shipper.

Of the comments relating to specific problems in the transportation of marine mammals, one suggested that primary enclosures for polar bears need not allow for space to freely turn about. As in the standards for other animals, a proviso that movement of certain species may be restricted according to professionally accepted standards has been incorporated.
With reference to care in transit, it is the intent of the Department to indicate that no marine mammal in need of veterinary care shall be transported in commerce except for the specific purpose of receiving that care. However, it is the intent to hold carriers and intermediate handlers responsible for the movement of animals within the terminal areas regardless of who actually moves them.

As indicated in part 2, § 2.100 of this subchapter, those persons who own or lease their own conveyances for transporting marine mammals must comply with the standards for transportation.

PART 1—DEFINITION OF TERMS

Accordingly, the regulations and standards (9 CFR 1.1 et seq.) are amended as follows:

§ 1.1 [Amended]
1. The second sentence in § 1.1(n) of the regulations (9 CFR 1.1(n)) is amended to delete the words "aquatic animals," following the word "birds" and before the word "rarely." 2. § 1.1(gg) of the regulations (9 CFR 1.1(gg)) is amended by inserting a comma after the word "compartment." and adding the word "pool." immediately thereafter and before the word "or".

3. A new definition for minimum horizontal dimension (MHD) is added to the end of § 1.1 of the regulations (9 CFR 1.1) to read as follows:

(as) "Minimum horizontal dimension" (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangular, oblong or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

PART 3—STANDARDS

4. The Table of Contents in Part 3—Standards of Title 9, Code of Federal Regulations, is amended by redesignating present Subpart E of the Table of Contents as Subpart F, and redesigning §§ 3.100 to 3.118 thereof to §§ 3.125 through 3.142, respectively, and by adding a new Subpart E as follows:

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

Facilities and Operating Standards Sec. 3.100 Special considerations regarding compliance and/or variance.

(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, 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

1Written 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 this Subpart.
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.

(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.

§ 3.101 Facilities, general.

(a) Construction requirements. (1) Housing facilities for marine mammals shall be structurally sound and shall be maintained in good repair, to protect the animals from injury, to contain the animals, and to restrict the entrance of unwanted animals.

(2) All marine mammals shall be provided with protection from abuse and harassment by the viewing public by the use of a sufficient number of employees or attendants to supervise the viewing public, or by physical barriers, such as fences, walls, glass partitions, or distance, or both.

(3) Any primary enclosure pool, including ramps for entering or leaving the pool, shall be constructed of materials having a nonporous, waterproof finish, which shall facilitate proper cleaning and disinfection, and which shall be maintained in good repair as part of a regular ongoing maintenance program.

(b) Facilities which utilize natural water areas such as tidal basins, bays, or estuaries for housing marine mammals shall be exempt from the waterproof finish, nonporous surface construction, and drainage requirements of paragraphs (a)(3) and (c)(1) of this section, but they must meet the minimum standards with regard to space, depth, and sanitation. The water must be monitored for coliforms and for pH and chemical content, if chemicals are added.

(c) Drainage. (1) Adequate drainage shall be provided for all primary enclosure pools and shall be located so that all of the water contained in such pools may be rapidly eliminated when necessary for cleaning the pools or for other purposes. Drainage effluent from primary enclosure pools shall be disposed of in a manner that complies with all applicable Federal, State, and local pollution control laws.

(2) Drainage shall be provided for primary enclosures and areas immediately surrounding pools. Drains shall be located so as to rapidly eliminate excess water (except in pools). Such drainage effluent shall be disposed of in a manner that complies with all applicable Federal, State, and local pollution control laws.

(d) Storage. Supplies of food shall be stored in facilities which adequately protect such supplies from deterioration, molding, or contamination by vermin. Refrigerators and freezers shall be used for perishable food. No substances which are known to be or may be toxic or harmful to marine mammals shall be stored or maintained in the marine mammal food storage areas.

(e) Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, dead animals, trash, and debris. Disposal facilities shall be provided and operated in a manner which will minimize vermin infestation, odors, and disease hazards. All waste disposal procedures must comply with all applicable Federal, State, and local laws pertaining to pollution control, protection of the environment, and public health.

(f) Washroom facilities. Facilities such as restrooms, basins, showers, or sinks, shall be provided to maintain cleanliness among employees and attendants.

§ 3.102 Facilities, indoor.

(a) Ambient temperature. The air and water temperatures in indoor facilities shall be sufficiently regulated by heating or cooling to protect the marine mammals from extremes of temperature, to provide for their good health and well-being and to prevent discomfort, in accordance with the currently accepted practices as cited in appropriate professional journals or reference guides, depending upon the species housed therein. Rapid changes in air and water temperatures shall be avoided.

(b) Ventilation. Indoor housing facilities shall be ventilated by natural or artificial means to provide a flow of fresh air for the marine mammals and to minimize the accumulation of chlorine fumes, other gases, and objectionable odors. A vertical air space averaging at least 1.83 meters (6 feet) shall be maintained in all primary enclosures housing marine mammals, including pools of water.

(c) Lighting. Indoor housing facilities for marine mammals shall have ample lighting, by natural or artificial means, or both, of a quality, distribution, and duration which is appropriate for the species involved. Sufficient lighting must be available to provide uniformly distributed illumination which is adequate to permit routine inspections, observations, and cleaning of all parts of the primary enclosure including any den areas. The lighting shall be designed so as to prevent overexposure of the marine mammals contained therein to excessive illumination.

§ 3.103 Facilities, outdoor.

(a) Environmental temperatures. Marine mammals shall not be housed in outdoor facilities unless the air and water temperature ranges which they may encounter during the period they are so housed do not adversely affect their health and comfort. A marine mammal shall not be introduced to an outdoor housing facility until it is acclimated to the air and water temperature ranges which it will encounter therein. The following requirements shall be applicable to all outdoor pools.  

(1) The water surface of pools in outdoor primary enclosures housing polar bears and ice or cold water dwelling species of pinnipeds shall be kept sufficiently free of solid ice to allow for entry and exit of the animals.

Lighting intensity and duration must be consistent with the general well-being and comfort of the animal involved. When possible, it should approximate the lighting conditions encountered by the animal in its natural environment. At no time shall the lighting be such that it will cause the animal discomfort or trauma.
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[2] The water surface of pools in outdoor primary enclosures housing cetaceans and sea otters shall be kept free of ice.

[3] No sirenian or warm water dwelling species of pinnipeds or cetaceans shall be housed in outdoor pools where water temperature cannot be maintained within the temperature range to meet their needs.

(b) Shelter. Natural or artificial shelter which is appropriate for the species concerned, when the local climatic conditions are taken into consideration, shall be provided for all marine mammals kept outdoors to afford them protection from the weather or from direct sunlight.

§ 3.104 Space requirements.

(a) General. Primary enclosures, including pools of water housing marine mammals, shall comply with the minimum space requirements prescribed by this Part. They shall be constructed and maintained so that the animals contained therein are provided with sufficient space, both horizontally and vertically so that they are able to make normal postural and social adjustments with adequate freedom of movement, in or out of the water. An exception to these requirements is provided for in § 3.110, “Veterinary care.” Primary enclosures smaller than required by the standards are also allowed to be used for temporary holding purposes such as training and transfer. Such enclosures shall not be used for permanent housing purposes or for periods longer than specified by an attending veterinarian.

(b) Cetaceans. Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. In determining the minimum space required in a pool holding cetaceans four factors must be satisfied. These are MHD, depth, volume, and surface area. For the purposes of this Subpart, cetaceans have been divided into the following groups:

Group I Cetaceans. This group shall consist of all cetaceans except those specified in Group II below.

Group II Cetaceans. This group shall consist of the following genera and species of cetaceans.

Genera, Species and Common name

**Delphinus**, all species, common dolphin
**Lissodelphis**, all species, right whale dolphin
**Stenella**, *plagiodyon*, spotted dolphin
**Stenella, attenuata**, spotted porpoise
**Stenella, coeruleoalba**, striped dolphin
**Stenella, longirostris**, spinner porpoise
**Phocoenoides, dalli**, Dall’s porpoise

(1) *The required minimum horizontal dimension (MHD) of a primary enclosure pool shall be based on the average adult body length of the longest species of cetacean housed therein.*

- MHD shall be either two times the body length of an average adult of the longest species of Group I cetacean to be housed therein or four times the body length of an average adult of the longest species of Group II cetacean to be housed therein, whichever is greater.

- (iii) In a pool where a mixture of both Group I and Group II cetaceans are to be housed, the MHD must be computed on the basis of both the average adult body length of the longest species of Group I cetacean and of the longest species of Group II cetacean, and the required MHD shall equal .3048 meter. Due to rounding of meter figures to the length of the cetacean, the correlation of meters to feet is shown in Table I, and for Group II cetaceans in Table II.

- Converting cubic feet to cubic meters is based on:

1 cubic foot = 0.0283 cubic meter.

<table>
<thead>
<tr>
<th>Species</th>
<th>Adult length</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Delphinapterus leucas</em></td>
<td>4.27</td>
</tr>
<tr>
<td><em>Iala geofenriss</em></td>
<td>2.05</td>
</tr>
<tr>
<td><em>Lagenorhynchus obliquidens</em></td>
<td>2.29</td>
</tr>
<tr>
<td><em>Tursiops truncatus</em></td>
<td>2.74</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Table I—Group I Cetaceans</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average adult length</td>
<td>Meters</td>
<td>Feet</td>
<td>Meters</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Dolphin</td>
<td>1.66</td>
<td>5.5</td>
<td>3.35</td>
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<td>2.29</td>
<td>7.5</td>
<td>4.57</td>
</tr>
<tr>
<td>Stenella longirostris</td>
<td>2.74</td>
<td>9.0</td>
<td>5.5</td>
</tr>
<tr>
<td>Stenella attenuata</td>
<td>3.25</td>
<td>10.5</td>
<td>6.10</td>
</tr>
<tr>
<td>Phocoenoides dallii</td>
<td>3.51</td>
<td>11.5</td>
<td>7.00</td>
</tr>
<tr>
<td>Stenella plagdodon</td>
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<td>11.25</td>
<td>7.32</td>
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<tr>
<td>Stenella attenuata</td>
<td>5.48</td>
<td>18.0</td>
<td>10.97</td>
</tr>
<tr>
<td>Phocoenoides dallii</td>
<td>5.84</td>
<td>18.5</td>
<td>11.29</td>
</tr>
<tr>
<td>Stenella attenuata</td>
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<tr>
<td>Phocoenoides dallii</td>
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<td>22.0</td>
<td>13.41</td>
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<td>Stenella attenuata</td>
<td>6.68</td>
<td>22.5</td>
<td>13.72</td>
</tr>
<tr>
<td>Phocoenoides dallii</td>
<td>7.32</td>
<td>24.0</td>
<td>14.03</td>
</tr>
<tr>
<td>Stenella attenuata</td>
<td>6.53</td>
<td>26.0</td>
<td>17.07</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Table II—Group II Cetaceans</th>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Average adult length</td>
<td>Meters</td>
<td>Feet</td>
<td>Meters</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td><em>Delphinus leucas</em></td>
<td>1.63</td>
<td>6.0</td>
<td>7.32</td>
</tr>
<tr>
<td><em>Tursiops truncatus</em></td>
<td>2.13</td>
<td>7.0</td>
<td>8.53</td>
</tr>
<tr>
<td><em>Stenella coeruleoalba</em></td>
<td>2.29</td>
<td>7.5</td>
<td>9.14</td>
</tr>
<tr>
<td><em>Stenella attenuata</em></td>
<td>2.44</td>
<td>8.0</td>
<td>9.75</td>
</tr>
<tr>
<td><em>Phocoenoides dallii</em></td>
<td>2.59</td>
<td>8.5</td>
<td>10.26</td>
</tr>
<tr>
<td><em>Stenella attenuata</em></td>
<td>2.74</td>
<td>9.0</td>
<td>10.97</td>
</tr>
</tbody>
</table>

*The body length of a *Monodon monoceros* (narwhale) is measured from the tip of the upper incisor tooth to the notch in the tail fluke. If the upper incisor is absent or does not extend beyond the front of the head, then it is measured like other cetaceans, from the tip of the lower jaw to the notch in the tail fluke. Immature males should be anticipated to develop the "tusk" (usually left incisor tooth) beginning at sexual maturity.
Table III.—Average Adult Lengths of Marine Mammals Maintained in Captivity 1—Continued

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phocoena phocoena</td>
<td>Harbor Porpoise</td>
</tr>
<tr>
<td>Grampus griseus</td>
<td>Dalls Porpoise</td>
</tr>
<tr>
<td>Globicephala melas</td>
<td>Long-finned Pilot Whale</td>
</tr>
<tr>
<td>Globicephala microcephalus</td>
<td>Short-finned Pilot Whale</td>
</tr>
<tr>
<td>Orcinus Orca</td>
<td>Killer Whale</td>
</tr>
<tr>
<td>Pseudorca crassidens</td>
<td>False Killer Whale</td>
</tr>
<tr>
<td><strong>Group II Cetaceans:</strong></td>
<td></td>
</tr>
<tr>
<td>Lagsodelphis maculosus</td>
<td>Northern Right Whale Dolphin</td>
</tr>
<tr>
<td>Delphinus delphis</td>
<td>Common Dolphin</td>
</tr>
<tr>
<td>Stenella longirostris</td>
<td>Spinner Dolphin</td>
</tr>
<tr>
<td>Stenella attenuata</td>
<td>Stenellid Dolphin</td>
</tr>
<tr>
<td>Stenella plagidodon</td>
<td>Spotted Dolphin</td>
</tr>
<tr>
<td>Physeter catodon</td>
<td>Dalls Porpoise</td>
</tr>
</tbody>
</table>

Phocoenidae:  

The additional volume needed shall be determined in the following manner. The volume as well as the surface area requirements discussed next must be satisfied. The minimum surface area requirements discussed next must also be satisfied.

(ii) The minimum surface area requirements for each cetacean housed in a pool, regardless of Group I or Group II classification, are calculated as follows:

\[
\text{Surface Area} = \left(\frac{\text{average adult length}}{2}\right)^2
\]

(iii) When a mixture of both Group I and Group II cetaceans are housed together, the MHD must be satisfied as stated in § 3.103(b)(1), and the minimum depth must be satisfied as stated in § 3.103(b)(2). Based on these figures, the resulting volume must then be calculated

\[
V = \left(\frac{4L}{2}\right)^2 \times 3.14 \times d.
\]

Dividing this figure by 2 would give the volume required for each individual Group I cetacean of a specified average adult length. This is the figure which is to be used for each additional Group II cetacean when more than four are to be kept in a pool and more space is required. See Table II for required volumes.

(2) The minimum depth requirements for primary enclosure pools for all cetaceans shall be one-half the body length of the average adult of the longest species to be housed therein, regardless of Group I or Group II classification, or 1.52 meters (5 feet), whichever is greater.

(3) Pool volume. A pool of water housing cetaceans which satisfies the MHD and which meets the minimum depth requirement, will have sufficient volume and surface area to hold up to two Group I cetaceans or up to four Group II cetaceans. If additional cetaceans are to be added to the pool, the volume as well as the surface area may have to be adjusted to allow for additional space necessary for such cetaceans. See Tables I, II, and IV for volumes and surface area requirements.

The additional volume needed shall be based on the number and kind of cetaceans housed therein and shall be determined in the following manner.

(i) The minimum volume of water (space) required for up to two Group I cetaceans is based upon the following formula:

\[
\text{Volume} = \left(\frac{2 \times \text{average adult length}^2}{\text{of the longest species of cetacean}}\right) \times 3.14 \times \text{depth} \left(\frac{1}{2} \text{ body length or 5 feet, whichever is greater}\right), \text{or}
\]

\[
V = \left(\frac{4L}{2}\right)^2 \times 3.14 \times d.
\]

Dividing this figure by 2 would give the volume required for each individual Group I cetacean of a specified average adult length. This is the figure which is to be used for each additional Group I cetacean when more than two are to be kept in a pool and more space is required. See Table I for required volumes.

(ii) The minimum volume of water required for up to four Group II cetaceans is based upon the following formula:

\[
\text{Volume} = \left(\frac{\text{average adult length}^2}{2}\right) \times MHD.\]
In a pool containing more than two Group I cetaceans or more than four Group II cetaceans, the additional surface area which may be required when animals are added must be calculated for each such animal. (ii) When a mixture of Group I and Group II cetaceans are to be housed in a pool, the required MHD, depth, and volume must be met. Then the required surface area must be determined for each animal in the pool. The sum of these surface areas must then be compared to the surface area which is obtained by a computation based on the required MHD of the pool. The larger of the two figures represents the surface area which is required for a pool housing a mixture of Group I and Group II cetaceans. Pool surfaces where the depth does not meet the minimum requirements cannot be used in determining the required surface area. (iii) Surface area requirements are given in Table IV.

\[ SA = \pi \times \left( \frac{MHD}{2} \right)^2 \]

### Table IV.—Minimum Surface Area Required for Each Cetacean

<table>
<thead>
<tr>
<th>Average adult length of each cetacean</th>
<th>Surface area required for each cetacean</th>
<th>Sq. meters</th>
<th>Sq. feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meters</td>
<td>Feet</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1.88</td>
<td>5.5</td>
<td>3.31</td>
<td>35.37</td>
</tr>
<tr>
<td>2.13</td>
<td>7.0</td>
<td>5.96</td>
<td>64.70</td>
</tr>
<tr>
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<td>66.22</td>
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<td>75.57</td>
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<td>2.74</td>
<td>9.0</td>
<td>8.98</td>
<td>95.38</td>
</tr>
<tr>
<td>3.05</td>
<td>10.0</td>
<td>10.64</td>
<td>117.75</td>
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<td>3.51</td>
<td>11.5</td>
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<td>155.72</td>
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<td>12.0</td>
<td>15.75</td>
<td>169.56</td>
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<td>14.0</td>
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</tr>
<tr>
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<td>16.0</td>
<td>25.44</td>
<td>271.54</td>
</tr>
<tr>
<td>5.04</td>
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<td>31.54</td>
<td>338.14</td>
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<td>5.79</td>
<td>20.0</td>
<td>39.40</td>
<td>425.56</td>
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<tr>
<td>6.21</td>
<td>22.0</td>
<td>52.94</td>
<td>569.91</td>
</tr>
<tr>
<td>6.65</td>
<td>22.5</td>
<td>55.28</td>
<td>586.11</td>
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<tr>
<td>7.22</td>
<td>24.0</td>
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<td>678.24</td>
</tr>
<tr>
<td>8.53</td>
<td>28.0</td>
<td>83.76</td>
<td>909.38</td>
</tr>
</tbody>
</table>

1. Square meter = square feet x 0.0929

A pool containing up to two Group I cetaceans or up to four Group II cetaceans which meets the required MHD and depth will have the necessary surface area and volume required for the animals contained therein.

*Since the MHD represents the diameter of a circle, the surface area based on the MHD is calculated by use of the following formula:

\[ SA = \pi \times \left( \frac{MHD}{2} \right)^2 \]

The required MHD and depth are stated in the following examples. Square the average adult length of each pinniped, and all additional pinnipeds. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting and social activity area required for such pinnipeds.

- 1st pinniped (ave. adult length) x 1.5 = resting and social activity area required.
- 2nd pinniped (ave. adult length) x 1.4 = resting and social activity area required.
- 3rd pinniped (ave. adult length x 1.3 = resting and social activity area required.
- 4th pinniped (ave. adult length x 1.2 = resting and social activity area required.
- 5th pinniped (ave. adult length x 1.1 = resting and social activity area required.
- Over 5 (ave. adult length x 1.0 = resting and social activity area required for each additional animal.

If all the pinnipeds in the primary enclosure are the same species, the same descending order of calculation shall apply. Example: California sea lions—average adult length of 8 feet.

- 1st sea lion (8 feet) x 1.5 = 12 square feet
- 2nd sea lion (8 feet) x 1.4, etc.

(3) The minimum surface area of a pool of water for pinnipeds shall be two-thirds of the total minimum dry resting and social activity area required for the pinnipeds contained therein. The MHD of the pool shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure. The pool of water shall be at least 0.91 meters (3 feet) deep or one-half the average adult length of the longest species of pinniped contained therein, whichever is greater. Parts of the pool that do not meet minimum depth requirements cannot be used in the calculation of either the resting and social activity area or as part of the pool.

(e) Polar bears. Primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den. A minimum of 37.18 square meters (400 square feet) of dry resting and social activity area shall be provided for up to two polar bears, with an additional 3.72 square meters (40 square feet) of dry resting and social activity area for each additional polar bear. The dry resting and social activity area shall be provided with enough shade to accommodate all of the polar bears.
bears housed in such primary enclosure at the same time. The pool of water shall be at least 2.44 meters (8 feet) by 3.66 meters (12 feet) with a minimum depth of 1.52 meters (5 feet), with the exception of any entry and exit area. This size pool shall be adequate for two polar bears. For each additional bear, the surface area of the pool must be increased by 3.72 square meters (40 square feet). In measuring this additional surface area, parts of the pool which do not meet minimum depth cannot be considered. The den shall be at least 1.95 meters (6 feet) in width and depth and not less than 1.52 meters (5 feet) in height. It will be so positioned that the viewing public shall not be visible from the interior of the den. A separate den shall be provided for each adult female of breeding age which is permanently housed in the same primary enclosure with an adult male of breeding age. Female polar bears in traveling acts or shows must be provided a den when pregnancy has been determined.

(3) Sea otters. (1) Primary enclosures for sea otters shall consist of a pool of water and a dry resting area. The MHD of the pool of water for sea otters shall be at least twice the length of the average adult sea otter contained therein (measured from the tip of its nose to the tip of its tail) and the pool shall be not less than 0.91 meters (3 feet) deep. When more than two sea otters are housed in the same primary enclosure, additional dry resting area as well as pool volume is required to accommodate the additional sea otters (Table V).

(2) The minimum volume of water required for a primary enclosure pool for sea otters shall be based on the sea otter's average adult length. The minimum volume of water required in the pool shall be computed using the following method. Multiply the square of the sea otter's average adult length by 3.14 and then multiply the total by 0.91 meters (3 feet). This volume is satisfactory for one or two sea otters. For more than two sea otters, multiply one-half of the square of the sea otter's average adult length by 3.14, then multiply by 0.91 meters (3 feet) (Table V).

(3) The minimum dry resting area required for one or two sea otters shall be based on the sea otter's average adult length. The minimum dry resting area for one or two sea otters shall be computed using the following method. Square the length of the average adult sea otter and multiply the total by 3.14. When the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14. Using 8.5 feet (the average adult length of a sea otter) the calculations for additional space will result in the following figures.

<table>
<thead>
<tr>
<th>Average adult length of sea otter</th>
<th>Resting area</th>
<th>Pool volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meters</td>
<td>Feet</td>
<td>Square meters</td>
</tr>
<tr>
<td>1.96</td>
<td>6.5</td>
<td>6.16</td>
</tr>
</tbody>
</table>

Animal Health and Husbandry Standards

§ 3.105 Feeding.

(a) The food for marine mammals shall be wholesome, palatable, and free from contamination and shall be of sufficient quantity and nutritive value to maintain all of the marine mammals in a state of good health. The diet shall be prepared with consideration for age, species, condition, size, and type of marine mammal being fed. Marine mammals shall be offered food at least once a day, except as directed by veterinary treatment or professionally accepted practices.

(b) Food receptacles, if used, shall be located so as to be accessible to all marine mammals in the same primary enclosure and shall be placed so as to minimize contamination of the food contained therein. Such food receptacles shall be cleaned and sanitized after each use.

(c) Food, when given to each marine mammal individually, shall be given by an employee or attendant responsible to management who has the necessary knowledge to assure that each marine mammal receives an adequate quantity of food to maintain it in good health. Such employee or attendant is required to have the ability to recognize deviations from a normal state of good health in each marine mammal so that the food intake can be adjusted accordingly. Public feeding shall be only permitted if it is done in the presence and under the supervision of a uniformed employee or attendant. Such employee or attendant must assure that the marine mammals are receiving the proper amount and type of food. Only food supplied by the facility where the marine mammals are kept shall be fed to such mammals by the public.

(d) Food preparation and handling shall be conducted so as to minimize bacterial or chemical contamination and to assure the wholesomeness and nutritive value of the food. Frozen fish or other frozen food shall be stored in frozen food storage which is to be maintained at a maximum temperature of -18°F. The length of time food is stored and the method of storage, as well as the thawing of frozen food, shall be conducted in a manner which will minimize contamination and which will assure that the food retains nutritive value and wholesome quality. The thawed product shall be kept iced or refrigerated until a reasonable time before feeding. All foods shall be fed to the marine mammals within 24 hours following the removal of such foods from the freezers for thawing.

§ 3.106 Water quality.

(a) General. The primary enclosure shall not contain water which would be detrimental to the health of the marine mammal contained therein.

(b) Bacterial standards. (1) The coliform bacteria count of the primary enclosure pool shall not exceed 1,000 MPN (most probable number) per 100 ml. of water. Should a coliform bacterial count exceed 1,000 MPN, two subsequent samples may be taken at 48-hour intervals and averaged with the first sample. If such average count does not fall below 1,000 MPN, then the water in the pool shall be deemed unsatisfactory, and the condition must be corrected immediately.

(2) When the water is chemically treated, the chemicals shall be added so as not to cause harm or discomfort to the marine mammals.

(3) Water samples shall be taken and tested at least weekly for coliform count and at least daily for pH and any chemical additives (e.g. chlorine and copper) that are added to the water to maintain water quality standards. Facilities using natural seawater shall be exempt from pH and chemical testing unless chemicals are added to maintain water quality. However, they are required to test for coliforms. Records must be kept documenting the time when all such samples were taken and the results of the sampling. Records of all such test results shall be maintained by management for a 1-year period and must be made available for inspection purposes on request.

(c) Salinity. Primary enclosure pools of water shall be salinized for marine cetaceans as well as for those other marine mammals which require salinized water for their good health and well-being. The salinity of the water in such pools shall be maintained within a range of 35–38 parts per thousand.
(d) Filtration and water flow. Water quality must be maintained by filtration, chemical treatment, or other means so as to comply with the water quality standards specified in this section.

§ 3.107 Sanitation.
(a) Primary enclosures. (1) Animal and food waste in areas other than the pool of water shall be removed as often as necessary to maintain the required water quality and to prevent health hazards to the marine mammals contained therein.

(2) Particulate animal and food waste, trash, or debris that enters the primary enclosure pool of water shall be removed as often as necessary to maintain the required water quality and to prevent disease hazards.

(3) The wall and bottom surfaces of the primary enclosure pool of water shall be cleaned as often as necessary to maintain proper water quality.

(b) Food preparation areas and food receptacles. Containers, such as buckets, tubs, and tanks, as well as utensils, such as knives and cutting boards, or any other equipment which has been used for holding, feeding, or preparing food for marine mammals shall be cleaned and sanitized after each feeding, if the marine mammals are fed once a day, and at least daily if the marine mammals are fed more than once a day. Kitchens and other food handling areas where animal food is prepared shall be cleaned at least once daily and sanitized at least once every week. Sanitizing shall be accomplished by washing with hot water (82° C., 180° F., or higher) and soap or detergent or a mechanical dishwasher, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with live steam. Substances such as cleansing and sanitizing agents, pesticides, and other potentially toxic agents must be stored in properly labeled containers away from food preparation surface areas.

(c) Housekeeping. Buildings and grounds, as well as exhibit areas, shall be kept clean and in good repair. Fences shall be maintained in good repair. Primary enclosures housing marine mammals shall not have any loose objects, sharp projections, and/or edges which may cause injury or trauma to the marine mammals contained therein.

(d) Pest control. A safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained. Insecticides or other such chemical agents shall not be applied in a primary enclosure housing marine mammals except when deemed essential by an attending veterinarian.

§ 3.108 Employees or attendants.
A sufficient number of adequately trained employees or attendants responsible to management shall be utilized to maintain the prescribed level of husbandry practices set forth in this subpart. Such practices shall be conducted under the supervision of a marine mammal caretaker who has a background in marine mammal husbandry and care. Training of marine mammals shall be done by or under the direct supervision of experienced trainers without physical punishment or abuse being used or inflicted upon the marine mammals.

§ 3.109 Separation.
Marine mammals which are not compatible shall not be housed in the same enclosure. Marine mammals shall not be housed near animals that would cause them stress or discomfort, or interfere with their good health. Captive marine mammals must be given access to other animals except when they are temporarily maintained in isolation for such purposes as medical treatment or training and given special attention.

§ 3.110 Veterinary care.
(a) Programs of disease prevention, parasite control, euthanasia, and adequate veterinary care for all marine mammals shall be established and maintained under the supervision of an attending veterinarian.

(b) Marine mammals shall be observed daily by the person in charge of the marine mammals or by someone working under his direct supervision. Sick or diseased, stressed, injured, or lame marine mammals shall be provided with adequate veterinary care or humanely destroyed, when necessary, unless such action is inconsistent with the research purposes for which the marine mammal was obtained and is being held.

(c) (1) In the case of a research facility, the program of adequate veterinary care shall include the appropriate use of anesthetic, analgesic, for tranquilizing drugs, when such case would be proper in the opinion of the attending veterinarian of the research facility. The use of these three classes of drugs shall be in accordance with currently accepted veterinary medical practices. The drugs used shall be those which are expected to produce in the individual subject animal as high a level of tranquiliation, anesthesia, or analgesia as is consistent with the protocol or design of the experiment.

(2) It shall be incumbent upon each research facility through its Animal Care Committee and attending veterinarian to provide guidelines and consultation to research personnel with respect to the type and amount of tranquilizers, anesthetics, or analgesics recommended as being appropriate for each species of marine mammals used by that institution.

(d) Newly acquired marine mammals shall be isolated from resident marine mammals until such newly acquired marine mammals can be reasonably determined to be in good health. Any communicable disease condition in a newly acquired marine mammal must be remedied before it is placed with other resident marine mammals.

(e) Any primary enclosure containing a marine mammal with an infectious or contagious disease shall be cleaned and sanitized in the manner prescribed by the attending veterinarian. No additional animals shall be introduced into the primary enclosure prior to such cleaning and sanitizing procedures. Any marine mammal exposed to a diseased animal shall be isolated for observation for an appropriate period of time as determined by the attending veterinarian.

(f) Temporary holding facilities with adequately and properly designed pools, tanks, restraining devices or primary enclosures shall be provided for isolation, medication, treatment, and other purposes such as transfer and training of marine mammals. The pools, tanks and primary enclosures may be less than minimum size in both lateral dimensions and depth when used in special situations when prescribed by the professional staff for temporary usage.

(g) A complete necropsy must be conducted by or under the direct supervision of a veterinarian on all marine mammals that die in captivity. A necropsy report must be prepared by the veterinarian listing all pathologic lesions observed and giving the apparent cause of death. All diagnostic tests conducted on post mortem specimens shall be listed in the report, and the results of each test recorded. The management of the facility, at which the marine mammal died, must maintain these necropsy records for a period of 3 years and present them to Department inspectors when requested.

§ 3.111 Handling.
(a) Handling marine mammals shall be done as expeditiously and carefully as possible in a manner that does not
cause unnecessary discomfort, overheating, behavioral stress, or physical harm. Care should also be exercised to avoid harm to the handlers of such marine mammals.

(b) Marine mammals shall only be displayed for periods of time and under conditions consistent with their good health, and well-being. A responsible uniformed employee or attendant must be present at all times during periods of public contact.

(c) During public display, all marine mammals must be handled so that there is minimal risk of harm to the public or the marine mammal, with sufficient distance allowed, or barriers placed between the marine mammal and the viewing public to assure safety to both the public and the marine mammal. Performing marine mammals shall be allowed a rest period between performances at least equal to the time for one performance.

Transportation Standards

§ 3.112 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any marine mammal presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States of any State or local government for shipment. In commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: Provided, however, that the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States of any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any marine mammal in a primary enclosure which conforms to the requirements set forth in § 3.113 of the standards: Provided, however, that any carrier or intermediate handler may accept for transportation or transport, in commerce, any marine mammal consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such animal for transportation in commerce, stating that such marine mammal is acclimated to lower air temperatures than prescribed in §§ 3.117 and 3.118. A copy of such certificate shall accompany the shipment to destination. The certificate to include at least the following information:

(1) Name and address of the consignor;

(2) The number of animals in the primary enclosure(s);

(3) A certifying statement (e.g., "I hereby certify that the — (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)"); and

(4) The signature of the consignor, and date.

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any marine mammal consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such animal for transportation in commerce, stating that such marine mammal is acclimated to lower air temperatures than prescribed in §§ 3.117 and 3.118. A copy of such certificate shall accompany the shipment to destination. The certificate to include at least the following information:

(1) Name and address of the consignor;

(2) The number of animals in the shipment;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.")"); and

(4) The signature of the licensed veterinarian, and date.

(d) Carriers and intermediate handlers shall attempt to notify the consigned at least once in every 6-hour period following the arrival of any marine mammals at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

§ 3.113 Primary enclosures used to transport marine mammals.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any marine mammal in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, which are used to transport marine mammals other than cetaceans and sirenians, shall (1) be constructed from materials of sufficient structural strength to contain the marine mammals; (2) be constructed from material that is durable, nontoxic, and cannot be chewed and/or swallowed; (3) be able to withstand the normal rigors of transportation; (4) have interiors which are free from any protrusions that could be injurious to the marine mammals contained therein; (5) be constructed so that no parts of the contained marine mammals shall be exposed to the outside of the enclosures in such a way which may cause injury to the animals or to persons who are nearby or who handle the enclosures; (6) have openings which provide access into the enclosures which shall be secured with locking devices of a type which cannot be accidentally opened; (7) have such openings located in a manner which makes them easily accessible at all times for emergency removal of any live marine mammal contained therein; (8) have air inlets at heights which will provide cross ventilation at all levels (particularly when the marine mammals are in a prone position) and located on all four sides of the enclosures, and such ventilation openings shall not be less than 16 percent of the total surface area of each side of the enclosures; (9) have projecting rims or other devices placed on the ends and sides of any enclosures which have ventilation openings to provide a minimum air circulation space of 1.9 centimeters (0.75 inches) between the enclosures and any adjacent cargo or conveyance wall; and (10) be equipped with adequate handholds or other devices on the exterior of the enclosures which shall enable them to be lifted without unnecessary tilting and which will ensure that the persons handling the enclosures will not come in
contact with any marine mammal contained therein.

(b) Straps, slings, harnesses, or other devices, if used for body support or restraint, when transporting marine mammals such as cetaceans and sirenians shall (1) be designed so as not to prevent access to such mammals by attendants during transportation for the purpose of administering in transit care; (2) be equipped with special padding to prevent trauma or injury at critical weight pressure points on the body of the marine mammals; and (3) be capable of keeping the animals from thrashing about and causing injury to themselves or their attendants and yet be adequately designed so as not to cause injury to the animals.

(c) Primary enclosures used to transport live marine mammals shall be large enough to assure that (1) in the case of polar bears and sea otters, there is sufficient space to turn about freely in a stance whereby all four feet are on the floor and the animal can sit in an upright position and lie in a natural position; (2) in the case of pinnipeds, each animal has sufficient space to lie in a natural position; and (3) in the case of cetaceans and sirenians, each animal has sufficient space for support of its body in slings, harnesses, or other supporting devices, if used (as prescribed in paragraph (b) of this section) without causing injury to such cetaceans or sirenians due to contact with the primary enclosure. Provided, however, that certain species may be restricted in their movements according to professionally acceptable standards when such freedom of movement would constitute a danger to the animals, their handlers, or other persons.

(d) Marine mammals transported in the same primary enclosure shall be of the same species and maintained in compatible groups. Marine mammals which have not reached puberty shall not be transported in the same primary enclosure with adult marine mammals other than their dams. Socially dependent animals (e.g., sibling, dam, and other members of a family group) must be allowed visual and olfactory contact. Female marine mammals shall not be transported in the same primary enclosure with any male marine mammals.

(e) Primary enclosures used to transport marine mammals as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in §3.107 of the standards, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to the marine mammals contained therein, in sufficient quantity to absorb and cover excreta, unless the animals are on wire or other nonsolid floors.

(f) Primary enclosures used to transport marine mammals, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be cleaned and sanitized in a manner which will prevent drying of the skin; (2) assuring a moisture content of the skin; (3) assuring that the animal is not subjected to any known irritant or noxious substance for more than a period of 30 hours; (4) assuring the animal is not exposed to temperatures of 100°F or higher for a period of 30 hours; (5) assuring the animal is not exposed to ambient air temperatures of less than 50°F for a period of 30 hours; (6) assuring that the animal is not subjected to any known irritant or noxious substance; (7) assuring that the animal is not exposed to temperatures of 100°F or higher for a period of 30 hours; (8) assuring that the animal is not exposed to ambient air temperatures of less than 50°F for a period of 30 hours; (9) assuring that the animal is not subjected to any known irritant or noxious substance.

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

(a) The animal cargo space of primary conveyances used in transporting live marine mammals shall be constructed in a manner which will protect the health and assure the safety and comfort of the marine mammals contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner which will prevent the ingress of engine exhaust fumes and gases in excess of that ordinarily contained in the passenger compartments.

(c) No marine mammal shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo spaces of primary conveyances in such a manner that each marine mammal contained therein shall have access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in primary conveyances in such a manner that in an emergency the live marine mammals can be removed from the conveyances as soon as possible.

(e) The interiors of animal cargo spaces in primary conveyances shall be kept clean.

(f) Live marine mammals shall not knowingly be transported with any material, substance or device which may be injurious to the health and well-being of such marine mammals unless proper precautions are taken to prevent such injury.

§3.115 Food and water requirements.

(a) Those marine mammals which require drinking water shall be offered potable water within 4 hours prior to being transported in commerce or offered for transportation in commerce. Such marine mammals shall be watered as often as necessary and appropriate to the health and well-being of the animals.

(b) Marine mammals shall not be transported for more than a period of 30 hours without being offered food. When an employee or attendant is required to accompany a shipment of marine mammals, as provided in §3.116 of these standards, such marine mammals shall be fed during transit when necessary to provide for their good health and well-being.

§3.116 Care in transit.

(a) An employee or attendant of the shipper or receiver of any marine mammal being transported in commerce, knowledgeable in the area of marine mammal care, shall accompany cetaceans, sirenians, and sea otters during periods of transportation to provide for their good health and well-being, to observe such marine mammals and to determine whether they need veterinary care and to obtain any needed veterinary care as soon as possible.

(b) An employee or attendant of the shipper or receiver of cetaceans or sirenians being transported, in commerce, shall provide for such cetaceans and sirenians during periods of transport by (1) keeping the skin moist with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin; (2) assuring that the pectoral flippers shall be allowed freedom of movement at all times; (3) making adjustments in the position of such marine mammals when necessary to prevent necrosis of the skin at weight pressure points; (4) calming such marine mammals to avoid struggling, thrashing, and other unnecessary activity which may cause overheating or physical trauma. No
polar bears and other surface carnivores, need veterinary care, and the carrier or intermediate handler shall move marine mammals from the primary enclosure in a manner that may cause physical or emotional trauma to the marine mammal contained therein.

(c) Primary enclosures used to transport any marine mammal shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

§ 3.119—3.124 [Reserved]

It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to these amendments are impracticable and unnecessary.

Note.—This final rule has been reviewed under the USDA criteria established to Implement Executive Order 12044.

Improving Government Regulations," and has been classified "significant." An approved Final Impact Statement is available from the Deputy Administrator, USDA APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20702.

Done at Washington, D.C., this 19th day of June, 1979.

M. T. Goff,
Acting Deputy Administrator, Veterinary Services.

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