

The revision and addition read as follows:

**§ 274.12 Electronic Benefit Transfer Issuance System approval standards.**

\* \* \* \* \*

(j) *Reconciliation, Management Reporting, and Audits.* \* \* \*

(5) *Audits.* (i) The state agency must obtain an annual audit of their EBT system contractors regarding the issuance, redemption, and settlement of Food Stamp Program benefits. The audit must comply with American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (SAS 70). The audit must also follow the EBT review guidelines developed by the United States Department of Agriculture (USDA), Office of the Inspector General to the extent the guidelines refer to food stamp benefits. EBT work done by the State does not have to be audited in this manner but may be subject to audits by USDA's Office of the Inspector General or to reviews done by the Food and Nutrition Service.

(ii) The state agency must retain a copy of the SAS 70 report. If the Food and Nutrition Service or the USDA Office of Inspector General asks for the SAS 70 audit report in writing it must be provided within thirty days of the receipt of the written request.

(iii) The Food and Nutrition Service and the USDA Office of Inspector General reserve the right to conduct other reviews or audits of the State's Food Stamp Program EBT system or parts of the EBT system.

\* \* \* \* \*

Dated: February 16, 1999.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 99-4410 Filed 2-22-99; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 93-076-11]

RIN 0579-AA59

#### Animal Welfare; Marine Mammals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed regulations were developed by the

Marine Mammal Negotiated Rulemaking Advisory Committee and appear to be necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

**DATES:** Consideration will be given only to comments received on or before April 26, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93-076-11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 93-076-11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1228, (301) 734-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*, enacted in 1966 and amended in 1970, 1976, 1985, and 1990) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture established regulations under the Act in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards, contained in 9 CFR part 3, subpart E, were amended in 1984. During the 14 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the handling, care, treatment, and transportation of marine mammals in captivity.

On July 23, 1993, APHIS published in the **Federal Register** (58 FR 39458, Docket No. 93-076-1) an advance notice of proposed rulemaking that solicited comments on appropriate revisions or additions to the standards for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition (referred to below as the regulations). The comments we received supported our intent to revise the regulations and suggested it would be highly desirable to involve all interested parties in developing appropriate regulations. We determined that consensus among interested parties was attainable, and that we should proceed with negotiated rulemaking.

On May 22, 1995, we published in the **Federal Register** (60 FR 27049-27051, Docket No. 93-076-3) a notice of intent to establish an advisory committee to advise the Department on how to revise the regulations. The notice included a list of groups tentatively identified by the Department as potential participants on the advisory committee. A committee, called the Marine Mammal Negotiated Rulemaking Advisory Committee (the Committee), was subsequently established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I). It included all of the groups that were identified in the notice as potential participants, with the exception of the Society for Marine Mammology, which was unable to participate.

The following organizations were included on the Committee as voting members:

American Zoo and Aquarium Association  
Alliance of Marine Mammal Parks and Aquariums  
International Association of Amusement Parks and Attractions  
Marine Mammal Coalition  
United States Navy  
Center for Marine Conservation  
Humane Society of the United States  
Animal Welfare Institute, representing a broad coalition of animal concern groups  
American Association of Zoo Veterinarians  
International Association for Aquatic Animal Medicine  
International Marine Animal Trainers Association  
Animal and Plant Health Inspection Service

The following organizations or individuals were included on the Committee as observers or consultants. These individuals did not vote on the final consensus reached by the Committee:

Marine Mammal Commission  
National Marine Fisheries Service  
Fish and Wildlife Service  
Dr. Joseph Geraci, independent consultant to the Committee

The Committee conducted three sessions, on September 25 and 26, 1995, in College Park, MD; on April 1, 2, and 3, 1996, in Riverdale, MD; and on July 8, 9, and 10, 1996, in Riverdale, MD. All meetings were open to the public, with specified times during the meetings established for public participation and comment.

Under the rules governing the negotiated rulemaking process, and in accordance with the organizational protocols established by the Committee, APHIS agreed to publish as a proposed rule any consensus language developed during the meetings unless substantive changes were made as a result of authority exercised by another Federal government entity. Committee members agreed to refrain from commenting negatively on the consensus-based language in the proposed rule. Consensus language was reached on 13 of the 18 sections that comprise the regulations, and on one paragraph in a fourteenth section: §§ 3.101, 3.104(a), 3.105, 3.107 through 3.110, and 3.112 through 3.118. Sections 3.101 and 3.104(a) contain facility and operating standards. Section 3.101 contains general requirements for facilities housing marine mammals, including construction, water and power supply, drainage, storage, waste disposal, and washroom facilities; § 3.104(a) contains general space requirements for primary enclosures. Sections 3.105 and 3.107 through 3.110 concern animal health and husbandry. Section 3.105 contains feeding requirements; § 3.107 concerns sanitation and pest control; § 3.108 sets standards for employees and attendants; § 3.109 concerns separation of marine mammals; and § 3.110 concerns veterinary care. Sections 3.112 through 3.118 concern transportation of marine mammals. Section 3.112 concerns consignment of marine mammals to carriers and intermediate handlers; § 3.113 contains standards for primary enclosures used to transport marine mammals; § 3.114 contains standards for primary conveyances used to transport marine mammals; § 3.115 contains requirements for provision of food and water during transport; § 3.116 concerns the care of marine mammals by employees or attendants during transport; § 3.117 concerns terminal facilities; and § 3.118 contains requirements for handling marine mammals during transport.

This proposed rule contains the consensus language developed by the Committee for these sections of the regulations. No Federal government entity made any substantive changes to this language. The Committee considered the remaining sections of the

marine mammal regulations, but, because there was not enough time, did not reach consensus on changes to these sections. With one exception, only sections on which consensus language was attained are included in this proposed rule. The exception is a provision in current § 3.110(d) concerning maintenance of necropsy records. We have included this provision in § 3.110(g)(2) in this proposed rule. Consensus on this provision was not attained. We are including it in this proposed rule in order to complete the section. Further, including the provision will allow members of the Committee and other interested persons to comment on it, especially as it pertains to the consensus paragraphs in § 3.110. Amendments to the remaining sections in the regulations are currently being considered by APHIS and will be proposed in a separate **Federal Register** document for comment at that time. Comments on this proposal should be confined to the proposed language in this document.

#### **Proposed Rule**

##### *Facilities and Operating Standards*

As discussed above, consensus language was reached for §§ 3.101 and 3.104(a) of the marine mammal regulations. Sections 3.101 and 3.104 address facilities and operating standards.

In § 3.101, paragraph (a)(1) requires that indoor and outdoor housing facilities for marine mammals be structurally sound and maintained in good repair to protect animals from injury, to contain the animals, and to restrict the entry of unwanted animals. We are proposing to additionally specify that lagoon and similar natural seawater facilities must maintain effective barrier fences or other appropriate barrier measures around all sides of the enclosure not contained by dry land, and that the barriers must extend above the high tide water level. Such barriers for lagoon and natural seawater facilities would contain the marine mammals within the facility and restrict the entry of unwanted animals. During the negotiated rulemaking discussions, the Committee agreed that this requirement in not intended to preclude the temporary (less than 1 day at a time) lowering or removal of part of the barrier fencing above the water line to accommodate filming or similar actions. It would remain the facility's responsibility to ensure the safety and containment of the marine mammals at all times.

Section 3.101, paragraph (a)(2), requires that all marine mammals be protected 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. We are proposing to require that the employees and attendants be uniformed or in some way readily identifiable as employees or attendants of the facility. The Committee believes that the presence of persons readily identifiable as employees or attendants of the facility is necessary to deter abuse and harassment of animals by the public, and to readily identify persons to whom questions or complaints may be directed.

Section 3.101, paragraph (a)(3), requires that a primary enclosure (except for natural seawater pools subject to tidewater action) be constructed of materials that have a nonporous, waterproof finish, and that facilitate proper cleaning and disinfection, and be maintained in good repair as part of a regular ongoing maintenance program. Paragraph (a)(3) further states that any ramps or haul-out areas for primary enclosure pools, and any natural seawater pools subject to tidal action, must be constructed of materials that facilitate proper cleaning and disinfection and must be maintained in good repair as part of a regular ongoing maintenance program. The Committee believes that these requirements do not accommodate changes and advances in marine habitat design, or materials used in marine habitats that may not be amenable to disinfection. For example, some primary enclosures designed to be realistic include wood or textured surfaces that are difficult to disinfect completely. Further, the Committee does not believe that absolute disinfection is necessary in cases where the habitat design is not amenable to it.

We are proposing to revise paragraph (a)(3) to require that all surfaces in a primary enclosure be constructed of durable, nontoxic material that facilitates cleaning, and, as appropriate, disinfection. We further propose to require that materials used be compatible with maintaining the water quality parameters specified in § 3.106 of the regulations. (The standards for water quality contained in § 3.106 generally address bacterial standards, salinity, filtration, and water flow.) Additionally, we propose to require facilities to develop and follow a written protocol for cleaning enclosure surfaces that does not employ methods or materials hazardous to the marine

mammals. Having a written protocol would help ensure that facility employees have clear directions and would provide a written plan that could be evaluated by APHIS inspectors if a problem arises. Specific references to natural seawater facilities are not included in the proposed language because the Committee judged it unnecessary to distinguish between these and other kinds of facilities, given the proposed language. Even though natural seawater facilities are not made predominantly of materials that can be cleaned and disinfected, they may have constructed barrier fences or other structures that should be maintained as in other facilities. The intent of proposed paragraph (a)(3) is to ensure that all surfaces that can be cleaned and disinfected are cleaned and disinfected.

Section 3.101, paragraph (a)(4), exempts facilities that utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tidewater action), for housing marine mammals from the drainage requirements in § 3.101(c)(1) (discussed later in this document). Paragraph (a)(4) also provides that, regardless of the exemption stated above, facilities must meet the minimum standards with regard to space, depth, and sanitation, and must monitor the water for coliforms and for pH and chemical content, if chemicals are added. We are proposing to remove the language concerning the minimum standards with regard to space, depth, and sanitation, and for monitoring the water coliforms and pH and chemical content. Requirements for meeting minimum space standards are contained in § 3.104, and requirements for monitoring water for coliforms and pH and chemicals are contained in § 3.106. The Committee believes that these changes would simplify the paragraph without substantively changing the requirements for natural water area facilities.

Section 3.101, paragraph (b), requires that reliable and adequate sources of water and electric power be provided by the facility, and that written contingency plans be submitted to and approved by APHIS' Veterinary Services regarding emergency sources of water and electric power in the event of failure of the primary sources. We are proposing two changes to paragraph (b). First, we would require that written contingency plans be submitted to the Deputy Administrator of Animal Care, rather than to Veterinary Services. This change is necessary because, since the last amendments to subpart E, APHIS reorganized so that Animal Care is no longer part of APHIS' Veterinary

Services program, but is an independent APHIS program. Additionally, we are proposing to require that contingency plans include, but not be limited to, specific animal evacuation plans in the event of a disaster, and that the plans should describe back-up systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water. If a contingency plan includes release of marine mammals, the plan also would have to include provisions for recall training and retrieval of the animals.

Paragraph (c) of § 3.101 concerns drainage. Paragraph (c)(1) requires, among other things, that adequate drainage be provided for all primary enclosure pools in marine mammal facilities, and that drainage be located so that all of the water contained in the pools may be "rapidly eliminated" when necessary for cleaning the pools or for other purposes. We are proposing to change the phrase "rapidly eliminated" to "effectively eliminated." "Rapid" emptying of enclosure pools is not always practical and, in some cases, can be unsafe for both humans and animals. For example, a 2 million gallon pool cannot be rapidly emptied without having a drain and pipes that are extremely large, much larger than needed for water circulation. Further, if a pool is rapidly emptied with an animal or human in the water, the animal or human could be pulled down by an undertow or be trapped in the drain. The intended goal of the requirement is to ensure that all water in the pool can be eliminated when necessary. The Committee believes "effectively eliminated" is a better term to convey this intended goal.

In § 3.101, paragraph (c)(2) requires, among other things, that drainage be provided for primary enclosures and areas immediately surrounding pools. Members of the Committee were concerned about the possibility of animals becoming entrapped by suction created by the drains. This can occur when a drain cover or strainer becomes unfastened so that the drain hole is exposed. To help prevent the possibility of such occurrences, we are proposing to add a requirement to paragraph (c)(2) that all drain covers and strainers be securely fastened to minimize the risk of animal entrapment.

Paragraph (d) of § 3.101 concerns food storage, and requires that supplies of food be stored in facilities that adequately protect the food supplies from deterioration, molding, or contamination by vermin. We are proposing to state instead that the food supplies must be protected from deterioration, spoilage (meaning

harmful microbial growth), vermin, or other contamination. The Committee believes that the proposed change is necessary to address microbial growth and other potential contaminants, such as bacteria or chemicals. Paragraph (d) also requires that refrigerators and freezers be used for perishable food. We are proposing to permit temporary storage of food in chilled and/or iced coolers for periods of less than 12 hours. This change would accommodate the practice of using coolers to bring food to the marine mammal enclosure to be used throughout the day. The intent of the Committee in agreeing to this proposed addition is that the chilled and/or iced coolers would have to function adequately and have sufficient ice and insulation to maintain the integrity of the food inside. Finally, paragraph (d) specifies that no substances that are known to be, or may be, toxic or harmful to marine mammals may be stored or maintained in the marine mammal food storage areas. We are proposing to allow cleaning agents to be maintained in these areas if they are kept in secured cabinets designed and located to prevent food contamination. We also propose to prohibit food, supplements, or medications to be used beyond the commonly accepted shelf life or dating on the label. The Committee believes that this prohibition would help ensure that only wholesome and efficacious food, supplements, and medications are used.

Paragraph (e) of § 3.101 concerns waste disposal and requires, among other things, that disposal facilities be provided and operated in a manner that minimizes vermin infestation, odors, and disease hazards. We are proposing to state instead that disposal facilities must be provided and operated in a manner that minimizes odors and the risk of vermin infestation and disease hazards. We are proposing this rewording because the Committee was concerned that the current language could be misunderstood to imply that some degree of vermin infestation and disease hazard is acceptable.

Section 3.101, paragraph (f), concerns washroom facilities and requires that facilities such as washrooms, basins, showers, or sinks be provided to maintain cleanliness among employees and attendants. The Committee agreed to several changes to make this paragraph more specific. We are proposing that washroom facilities containing basins, sinks, and, as appropriate, showers (not all washrooms require a shower) must be provided and must be conveniently located to maintain cleanliness among

employees, attendants, and volunteers. We would also require that such facilities be cleaned and sanitized daily.

The Committee also agreed to add a new paragraph (g) to § 3.101, to address the use of enclosure or pool environmental enhancements. Proposed paragraph (g) would require that any nonfood item used to provide entertainment or stimulation for marine mammals be of sufficient size and strength to prevent ingestion or breakage or causing injury to marine mammals. These items would also have to be able to be cleaned, sanitized and/or replaced effectively.

As discussed previously in this document, consensus language was not developed for the bulk of § 3.104. However, consensus language for paragraph (a) of § 3.104 was developed and is included in this proposed rule. Paragraph (a) states that primary enclosures must comply with the minimum space requirements prescribed by the regulations. (The minimum space requirements are contained in § 3.104(b) and (c), which are not affected by this rulemaking.) Paragraph (a) further requires that primary enclosures be constructed and maintained so that marine mammals contained within have sufficient space to make normal postural and social adjustments, with adequate freedom of movement, in or out of the water, except as provided in § 3.110, "Veterinary care." Paragraph (a) also provides that primary enclosures smaller than required by the standards may be used for temporary holding purposes such as training and transfer of marine mammals, but may not be used for permanent housing or for periods longer than specified by an attending veterinarian.

The Committee agreed to make several changes to paragraph (a) to add specificity. First, we propose to replace the general reference to § 3.110 with a reference to § 3.110(b) (discussed later in this document). Paragraph (b) concerns isolation or separation for medical treatment and/or medical training. We also propose to provide that enclosures smaller than allowed by the standards may be used temporarily for nonmedical training, breeding, holding, and transfer purposes. However, we propose that, if a marine mammal is to be kept in such an enclosure for nonmedical training, breeding, or holding for longer than 2 weeks, or for transfer purposes for longer than 1 week, the attending veterinarian must provide written justification on a weekly basis. We propose to specify that enclosures that do not meet the minimum space

requirements, including gated side pools abutting primary enclosures, may not be used for permanent housing of marine mammals. We also propose to specify that rotating animals between compliant and noncompliant sized pools or enclosures is not acceptable to comply with this paragraph.

#### *Animal Health and Husbandry Standards*

Sections 3.105 through 3.111 address animal health and husbandry. The Committee developed consensus language for §§ 3.105 and 3.107 through 3.110.

Section 3.105 contains feeding requirements. Paragraph (a) of § 3.105 requires, among other things, that the diet for marine mammals be prepared with consideration for age, species, condition, size, and type of marine mammal being fed. We propose to state that *factors such as* age, species, condition, and size must be considered when preparing the animals' diet. The Committee's intent is that this language would clarify that the list is not meant to be all inclusive, but that the listed factors must be considered in developing the animals' diet. The specification that "type" of marine mammal must be considered would be removed because the Committee believes that listing "species" is adequate. Paragraph (a) also requires that marine mammals be offered food at least once a day, except as directed by veterinary treatment or professionally accepted practices. We are proposing to require, instead, that marine mammals be offered food at least once a day, except as directed by the attending veterinarian.

The Committee agreed that no changes were necessary to § 3.105(b).

Section 3.105, paragraph (c), requires, among other things, that employees or attendants responsible for giving food to the marine mammals be able to recognize deviations from a normal state of good health in each marine mammal so that the food intake can be adjusted accordingly. We propose to add a requirement that inappetence exceeding 24 hours must be reported immediately to the attending veterinarian. Loss of appetite may indicate a medical problem. The Committee believes that requiring that loss of appetite exceeding 24 hours be reported to the attending veterinarian would help ensure that the marine mammal is provided with adequate veterinary care.

Paragraph (c) further requires that public feeding may only be permitted in the presence and under the supervision of a uniformed employee or attendant. We are proposing to revise this

requirement to further stipulate that a sufficient number of knowledgeable, uniformed employees or attendants must supervise public feeding. The Committee believes that adding the requirement for "a sufficient number" of employees or attendants during public feeding would ensure that adequate supervision is available depending on the number of animals being fed. If a large number of animals is involved in the public feeding, more than one employee or attendant would be needed. The Committee agreed that the term "knowledgeable" would indicate that the employee or attendant not only has knowledge about the individual animals, but knowledge about the harmful effects of feeding marine mammals in the wild, and knowledge that such practices are prohibited under the Marine Mammal Protection Act. The Committee believes that clarification of this intent in the preamble of the proposed rule, rather than in the rule itself, would be sufficient. This interpretation of the word "knowledgeable" is consistent with the general welfare and conservation programs embraced by the majority of the animal exhibition community.

We are also proposing to add to paragraph (c) a provision that individual feeding records noting the estimated daily food consumption must be maintained at the facility for a period of 1 year, and must be made available for APHIS inspection. The Committee agreed on clarification of this requirement as follows: For marine mammals that are individually fed, and not subject to public feeding, the feeding records should reflect an accurate account of food intake; for animals fed, in part, by the public, and for large, group fed colonies of marine mammals where individual rations are not practical or feasible to maintain, the daily food consumption should be estimated as precisely as possible. However, the Committee agreed that it would not be necessary to add this clarification to the proposed regulatory language. The Committee agreed that the remaining requirements of paragraph (c) would remain unchanged.

Paragraph (d) of § 3.105 concerns food preparation and handling, and requires, among other things, that food be prepared and handled so as to minimize bacterial or chemical contamination and to assure the wholesomeness and nutritive value of the food. We are proposing to remove the portion of that sentence referring to minimizing bacterial or chemical contamination because the Committee was concerned that it implied that some degree of bacterial or chemical contamination

would be permissible. The Committee believes that requiring food to be prepared and handled in a manner that assures the wholesomeness and nutritive value of the food would make it clear that contamination by bacteria or chemicals is not acceptable.

We are also proposing to add several requirements concerning thawed food. Paragraph (d) requires that storage of food (including the length of time food is stored and the method of storage) and thawing of frozen food be done in a manner that minimizes contamination and assures that the food retains nutritive value and wholesome quality. We are proposing to also require that thawed food be maintained in a manner that minimizes contamination and assures that the food retains nutritive value and wholesome quality *until the time of feeding*. The Committee believes this new provision would clarify that proper maintenance of food extends beyond the thawing process to the time the food is fed to the animal. We are also proposing to specify that when food is thawed in standing or running water, cold water must be used. Use of other water to thaw frozen food may increase the risk of food contamination and loss of nutritive value. Finally, paragraph (d) requires that food be fed to the marine mammals within 24 hours of removal from the freezer for thawing. We propose that, if the food is thawed under refrigeration, it must be fed to the marine mammals within 24 hours of thawing. The Committee agreed to make this change to accommodate changes in recognized and acceptable methods of food storage and handling, primarily the thawing of food under refrigeration (as opposed to thawing under running or standing water). This time frame for using food thawed under refrigeration has been approved by APHIS for use on an individual facility basis in the past.

Section 3.107 concerns sanitation. We are proposing several amendments to this section that the Committee believes will simplify language and clarify issues. Paragraph (a) of § 3.107 concerns sanitation in primary enclosures. Paragraph (a)(1) requires that animal and food waste in areas other than the primary enclosure pool of water be removed at least daily, and more often when necessary, to prevent contamination of the marine mammals and to minimize disease hazards. Paragraph (a)(2) requires that particulate animal and food waste, trash, or debris that enters the primary enclosure pool of water be removed as often as necessary to maintain the required water quality and to prevent health hazards to the marine mammals. We are proposing to revise both paragraphs to

refer to minimizing "health and disease hazards." We are proposing to use this language to make these paragraphs consistent with the rest of the proposed rule. In paragraph (a)(1), we would also add that the removal of animal and food waste be done "to provide a clean environment." In paragraph (a)(2), we would add that the removal of waste, trash, and debris from pools of water must be done at least daily, or more often as necessary. This would be consistent with the requirement in paragraph (a)(1), and would help ensure that the pool water is kept clean.

Paragraph (a)(3) of § 3.107 requires that the wall and bottom surfaces of the primary enclosure pool of water be cleaned as often as necessary to maintain proper water quality. We are proposing to add that natural organisms (such as algae, coelenterates, or molluscs) that do not degrade water quality (according to the standards in § 3.106), prevent proper maintenance, or pose a health or disease hazard to the animals will not be considered contaminants. The Committee believes this addition would accommodate current trends and accepted practices of recreating more naturalistic habitats for captive marine mammals.

Paragraph (b) of § 3.107 concerns cleaning of food preparation areas and food receptacles. The first sentence reads "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, thawing, 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." We are proposing to simplify this sentence to read, "All equipment and utensils used in food preparation shall be cleaned and sanitized after each use." The Committee believes that the revised sentence would retain the intent of the original, while eliminating unnecessary complexity. The remaining requirements in paragraph (b) would be left unchanged.

Paragraph (c) of § 3.107 concerns housekeeping. The last sentence reads, "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." We are proposing to change this sentence by removing the commas after "loose objects" and "sharp projections" and adding an "or", so that the phrase would read "shall not have any loose objects or sharp projections and/or edges which may cause injury." The

Committee believes that this change would clarify the sentence.

The Committee agreed that no changes are necessary in § 3.107(d).

Section 3.108 contains standards for employees and attendants who handle marine mammals. The Committee agreed to clarify and expand the requirements for employees and attendants. Currently, § 3.108 requires that a sufficient number of adequately trained employees or attendants responsible to management be utilized to maintain the prescribed level of husbandry practices set forth in the regulations. We are proposing to add that the employees and attendants must also work in concert with the attending veterinarian.

Section 3.108 further requires that employees and attendants work under the supervision of a marine mammal caretaker who has a background in marine mammal husbandry and care. We are proposing to revise this requirement to state that the marine mammal caretaker must have "demonstrable experience" in marine mammal husbandry and care. A marine mammal caretaker could meet this requirement by, for example, having on file at the facility a resume with verifiable information showing where and when the employee had worked previously and a summary of job duties. Similar and equivalent means to verify experience and training would be acceptable to demonstrate experience under this requirement. In the past, APHIS has received public complaints about the lack of training and applicable experience of employees in licensed facilities. When an employee's experience has not been demonstrable or verifiable, it impedes the effective enforcement of the provisions intended to make sure the animals are cared for by trained and competent personnel. The Committee believes that the proposed revisions would help ensure that personnel are adequately trained and supervised to manage the care of the marine mammals.

To the same end, we are proposing to put the provisions described above into a new paragraph (a) in § 3.108, and to add new paragraphs (b), (c), and (d) to address employee and attendant training and animal training. Paragraph (b) would require that each facility provide and document participation in and successful completion of a facility training course for its employees. This training course would have to include, but would not be limited to, species appropriate husbandry techniques, animal handling techniques, and information on proper reporting protocols, including recordkeeping and

notification of veterinary staff when there are medical concerns. New paragraph (c) would require that any training of marine mammals be done by or under the direct supervision of experienced trainers, and new paragraph (d) would require that all trainers and handlers meet professionally recognized standards for experience and training. The Committee agreed that, for purposes of enforcing this requirement, APHIS should use professional organization standards, such as those used by the International Marine Animal Trainers Association, as a point of reference.

Section 3.109 concerns separation of animals, and prohibits marine mammals that are not compatible from being housed in the same enclosure, and prohibits marine mammals from being housed near animals that cause them stress or discomfort or interfere with their good health. Section 3.109 also requires that captive marine mammals 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. The Committee agreed to revise these requirements to better define under what conditions usually social animals may be kept with or separated from the same or related species. We are proposing to retain the provisions that prohibit marine mammals that are not compatible from being housed in the same enclosure, and that prohibit marine mammals from being housed near animals that cause them stress or discomfort or interfere with their good health. However, we would add the term "unreasonable" in front of "stress or discomfort" to recognize that any new situation or change in conditions can cause a marine mammal to experience some stress.

We are proposing to remove the requirement in § 3.109 that 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. In its place, we are proposing to add that marine mammals that are known to be primarily social in the wild must be housed in their primary enclosure with at least one compatible animal of the same or biologically related species. An exception to this requirement would be made when the attending veterinarian, in consultation with the husbandry/training staff, determines that such housing is not in the best interests of the marine mammal's health or well-being. We also propose to require a written plan for animals that are housed separately that includes justification for

the length of time the animal will be kept separated or isolated, the type and frequency of enrichment activities, plans for interaction, if appropriate (for example, interactions with trainers/handlers would be appropriate for cetacean species and some pinnipeds but not, necessarily, for polar bears), and provisions for periodic review of the plan by the attending veterinarian. The written plan would have to be approved by the attending veterinarian and developed in consultation with the husbandry/training staff. Finally, we propose to require that marine mammals that are held separately for nonmedical reasons be in facilities (enclosures) that meet the minimum space requirements found in § 3.104. The Committee believes that these proposed regulations would minimize separation or isolation of social animals except for medical or compatibility considerations, and would ensure that there is an ongoing accountability for the isolation or separation of a marine mammal.

Section 3.110 contains standards for veterinary care of marine mammals. Proposed § 3.110 would retain most of the current requirements, with some minor changes, and would add additional standards for veterinary care.

Proposed paragraph (a) of § 3.110 would require all newly acquired marine mammals to be isolated from resident animals at the facility. This requirement is in current § 3.110(a). Current § 3.110(a) further stipulates that the newly acquired marine mammals be isolated until they can reasonably be determined to be in good health. In accordance with the Committee's agreement, we propose to require instead that newly acquired marine mammals with a known medical history be isolated unless or until the attending veterinarian can reasonably determine that they are in good health. Marine mammals without a known medical history would have to be isolated until the attending veterinarian determines that they are in good health. This revision is intended to mean that newly acquired marine mammals with a known medical history might not have to be isolated at all if the attending veterinarian determines they are in good health. Paragraph (a) also requires that any communicable disease condition in a newly acquired marine mammal be remedied before the new animal is placed with resident marine mammals. We propose to add that this requirement will not apply if the attending veterinarian judges that the potential benefits of a resident animal as a companion to the newly acquired animal outweigh the risks to the resident animal.

Proposed paragraph (b) of § 3.110 would, in part, contain a revised version of the provisions currently found in paragraph (c) of § 3.110. Paragraph (c) requires that temporary holding facilities with adequately and properly designed pools, tanks, restraining devices, or primary enclosures, be provided for isolation, medication, treatment, and other purposes, such as transfer and training of marine mammals. To simplify this requirement, proposed § 3.110(b) would state that holding facilities must be in place and available to meet the needs for isolation, separation, medical treatment, and medical training of the marine mammals. Paragraph (c) also currently provides that 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 use. To simplify and clarify this requirement, as well, proposed paragraph (b) would state that holding facilities used to house isolated or separated marine mammals for nonmedical purposes would have to meet the space requirements of § 3.104; holding facilities used only for medical treatment and medical training would not have to meet the minimum space requirements of § 3.104.

The remainder of proposed § 3.110(b) would contain new requirements agreed on by the Committee. We are proposing to require that, if an animal is to be housed for longer than 2 weeks for medical or medical training purposes in a facility that does not meet the minimum space requirements in § 3.104, it must be noted and justified on the animal's medical records by the attending veterinarian on a weekly basis. We are also proposing in paragraph (b) provisions for veterinary care of marine mammals in natural lagoon and coastal enclosures because water circulation cannot be controlled or isolated in such facilities. In natural lagoon and coastal enclosures, newly acquired marine mammals would have to be separated from resident animals using separate enclosures within the facility, located to prevent direct contact of newly acquired animals with resident animals and to minimize the risk of airborne or waterborne contamination between newly acquired animals and resident animals.

Currently, paragraph (b) of § 3.110 also contains provisions concerning cleaning of primary enclosures containing a marine mammal with an infectious or contagious disease. We are proposing to put provisions for cleaning in paragraph (c) of § 3.110. The

proposed provisions would be similar to the current provisions, except that we would refer to cleaning of holding facilities used for medical purposes, instead of to primary enclosures. The Committee's intent is to clarify that holding facilities may include primary enclosures, as well as other types of facilities used for medical purposes. We are proposing to require that any holding facility that is used for medical purposes and that has contained a marine mammal with an infectious or contagious disease be cleaned and sanitized in the manner prescribed by the attending veterinarian. No healthy animals could be introduced into the holding facility prior to such cleaning and/or sanitizing, to minimize the risk of spreading disease. Any marine mammal exposed to a contagious animal would have to be evaluated by the attending veterinarian. The attending veterinarian would determine if the exposed animal needs to be monitored and/or isolated, and would determine the appropriate time period for monitoring or isolation.

In proposed § 3.110, paragraphs (d), (e), and (f) would add new requirements for veterinary care beyond what is currently required. The new requirements are intended to provide more specific standards concerning what constitutes adequate veterinary care.

Proposed § 3.110, paragraph (d), would require that individual medical records be kept for each animal and be made available to APHIS inspectors. These records would have to indicate the animal's identification/name and a physical description of the animal, including any identifying markings, scars, etc. The age and sex of the animal must also be recorded. The Committee agreed that, in enforcing this requirement, records may include the actual age of the animal or an estimated age, if the actual age is not known. The individual medical record would also have to include the results of all physical examinations, including, but not limited to, length, weight, physical examination results by body system, identification of all medical and physical problems and proposed plan(s) of action (i.e. the treatment protocol), all diagnostic test results, and documentation of all treatment.

Proposed § 3.110, paragraph (e), would require that a copy of the individual animal medical record accompany any marine mammal when it is transferred to another facility. This would include transfers to all contract (lease) and satellite facilities. The intent of this requirement is to ensure that a copy or the original of the animal's

individual medical record would always be available to animal care personnel, including the attending veterinarian at the receiving facility, and to APHIS inspectors.

Proposed § 3.110, paragraph (f), would require that all marine mammals be visually examined by the attending veterinarian at least twice a year, and physically (hands on) examined under the supervision of the attending veterinarian whenever the attending veterinarian determines that physical examination is necessary. All cetaceans and sirenians (whales, dolphins, and manatees) would have to be physically examined by the attending veterinarian at least once a year. The annual physical examination for cetaceans and sirenians would have to include, but not be limited to, a hands on physical examination, hematology and blood chemistry analysis, and other diagnostic tests as determined by the attending veterinarian. APHIS could grant an exception from the requirement for a yearly physical examination of cetaceans and sirenians based on considerations related to the health and safety of the individual animal. It was agreed by the Committee that use of trained husbandry behaviors should be encouraged, to minimize the stress of the required examinations. However, the Committee determined that this would not be specified in the regulations. We are proposing to leave the frequency of physical examinations for marine mammals other than cetaceans and sirenians to the discretion of the attending veterinarian. The Committee particularly felt that hands on physical examinations of animals in large, untrained pinniped colonies may not be warranted unless the attending veterinarian believes a particular animal requires such an examination. This is because examination of an untrained pinniped colony may cause undue stress to the colony or individual animals and may present a significant risk of injury to personnel.

In proposed § 3.110, paragraph (g) would contain requirements for necropsy. The proposed requirements are essentially the same as those in current § 3.110(d), with some additional provisions. Currently, § 3.110(d) requires that a complete necropsy be conducted by or under the supervision of a veterinarian on all marine mammals that die in captivity. We would retain this requirement in proposed paragraph (g)(1), but would further specify that the necropsy must include histopathology samples, microbiological cultures, and other testing as appropriate, and that the necropsy must be conducted by or under the supervision of the *attending*

veterinarian. Current paragraph (d) further requires that the veterinarian prepare a necropsy report listing all pathological lesions observed and giving the apparent cause of death. Proposed paragraph (g)(1) would require both a preliminary report and a final report. The preliminary necropsy report would have to include a list all pathological lesions observed. The final report would have to include all gross and histopathological findings, lab test results, and a pathological diagnosis (this may or may not be the immediate cause of death).

Current paragraph (d) also requires that the management of the facility at which the marine mammal died must maintain necropsy records for a period of 3 years and must make them available for APHIS inspection when requested. The Committee discussed whether or not to revise the regulations to require that necropsy records be submitted to and maintained by APHIS, but the Committee did not reach agreement on this issue. APHIS has encountered no significant problems investigating marine mammal deaths, when indicated, using necropsy records kept at the facility. Further, we do not wish to place an additional reporting burden on licensees and registrants concerning these records. Therefore, we are including the requirement from paragraph (d), with one change, in proposed paragraph (g)(2), despite the fact that consensus was not reached on the requirement. Because proposed paragraph (g)(2) is nonconsensus language, it is open for all public comment, including comments from Committee members.

Proposed paragraph (g)(2) would require that necropsy reports be maintained at the facility for a period of 3 years and made available for APHIS inspection. We intend this to mean at the home facility of the marine mammal. We are proposing not to retain the requirement that records be kept at the facility where the marine mammal died, in order to allow for the records of leased or borrowed animals to be maintained at the home institution. Some facilities maintain marine mammals only on a seasonal basis, and are therefore not open for inspection for significant parts of the year. While we would still expect records to be available at the site of demise for investigative purposes following an animal's death, once an investigation (if warranted) is completed, the records could be maintained at the home facility of the animal.

### Transportation Standards

Sections 3.112 through 3.118 contain standards for transportation of marine mammals. Consensus language was attained for each of these sections. One of the changes we are proposing appears throughout §§ 3.112 through 3.118. These sections frequently use the term "primary enclosure" to mean the primary enclosure used during transport of a marine mammal. However, the term "primary enclosure" is also used throughout the regulations to mean an animal's permanent housing structure, such as the pool at the facility where the animal is kept. To avoid confusion, we are proposing to replace the term "primary enclosure" with the term "primary transport enclosure" throughout §§ 3.112 through 3.118, wherever we believe such change is necessary for clarity. This change would appear in § 3.112(b), § 3.113(h), § 3.114(c), § 3.117, and § 3.118(b). In other places, the regulations specify "primary enclosure used to transport marine mammals." We would not make any changes in these places because we believe the intent is clear.

Section 3.112 concerns consignment of marine mammals to carriers and intermediate handlers. The Committee agreed to retain almost all of current § 3.112, with a few changes and additions.

Paragraph (a) of § 3.112 currently states that carriers and intermediate handlers may not accept any marine mammal for transport more than 4 hours prior to the scheduled departure of the primary conveyance on which the animal is to be transported, with an exception made to 6 hours if agreed on by both the carrier or intermediate handler and the person or group presenting the animal for transport. We are proposing to also prohibit a carrier or intermediate handler from accepting any marine mammal for transport if the animal is not accompanied by a health certificate signed by the attending veterinarian and stating that the animal was examined within 10 days prior to transport and was found to be in acceptable health for transport. A requirement for a pre-transport veterinary examination and health certificate already exists for dogs, cats, and nonhuman primates (see 9 CFR 2.38 and 2.78). The Committee believes that adding a similar requirement for marine mammals would help ensure that the health of marine mammals is assessed prior to transport.

Paragraph (b) of § 3.112 states, among other things, that any carrier or intermediate handler may accept a marine mammal for transport if the

consignor provides a certificate stating that the primary transport enclosure complies with § 3.113 of the regulations (discussed later in this document). The certificate must include the name and address of the consignor, the number of animals in the enclosure, a statement certifying that the enclosure complies with the standards in 9 CFR part 3, and the signature of the consignor. We are proposing to add that the certificate must also include the age and sex of each animal in the primary transport enclosure. The Committee agreed that, in enforcing this requirement, APHIS may accept on the certificate the actual age of the animal or an estimated age, if the actual age is not known.

Section 3.112(c) concerns temperature. It states that carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the regulations may accept a marine mammal for transport if the marine mammal is accompanied by a certificate executed by an accredited veterinarian and stating that the marine mammal is acclimated to air temperatures lower than those prescribed in §§ 3.117 and 3.118 of the regulations. We are proposing first to clarify the temperature requirement in this paragraph by stating the acceptable temperature range required by §§ 3.117 and 3.118 (7.2 °C–23.9 °C, or 45 °F–75 °F) and by stating that the air temperature must be within this range. We also propose to amend paragraph (c) to state that carriers or handlers whose facilities fail to maintain a temperature within that range may accept a marine mammal for transport if the marine mammal is accompanied by a certificate stating that the marine mammal is acclimated to an air temperature range specified on the certificate that is either lower or higher than the prescribed range. Including the air temperature to which the animal is acclimated would provide additional guidance to carriers and intermediate handlers in determining if the animal should be accepted for shipment. We are also proposing to require that the certificate be executed by the attending veterinarian instead of by an accredited veterinarian. We are proposing this change because the attending veterinarian responsible for the marine mammal would know better to what temperature the animal is acclimated than would an accredited veterinarian who is not usually responsible for the animal's care.

In addition to certifying acclimation to a certain air temperature, paragraph (c) requires that the certificate include the name and address of the consignor and the number of animals in the

shipment. We are proposing to additionally require that the certificate include the age and sex of each marine mammal in the shipment. The Committee agreed that, in enforcing this requirement, the certificate may include the actual age of the animal or an estimated age, if the actual age is not known.

Section 3.113 contains standards for construction and design of primary transport enclosures for marine mammals. The Committee's proposal retains almost all of the current provisions in § 3.113, with some revisions and additions.

Paragraph (a) contains specific requirements for primary transport enclosures used to transport any marine mammal to help ensure the animals' safety and comfort.

One of the requirements, contained in paragraph (a)(4), is that the primary transport enclosure have interiors that are free from any protrusions that could be injurious to the marine mammals. We are proposing to add that the interior must also be free from any hazardous openings that could be injurious to the marine mammals. This requirement appears necessary to prevent injuries caused by marine mammals' flippers, heads, or feet being caught in openings from which they can not readily free themselves.

Paragraph (a)(7) requires that primary transport enclosures have openings located in a manner that makes them easily accessible at all times for emergency removal of the marine mammal inside. We are proposing to add that the openings must also allow potential treatment of the marine mammal. The Committee believes this requirement is necessary because treatment during transport (emergency or otherwise) would not always require, and is often best performed without, removal of the marine mammal from the enclosure.

Paragraph (a)(8) requires that primary transport enclosures have ventilation openings located on all four sides of the enclosure that are not less than 16 percent of the total surface area of each side. We are proposing to require that the ventilation openings be not less than 20 percent of the total surface area on each side. The Committee determined that this was a reasonable requirement that would ensure adequate ventilation without interfering with the strength and integrity of the transport enclosure. The Committee also believes that 20 percent is an easier percentage to work with than 16 percent.

Paragraph (a)(9) requires that primary transport enclosures have projecting rims or other devices placed on the ends

and sides of enclosures with ventilation openings to provide a minimum air circulation space of 1.9 centimeters (.75 inches) between the enclosure and any adjacent cargo or the conveyance wall. We are proposing to require the minimum air circulation space be 7.6 centimeters (3 inches). The Committee believes this additional space is necessary to ensure adequate airflow around the enclosure.

We would redesignate current paragraph (a)(10) as (a)(11), without changing its content. We propose to add a new paragraph (a)(10) in its place to state that primary transport enclosures must be constructed so as to provide air circulation space sufficient to maintain the temperature limits required by the regulations (in subpart E). Temperature limits required by the regulations would include temperature limits found within §§ 3.112 through 3.118, as well as any temperature limits for specific species that may be set in §§ 3.102 and 3.103 in a future rulemaking.

Paragraph (b) of § 3.113 concerns devices used for supporting or restraining marine mammals during transport. The Committee agreed that no substantive changes were necessary in this paragraph. The Committee did propose an editorial change in paragraph (b)(1), to remove the phrase "during transportation." This phrase was considered redundant, since it is already clear that the standards in this section apply to transportation.

Paragraph (c) of § 3.113 contains standards for the size of primary transport enclosures, specific for different types of marine mammals. We are proposing to restructure this paragraph for the purpose of simplification. Paragraph (c)(1) concerns enclosures for polar bears and sea otters, and paragraph (c)(2) concerns enclosures for pinnipeds (seals, sea lions, and walruses). We would add pinnipeds to paragraph (c)(1), without changing the space requirements and would remove paragraph (c)(2). Current paragraph (c)(3) would be redesignated as paragraph (c)(2).

Current paragraph (c)(1) requires that enclosures for polar bears and sea otters provide sufficient space for the animals to turn about freely in a stance whereby all four feet are on the floor. Because we are adding pinnipeds to this paragraph, we would also add a reference to all flippers being on the floor. Current paragraph (c)(3) (proposed to be redesignated as paragraph (c)(2)) states that animals may be restricted in their movement "according to professionally acceptable standards. . . ." We propose to refer instead to "professionally accepted standards."

Paragraph (d) of § 3.113 concerns the compatibility of marine mammals transported together. One of the requirements in paragraph (d) is that socially dependent animals (for example, siblings, dams, or other members of a family group) must be allowed visual and olfactory contact. We are proposing to require that visual and olfactory contact be allowed *whenever reasonable*. The Committee believes that this proposed revision is necessary because there are occasions when, due to transportation circumstances and the animals involved, visual or olfactory contact is not possible. For example, currently accepted industry standards for transporting cetaceans involves transportation in individual enclosures with solid sides. These enclosures invariably have solid sides even when the animal is in a sling. Although there may be auditory contact with other group members being transported at the same time, visual contact is not practical.

Section 3.113, paragraph (e), contains provisions for the construction of primary transport enclosure floors. We are proposing to retain the first requirement in paragraph (e) that primary transport enclosures have solid bottoms to prevent leakage in shipment and, if the enclosure has been previously used, that it be cleaned and sanitized in a manner prescribed in § 3.107 of the regulations. The remainder of paragraph (e) requires that primary transport enclosures contain clean litter, unless the animals are on wire or other nonsolid floors. We are proposing to replace these provisions with a requirement that, within the primary transport enclosure, marine mammals be maintained on sturdy, rigid, solid floors with adequate drainage. The use of litter and some wire flooring can be potentially dangerous for the animals if litter is ingested or body parts are caught in or abraded on the wire flooring. The Committee believes the revision is necessary to reflect currently accepted practices regarding the flooring of transport enclosures for marine mammals, and to provide the best flooring for the safe transport of the marine mammals.

Paragraph (f) of § 3.113 requires primary transport enclosures to be marked with the phrase "Live Animal" or "Wild Animal" (whichever is appropriate), and gives specifications as to how those markings must appear. One of the specifications is that the enclosure must be marked on top and on one or more sides. However, some primary transport enclosures are open,

and do not have tops (such as those used for cetaceans or sireniens). Other primary transport enclosures do not have solid areas on more than one side. To accommodate these situations, we are proposing to revise this requirement to state that the enclosure must be marked with the appropriate phrase "on top (when present) and on at least one side, or on all sides whenever possible." We are also proposing to remove the phrase "whichever is appropriate" after "Live Animal" or "Wild Animal" because the Committee believes it is unnecessary.

Paragraph (g) of § 3.113 requires that documents accompanying the shipment of marine mammals be attached to the outside of a primary transport enclosure that is part of the shipment. We are proposing to add, as an alternative, that the documents may be in the possession of the shipping attendant. This alternative would allow the documents to be kept away from water that is in the enclosures or that is used to spray the animals.

The Committee proposed no changes to § 3.113, paragraph (h), except to change "primary enclosure" to "primary transport enclosure", for the reasons given previously in this document.

Section 3.114 contains standards for primary conveyances (motor vehicle, rail, air, and marine) used to transport marine mammals. Paragraph (a) provides that the animal cargo space of any primary conveyance used to transport live marine mammals must be constructed in a manner that will protect the health and ensure the safety and comfort of the marine mammals being transported. Historically, most problems with discomfort, stress, and injuries to marine mammals during transportation have been caused by excessive heat or cold. To help prevent such problems, we are proposing to add a provision to paragraph (a) that would require primary conveyances to be sufficiently temperature controlled to provide an appropriate environmental temperature for the species of marine mammal being transported, to ensure the safety and comfort of the marine mammal, or to employ other safeguards (for example, cold water, ice, or fans) to maintain the animal at an appropriate temperature.

The Committee did not propose any revisions to § 3.114(b).

In § 3.114, paragraph (c), we are proposing to make some editorial changes to make the regulations easier to read and understand, but we are proposing no substantive changes.

The Committee did not propose any changes to paragraphs (d), (e), or (f) of § 3.114.

We are proposing to add a new paragraph (g) to § 3.114 to address lighting in the requirements for primary conveyances. The Committee believes that adequate lighting is essential to provide adequate care for the animals during transport. Proposed paragraph (g) would require that adequate lighting be made available so that attendants may properly inspect the marine mammals in their care at any time. If the carrier cannot provide such lighting, the shipper (consignor) must arrange for the lighting.

Section 3.115 contains requirements for food and drink availability during transport. Currently, paragraph (a) requires that those marine mammals that require drinking water be offered potable water within 4 hours prior to being transported in commerce or offered for transportation in commerce. We propose to change this language to state that those marine mammals that require drinking water be offered potable water within 4 hours of being placed in the primary transport enclosure for transport in commerce. The Committee believes this change is necessary because marine mammals are sometimes placed in a primary transport enclosure and then transported to the primary conveyance for transport in commerce. In these cases, the marine mammal may be in the primary transport enclosure several hours before transport in commerce begins. The Committee intends that this change will ensure that the marine mammal is given water within a reasonable time prior to being placed in the primary transport enclosure.

Paragraph (b) of § 3.115 requires that marine mammals may not be transported for more than 36 hours without being offered food; when an employee or attendant is required to accompany the shipment, the marine mammals must be fed during transit when necessary to provide for their good health and well-being. The Committee agreed that not all marine mammal species require or benefit from food during transportation. To reflect this, we are proposing to require instead that marine mammals being transported in commerce be offered food as often as necessary and appropriate for the species involved or as determined by the attending veterinarian. The attending veterinarian would take into account the species of marine mammal, the condition of the individual animal, and the length of transport to determine if food needs to be offered.

Section 3.116 contains requirements for care of marine mammals in transit. The Committee chose to extensively revise this section to address the

specific needs and considerations for the transport of marine mammals. While the specific proposed regulations are discussed below, a key overriding component of the proposed language is that all marine mammals in transit must be accompanied by a sufficient number of knowledgeable and experienced escorts. The proposed regulations may specify that the escort be a licensed veterinarian, an employee, or an attendant of the shipper or receiver. This additional consideration appears throughout proposed § 3.116.

Section 3.116(a) requires that an employee or attendant of the shipper or receiver knowledgeable in the area of marine mammal care accompany cetaceans, sirenians, pinnipeds, and sea otters during transport to provide for their good health and well-being, to observe the marine mammals and determine whether they need veterinary care, and to obtain any needed veterinary care as soon as possible. We are proposing to retain this requirement, but with a few changes. We would add "licensed veterinarian" to the list of persons who may accompany the marine mammal during transport. We would require that, in addition to being knowledgeable in the area of marine mammal care, the licensed veterinarian, employee, or attendant must also be experienced in the area of marine mammal care and knowledgeable and experienced in the area of marine mammal transport. We would also replace the phrase "cetaceans, sirenians, pinnipeds, and sea otters" with "all marine mammals," which would include polar bears. We also propose to require that any transport of greater than 2 hours duration have a transport plan approved by the attending veterinarian. Among other things, this plan would have to specify whether a veterinarian must accompany the shipment. We also propose that, if the attending veterinarian does not accompany the shipment, arrangements must be made to stay in contact with him/her during transport, in accordance with 9 CFR 2.40(b)(3). Section 2.40 of the regulations contains requirements for adequate veterinary care of any animal covered under the Animal Welfare Act. Section 2.40(b)(3) requires, among other things, that there be daily observations of all animals to assess their health and well-being, and that there be a mechanism of direct and frequent communication so that timely and accurate information on problems of animal health, behavior, and well-being can be conveyed to the attending veterinarian.

Currently, specific requirements concerning care of cetaceans and

sirenians in transit appear in paragraph (b) of § 3.116; specific requirements concerning care of sea otters in transit appear in paragraph (c) of § 3.116. In proposed § 3.116, requirements concerning these animals would appear in paragraphs (d) and (f), respectively. Proposed paragraphs (b) and (c) would contain new requirements. Paragraph (b) would contain requirements for handling the transportation of a marine mammal under circumstances where additional care or planning may be needed. A pregnant marine mammal in the last half of pregnancy, a dependent unweaned young animal, a nursing mother with young, or an animal with a medical condition requiring veterinary care that would be compromised by transport could not be transported in commerce unless the transport is determined to be appropriate by the attending veterinarian. Earlier in this document, we discussed the proposal in § 3.112 to require that marine mammals presented for transport be accompanied by a health certificate, signed by the attending veterinarian, certifying that the animal is in acceptable health for transport. In conjunction with this, we are proposing in § 3.116(b) that the attending veterinarian must note the existence of any of the above conditions on the health certificate, and determine whether a veterinarian should accompany the animal during transport.

Proposed paragraph (c) of § 3.116 would require the carrier to inform the crew of the primary conveyance that a marine mammal is on board the craft, and inform the persons accompanying the marine mammal of any unforeseen delays as soon as they become known. The carrier would also be required to accommodate requests by the shipper or his agent to provide access to the animal or take other actions necessary for the welfare of the animal during any delay, unless the carrier is precluded from doing so because of safety considerations.

As stated previously, proposed paragraph (d) of § 3.116 would contain specific requirements for the care of cetaceans and sirenians during transport. Most of the requirements we are including in proposed paragraph (d) currently appear in § 3.116(b), and would simply be moved to proposed paragraph (d). Currently, § 3.116(b) requires that an employee or attendant of the shipper or receiver of cetaceans or sirenians being transported in commerce provide certain care to ensure the comfort and health of the animal during transport. We would change this requirement in proposed paragraph (d) to state that "a sufficient number of employees or attendants" of the shipper

or receiver must provide care to the animals during transport. Current paragraph (b) then lists four specific things that must be done by the employees or attendants to care for the marine mammals during transport. These would all be included in proposed paragraph (d), and are as follows:

- Keeping the skin moist or preventing the drying of the skin by methods such as intermittent spraying of water or application of a nontoxic emollient. (We would remove the reference to lanolin as an example of a nontoxic emollient, as it is not currently used often, and there are more effective emollients available.);
- Assuring that the pectoral flippers are allowed freedom of movement at all times;
- Making adjustments in the position of such marine mammals when necessary to prevent necrosis of the skin at weight pressure points; and
- Calming the marine mammals to avoid struggling, thrashing, and other unnecessary activity which may cause overheating or physical trauma.

We also propose to add a fifth requirement, that the employees or attendants must keep the marine mammals cooled or warmed sufficiently to prevent overheating, hypothermia, or temperature related stress. Finally, current paragraph (b) states that no cetacean or sirenian in need of veterinary care may be transported in commerce unless the transport is for the purpose of obtaining such care. The Committee believes it is unnecessary to include this requirement in proposed paragraph (d) because proposed § 3.116(b) (discussed previously in this document) would prohibit any marine mammal with a medical condition requiring veterinary care from being transported unless the transport is determined to be appropriate by the attending veterinarian.

Currently, provisions for transport of polar bears are contained in § 3.116(d). This paragraph provides that polar bears need not be accompanied by an employee or attendant unless the period of transportation will exceed 24 hours in duration, and requires that the carrier inspect unaccompanied polar bears at specific intervals during transport to ascertain the need for any veterinary care. There are no specific requirements in § 3.116 for the transport of pinnipeds. We are proposing to place new requirements for the transport of polar bears and pinnipeds in paragraph (e) of § 3.116. We do not propose to include the current requirements discussed above concerning polar bears in proposed paragraph (e) because the

Committee believes they are inadequate to ensure the health and well-being of polar bears being transported.

Proposed paragraph (e) of § 3.116 would require that a sufficient number of employees or attendants of the shipper or receiver of pinnipeds or polar bears being transported in commerce provide for the pinnipeds and polar bears during transport by keeping the animals cooled and/or warmed sufficiently to prevent overheating, hypothermia, or temperature related stress, and by calming the animals to avoid struggling, thrashing, and other unnecessary activity that may cause overheating or physical trauma.

As discussed previously, provisions for the care of sea otters during transport are currently found in § 3.116(c). Paragraph (c) requires that not less than one-half of the floor area in a primary transport enclosure be leakproof and contain sufficient crushed ice or ice water to provide each sea otter with moisture necessary to prevent its hair coat from drying and minimize soiling of the hair coat with urine and fecal material. We are proposing to remove these requirements for sea otters from paragraph (c), and place new requirements for sea otters in paragraph (f) of § 3.116. Proposed paragraph (f) would require that sea otters be transported in primary enclosures that contain false floors through which water and waste can freely pass to keep the interior of the transport unit free from waste materials. The Committee believes this change is necessary because contact with waste materials can rapidly foul a sea otter's coat and cause serious problems for the animal. Requiring a false floor would help eliminate such problems. Also, paragraph (f) would require that moisture be provided by water sprayers or ice during transport. This would allow employees and attendants options for maintaining the availability of sufficient water for grooming by the sea otters during transport.

Currently, paragraph (e) of § 3.116 states that wild or otherwise dangerous marine mammals may not be taken from their primary transport enclosures except under extreme emergency conditions and then only by their trainer or other person who is capable of handling the animals safely. We are proposing to revise this requirement to state that marine mammals may be removed from their primary transport enclosures only by attendants or other persons who are capable of handling the animals safely. The Committee believes this revision is necessary to make the requirement apply to all marine mammals, not just wild or dangerous

marine mammals, and to make it apply to removal of the animals from their primary transport enclosure for any reason. This requirement would appear in a new paragraph (g) in § 3.116.

Section 3.117 of the regulations contains requirements for terminal facilities. This proposal would retain most of the requirements in § 3.117, with some changes. We would retain the current requirement from § 3.117 that carriers and intermediate handlers may not commingle marine mammal shipments with inanimate cargo. Section 3.117 also states that all animal holding areas of a terminal facility of any carrier or intermediate handler in which marine mammal shipments are maintained must be cleaned and sanitized in a manner prescribed in § 3.107 often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. We would amend this provisions to remove the phrase "often enough to prevent an accumulation of debris \* \* \* and to prevent a disease hazard" and replace this phrase with "to minimize health and disease hazards." The Committee believes this revision would clarify that the purpose of maintaining clean and sanitary conditions in a terminal facility is to ensure the health of the animals held there. An accumulation of excreta or debris or an infestation of vermin would be a threat to the animals' health, and would, therefore, not be acceptable. We would retain without change the next requirement in § 3.117 that an effective program for the control of insects, ectoparasites, and avian and mammalian pests be established and maintained for all animal holding areas.

Section 3.117 next states that any animal holding area containing marine mammals must be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or have air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. We propose to state instead that animal holding areas must be "ventilated with fresh air or air circulated by means of fans, blowers, or an air conditioning system" to minimize drafts, odors, and moisture condensation. The Committee believes this wording is easier to understand and would make the intent of the requirement more clear.

Finally, current § 3.117 addresses air temperature and auxiliary ventilation. Auxiliary ventilation, such as exhaust fans and vents, or fans, blowers, or air conditioning, must be used for any animal holding area containing marine

mammals when the air temperature within the animal holding area is 23.9 °C (75 °F) or higher. The air temperature around any marine mammal in any animal holding area must not be allowed to fall below 7.2 °C (45 °F). The air temperature around any polar bear must not be allowed to exceed 29.5 °C (85 °F) at any time and no polar bear may be subjected to surrounding air temperatures that exceed 23.9 °C (75 °F) for more than 4 hours at any time. The Committee agreed to retain these requirements in proposed § 3.117.

Section 3.117 also describes how compliance with the air temperature requirements described above must be ascertained, and states that the air temperature around any marine mammal must be measured and read outside the primary enclosure containing the animal at a distance not to exceed 0.91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of the primary enclosure at a point that approximates half the distance between the top and bottom of the enclosure. We would retain this requirement, as well, but would add that the air temperature must be ascertained in this manner upon arrival of the shipment in the holding area by the attendant, carrier, or intermediate handler.

Section 3.118 contains requirements for handling of marine mammals by carriers and intermediate handlers in holding areas of terminal facilities and when transporting marine mammals between holding areas and primary conveyances. The introductory text of paragraph (a) requires carriers and intermediate handlers to move marine mammals from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. We would retain this requirement in proposed § 3.118 and designate it as paragraph (a)(1).

In § 3.118, paragraph (a)(1) is titled "Shelter from sunlight." We propose to redesignate this paragraph as paragraph (a)(2) and to revise the heading to read "Shelter from overheating and direct sunlight." Currently, this paragraph states that when sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the marine mammals from the direct rays of the sun. It also provides that marine mammals may not be subjected to surrounding air temperatures exceeding 29.5 °C (85 °F) for more than 45 minutes. We propose to require that shade must also be provided when sunlight is likely to

cause sunburn. We are also proposing to lower the maximum surrounding air temperature to 23.9 °C (75 °F), but would allow the temperature to exceed that if the marine mammal is accompanied by an acclimation certificate in accordance with § 3.112.

Paragraph (a)(1) currently requires that the surrounding air temperature discussed above be measured and read in the manner prescribed in § 3.117 (concerning terminal facilities), for a period of more than 45 minutes. Section 3.117 concerns the environmental ambient temperature in a terminal facility holding area. The Committee believes that, to ensure that an animal is not exposed to overheating from direct sunlight, monitoring of temperature should be for conditions in the transport enclosure itself. For example, the surrounding air temperature may be acceptable, but if the transport enclosure is exposed to direct sunlight, the interior temperature of the enclosure may be too high for the animal's well-being. Therefore, we propose to require that the air temperature surrounding the primary transport enclosure be measured and read within or immediately adjacent to the primary transport enclosure. The Committee's intent is that the temperature be taken as close to the animal's immediate environment as possible, without endangering the person taking the temperature.

Paragraph (a)(2) of § 3.118 is titled "Shelter from cold weather." We propose to redesignate this paragraph as paragraph (a)(3) and to make several changes to the requirements. Currently, this paragraph requires that transporting devices be covered to provide protection for marine mammals when the outdoor temperature falls below 10 °C (50 °F). We propose to require instead that marine mammals be provided with species appropriate protection against cold weather, to accommodate animals that do not need additional protection at temperatures below 10 °C. We propose to retain the current requirement that the marine mammals may not be subjected to surrounding air temperatures that fall below 7.2 °C (45 °F) unless they are accompanied by an acclimation certificate in accordance with § 3.112. Like the current provisions described above to protect marine mammals from overheating, the current provisions concerning cold weather require that the surrounding air temperature be measured and read in the manner prescribed in § 3.117 for a period of more than 45 minutes. For the reasons explained previously, we propose to require that the surrounding air temperature be measured and read

within or immediately adjacent to the primary transport enclosure.

Paragraph (b) of § 3.118 requires that care be exercised to avoid handling of the primary enclosure in a manner that may cause physical or emotional trauma to the marine mammal inside. We propose to replace the phrase "physical or emotional trauma" with "physical harm or distress." The Committee believes that "distress" would be more easily identified by carriers and intermediate handlers than "emotional trauma." This would eliminate anthropomorphic terminology, and is consistent with § 2.131, which contains general handling requirements for all animals covered under the Act.

Paragraph (c) of § 3.118 prohibits primary enclosures used to transport any marine mammal from being tossed, dropped, needlessly tilted, or stacked in a manner that may reasonably be expected to result in their falling. We propose to replace the phrase "in a manner that may reasonably be expected to result in their falling" with the phrase "unless properly secured." The Committee believes that requiring stacked enclosures to be secured would more likely ensure that they would not fall.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed regulations were developed by the Marine Mammal Negotiated Rulemaking Advisory Committee, and appear to be necessary to ensure the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

There are 116 establishments that contain marine mammals in the United States: 40 aquariums, 70 zoos, and 6 research facilities. Of the aquariums, 28 are private, 5 belong to small cities, and 7 are owned by States. Of the zoos, 19 are private, 12 are owned by large cities, 23 are owned by small cities, 3 are owned by counties, and 13 belong to States. Of the research facilities, 2 are privately owned and 4 are owned by the public (such as State universities). The average annual revenue for an

establishment is approximately \$1.46 million. Nearly 95 percent of the establishments have annual revenues of less than \$5 million and, thus, are considered to be small according to the Small Business Administration size standards.<sup>1</sup> There were 1,429 marine mammals in these establishments during FY 1997. These included 357 Group I cetaceans, 89 Group II cetaceans, 796 Group I pinnipeds, 16 Group II pinnipeds, 39 sirenians, 21 mustelidae and 111 polar bears. (Group designations for cetaceans and pinnipeds are as shown in Table III of § 3.104 of the regulations.) The Atlantic bottlenose dolphin, harbor seal, California sea lion, and polar bear are the predominant varieties of captive marine mammals, accounting for approximately 74 percent of the total number of captive marine mammals. The second largest group includes the West Indian manatee, walrus, common dolphin, Pacific bottlenose dolphin, and Atlantic white-sided dolphin. These represented 13.3 percent of the total number of captive marine mammals in FY 1997.

Arboreta and botanical or zoological gardens comprise an important subgroup of the amusement parks industry, generating more than \$653 million dollars in revenues and attracting close to 50 million visitors annually. There were 448 establishments in this subgroup in 1992, including the 116 that are regulated for marine mammals. About 27 percent of these are operated for-profit; the rest are nonprofit organizations owned publicly by States, counties, or cities, or owned privately. Ten percent of the 116 facilities regulated for marine mammals display regulated captive marine mammals exclusively; the others may exhibit a combination of marine mammals and terrestrial animals or terrestrial animals exclusively. Some facilities licensed to exhibit marine mammals host only a single variety of marine mammal (e.g., only dolphins, only harbor seals, or only polar bears). Marine mammals account for a very small fraction of all animals in captivity, which number in the hundreds of species.

Most facilities exhibiting marine mammals charge admission fees. Overall, visitor admission fees cover less than 30 percent of the annual budget of zoos and aquariums, although the fees vary substantially between

facilities. A few facilities, mostly those that are city owned, do not charge visitors for admission. Fees range from \$1 to \$41 dollars for adults, from \$0 to \$33 for children, and from \$0 to \$36 for seniors. Admission rates to the for-profit facilities are higher than those of nonprofit facilities, which have some of their budget covered through appropriations and donations.<sup>2</sup> If the proposed regulatory changes significantly increase the operational expenses of a facility, admission fees for that facility could be increased. However, the increases in operational expenses as a result of this proposed rule should not have any significant impact on entrance fees in most facilities.

Other than admission charges, these facilities often generate income by renting space for large group functions such as family reunions, wedding receptions, and corporate parties. City- and State-owned facilities finance their budgets through annual appropriations, membership sales, concessions, grants, and donations. The principal sources of income for privately-owned nonprofit establishments include food service, funding drives, membership dues, gift shops, grants, and donations. Many facilities encourage membership through yearly passes that also provide members of one facility with access to other similar facilities. Some zoos offer guided excursions to other parts of the world. A portion of the generated income is often directed to conservation efforts.

The proposed rule changes are intended to result in clearer, more easily understood regulatory language and increased levels of care for marine mammals. Alternatives to the proposed language were well discussed and debated during the course of the negotiated rulemaking meetings, and the consensus language reflects the best efforts of all participating parties to ensure the health and well-being of marine mammals in captivity.

Several of the proposed amendments would simplify and clarify the language of the existing requirements without requiring any substantial changes. Some of the proposed amendments would result in some additional costs for facilities housing marine mammals if they are not already in compliance with the proposed standards. Since approximately 90 percent of the facilities already meet the proposed standards set by consensus and already

practice sound marine mammal husbandry, costs for them should remain unaffected. For the remaining facilities, increased costs as a result of this proposed rule would likely be passed on to the public in the form of increased admission fees or would result in changes in the facility's collection size or diversity.

While it is difficult to quantify all the benefits of this proposed rule, the conditions of captive marine mammals are expected to improve as a result of this action. As stated above, we believe that approximately 90 percent of licensed marine mammal facilities are already meeting or exceeding the proposed requirements. Therefore, the impact of the proposed requirements would be most apparent within the approximately 10 percent of licensed marine mammal facilities that are not already meeting or exceeding the proposed requirements. The proposed requirements that would likely have the most impact on these facilities are the requirements that clarify veterinary care for marine mammals. Preventive care during annual or semiannual examinations (as proposed in this rule) would potentially reduce emergency veterinary costs and result in fewer marine mammal deaths because of increased health of the animals. Healthier animals would also have an increased life expectancy and improved reproductive outcomes. In general, any improvements in the care and maintenance of marine mammals would be reflected in lower levels of animal distress and suffering and improved quality of life. In addition, improved conditions for captive marine mammals would result in increased satisfaction for the public that views these animals in zoos and aquariums. This rulemaking represents an important, sensitive, and precedent-setting effort. We believe the benefits of regulating standards of care for captive marine mammals outweigh the potential costs to facilities exhibiting these animals.

Following are the proposed rule changes that could generate minor cost increases in facilities that do not already meet the proposed standards.

Section 3.101 requires facilities to have a contingency plan addressing relocation during an emergency or natural disaster. We are proposing that additional and more detailed contingency plans be kept.

In § 3.105, we are proposing to require that a daily record of animal feeding be kept by an employee or attendant of the facility, noting daily food consumption of the marine mammals in the facility. Individual feeding records would have to be maintained at the facility for a

<sup>1</sup> Arboreta and botanical or zoological gardens with less than \$5 million in annual revenues are classified as being small according to the Small Business Administration guide for defining industries for size standards. Source: 13 CFR 121.601, SIC 0272, p. 354.

<sup>2</sup> Much of the admission fee information was obtained from Internet home pages of aquariums and botanical and zoological gardens. Data obtained from the home pages was checked with recorded messages of many of the facilities.

period of 1 year. Personnel costs to provide for planning, observation, documentation, and record maintenance may increase as a result of these proposed requirements, depending on present staffing.

In § 3.108, we are proposing to expand the training requirements for employees and attendants. Facilities would have to provide and document participation in, and successful completion of, a facility training course by a sufficient number of employees (meaning a number sufficient to maintain the prescribed level of husbandry set forth in the regulations. This would generally mean a minimum of two employees, but could be more, depending on the size of the facility.). Training would need to be done under the direct supervision of experienced trainers who meet professionally recognized standards for their own experience and training. The length of such training sessions are estimated here to be about 4 hours for each trainee. Any increase in costs as a result of this requirement would depend on the current training practice of a facility.

In § 3.109, we are proposing to require a written plan for any animals kept in isolation. The plan would have to be approved by the attending veterinarian and developed in consultation with the husbandry/training staff of the facility. The plan would have to include justification for the length of time an animal will be isolated, the type and frequency of enrichment used to offset the separation or isolation, the interactions planned, and provision for a periodic review by the attending veterinarian. At present, there are not more than 20 animals being housed

separately throughout the country. Such record preparation and review by professionals would probably not require more than 30 minutes per animal per week.

In § 3.110, medical recordkeeping requirements for each animal would be added. Again, this would probably not entail more than 30 minutes for each animal twice per year. We are also proposing to add requirements concerning examinations of marine mammals by the attending veterinarian. All marine mammals in a facility would have to be visually examined at least semiannually and physically examined when deemed necessary, except that cetaceans and sirenians would have to be physically examined at least annually. The physical examinations would have to include a hands-on physical examination, hematology and blood chemistry, and other diagnostic tests as determined by the attending veterinarian. Examinations would take an average of approximately 2 hours per animal. Proposed § 3.110 would also require that both a preliminary and final necropsy report be completed by the attending veterinarian. While most facilities currently provide preliminary and final reports, only one necropsy report is required under current regulations.

In § 3.112, we are proposing to require that a health certificate, and possibly an acclimation certificate, signed by the attending veterinarian accompany each animal that is moved to another facility. Issuance of these certificates would not take more than 15 minutes per animal, with an average of two animals moving per facility per year.

In § 3.116, we are proposing to require that any transport of a marine mammal for longer than 2 hours duration would require preparation of a transport plan. Preparing such transport plans would take about 1/2 to 2 hours, depending on circumstances. Most facilities transport marine mammals fewer than two times per year. Facilities that transport marine mammals more often generally have protocols already in place to address this issue. We are proposing that certain pregnant marine mammals, unweaned young, nursing mothers with young, and marine mammals with certain medical conditions be transported only after approval of the attending veterinarian and with a determination by the attending veterinarian as to whether or not a veterinarian should accompany the marine mammal during transport. We estimate that not more than five marine mammals that fit one of these categories are transported per year. We also propose that an employee or attendant must travel with polar bears being transported to provide care for the animal. Nationally, not more than 10 polar bears are transported per year; an average transport by land takes about 12 hours.

Taken together, these proposed requirements could result in total increase in expenditures of about \$473,000 for all regulated facilities together (see Table A for details). This would yield an average increase in expenditures of \$378 per animal per year or about \$1.04 per animal per day. The table below details the potential additional expenses for marine mammal facilities as a result of the requirements in this proposed rule.

TABLE A.—ADDITIONAL COSTS OF RECORDKEEPING AND TRAINING REQUIREMENTS FOR ALL REGULATED MARINE MAMMAL FACILITIES COMBINED

Section	Non-professional staff (\$15/hour) <sup>1</sup>	Professional staff (\$20/hour) <sup>2</sup>	Veterinarian (\$25/hour) <sup>3</sup>	Total value in dollars
		Time in hours		
3.101 .....		58		\$1,160.00
3.105 .....	21,170		464	329,150.00
3.108 .....	928	928		32,480.00
3.109 .....			10	250.00
3.110 .....		4,858	1,893	104,485.00
3.112 .....		29	29	1,305.00
3.116 .....	120		<sup>5</sup> 60.5	3,312.50
Total Hours .....	22,218	3,873	2,456.5	
Total Cost .....	333,270	77,460	61,412.50	472,142.50

Note: <sup>1,2,3</sup> Denote estimated hourly wages of nonprofessional attendant, nonveterinarian professional, and veterinarian professional, respectively.

<sup>4</sup> Represents number of hematology and blood chemistry tests based on two tests per marine mammal per year. Average cost of each test is about \$20. However, the cost of tests are variable depending on volume and whether they are done in private laboratories or on site. Additionally, most of these tests are already done.

<sup>5</sup> Represents approval of 1 transport plan per year per facility (116) at 30 minutes each and approval of transport for 5 marine mammals with medical conditions per year at 30 minutes each.

Because this regulatory action was initiated at the request of the major stakeholders and was undertaken using negotiated rulemaking, the resulting proposal is broadly supported by affected groups. Additionally, since 90 percent of licensed marine mammal facilities are already meeting or exceeding the proposed requirements, the actual economic effect of this proposed rule is expected to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

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

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 93-076-11. Please send a copy of your comments to:

1. Docket No. 93-076-11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and

2. Clearance Officer, OClO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would introduce various information collection and recordkeeping requirements to enable us to determine that a marine mammal is receiving adequate care. These include requirements that licensed facilities prepare written protocols for cleaning primary enclosure surfaces, written contingency plans for emergency sources of power and water in the event of a failure, and written transport plans; maintain feeding records and medical records; prepare preliminary and final necropsy reports; acquire health certificates to accompany transports; and make requests to APHIS if exception from various other requirements is desired.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

1. Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .34189 hours per response.

*Respondents:* Facilities licensed to exhibit marine mammals, such as aquariums and zoos, and research facilities that use marine mammals.

*Estimated annual number of respondents:* 129.

*Estimated annual number of responses per respondent:* 110.147.

*Estimated annual number of responses:* 14,209.

*Estimated total annual burden on respondents:* 4858 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OClO, USDA, room 404-W, 14th Street

and Independence Avenue SW., Washington, DC 20250.

#### List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR part 3, as follows:

#### PART 3—STANDARDS

1. The authority citation for part 3 would continue to read as follows:

**Authority:** 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 3.101 is revised to read as follows:

#### § 3.101 Facilities, general.

(a) *Construction requirements.* (1) Indoor and outdoor 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 within the facility, and to restrict the entrance of unwanted animals. Lagoon and similar natural seawater facilities must maintain effective barrier fences, or other appropriate measures, on all sides of the enclosure not contained by dry land, extending above the high tide water level, to fulfill the requirements of this section.

(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 uniformed or readily identifiable employees or attendants to supervise the viewing public, or by physical barriers, such as fences, walls, glass partitions, or distance, or any combination thereof.

(3) All surfaces in a primary enclosure shall be constructed of durable, nontoxic materials which facilitate cleaning, and disinfection as appropriate, sufficient to maintain water quality parameters as designated in § 3.106. All surfaces shall be maintained in good repair as part of a regular, ongoing maintenance program. All facilities shall implement a written protocol on cleaning so that surfaces do not constitute a health hazard to animals.

(4) Facilities which utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tidewater action) for housing marine mammals shall be exempt from the drainage requirements of paragraph (c)(1) of this section.

(b) *Water and power supply.* Reliable and adequate sources of water and electric power shall be provided by the facility housing marine mammals.

Written contingency plans must be submitted to and approved by the Deputy Administrator regarding emergency sources of water and electric power in the event of failure of the primary sources, when such failure could reasonably be expected to be detrimental to the good health and well-being of the marine mammals housed therein. Contingency plans shall include, but not be limited to, specific animal evacuation plans in the event of a disaster, and should describe back-up systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water. If the emergency contingency plan includes release of marine mammals, the plan must include provision for recall training and retrieval of such animals.

(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 effectively eliminated when necessary for cleaning the pool 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. All drain covers and strainers shall be securely fastened in order to minimize the potential risk of animal entrapment. Drains shall be located so as to rapidly eliminate excess water (except in pools). 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, spoilage (harmful microbial growth), or vermin or other contamination. Refrigerators and freezers (or chilled and/or iced coolers for under 12 hours) shall be used for perishable food. No substances which are known to be or may be toxic or harmful to marine mammals may be stored or maintained in the marine mammal food storage or preparation areas, except that cleaning agents may be kept in secured cabinets designed and located to prevent food contamination. Food, supplements, and medications may not be used beyond commonly accepted shelf life or date listed on the label.

(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 odors, and

the risk of vermin infestation 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) *Employee washroom facilities.* Washroom facilities containing basins, sinks, and showers as appropriate, shall be provided and conveniently located to maintain cleanliness among employees, attendants, and volunteers. These facilities shall be cleaned and sanitized daily.

(g) *Enclosure or pool environmental enhancements.* Any nonfood objects provided for the entertainment or stimulation of marine mammals must be of sufficient size and strength to not be ingestible, readily breakable, or likely to cause injury to marine mammals, and be able to be cleaned, sanitized, and/or replaced effectively.

3. In § 3.104, paragraph (a) is revised to read as follows:

#### § 3.104 Space requirements.

(a) *General.* Marine mammals must be housed in primary enclosures which comply with the minimum space requirements prescribed by this part. These enclosures 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 in § 3.110(b), concerning isolation or separation for medical treatment and/or medical training.) Enclosures smaller than required by the standards may be temporarily used for nonmedical training, breeding, holding, and transfer purposes. If maintenance in such enclosures for nonmedical training, breeding, or holding, is to last longer than 2 weeks, such extension must be justified in writing by the attending veterinarian on a weekly basis. If maintenance in such enclosures for transfer is to last longer than 1 week, such extension must be justified in writing by the attending veterinarian on a weekly basis. Such enclosures, for example, gated side pools abutting primary enclosures, shall not be used for permanent housing purposes. Rotating animals between enclosures which do and do not meet minimum space requirements is not acceptable to comply with these standards.

\* \* \* \* \*

4. Section 3.105 is revised to read as follows:

#### § 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 marine mammals in a state of good health. The diet shall be prepared with consideration for factors such as age, species, condition, and size of the marine mammal being fed. Marine mammals shall be offered food at least once a day, except as directed by the attending veterinarian.

(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. Inappetence exceeding 24 hours must be reported immediately to the attending veterinarian. Public feeding shall be permitted only in the presence and under the supervision of a sufficient number of knowledgeable, uniformed employees or attendants. Such employees or attendants 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 marine mammals by the public. Marine mammal feeding records noting the estimated individual daily consumption shall be maintained at the facility for a period of 1 year and shall be made available for APHIS inspection.

(d) Food preparation and handling shall be conducted so as to assure the wholesomeness and nutritive value of the food. Frozen fish or other frozen food shall be stored in freezers which are maintained at a maximum temperature of  $-18^{\circ}\text{C}$  ( $0^{\circ}\text{F}$ ). The length of time food is stored and the method of storage, the thawing of frozen food, and the maintenance of thawed food shall be conducted in a manner which will minimize contamination and which will assure that the food retains nutritive value and wholesome quality until the time of feeding. When food is thawed in standing or running water, cold water shall be used. All foods shall

be fed to the marine mammals within 24 hours following the removal of such foods from the freezers for thawing, or if the food has been thawed under refrigeration, it must be fed to the marine mammals within 24 hours of thawing.

5. Section 3.107 is revised to read as follows:

**§ 3.107 Sanitation.**

(a) *Primary enclosures.* (1) Animal and food waste in areas other than the pool of water shall be removed from the primary enclosures at least daily, and more often when necessary in order to provide a clean environment and minimize health and disease hazards.

(2) Particulate animal and food waste, trash, or debris that enters the primary enclosure pools of water shall be removed at least daily, or as often as necessary to maintain the required water quality and to minimize health and disease hazards to the marine mammals contained therein.

(3) The wall and bottom surfaces of the primary enclosure pools of water shall be cleaned as often as necessary to maintain proper water quality. Natural organisms (such as algae, coelenterates, or molluscs, for example) that do not degrade water quality as defined in § 3.106, prevent proper maintenance, or pose a health or disease hazard to the animals shall not be considered contaminants.

(b) *Food preparation.* Equipment and utensils used in food preparation shall be cleaned and sanitized after each use. 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 in 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 or 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 primary enclosures housing marine mammals except when deemed essential by an attending veterinarian.

6. Section 3.108 is revised to read as follows:

**§ 3.108 Employees or attendants.**

(a) A sufficient number of adequately trained employees or attendants, responsible to management and working in concert with the attending veterinarian, 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 demonstrable experience in marine mammal husbandry and care.

(b) The facility will provide and document participation in and successful completion of a facility training course for such employees. This training course will include, but is not limited to, species appropriate husbandry techniques, animal handling techniques, and information on proper reporting protocols, such as recordkeeping and notification of veterinary staff for medical concerns.

(c) Any training of marine mammals shall be done by or under the direct supervision of experienced trainers.

(d) Trainers and handlers must meet professionally recognized standards for experience and training.

7. Section 3.109 is revised to read as follows:

**§ 3.109 Separation.**

Marine mammals, whenever known to be primarily social in the wild, shall be housed in their primary enclosure with at least one compatible animal of the same or biologically related species, except when the attending veterinarian, in consultation with the husbandry/training staff, determines that such housing is not in the best interest of the marine mammal's health or well-being. However, marine mammals which are not compatible shall not be housed in the same enclosure. Marine mammals shall not be housed near other animals that cause them unreasonable stress or discomfort, or interfere with their good health. Animals housed separately must have a written plan, approved by the attending veterinarian, developed in consultation with the husbandry/training staff, which includes information on the justification for the length of time the animal will be kept separated or isolated, type and frequency of enrichment, and

interaction if appropriate, and provisions for periodic review of the plan by the attending veterinarian. Marine mammals that are separated for nonmedical purposes must be held in facilities which meet minimum space requirements as outlined in § 3.104.

8. Section 3.110 is revised to read as follows:

**§ 3.110 Veterinary care.**

(a) Newly acquired marine mammals shall be isolated from resident marine mammals. Animals with a known medical history shall be isolated unless or until the newly acquired animal(s) can be reasonably determined to be in good health by the attending veterinarian. Animals without a known medical history shall be isolated until it is determined that the newly acquired animal(s) is (are) determined to be in good health by the attending veterinarian. Any communicable disease condition in a newly acquired marine mammal must be remedied before it is placed with resident marine mammals, unless, in the judgement of the attending veterinarian, the potential benefits of a resident animal(s) as a companion(s) to the newly acquired animal outweigh the risks to the resident animal(s).

(b) Holding facilities shall be in place and available to meet the needs for isolation, separation, medical treatment, and medical training of marine mammals. Marine mammals that are isolated or separated for nonmedical purposes must be held in facilities which meet minimum space requirements as outlined in § 3.104. Holding facilities used only for medical treatment and medical training, need not meet the minimum space requirements as outlined in § 3.104. Holding of a marine mammal in a medical treatment or medical training enclosure which does not meet minimum space requirements for periods longer than 2 weeks must be noted in the animal's medical record and justified therein by the attending veterinarian. If holding in such enclosures for medical treatment and/or medical training is to last longer than 2 weeks, such extension must be justified in writing by the attending veterinarian on a weekly basis. In natural lagoon or coastal enclosures where isolation cannot be accomplished, since water circulation cannot be controlled or isolated, separation of newly acquired marine mammals shall be accomplished using separate enclosures situated within the facility to prevent direct contact and to minimize the risk of potential airborne and water cross-

contamination between newly acquired and resident animals.

(c) Any holding facility used for medical purposes which has contained a marine mammal(s) with an infectious or contagious disease shall be cleaned and/or sanitized in a manner prescribed by the attending veterinarian. No healthy animals shall be introduced into this holding facility prior to such cleaning and/or sanitizing procedures. Any marine mammal exposed to a contagious animal shall be evaluated by the attending veterinarian and monitored and/or isolated for an appropriate period of time as determined by the attending veterinarian.

(d) Individual animal medical records must be kept and made available for APHIS inspections. These medical records shall include at least the following information:

(1) Animal ID/name, a physical description, including any identifying markings, scars, etc., age, and sex; and  
(2) Physical examination information, including but not limited to length, weight, physical examination results by body system, identification of all medical and physical problems with proposed plan of action, all diagnostic test results, and documentation of treatment.

(e) A copy of the individual animal medical record shall accompany any marine mammal upon its transfer to another facility, including contract or satellite facilities.

(f) All marine mammals shall be visually examined by the attending veterinarian at least semiannually and shall be physically examined under the supervision of and when determined to be necessary by the attending veterinarian. All cetaceans and sirenians shall be physically examined by the attending veterinarian at least annually, unless APHIS grants an exception from this requirement based on considerations related to the health and safety of the cetacean or sirenian. These examinations shall include, but are not limited to, a hands-on physical examination, hematology and blood chemistry, and other diagnostic tests as determined by the attending veterinarian.

(g)(1) A complete necropsy, including histopathology samples, microbiological cultures, and other testing as appropriate, shall be conducted by or under the supervision of the attending veterinarian on all marine mammals that die in captivity. A preliminary necropsy report must be prepared by the veterinarian listing all pathologic lesions observed. The final necropsy report shall include all gross and

histopathological findings, the results of all lab tests performed, and a pathological diagnosis.

(2) Necropsy records will be maintained at the facility for a period of 3 years and must be presented to APHIS inspectors when requested.

9. Section § 3.112 is revised to read as follows:

**§ 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 or 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, and that is not accompanied by a health certificate signed by the attending veterinarian stating that the animal was examined within the prior 10 days and found to be in acceptable health for transport: *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 or 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 transport 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, signed by the consignor, stating that the primary transport enclosure complies with § 3.113 of the standards, unless such primary transport enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the marine mammal without causing suffering or injury to such marine mammal. A copy of such certificate shall accompany the shipment to destination. The certificate

shall include at least the following information:

(1) Name and address of the consignor;

(2) The number, age, and sex of animals in the primary transport enclosure(s);

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

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

(c) Carriers or intermediate handlers whose facilities fail to maintain a temperature within the range of 7.2 °C (45 °F) to 23.9 °C (75 °F) 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 or of any State or local government, or by any person (including any licensee or registrant under the Act, as well as any private individual) if the consignor furnishes to the carrier or intermediate handler a certificate executed by the attending 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 a specific air temperature range lower or higher than those prescribed in §§ 3.117 and 3.118. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) The number, age, and sex 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 an air temperature range of \_\_\_\_\_"); and

(4) The signature of the attending veterinarian and the 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.

10. Section 3.113 is revised to read as follows:

**§ 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 that 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 or hazardous openings 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 and potential treatment 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 be not less than 20 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 7.6 centimeters (3.0 inches) between the enclosures and any adjacent cargo or conveyance wall;

(10) Be constructed so as to provide sufficient air circulation space to maintain the temperature limits set forth in the regulations; and

(11) 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 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 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 pinnipeds, polar bears, and sea otters, each animal has sufficient space to turn about freely in a stance whereby all four feet or flippers are on the floor and the animal can sit in an upright position and lie in a natural position;

(2) 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 animals may be restricted in their movements according to professionally accepted 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) shall be allowed visual and olfactory contact whenever reasonable. Female marine mammals shall not be transported in the same primary enclosure with any mature 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. Within the primary enclosures used to transport marine mammals, the animals will be

maintained on sturdy, rigid, solid floors with adequate drainage.

(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 clearly marked on top (when present) and on at least one side, or on all sides whenever possible, with the words "Live Animal" or "Wild Animal" in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(g) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment or be in the possession of the shipping attendant.

(h) When a primary transport enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh, or smooth expanded metal.

11. Section 3.114 is revised to read as follows:

**§ 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. All primary conveyances used shall be sufficiently temperature-controlled to provide an appropriate environmental temperature for the species involved, to provide for the safety and comfort of the marine mammal, or other appropriate safeguards (such as, but not limited to, cooling the animal with cold water, adding ice to water-filled enclosures, and use of fans) shall be employed to maintain the animal at an appropriate temperature.

(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) Marine mammals shall only be placed in animal cargo spaces that have a supply of air sufficient for each live animal contained therein. Primary

transport 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.

(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 precaution is taken to prevent such injury.

(g) Adequate lighting must be available for marine mammal attendants to properly inspect their charges at any time. If such lighting is not provided by the carrier, provisions must be made by the shipper to supply such lighting.

12. Section 2.115 is revised to read as follows:

**§ 3.115 Food and drinking water requirements.**

(a) Those marine mammals which require drinking water shall be offered potable water within 4 hours of being placed in the primary transport enclosure for transport in commerce. Marine mammals shall be provided water as often as necessary and appropriate for the species involved to prevent dehydration which would jeopardize the good health and well-being of the animals.

(b) Marine mammals being transported in commerce shall be offered food as often as necessary and appropriate for the species involved or as determined by the attending veterinarian.

13. Section 3.116 is revised to read as follows:

**§ 3.116 Care in transit.**

(a) A licensed veterinarian, employee, and/or attendant of the shipper or receiver of any marine mammal being transported, in commerce, knowledgeable and experienced in the area of marine mammal care and transport, shall accompany all marine mammals 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. Any transport of greater than 2 hours duration requires a transport plan approved by the

attending veterinarian, to include the specification of the necessity of the presence of a veterinarian during the transport. If the attending veterinarian does not accompany the animal(s), communication with the veterinarian must be maintained in accordance with § 2.40(b)(3) of this chapter.

(b) The following marine mammals shall only be transported in commerce when the transport of such marine mammals has been determined to be appropriate by the attending veterinarian:

(1) A pregnant animal in the last half of pregnancy;

(2) A dependent unweaned young animal;

(3) A nursing mother with young; or  
(4) An animal with a medical condition requiring veterinary care, that would be compromised by transport.

The attending veterinarian shall note on the accompanying health certificate the existence of any of the above conditions. The attending veterinarian shall also determine whether a veterinarian should accompany such marine mammals during transport.

(c) Carriers shall inform the crew as to the presence of the marine mammal(s) on board the craft, inform the individual accompanying the marine mammal(s) of any unexpected delays as soon as they become known, and accommodate, except as precluded by safety considerations, requests by the shipper or his agent to provide access to the animal(s) or take other necessary actions for the welfare of the animal(s) if a delay occurs.

(d) A sufficient number of employees or attendants 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 or preventing the drying of the skin by such methods as intermittent spraying of water or application of a nontoxic emollient;

(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) Keeping the animal cooled and/or warmed sufficiently to prevent overheating, hypothermia, or temperature related stress; and

(5) Calming such marine mammals to avoid struggling, thrashing, and other unnecessary activity which may cause overheating or physical trauma.

(e) A sufficient number of employees or attendants of the shipper or receiver

of pinnipeds or polar bears being transported, in commerce, shall provide for such pinnipeds and polar bears during periods of transport by:

(1) Keeping the animal cooled and/or warmed sufficiently to prevent overheating, hypothermia, or temperature related stress; and

(2) Calming such marine mammals to avoid struggling, thrashing, and other unnecessary activity which may cause overheating or physical trauma.

(f) Sea otters shall be transported in primary enclosures which contain false floors through which water and waste freely pass to keep the interior of the transport unit free from waste materials. Moisture shall be provided by water sprayers or ice during transport.

(g) Marine mammals shall be removed from their primary transport enclosures only by the attendant(s) or other person(s) capable of handling such mammals safely.

14. Section 3.117 is revised to read as follows:

**§ 3.117 Terminal facilities.**

Carriers and intermediate handlers shall not commingle marine mammal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein marine mammal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.107 of the standards to minimize health and disease hazards. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing marine mammals shall be ventilated with fresh air or air circulated by means of fans, blowers, or an air conditioning system, so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing marine mammals when the air temperature within such animal holding area is 23.9 °C (75 °F) or higher. The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2 °C (45 °F). The air temperature around any polar bear shall not be allowed to exceed 29.5 °C (85 °F) at any time and no polar bear shall be subjected to surrounding air temperatures which exceed 23.9 °C (75 °F) for more than 4 hours at any time. The ambient temperature must be measured in the animal holding area upon arrival of the shipment by the attendant, carrier, or intermediate handler, outside the

transport enclosure which contains such animal at a distance not to exceed 0.91 meters (3.0 feet) from any one of the external walls of the primary transport enclosure and on a level parallel to the bottom of such primary transport enclosure at a point which approximates half the distance between the top and bottom of such transport enclosure.

15. Section 3.118 is revised to read as follows:

**§ 3.118 Handling.**

(a) Carriers and intermediate handlers moving marine mammals from the animal holding area of the terminal facility to the primary conveyance or from the primary conveyance to the animal holding area of the terminal facility shall provide the following:

(1) *Movement of animals as expeditiously as possible.*

(2) *Shelter from overheating and direct sunlight.* When sunlight is likely to cause overheating, sunburn, or discomfort, sufficient shade shall be provided to protect the marine mammals. Marine mammals shall not be subjected to surrounding air temperatures which exceed 23.9 °C (75 °F) unless accompanied by an acclimation certificate in accordance with § 3.112. The temperature shall be measured and read within or immediately adjacent to the primary transport enclosure.

(3) *Shelter from cold weather.* Marine mammals shall be provided with species appropriate protection against cold weather and such marine mammals shall not be subjected to surrounding air temperatures which fall below 7.2 °C (45 °F) unless accompanied by an acclimation certificate in accordance with § 3.112. The temperature shall be measured and read within or immediately adjacent to the primary transport enclosure.

(b) Care shall be exercised to avoid handling of the primary transport enclosure in such a manner that may cause physical harm or distress to the marine mammal contained therein.

(c) Enclosures used to transport any marine mammal shall not be tossed, dropped, or needlessly tilted and shall not be stacked unless properly secured.

Done in Washington, DC, this 18th day of February 1999.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99-4424 Filed 2-22-99; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 94**

[Docket No. 97-079-1]

RIN 0579-AA91

**Importation of Pork and Pork Products From Yucatan and Sonora, Mexico**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations concerning the importation of animal products to relieve certain restrictions on the importation of pork and pork products from the Mexican State of Yucatan. Currently, because of the existence of hog cholera in Mexico, pork and pork products from Yucatan must be heated or cured and dried to certain specifications to be eligible for entry into the United States. This proposal would establish new conditions for the importation of fresh and processed pork and pork products from Yucatan into the United States and would also provide for the movement through areas where hog cholera may exist of pork and pork products from Yucatan in transit to the United States. We are also proposing to amend the regulations that provide for the importation of fresh pork from the Mexican State of Sonora to also allow the importation of pork products from Sonora and to modify the import conditions for Sonoran pork and pork products so that those conditions parallel the import conditions proposed for pork and pork products from Yucatan. These proposed amendments would provide for the importation of pork products from Sonora and for the in-transit movement of Sonoran pork and pork products through areas where hog cholera may exist and would make it clear that pork and pork products from Sonora must be derived from swine slaughtered at federally inspected slaughter plants.

**DATES:** Consideration will be given only to comments received on or before April 26, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-079-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-079-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street

and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231, (301) 734-3399.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until recently, the regulations in parts 91 through 99 governed the importation of animals and animal products according to the recognized animal disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals or animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade—require APHIS to recognize regions, rather than only countries, as well as levels of risk, for the purpose of regulating the importation of animals and animal products into the United States. Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000-56026, Docket No. 94-106-9, effective November 28, 1997) that established procedures for recognizing regions and levels of risk for the purpose of regulating the importation of animals and animal products. In that rule, we also established procedures by which a region may request permission to export animals and animal products to the United States under specified conditions, based on the region's disease status.