

Sunshine Act Meetings

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Thursday, June 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, June 27, 1984, 9:00 a.m.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: FY 1985 Operating Plan.

The Commission will continue its discussion on issues related to the Operating Plan for Fiscal Year 1985, which began on Monday, June 25th.

For a recorded message containing the latest agenda information call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

June 28, 1984.

Sheldon Butts,

Deputy Secretary.

[FR Doc. 84-17377 Filed 6-28-84; 1:37 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, July 3, 1984.

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street N.W. Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84-3-FOIA-45-BA, concerning a request for copies of documents from a charge file.
4. Freedom of Information Act Appeal No. 84-3-FOIA-62-CL, Concerning a request for a document from closed Title VII/ADEA file.
5. Recommendation for Processing Charges Alleging Unequal Benefits Based on Sex-Based Mortality Tables
6. Proposed FY 1984 Title VII Contract to the Anchorage Equal Rights Commission

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION:

Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: June 26, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-17376 Filed 6-28-84; 1:37 pm]

BILLING CODE 6750-05-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 25, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,056-L (amended)—City and County Bank of Knox County, Knoxville, Tennessee, United Southern Bank of Nashville, Nashville, Tennessee, United American Bank in Hamilton County, Chattanooga, Tennessee, City and County Bank of Roane County, Kingston, Tennessee, City and County Bank of Anderson County, Lake City, Tennessee, First Peoples Bank of Washington County, Johnson City, Tennessee, First Commerce Bank of Hawkins County, Rogersville, Tennessee, City and County Bank of Jefferson County, White Pine, Tennessee

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17353 Filed 6-28-84; 12:22 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 25, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter: Application of Federal Finance & Mortgage, Ltd., an operating noninsured industrial bank located at 911 Keeaumoku Street, Honolulu, Hawaii, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject

matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 25, 1984.
Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Deputy Executive Secretary.
[FR Doc. 84-17354 Filed 6-26-84; 12:22 pm]
BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published June 26, 1984.)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 28, 1984, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No. and Company
CAG-35-ST82-322-002 and ICP82-356-002
Dow Intrastate Gas Company.
Kenneth F. Plumb,
Secretary.
[FR Doc. 84-17346 Filed 6-26-84; 10:35 am]
BILLING CODE 6717-02-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:00 p.m., Monday, July 2, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: Limitations on Acceptance of Brokered Deposits,

Recordkeeping for Insurance of Accounts.

J. J. Finn,
Secretary.

[FR Doc. 84-17374 Filed 6-26-84; 1:17 pm]

BILLING CODE 6720-01-M

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FEDERAL HOME LOAN BANK BOARD

Note.—This document supersedes Document No. 84-17258 which was published June 27, 1984.

TIME AND DATE: 2:00 p.m., Friday, June 29, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled for Friday, June 29, 1984, at 2:30 p.m., and added to the open portion of the Bank Board meeting scheduled for Monday, June 2, 1984, at 2:00 p.m.

Finance Subsidiaries

J. J. Finn,
Secretary.

[FR Doc. 84-17375 Filed 6-26-84; 1:17 pm]

BILLING CODE 6720-01-M

8

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 25, 1984.

TIME DATE: 10:00 a.m., Tuesday, July 3, 1984.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, ex rel. Roy Logan v. Bright Coal Company, Inc., and Jack

Collins, Docket No. KENT 81-162-D. (Issues include whether the ALJ erred in concluding that the Secretary would be required to disclose to the respondents certain investigating material.)

2. Westmoreland Coal Company, Docket No. WEVA 82-152-R. (Issues include whether the ALJ erred in concluding that the operator violated 30 CFR 75.202, a mandatory safety standard dealing with roof control.)

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-17339 Filed 6-26-84; 10:35 am]

BILLING CODE 6753-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held the following closed meeting on Friday, June 22, 1984, at 10:45 a.m. at 450 5th Street, N.W., Washington, D.C. to consider the following item.

Litigation matter.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272-3195.

George A. Fitzsimmons,
Secretary.

June 26, 1984.

[FR Doc. 84-17355 Filed 6-26-84; 12:23 pm]

BILLING CODE 8010-01-M

Federal Register

Thursday
June 28, 1984

Part II

Department of Agriculture

Animal and Plant Health Inspection
Service

9 CFR Part 3

Animal Welfare, Marine Mammals; Final
Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 83-122]

Animal Welfare, Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the humane handling, care, treatment, and transportation of marine mammals. The amendments are necessary in order to update the regulations and to provide more appropriate requirements with regard to marine mammals held in captivity.

DATE: The effective date of this rule is July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7833.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the *Federal Register* on July 29, 1983 (48 FR 34710-34721) and corrected on August 5, 1983 (48 FR 35654), the Department proposed to amend the "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" regulations (contained in 9 CFR 3.100 *et seq.* and referred to below as the regulations). The amendments were proposed to update the regulations and to provide more appropriate requirements for the humane handling, care, treatment, and transportation of marine mammals.

The document of July 29, 1983, invited the submission of written comments on or before August 29, 1983, and a document published in the *Federal Register* on August 29, 1983 (48 FR 39078) extended the comment period until September 30, 1983.

A final rule published in the *Federal Register* on August 29, 1983 (48 FR 39035-39036) amended § 3.100 of the regulations to allow facilities operating under variances that had been scheduled to expire on September 20, 1983, to continue operating under such variances until this rule becomes effective. A variance is written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or

more specified provisions of the regulations.

Twenty-one comments were received in response to the proposal. These comments were from representatives of aquariums, zoological parks, humane associations, and other persons from the marine mammal industry. Except as explained below, the provisions in the proposal have been adopted in the final rule as proposed.

Space Requirements

This document amends the regulations concerning space requirements for cetaceans, pinnipeds, sirenians, polar bears, and sea otters.

Space requirements for primary enclosures for certain marine mammals are calculated by using specified formulas based on the average adult lengths of classes of such animals. Table III in § 3.104(b), captioned "Average Adult Lengths of Marine Mammals Maintained in Captivity," is intended to list species, common names, and average adult lengths of certain marine mammals known by the Department to be maintained in captivity or likely to be maintained in captivity.

For certain marine mammals the primary enclosures may consist entirely of a pool of water, but for others, in addition to a pool of water, the primary enclosures must include certain dry areas. Space requirements for primary enclosure pools are measured by specified criteria which may include minimum horizontal dimension (sometimes referred to below as MHD), depth, pool volume, and surface area. MHD is defined in 9 CFR 1.1(tt) as the diameter of a circular pool of water, or in the case of a square, rectangular, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Cetaceans

Cetaceans are an order of marine mammals which includes whales, dolphins, and porpoises. The regulations provide that primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water.

The regulations divide cetaceans into two groups for purposes of determining space requirements. With respect to criteria for the two groups of cetaceans, the proposal stated as follows (48 FR 34710):

The regulations divide cetaceans into two groups for purposes of determining space requirements. Group I cetaceans, mostly animals that usually inhabit waters near land, are animals for which considerable information has been developed concerning

space requirements. Group II cetaceans, animals that live near the surface of the ocean far from land, are animals for which less information has been developed concerning space requirements. Accordingly, the formulas are designed to allow more space for Group II cetaceans than for Group I cetaceans as a precautionary measure in order to help assure that Group II cetaceans have sufficient space in their primary enclosures.

In order to more clearly reflect the intent with respect to the two groups of cetaceans, the criteria is changed as follows:

Group I cetaceans, mostly animals that usually inhabit waters near land, are animals for which it has been determined that they should be able to be adequately maintained under Group I conditions. In general, it was intended that Group I include the slower moving cetaceans and those cetaceans which inhabit coastal waters since coastal animals would be used to shallower waters and more confined space than pelagic (living in open waters) animals. Group II cetaceans, mostly animals that live near the surface of the ocean far from land, are animals for which it has been determined that they should be provided more space than Group I animals. In general, it was intended that this group include the faster moving cetaceans. Most pelagic cetaceans should be included in Group II since pelagic cetaceans are usually faster moving cetaceans.

In addition, prior to the effective date of this document, the regulations in § 3.104(b)(1) (i) and (ii) provided for the determination of the MHD of a pool for cetaceans based, among other things, on a measurement from the tip of the lower jaw to the notch in the tail fluke. However, the Department has been advised that instead it is the standard practice to measure from the tip of the upper jaw or from the most anterior portion of the head in bulbous headed animals. Therefore, the final rule reflects this change.

Table III for Cetaceans

The Department proposed to add the Minke whale (*Balaenoptera acutorostrata*) to the list of Group I cetaceans. Two commenters recommended that the Minke whale be included in the list of Group II cetaceans, based on the assertion that, even though the species is semi-coastal rather than pelagic, the scientific community's experience and understanding of their needs in captivity is extremely limited. No changes are made based on these comments. Although the Department is not aware of any Minke whales in captivity in the United States, information furnished to the Department by the Marine Mammal Advisory Committee of the American Association of Zoological Parks and

Aquariums (AAZPA) indicates that the Minke whale has been successfully maintained in captivity in Japan under conditions similar to Group I requirements. Further, the Department is not aware of any information to indicate otherwise.

The Department proposed to add the Narwhale (*Monodon monoceros*) to the list of Group I cetaceans. One commenter recommended that the Narwhale be included in Group II based on the assertion that although a few have been captured and maintained in captivity for brief periods of time, they have not been successfully maintained and not enough information or experience has been gained to reliably judge their needs for space in captivity. No changes are made based on this comment. The Narwhale is a slow swimmer that inhabits a limited range in Arctic waters. These characteristics indicate that the Narwhale should be included in Group I.

The Department proposed to add the pygmy sperm whale (*Kogia breviceps*) and the dwarf sperm whale (*Kogia simus*) to the list of Group I cetaceans. One commenter recommended that these animals be added to the list of Group II cetaceans based on the assertion that there is no record of such live-captured animals having been maintained in captivity successfully and that the little that is known suggests that they are pelagic species. Based upon a reevaluation, the Department agrees with the commenter's statements and has included the pygmy sperm whale and the dwarf sperm whale in the list of Group II cetaceans.

The Department proposed to amend the listing for Group I cetaceans by changing the specified average adult length of the killer whale (*Orcinus orca*) from 6.86 meters (22.5 feet) to 7.32 meters (24.0 feet). One commenter stated that data in the literature indicates sexual dimorphism should be considered and that the average adult length of males should be 6.4 meters (21.0 feet) and females 6.1 meters (20.0 feet). In support of his recommendation, the commenter cited two studies. However, he indicated that the studies may contain errors. No changes are made based on this comment. There is not sufficient information available to recognize sexual dimorphism for any cetaceans. Information available to the Department, including data concerning known mature adults in captivity in the United States, indicates that the average adult length of the killer whale is 7.32 meters (24.0 feet).

The Department proposed to amend the listing for Group I cetaceans by changing the specified average adult

length of the false killer whale (*Pseudorca crassidens*) from 5.64 meters (18.5 feet) to 4.35 meters (14.3 feet). One commenter recommended that the average adult length remain at 5.64 meters, based on measurements of a school of these animals which was stranded in Scotland. In that sample, the largest animal was 5.69 meters and there were 8 animals in excess of 4.9 meters. The mean length was 5.2 meters (16.1 feet). Also, the commenter stated that records indicate that the range of lengths for the false killer whale is from 4.4 to 5.8 meters. No changes are made based on this comment. It appears that the commenter's suggested average adult length is representative of an isolated group, but not representative of the species as a whole. Field measurements from a large sampling indicate that the statement of the average adult length should be reduced to 4.35 meters (14.3 feet), as proposed.

Both the false killer whale (*Pseudorca crassidens*) and the killer whale (*Orcinus orca*) are currently listed as Group I cetaceans. No changes were proposed with respect to their group listing. One commenter suggested that both be changed to Group II. It was asserted that the false killer whale has been observed feeding on dead porpoises spilling out of tuna purse seine nets thousands of miles from the nearest land. With respect to the killer whale, it was asserted that recent evidence indicates that these animals are pelagic in nature and that the "conventional wisdom" about killer whales inhabiting primarily coastal cold water regions might not be true. No changes are made based on these comments. Although isolated sightings have been made of false killer whales and killer whales in the open sea, family groups are customarily observed in offshore waters, bays and sounds. Further, the large number of these animals successfully maintained in captivity under Group I conditions confirms that they should continue to be listed as Group I cetaceans.

The beluga (*Delphinapterus leucas*) is listed as a Group I cetacean with an average adult length of 4.27 meters (14.0 feet). No changes were proposed with respect to the grouping or the average adult length of the beluga. One commenter recommended that data from the Churchill River (Hudson's Bay) population be used to determine the average adult length of the beluga, based on the assertion that it is likely that future belugas will come from there. The commenter further recommended that sexual dimorphism be considered and that the modal maximal lengths of 3.70 meters (12.1 feet) for males and 3.10

meters (10.2 feet) for females, as given by Sergeant and Brodie (1969), be adopted.

Also, the long-finned pilot whale (*Globicephala melaena*) is listed as a Group I cetacean with an average adult length of 5.79 meters (19.0 feet). No changes were proposed with respect to the grouping or the average adult length of the long-finned pilot whale. One commenter suggested that the average adult length be listed as 4.88 meters (16.0 feet) for males and 3.66 meters (12.0 feet) for females, based on the assertion that the listed length exceeds the lengths at functional maturity and does not account for the marked sexual dimorphism characteristic of the species.

No changes are made with respect to the beluga or the long-finned pilot whale based on these comments. As noted above, there is not sufficient information available to recognize sexual dimorphism for any cetaceans. With respect to the beluga, while the commenter's suggested average adult length may be representative of one group of belugas, it does not appear, based on large samplings, that it is representative of the species as a whole. Further, it would be inappropriate to base average adult length solely on the Churchill River population since the source of future belugas will not necessarily be confined to the Churchill River population. With respect to the long-finned pilot whale, the Department acknowledges that the statement of average adult length may exceed the length at functional maturity. However, the animals may reach full growth in captivity. Therefore, it is necessary that the average adult length represent the average length of a species that has reached its full growth rather than merely the average length at functional maturity.

Group II Cetaceans

The Department proposed to add the Greys white-sided dolphin (*Lagenorhynchus thicola*) to the list of Group II cetaceans. One commenter recommended that the Greys white-sided dolphin not be added to the list of Group II cetaceans based on the assertion that the species does not exist. The commenter further indicated that the species identification was founded only upon limited skull findings that have since been identified as either the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) or the Northern right whale dolphin (*Lissodelphis borealis*), both of which are in the current list of cetaceans. The Department agrees with the commenter

and the Greys white-sided dolphin is not included in the list of cetaceans in the final rule.

The Department proposed to add the Commerson's dolphin (*Cephalorhynchus commersonii*) to the list of Group II cetaceans. One commenter supported the inclusion of this dolphin in Group II based on the assertion that there is limited knowledge and experience concerning its needs in captivity. Two commenters recommended that the Commerson's dolphin be included in the list of Group I cetaceans based on research indicating that the animal's behavior is more characteristic of Group I cetaceans. The Department has determined, based on information provided by AAZPA, that this animal inhabits harbors and coastal areas. Further, based on observation it has been determined that this animal can be adequately maintained under Group I conditions. Accordingly, Commerson's dolphin is included in the list of Group I cetaceans in the final rule.

The Department proposed to add the Atlantic white-sided dolphin (*Lagenorhynchus acutus*) to the list of Group II cetaceans. One commenter recommended that this animal be included in the list of Group I cetaceans based on the assertion that experience indicates that the space requirements for Group I cetaceans would be more than sufficient to allow the Atlantic white-sided dolphin adequate freedom of movement. No changes are made based on this comment. It has been determined that the Atlantic white-sided dolphin is a pelagic species. Further, based on observation it has been determined it should be maintained under Group II conditions in order to be adequately maintained.

The Department proposed to transfer the harbor porpoise (*Phocoena phocoena*) from the list of Group I cetaceans to the list of Group II cetaceans. One commenter supported including the harbor porpoise in Group II, based on the assertion that there is limited knowledge and experience concerning its needs in captivity. Five commenters recommended that the harbor porpoise remain listed as a Group I cetacean based on documentation that the animal is normally found in harbors, estuaries, and coastal rivers. Data available to the Department indicate that the harbor porpoise is normally found in harbors, estuaries, and coastal rivers. Further, based on observation the Department has determined that the harbor porpoise can be adequately maintained under Group I conditions. Therefore, the

harbor porpoise is included in the list of Group I cetaceans in the final rule.

One commenter recommended that a re-analysis of the average adult lengths for cetaceans be made, giving consideration to wild adult cetaceans as well as adults in captivity and substantiating the listing with an appendix which lists the range of lengths for each species and which divides the species by sex where applicable. No changes are made based on this comment. The average adult lengths are based on information available concerning the animals both in captivity and in the wild. Further, as more information becomes available, the Department will consider amending the stated average adult lengths. In addition, as noted above, there is not sufficient information available to recognize sexual dimorphism for any cetaceans. Also, there does not appear to be a need for establishing a range of lengths for cetaceans under the regulations.

Sirenians

No changes were proposed concerning the space requirements for primary enclosures for housing sirenians. One commenter requested that the 24 feet MHD and the 20 percent MHD adjustment that were proposed for cetaceans also apply to sirenians. Another commenter suggested that the minimum depth requirement for sirenians be greater than that for similar length cetaceans, based on their different behavioral needs. In this connection it was asserted that a considerable portion of the daily activity of sirenians (especially resting time) is spent with their bodies in a vertical position whereas cetaceans spend relatively more time in a horizontal position. No changes are made based on these comments. Information available to the Department indicates that, compared to most cetaceans, sirenians are docile, slow moving animals. Further, sirenians normally inhabit and feed in shallow areas and spend much time resting at the surface. Additionally, there have been no apparent problems with the present standards for sirenians. It appears that the current requirements provide the minimum space requirements that would generally allow sirenians sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Pinnipeds

Prior to the effective date of this document, Table III in § 3.104(b) listed the average adult length of *Phoca*

vitulina (harbor seal) as 1.68 meters (5.5 feet). The Department proposed to change the average adult length to 1.70 meters (5.6 feet) for males and 1.50 meters (4.9 feet) for females. The Department also proposed to add to the list of Group I pinnipeds another species of harbor seal, *Phoca larga*, with the same average adult lengths as proposed for *Phoca vitulina*. One commenter objected to these proposed lengths for both *Phoca vitulina* and *Phoca larga*, based on his experience as an exhibitor of three adult females, all under 4.6 feet in length, and one adult male, under 5 feet in length. No changes are made based on these comments. Although a limited sampling of harbor seals may indicate lengths shorter than those proposed, it appears, based on a large sampling, that the statement of average adult lengths of these animals should be adopted as proposed.

The Department proposed to change the statement of the average adult length of the Northern elephant seal (*Mirounga angustirostris*) from 5.18 meters (17.0 feet) for both males and females to 5.00 meters (16.4 feet) for males and 3.00 meters (9.8 feet) for females. Three commenters asserted that the proposed lengths should be changed to 3.96 meters (13.0 feet) for males and 2.49 meters (8.2 feet) for females, based on data from extensive field measurements taken over a period of 15 years. The lengths stated in the proposal were in error and the Department agrees with the commenters. Therefore, the average adult lengths of the Northern elephant seal are changed accordingly.

The Department proposed to separate pinnipeds into Groups I and II. Group I pinnipeds would consist of those pinnipeds generally considered to be gregarious and social animals. Group II would consist of those pinnipeds that are considered to be more aggressive animals. One commenter specifically supported the division because it would provide additional space for the more aggressive species. Another commenter objected to dividing pinnipeds into two groups based on the assertion that many pinnipeds are social only at certain times of the year, such as the breeding season, and are solitary the rest of the time. No changes are made based on this comment. Some pinnipeds are more aggressive at certain times of the year; other pinnipeds are aggressive year round. However, they are maintained in the same facility year round. Therefore, it is necessary to ensure that they have sufficient space year round so that they will have sufficient space for the times they are aggressive.

The Department proposed to include the following animals, among others, in the list of Group I pinnipeds:

Ribbon seal (*Phoca fasciata*),

Harbor seal (*Phoca largi*),

Baikal seal (*Phoca sibirica*),

Crabeater seal (*Lobodon*

carcinophagus),

Ross seal (*Ommatophoca rossi*), and

Leopard seal (*Hydrurga leptonyx*).

One commenter recommended that these animals be included as Group II species, based on the assertion that their patterns of dispersion during breeding, and to some degree outside of breeding, are more similar to the three Group II species than to the other Group I species. No changes are made based on this comment. There may be some similarity in patterns of dispersion in the wild between Group I and Group II pinnipeds. However, observations indicate that the sociability level of these pinnipeds fits with the Group I classification.

In Table III as proposed, some of the Group I pinnipeds were marked with a double asterisk (**). It was proposed that any Group I pinnipeds maintained together be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males come from the same species. The California sea lion (*Zalophus californianus*) was listed in the proposal as a Group I pinniped but was not marked with a double asterisk. Two commenters recommended that this animal be included among those species for which two or more sexually mature males housed together would change their status to Group II. The recommendation was based on the assertion that all the evidence of their aggressive behavior is comparable to that seen in other otariids and that all the other otariids listed in Table III change to Group II when two or more males are put together. No changes are made based on these comments. Extensive numbers of California sea lions, with two or more sexually mature males housed together, have been maintained in captivity under Group I conditions. Observation of their level of sociability indicates that they are properly classified in Group I.

Prior to the effective date of this document, § 3.104(d)(2) of the regulations provided that the dry resting or social activity area of the primary enclosure for all pinnipeds (exclusive of the pool of water) shall be calculated as follows:

The minimum size of the dry resting or social activity area of the primary enclosure

for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting and social activity area shall be computed using the following method: List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following examples. Square the average adult length of the sixth pinniped and all additional pinnipeds. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting and social activity area required for such pinnipeds. * * *

The Department proposed to retain these provisions for calculating the dry resting or social activity area for the primary enclosures housing Group II pinnipeds, or for a mixture of Group I and Group II pinnipeds. It was further proposed that if only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

The Department further proposed to calculate the dry resting or social activity area for Group I pinnipeds as follows:

Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area is twice the square of the average adult length of that single Group I pinniped.

Two commenters suggested that the proposed sizes of the dry resting area (DRA) for pinnipeds would be too large. One commenter asserted that pinnipeds need a DRA of no more than 10 square feet per animal, based on experience with 14 seals using 32 square feet for years with no ill effects. The other commenter asserted that a DRA is not necessary because the animals would not use it for its intended purpose. It was suggested that the DRA for 1 pinniped should be the average length squared and the DRA for each additional pinniped should be twice its average adult length. No changes are made based on these comments. Based on observation, it is clear that pinnipeds do use DRA's as a social activity area, and that the DRA sizes should be

adopted as proposed. Although at times pinnipeds do pile up in one area, they also often spend time separate from other pinnipeds. The DRA sizes as proposed are necessary to accommodate them.

Polar Bears

The regulations provide that primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den.

Prior to the effective date of this document, § 3.104(e) provided, among other things, that the pool of water for one or two polar bears shall be at least 2.44 meters (8.0 feet) by 3.66 meters (12.0 feet) with a minimum depth of 1.52 meters (5.0 feet). It was proposed that these provisions be amended to provide that the pool of water for one or two polar bears shall have a minimum horizontal dimension (MHD) of not less than 2.44 meters (8.0 feet), a surface area of at least 8.93 square meters (96.0 square feet), and a minimum depth of 1.52 meters (5.0 feet). One commenter supported the proposed changes in space requirements. Another commenter opposed these requirements, based on the assertion that he kept polar bears in a pool smaller than required by the proposed regulations without any apparent damage to the animals. No changes are made based on these comments. Observation indicates that the space requirements set forth in the final rule are necessary in order to allow polar bears sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Another commenter suggested that polar bears be removed from the list of marine mammals based on the assertion that they are not marine mammals. No changes are made based on this comment. These regulations are issued under the Animal Welfare Act. Polar bears are subject to regulation under this Act regardless of whether they are classified as marine mammals. Although there may be some disagreement, the polar bear is generally recognized by the scientific community as a marine mammal. It should also be noted that Congress specifically recognized the polar bear as a marine mammal in the Marine Mammal Protection Act (16 U.S.C. 1362(5)).

Sea Otter

Prior to the effective date of this document, § 3.104(f) provided, among other things, that the minimum horizontal dimension (MHD) of the pool of water for sea otters shall be at least

twice the length of the average adult sea otter contained therein and that the pool shall not be less than 0.91 meters (3.0 feet) deep. The Department proposed to amend these provisions to provide that the MHD of the pool of water for sea otters shall be at least four times the average adult length of the sea otter and that the pool shall not be less than 1.22 meters (4.0 feet) deep. Two commenters recommended that the MHD be changed to three times the average adult length of the sea otter and that the pool be not less than .91 meters (3.0 feet) deep. The proposed MHD and the proposed depth of the pool were in error and were intended to be the same as those recommended by the commenters. The commenters' recommended changes are included in the final rule. Based on observation, it has been determined that this will allow sufficient space to make postural and social adjustments with adequate freedom of movement.

The minimum dry resting area for sea otters is based on their average adult length. Prior to the effective date of this document, the regulations in § 3.104(f)(3) provided that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the square of the sea otter's average adult length by 3.14." It was proposed that this provision be amended to require that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14." One commenter opposed any reduction in DRA for sea otters, based on the assertion that the current DRA is not excessively large. No changes are made based on this comment. Based on observations over the past few years, it appears that the previously required DRA was excessively large and that the proposed DRA would be adequate. Further, it should be noted that sea otters spend 90 percent or more of their time in the water.

Variances

Proposed § 3.100 set forth provisions for the granting of variances. Proposed paragraph (b) of that section set forth application procedures for certain variances. Proposed paragraph (g) contained provisions concerning variances for research facilities as follows:

(g) A research facility may be granted a variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. Any time limitation

stated in this section shall not be applicable in such case.

One commenter questioned whether the application procedures in paragraph (b) were applicable to research facilities. Under the provisions of § 3.100 (b) and (g) the application procedures are applicable to research facilities.

Proposed § 3.100(b) stated that an application for a variance, among other things, must specify "[t]he age and health status of the animals involved," and "[t]he specific reasons why a variance would be in the best interest of the marine mammals involved."

Two commenters suggested that the application include information from the attending veterinarian concerning the health status of the animals involved, and whether the granting of the variance requested would be detrimental to the animals involved. The Department agrees that obtaining this information from the attending veterinarian would be helpful for determining whether a variance should be granted. Therefore, the provisions in § 3.100(b) are amended accordingly.

One commenter suggested that the proposed requirement concerning age and health status be amended to read "age and health status of the animals involved, if known." This suggestion was based on the assertion that the ages of marine mammals rarely are known and the assertion that health status ordinarily is determined from clinical criteria and therefore relative. The Department agrees that the exact age of a marine mammal may not be known and that the health status is relative and a matter of opinion. However, it is necessary that this information be submitted and that it be as accurate as possible in order to help the Department to make a determination concerning a variance. As noted above, the final rule provides that the application include a statement from the attending veterinarian concerning the health status of the animals involved. It appears that the attending veterinarian would also be best able to determine the age of the animals involved. Therefore, the final rule is changed accordingly.

Proposed § 3.100(b) also stated that an application for a variance, among other things, must include information concerning "[t]he specific reasons why a variance would be in the best interest of the marine mammals involved." One commenter suggested that this be changed to ask for reasons why the facility cannot comply based on the assertion that, with the possible exception of old and infirm animals, any variance would not be "in the best interest of the marine mammals

involved." It was intended that the response to this request for information in the application would provide specific reasons in support of granting the variance. Therefore, § 3.100(b) of the final rule is rewritten to request "Specific reasons why a variance is requested."

Another commenter suggested that a new entry should be added to the application provisions, requesting "such other information as the Deputy Administrator may require." No changes are made based on this comment. It does not appear that it is necessary to request any information for the application other than that included in the final rule.

With respect to consideration of an application for a variance, proposed § 3.100(c) provided:

(c) After receipt of an application for a variance, the Deputy Administrator may require the submission in writing of a recommendation by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals. Such a recommendation will be required only in those cases when the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. The cost of such recommendation is to be paid by the applicant.

One commenter asserted that the AAZPA constitutes an industry group and further asserted that getting all the advice from the industry is highly questionable. The commenter also recommended that one of the two experts should be selected by the environmental and humane groups who make up the Monitor consortium and who jointly possess a wide expertise. No changes are made based on this comment. The AAZPA is an association with a wide range of membership including highly competent professionals from industry, academia, and government. Also, the AAZPA has access to a broad spectrum of expertise regarding marine mammals. The recommendation of experts by the AAZPA would not preclude the use of experts from the Monitor consortium. Further, it should be noted that the experts must be approved by the Deputy Administrator.

Another commenter suggested that proposed § 3.100(c) be modified to allow the Deputy Administrator the necessary

latitude to get expert advice on the potential adverse impacts of such maintenance from as many and whichever experts the Deputy Administrator deems necessary. No changes are made based on this comment. The regulations would not prevent the Deputy Administrator from seeking advice as he deems necessary.

As noted above, proposed § 3.100(c) provided that the recommendations of experts would concern "whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals." One commenter suggested that this language should be reworded so that the recommendation would concern, "potential adverse impacts on the animals involved or on other matters relating to the effects of the requested variance on the health and well-being of the animals involved." The Department accepts this suggestion as more accurately stating the intended purpose of the experts' recommendation. The final rule reflects this change.

With respect to the length of time for which variances may be granted, proposed § 3.100 (d) and (f) provided:

(d) Variances granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement may be granted for up to the life of the marine mammals involved. Otherwise, variances shall be granted for a period not exceeding September 20, 1985. *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator by July 20, 1985. Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance by September 20, 1985.

(f) Any facility housing marine mammals that does not meet all of the space requirements as of September 20, 1983, must meet all of the requirements by November 20, 1983, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before November 20, 1983.

One commenter suggested that the date of September 20, 1985, in § 3.100(d) be changed to March 31, 1986, in order to allow additional time to build facilities. It was intended that variances, other than those granted for up to the life of the marine mammals involved, expire two years after the effective date of the final rule. Therefore, the final rule

provides that such variances shall be granted for a period not exceeding July 30, 1986.

Another commenter suggested that the proposed variance period be for three years, rather than two as was intended, based on the assertion that institutions may require several years to meet the requirements. The final rule provides, as proposed, that under circumstances deemed justified by the Deputy Administrator, a maximum extension of one year may be granted to attain full compliance. Consideration for the one-year extension is limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance. If an extension were granted the variance period would be for up to three years. It does not appear necessary to allow a three-year variance period except under these circumstances.

Another commenter asserted that any extension of the variance deadline or the allowance of a variance for ill or infirm marine mammals would not be fair to those persons who already comply with the regulations without a variance. No changes are made based on this comment. Although the granting of variances may not seem fair to some persons, the variance system in the final rule is necessary in order to avoid situations detrimental to the health and well-being of the marine mammals affected by the regulations.

It was also intended that § 3.100(f) provide that any facility housing marine mammals that does not meet all of the space requirements by the effective date of the final rule, must meet all of the requirements within 60 days after the effective date of the final rule, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before 60 days after the effective date of the final rule. Section 3.100(f) is changed to reflect this intent.

Miscellaneous

Section 3.101(a) sets forth construction requirements for facilities housing marine mammals. Prior to the effective date of this document, § 3.101(a)(3) provided that:

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

The Department proposed to delete "having a nonporous, waterproof finish." However, the Department did not propose to delete the requirement that the primary enclosure pool, including ramps for entering or leaving the pool, be constructed of materials which facilitate proper cleaning and disinfection and it is necessary to retain these provisions. It appears that only ramps and haulout areas and natural sea water pools subject to tidal action could have other than a nonporous, waterproof finish and still be adequately cleaned and disinfected. Ramps and haulout areas are customarily constructed of materials that can be readily cleaned and disinfected, or feasibly replaced. Further, tidal action naturally would have a cleaning and disinfecting effect on natural seawater pools. However, it appears that pools not subject to tidal action must be constructed of materials having a nonporous, waterproof finish in order to facilitate proper cleaning and disinfection. Therefore, the provisions of § 3.101(a)(3) are clarified to provide that any primary enclosure pool, except for a natural seawater pool subject to tidal action, must be constructed of materials having a nonporous, waterproof finish.

Prior to the effective date of this document, § 3.110(a) provided that:

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

The Department proposed to extend these provisions to pinnipeds. Seven commenters supported the proposed requirement that pinnipeds be accompanied during transportation, based on the record of 15 cases of pinniped mortalities during transit in 1983, and based on the assertion that such an employee or attendant would be able to provide for the health and well-being of the animal by taking a variety of steps that do not require the presence of a veterinarian. Two commenters objected to this proposed requirement. In support of their objections, it was asserted: (1) That such a requirement would be a financial burden; (2) that there is no evidence that the presence of an attendant would reduce mortality; (3) that an individual accompanying a pinniped shipment by commercial air transport would not be allowed to travel in the same compartment and would,

therefore, be unable to determine any need for immediate veterinary care; and (4) that most pinnipeds can be shipped by air in a manner similar to the shipment of many land mammals with no extraordinary complications during shipment. No changes are made based on these comments. The physiology and anatomy of pinnipeds is different from that of most land animals and these animals require special conditions for shipment. Even though it could increase the cost of transporting pinnipeds, an employee or attendant of the shipper or receiver of pinnipeds being transported, in commerce, who is knowledgeable in the area of marine mammal care, should accompany pinnipeds during periods of transportation. This is necessary to provide for their good health and well-being, to observe such marine mammals in order to determine whether they need veterinary care, and to obtain any needed veterinary care as soon as possible. Even though in some instances an individual accompanying a pinniped shipment by air would not be allowed to travel in the same compartment, that individual would be available in the event of delays or unusual circumstances to bring the plight of the animal to the attention of appropriate officials and arrange for any necessary care as soon as possible.

With respect to polar bears, the regulations (§ 3.116(d)) specify that they need not be accompanied by an employee or attendant of the shipper or receiver, unless the period of transportation will exceed 24 hours in duration. No changes were proposed. Four commenters suggested that polar bears also be required to be accompanied by an employee or attendant during transportation even for short periods of time. These comments were based on the assertion that the same rationale for requiring that other marine mammals be accompanied is equally applicable to polar bears. No changes are made based on these comments. The Department disagrees with the assertion that the rationale for requiring that other marine mammals be accompanied by an employee or attendant is equally applicable to polar bears. The requirements that certain marine mammals be accompanied by such an employee or attendant were designed to help prevent heat build-up in the marine mammals. Polar bears are better able to tolerate heat and regulate heat loss over short periods of time than are other marine mammals.

One commenter suggested that the regulations should require that a veterinarian accompany marine mammals on long or complicated flights.

No changes are made based on this comment. The major concern for these animals during transportation is heat build-up. Non-veterinarians can provide care to avoid excess heat build-up.

Prior to the effective date of this document, § 3.116(b) required, among other things, that:

An employee or attendant of the shipper or receiver of cetaceans or sirenians being transported, in commerce, shall provide for such cetaceans and sirenians during periods of transport by (1) keeping the skin moist with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin. * * *

The Department proposed to amend these provisions to indicate that these methods are examples of ways to keep the skin moist, but that employees or attendants would not be limited to these methods. One commenter supported the proposal to provide latitude in selection of methods for keeping the skin moist and recommended that language be included to caution that the use of petroleum jelly or other products may have the effect of sealing the skin, preventing cutaneous evaporative cooling, and exacerbating overheating problems. No changes are made based on this comment. The Department recognizes that marine mammals are subject to overheating and that their skin is subject to drying. However, it does not appear necessary to include the suggested caution in the final rule. The person accompanying the animal is required to be knowledgeable in marine mammal care and should be aware of the effects of the use of emollients and able to exercise discretion in their use.

Section 3.117 contains provisions for holding areas for marine mammals in terminal facilities. Prior to the effective date of this document, this section, among other things, provided that:

The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time: *Provided, however,* That no marine mammal shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time.

The requirements that such air temperature not be allowed to exceed 29.5° C. (85° F.) at any time, and that such air temperatures not be allowed to exceed 23.9° C. (75° F.) for more than 4 hours at any time were designed to prevent the animals from becoming overheated. The Department proposed to retain these provisions for polar bears since they would not necessarily be accompanied by an employee or attendant but to delete them for all other marine mammals. Two commenters

opposed the proposed change. In this connection, it was asserted that the change could allow heat build-up for animals with heavy fat layers regardless of whether they are kept moist. No changes are made based on these comments. Regardless of the surrounding air temperature, the employee or attendant can take action to facilitate heat loss. It appears that air temperatures in certain terminal facilities at times may exceed 29.5° C. (85° F.). However, it appears that compliance with the current provisions which require that the skin of cetaceans, sirenians, and sea otters be kept moist during periods of transport (see § 3.116 (b) and (c)), and that marine mammals not be held in a terminal facility for more than 6 hours (see § 3.112(a)) would be sufficient in most cases to prevent excess heat buildup in these animals on those occasions when higher temperatures may occur in terminal facilities. Further, when necessary, the employee or attendant can help facilitate heat loss by such methods as increasing ventilation, icing the flippers, or covering the pinnipeds with damp towels.

One comment suggested that it would be advisable to express maximum and minimum allowable temperatures in terminal facilities in terms of "humiture" rather than temperature alone, based on the assertion that humidity can make a marginally acceptable situation totally unacceptable with regard to temperature. No changes are made based on this comment. Currently, insufficient information is available to establish criteria for marine mammals based on "humiture."

This document also makes certain nonsubstantive changes for purposes of clarity.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the control number 0579-0036.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered with respect to this rule.

Consideration was given whether to change space requirements as explained in the proposed rule and this document. The changes made in the space requirements are made because it appears that such changes would be the minimum space requirements that would generally allow affected animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Consideration was given concerning whether to propose to eliminate provisions for variances or to propose to allow variances under conditions explained in the proposed rule and this document. Further, consideration was given as to the length of time that should be allowed for variances. The final rule allows variances for up to the life of the animals involved if the animals are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, and for facilities within 0.3048 meters (1 foot) of compliance with any space requirement. It appears that if a facility houses animals that are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, the facility must be granted a variance for those animals in order to accomplish the purposes of the Act. Further, in some cases it would appear unreasonable to require renovations if the facilities were within 0.3048 meters (1 foot) of compliance. However, if a facility is more than 0.3048 meters (1 foot) from being in compliance and it is not out of compliance because of such old, ill, or infirm animals, it appears that it is necessary to require that adjustments be made within a reasonable amount of time.

Consideration was also given concerning whether a pinniped being transported in commerce should be required to be accompanied by an employee or attendant of the shipper or receiver. The final rule establishes such a requirement. This appears to be necessary in order that persons are available to observe whether the pinnipeds need veterinary care, and to obtain any needed veterinary care as soon as possible.

It is not anticipated that the adoption of these changes will have a significant impact. Many of the changes will lessen restrictions. Further, it appears that few facilities will have to make changes because of the final rule. Also, the adoption of the proposal to require pinnipeds to be accompanied by an employee or attendant of the shipper or receiver during transportation in commerce will not cause a significant impact because this is already a general industry practice.

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

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Humane animal handling.

PART 3—STANDARDS

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

Accordingly, Subpart E of 9 CFR Part 3 is amended as follows:

1. Section 3.100 is revised to read as follows:

§ 3.100 Special considerations regarding compliance and/or variance.

(a) All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals in captivity must comply with the provisions of this subpart, except that they may apply for and be granted a variance,¹ by the Deputy Administrator, from one or more specified provisions of § 3.104. The provisions of this Subpart shall not apply, however, in emergency circumstances where compliance with one or more requirements would not serve the best interest of the marine mammals concerned.

(b) An application for a variance must be made to the Deputy Administrator in writing. The request must include:

(1) The species and number of animals involved,

(2) A statement from the attending veterinarian concerning the age and health status of the animals involved, and concerning whether the granting of a variance would be detrimental to the marine mammals involved,

(3) Each provision of the regulations that is not met,

¹ Written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of § 3.104.

(4) The time period requested for a variance,

(5) The specific reasons why a variance is requested, and

(6) The estimated cost of coming into compliance, if construction is involved.

(c) After receipt of an application for a variance, the Deputy Administrator may require the submission in writing of a report by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning potential adverse impacts on the animals involved or on other matters relating to the effects of the requested variance on the health and well-being of such marine mammals. Such a report will be required only in those cases when the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. The cost of such report is to be paid by the applicant.

(d) Variances granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy, or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement may be granted for up to the life of the marine mammals involved. Otherwise, variances shall be granted for a period not exceeding July 30, 1986, *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator by May 30, 1986. Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance by July 30, 1986.

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

(f) Any facility housing marine mammals that does not meet all of the space requirements as of July 30, 1984, must meet all of the requirements by September 28, 1984, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before September 28, 1984.

(g) A research facility may be granted a variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. Any time limitation stated in the section shall not be applicable in such case.

2. Sections 3.101(a) (3) and (4) are revised to read as follows:

§ 3.101 Facilities, general.

(a) * * *

(3) Any primary enclosure pool, except for natural seawater pools subject to tidal action, shall be constructed of materials having a nonporous, waterproof finish, which facilitate proper cleaning and disinfection, and shall be maintained in good repair as part of a regular ongoing maintenance program. Any ramps or haul-out areas for primary enclosure pools, and any natural seawater pools subject to tidal action, shall be constructed of materials which facilitates proper cleaning and disinfection and shall be maintained in good repair as part of a regular ongoing maintenance program.

(4) Facilities which utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tidewater action) used for housing marine mammals shall be exempt from the drainage requirements of paragraph (c)(1) of this section, but they must meet the minimum standards with regard to space, depth, and sanitation. The water must be monitored for coliforms and for pH and chemical content, if chemicals are added.

* * *

3. The introductory text in § 3.104(b) and § 3.104 (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii), (c), and (d) is revised to read as follows:

§ 3.104 Space requirements.

* * *

(b) *Cetaceans*. Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. In determining the minimum space required in a pool holding cetaceans, four factors must be satisfied. These are MHD, depth, volume, and surface area. For the purposes of this Subpart, cetaceans are divided into Group I cetaceans and Group II cetaceans as shown in Table III in this section.

(1)(i) *The required minimum horizontal dimension (MHD)* of a pool for Group I cetaceans shall be 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein (as measured in a parallel or horizontal line, from the tip of its upper jaw, or from the most anterior portion of the head in bulbous headed animals, to the notch in the tail fluke²), whichever is greater; except that such MHD measurement may be reduced from the

²The body length of a *Monodon monoceros* (narwhale) is measured from the tip of the upper incisor tooth to the notch in the tail fluke. If the upper incisor is absent or does not extend beyond the front of the head, then it is measured like other cetaceans, from the tip of the upper jaw to the notch in the tail fluke. Immature males should be anticipated to develop the "tusk" (usually left incisor tooth) beginning at sexual maturity.

greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein, whichever is greater.

(ii) The MHD of a pool for Group II cetaceans shall be 7.32 meters (24.0 feet) or four times the average adult length of the longest species of cetacean to be housed therein (as measured in a parallel or horizontal line from the tip of its upper jaw, or from the most anterior portion of the head in bulbous headed animals, to the notch in the tail fluke), whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or four times the average adult length of the longest species of Group II cetacean housed therein, whichever is greater.

(iii) In a pool housing a mixture of Group I and Group II cetaceans, the MHD shall be the largest required for any cetacean housed therein.

(iv) Once the required MHD has been satisfied, the pool size may be required to be adjusted to increase the surface area and volume when cetaceans are added. Examples of MHD and volume requirements for Group I cetaceans are shown in Table I, and for Group II cetaceans in Table II.

TABLE I.¹—GROUP I CETACEANS

Representative average adult lengths		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of two	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters	feet
1.68	5.5	7.32	24	1.83	6	8.11	284.95
2.29	7.5	7.32	24	1.83	6	15.07	529.87
2.74	9.0	7.32	24	1.83	6	21.57	763.02
3.05	10.0	7.32	24	1.83	6	26.73	942.00
3.51	11.5	7.32	24	1.83	6	35.40	1,245.79
3.66	12.0	7.32	24	1.83	6	38.49	1,356.48
4.27	14.0	8.53	28	2.13	7	60.97	2,154.04
5.49	18.0	10.97	36	2.74	9	129.65	4,578.12
5.64	18.5	11.28	37	2.82	9.25	140.83	4,970.33
5.79	19.0	11.58	38	2.90	9.50	152.64	5,384.32
6.71	22.0	13.41	44	3.36	11	237.50	8,358.68
6.86	22.5	13.72	45	3.43	11.25	253.42	8,941.64
7.32	24.0	14.63	48	3.66	12	307.89	10,851.84
8.53	28.0	17.07	56	4.27	14	487.78	17,232.32

¹ All calculations are rounded off to the nearest hundredth. In converting the length of cetaceans from feet to meters, 1 foot equals .3048 meter. Due to rounding of meter figures as to the length of the cetacean, the correlation of meters to feet in subsequent calculations of MHD and additional volume of water required per cetacean, over two, may vary slightly from a strict feet to meters ratio. Cubic meters is based on: 1 cubic foot=0.0283 cubic meter.

TABLE II.¹—GROUP II CETACEANS

Representative average adult length.		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of four	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters ¹	Cubic feet
1.52	5.0	7.32	24	1.83	6	13.28	471.00
1.68	5.5	7.32	24	1.83	6	16.22	569.91
1.83	6.0	7.32	24	1.83	6	19.24	678.24
2.13	7.0	8.53	28	1.83	6	26.07	923.16
2.29	7.5	9.14	30	1.83	6	30.13	1,059.75
2.44	8.0	9.75	32	1.83	6	34.21	1,205.76
2.59	8.5	10.36	34	1.83	6	38.55	1,361.19
2.74	9.0	10.97	36	1.83	6	43.14	1,526.04

¹ Converting cubic feet to cubic meters is based on: 1 cubic foot = 0.0283 of a cubic meter.TABLE III.—AVERAGE ADULT LENGTHS OF MARINE MAMMALS MAINTAINED IN CAPTIVITY ¹

Species	Common name	Average adult length	
		In meters	In feet
Group I Cetaceans:			
<i>Balaenoptera acutorostrata</i>	Minke whale	8.50	27.9
<i>Cephalorhynchus commersonii</i>	Commerson's dolphin	1.52	5.0
<i>Delphinapterus leucas</i>	Beluga whale	4.27	14.0
<i>Monodon monoceros</i>	Narwhale	3.96	13.0
<i>Globicephala melana</i>	Long-finned pilot whale	5.79	19.0
<i>Globicephala macrorhynchus</i>	Short-finned pilot whale	5.49	18.0
<i>Grampus griseus</i>	Risso's dolphin	3.66	12.0
<i>Orcinus orca</i>	Killer whale	7.32	24.0
<i>Pseudorca carassidens</i>	False killer whale	4.35	14.3
<i>Tursiops truncatus</i> (Atlantic)	Bottlenose dolphin	2.74	9.0
<i>Tursiops truncatus</i> (Pacific)	Bottlenose dolphin	3.05	10.0
<i>Inia geoffrensis</i>	Amazon porpoise	2.44	8.0
<i>Phocoena phocoena</i>	Harbor porpoise	1.68	5.5
<i>Pontoporia blainvilliei</i>	Franciscana	1.52	5.0
<i>Sotalia fluviatilis</i>	Tucuxi	1.68	5.5
<i>Platanista</i> , all species	River dolphin	2.44	8.0
Group II Cetaceans:			
<i>Delphinus delphis</i>	Common dolphin	2.59	8.5
<i>Feresa attenuata</i>	Pygmy killer whale	2.44	8.0
<i>Kogia breviceps</i>	Pygmy sperm whale	3.96	13.0
<i>Kogia simus</i>	Dwarf sperm whale	2.90	9.5
<i>Lagenorhynchus acutus</i>	Atlantic white-sided dolphin	2.90	9.5
<i>Lagenorhynchus cruciger</i>	Hourglass dolphin	1.70	5.6
<i>Lagenorhynchus obliquidens</i>	Pacific white-sided dolphin	2.29	7.5
<i>Lagenorhynchus albirostris</i>	White-beaked dolphin	2.74	9.0
<i>Lagenorhynchus obscurus</i>	Duskey dolphin	2.13	7.0
<i>Lissodelphis borealis</i>	Northern right whale dolphin	2.74	9.0
<i>Neophocaena phocaenoides</i>	Finless porpoise	1.83	6.0
<i>Peponocephala electra</i>	Melon-headed whale	2.74	9.0
<i>Phocoenoides dalli</i>	Dall's porpoise	2.00	6.5
<i>Stenella longirostris</i>	Spinner dolphin	2.13	7.0
<i>Stenella coeruleoalba</i>	Striped dolphin	2.29	7.5
<i>Stenella attenuata</i>	Spotted dolphin	2.29	7.5
<i>Stenella plagiodon</i>	Spotted dolphin	2.29	7.5
<i>Steno bredanensis</i>	Rough-toothed dolphin	2.44	8.0

¹ This table contains the species of marine mammals known by the Department to be presently in captivity or that are likely to become captive in the future. Anyone who is subject to the Animal Welfare Act having species of marine mammals in captivity which are not included in this table should consult the Deputy Administrator with regard to the average adult length of such animals.

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
Group I Pinnipeds:					
<i>Arctocephalus gazella</i> **	Antarctic Fur Seal	1.80	1.20	5.9	3.9
<i>Arctocephalus tropicalis</i> **	Amsterdam Island Fur Seal	1.80	1.45	5.9	4.75
<i>Arctocephalus australis</i> **	South American Fur Seal	1.88	1.42	6.2	4.7
<i>Arctocephalus pusillus</i> **	Cape Fur Seal	2.73	1.83	8.96	6.0
<i>Callorhinus ursinus</i> **	Northern Fur Seal	2.20	1.45	7.2	4.75
<i>Eumetopias jubatus</i> **	Steller's Sea Lion	2.86	2.40	9.4	7.9
<i>Hydrurga leptonyx</i>	Leopard Seal	2.90	3.30	9.5	10.8
<i>Mirounga angustirostris</i> **	Northern Elephant Seal	3.96	2.49	13.0	8.2
<i>Mirounga leonina</i> **	Southern Elephant Seal	4.67	2.50	15.3	8.2
<i>Odobenus rosmarus</i> **	Walrus	3.15	2.60	10.3	8.5
<i>Otaria flavescens</i> **	South American Sea Lion	2.40	2.00	7.9	6.6
<i>Phoca caspica</i>	Caspian Seal	1.45	1.40	4.75	4.6
<i>Phoca fasciata</i>	Ribbon Seal	1.75	1.68	5.7	5.5
<i>Phoca largi</i>	Harbor Seal	1.70	1.50	5.6	4.9
<i>Phoca vitulina</i>	Habor Seal	1.70	1.50	5.6	4.9
<i>Zalophus californianus</i>	California Sea Lion	2.24	1.75	7.3	5.7
<i>Halichoerus grypus</i> **	Grar Seal	2.30	1.95	7.5	6.4
<i>Phoca sibirica</i>	Baikal Seal	1.70	1.85	5.6	6.1
<i>Phoca groenlandica</i>	Harp Seal	1.85	1.85	6.1	6.1
<i>Leptonychotes weddelli</i> **	Weddell Seal	2.90	3.15	9.5	10.3

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
<i>Lobodon carcinophagus</i> **	Crabeater Seal	2.21	2.21	7.3	7.3
<i>Ommatophoca rossi</i> **	Ross Seal	1.99	2.13	6.5	7.0
Group II Pinnipeds:					
<i>Erignathus barbatus</i>	Bearded Seal	2.33	2.33	7.6	7.6
<i>Phoca hispida</i>	Ringed Seal	1.35	1.30	4.4	4.3
<i>Cystophora cristata</i>	Hooded Seal	2.60	2.00	8.5	6.6

NOTE.—** Any Group I animals maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males from the same species.

Species	Common name	Average adult length	
		In meters	In feet
Sirenia:			
<i>Dugong dugong</i>	Dugong	3.35	11.0
<i>Trichechus manatus</i>	West Indian Manatee	3.51	11.5
<i>Trichechus inunguis</i>	Amazon Manatee	2.44	8.0
Mustelidae:			
<i>Enhydra lutris</i>	Sea Otter	1.25	4.1

(2) The minimum depth requirement for primary enclosure pools for all cetaceans shall be one-half the average adult length of the longest species to be housed therein, regardless of Group I or Group II classification, or 1.83 meters (6.0 feet), whichever is greater, and can be expressed as $d=L/2$ or 6 feet, whichever is greater. Those parts of the primary enclosure pool which do not meet the minimum depth requirement cannot be included when calculating space requirements for cetaceans.

(3) * * *

(i) The minimum volume of water

required for up to two Group I cetaceans is based upon the following formula:

$$\text{Volume} = \left(\frac{\text{MHD}}{2} \right)^2 \times 3.14 \times \text{depth.}$$

When there are more than two Group I cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group I cetacean in excess of two is based on the following formula:

$$\text{Volume} = \left(\frac{\text{Average Adult Length}}{2} \right)^2 \times 3.14 \times \text{depth.}$$

See Table I for required volumes.

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

$$\text{Volume} = \left(\frac{\text{MHD}}{2} \right)^2 \times 3.14 \times \text{depth.}$$

When there are more than four Group II cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group II cetacean in excess of four is based on the following formula:

$$\text{Volume} = (\text{Average Adult Length})^2 \times 3.14 \times \text{depth}$$

See Table II for required volumes.

* * * * *

primary enclosure pool which do not meet the minimum depth requirements cannot be included when calculating space requirements for sirenians.

(3) A pool which satisfies the required MHD and depth shall be adequate for one or two sirenians. Volume and surface area requirements for additional animals shall be calculated using the same formula as for Group I cetaceans, except that the figure for depth requirement for sirenians shall be one-half the average adult length or 1.52 meters (5.0 feet), whichever is greater.

(d) Pinnipeds. (1) Primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the surface of the water to allow easy access for entering or leaving the pool. For the purposes of this subpart, pinnipeds have been divided into Group I pinnipeds and Group II pinnipeds as shown in Table III in this section. In certain instances some Group I pinnipeds shall be considered as Group II pinnipeds. (See Table III).

(2) The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting or social activity area shall be computed using the following methods:

(i) Group I pinnipeds. Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such

(c) Sirenians. Primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water.

(1) The required MHD of a primary enclosure pool for sirenians shall be two times the average adult length of the longest species of sirenian to be housed therein. Calculations shall be based on the average adult length of such sirenians as measured in a horizontal line from the tip of the muzzle to the notch in the tail fluke of dugongs and from the tip of the muzzle to the most distal point in the rounded tail of the manatee.

(2) The minimum depth requirements for primary enclosure pools for all sirenians shall be one-half the average adult length of the longest species to be housed therein, or 1.52 meters (5.0 feet), whichever is greater. Those parts of the

pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area shall be twice the square of the average adult length of that single Group I pinniped. Examples:

(average adult length)² of 1st Group I pinniped + (average adult length)² of 2nd Group I pinniped = Total DRA for two pinnipeds

DRA for one pinniped = $2 \times (\text{average adult length of Group I pinniped})^2$

(ii) *Group II pinnipeds.* List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the

longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following example. Square the average adult length of the sixth pinniped and each additional pinniped. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting or social activity area required for such pinnipeds. If only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

Examples: DRA for 1 Group II Pinniped = $[(\text{Average adult length})^2 \times 1.5] + [(\text{Average adult length})^2 \times 1.4]$

1st pinniped (avg. adult length)² × 1.5 = social and DRA required
2nd pinniped (avg. adult length)² × 1.4 = social and DRA required
3rd pinniped (avg. adult length)² × 1.3 = social and DRA required
4th pinniped (avg. adult length)² × 1.2 = social and DRA required
5th pinniped (avg. adult length)² × 1.1 = social and DRA required
Each pinniped over 5 (avg. adult length)² = social and DRA required

Total minimum social activity and dry resting area required for all pinnipeds housed in a primary enclosure.

If all the pinnipeds in the primary enclosure are of the same species, the same descending order of calculation shall apply. Example: Hooded seal—average adult length of male = 8.5 feet and female = 6.6 feet. In a primary enclosure containing 2 males and 2 females, the social or DRA required would be the sum of $[(8.5)^2 \times 1.5] + [(8.5)^2 \times 1.4] + [(6.6)^2 \times 1.3] + [(6.6)^2 \times 1.2]$.

If two or more sexually mature males are maintained together in a primary enclosure, the dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(iii) *Mixture of Group I and Group II pinnipeds.* In a primary enclosure where a mixture of Group I and Group II pinnipeds is to be housed, the dry resting or social activity area shall be calculated as for Group II pinnipeds. The dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(3)(i) The minimum surface area of a pool of water for pinnipeds shall be at least equal to the dry resting or social activity area required.

(ii) The MHD of the pool shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure; except that such MHD

5. Section 3.104(f) is revised to read as follows:

§ 3.104 Space requirements.

* * * * *

(f) *Sea otters.* (1) Primary enclosures for sea otters shall consist of a pool of water and a dry resting area. The MHD of the pool of water for sea otters shall be at least three times the average adult length of the sea otter contained therein (measured in a horizontal line from the tip of its nose to the tip of its tail) and the pool shall be not less than .91 meters (3.0 feet) deep. When more than two sea otters are housed in the same primary enclosure, additional dry resting area as well as pool volume is required to accommodate the additional sea otters. (See Table V).

(2) The minimum volume of water required for a primary enclosure pool for sea otters shall be based on the sea otter's average adult length. The minimum volume of water required in the pool shall be computed using the following method: Multiply the square of the sea otter's average adult length by 3.14 and then multiply the total by 0.91 meters (3.0 feet). This volume is satisfactory for one or two otters. To calculate the additional volume of water for each additional sea otter above two in a primary enclosure, multiply one-half of the square of the sea otter's average adult length by 3.14, then multiply by 0.91 meters (3.0 feet). (See Table V).

(3) The minimum dry resting area required for one or two sea otters shall be based on the sea otter's average adult length. The minimum dry resting area for one or two sea otters shall be computed using the following method: Square the average adult length of the sea otter and multiply the total by 3.14. When the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14. Using 1.25 meters or 4.1 feet (the average adult length of a sea otter), the calculations for additional space will result in the following figures:

measurement may be reduced by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle.

(iii) The pool of water shall be at least 0.91 meters (3.0 feet) deep or one-half the average adult length of the longest species of pinniped contained therein, whichever is greater. Parts of the pool that do not meet the minimum depth requirement cannot be used in the calculation of the dry resting and social activity area, or as part of the MHD or required surface area of the pool.

* * * * *

4. The fourth sentence in § 3.104(e) is revised to read as follows:

§ 3.104 Space requirements.

* * * * *

(e) * * * The pool of water shall have an MHD of not less than 2.44 meters (8.0 feet) and a surface area of at least 8.93 square meters (96.0 square feet) with a minimum depth of 1.52 meters (5.0 feet) with the exception of any entry and exit area.

TABLE V.—ADDITIONAL SPACE REQUIRED FOR EACH SEA OTTER WHEN MORE THAN TWO IN A PRIMARY ENCLOSURE

Average adult length of sea otter		Resting area		Pool Volume	
Meters	Feet	Square meters	Square Feet	Cubic meters	Cubic feet
1.25	4.1	1.96	6.44	2.23	79.17

§ 3.116 [Amended]

6. By amending § 3.116(a) by adding "pinnipeds," immediately after "sirens,".

7. By amending § 3.116(b)(1) by removing the words "with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin;" and inserting in lieu thereof "or preventing the drying of the skin by such methods as intermittent spraying of water or application of a nontoxic emollient, such as lanolin;".

8. By amending § 3.116(d) by removing "and pinnipeds" in each of the three places it appears, by removing

"pinnipeds and" and by removing "or pinniped".

9. The sixth sentence in § 3.117 is revised to read as follows:

§ 3.117 Terminal facilities.

* * * 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.

* * *

§ 3.118 [Amended]

10. By removing § 3.118(a)(2) and by redesignating § 3.118(a)(3) as § 3.118(a)(2)

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

Done at Washington, D.C., this 21st day of June, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

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