

falling. It must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) This section applies to movement of a nonhuman primate from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

(Approved by the Office of Management and Budget under control number 0579-0093)

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

SOURCE: 44 FR 36874, June 22, 1979, unless otherwise noted.

FACILITIES AND OPERATING STANDARDS

§ 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,⁶ 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,

(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

⁶Written 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.

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 this section shall not be applicable in such case.

[49 FR 26681, June 28, 1984; 63 FR 2, Jan. 2, 1998]

§ 3.101 Facilities, general.

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

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

(3) Any primary enclosure pool, except for natural seawater pools subject to tidal action, shall be constructed of materials having a nonporous, water-proof 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 facilitate 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 tide-

water 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.

(b) *Water and power supply.* Reliable and adequate sources of water and electric power shall be provided by the facility housing marine mammals. Written contingency plans must be submitted to and approved by Veterinary Services regarding emergency sources of water and electric power in the event of failure of the primary sources, when such failure could reasonably be expected to be detrimental to the good health and well-being of the marine mammals housed therein.

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

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

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

(e) *Waste disposal.* Provision shall be made for the removal and disposal of animal and food wastes, dead animals, trash, and debris. Disposal facilities shall be provided and operated in a