

§3.92

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minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning, must be used in any animal holding area containing nonhuman primates when the ambient temperature is 85 °F (29.5 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) for more than four consecutive hours at any time nonhuman primates are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting nonhuman primates who is subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3), outside any primary enclosure containing a nonhuman primate at a point not more than 3 feet (0.91 m.) away from an outside wall of the primary enclosure, on a level that is even with the enclosure and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) holding a nonhuman primate in an animal holding area of a terminal facility must provide the following:

(1) *Shelter from sunlight and extreme heat.* Shade must be provided that is sufficient to protect the nonhuman primate from the direct rays of the sun.

(2) *Shelter from rain or snow.* Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) can hold a nonhuman primate in an animal holding area of a terminal facility upon arrival is the same as that provided in §3.86(f) of this subpart.

§3.92 Handling.

(a) Any person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) who moves (including loading and unloading) nonhuman primates within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible, and must pro-

vide the following during movement of the nonhuman primate:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the nonhuman primate from the direct rays of the sun. A nonhuman primate must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The ambient temperature must be measured in the manner provided in §3.91(d) of this subpart.

(2) *Shelter from rain or snow.* Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which nonhuman primates are placed to move them must be covered to protect the animals when the outdoor temperature falls below 45 °F (7.2 °C). A nonhuman primate must not be exposed to an ambient air temperature below 45 °F (7.2 °C) for a period of more than 45 minutes, unless it is accompanied by a certificate of acclimation to lower temperatures as provided in §3.86(e) of this subpart. The ambient temperature must be measured in the manner provided in §3.91(d) of this subpart.

(b) Any person handling a primary enclosure containing a nonhuman primate must use care and must avoid causing physical harm or distress to the nonhuman primate.

(1) A primary enclosure containing a nonhuman primate must not be placed on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a nonhuman primate must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its

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.