participated in an interactive session; (2) a statistical summary of the number of human participants per month in the SWTD program; and (3) a description of any changes made in the SWTD program since the previous report was submitted.

We would also require, in § 3.111(f)(6), that any incident resulting in injury to either dolphins or humans during an interactive session be reported to APHIS within 24 hours of the incident. Within a week of any such incident, a written report would be required to be submitted to the Administrator. The report would be required to provide a detailed description of the incident and must establish a plan of action for the prevention of further occurrences.

### **Veterinary Care**

In § 3.111(g) of this proposed rule, we are establishing standards for veterinary care and veterinary supervision for SWTD programs. The veterinary care standards set forth in this rule are based on documents developed at a NMFSsponsored workshop by experts in marine mammal medicine and parties experienced in dealing with SWTD animals. We consider these veterinary care standards necessary to safeguard the health of both dolphins and humans participating in interactive programs. The veterinary requirements, discussed below, would require regular monitoring by the attending veterinarian of dolphins used in the programs and of other aspects of the program. This regular monitoring is necessary to help prevent the spread of zoonotic diseases during the program. Additionally, because dolphins often do not exhibit clinical signs of illness until very late in the disease process, early detection of stress or health problems is essential for the well-being of the dolphins.

In § 3.111(g)(1) of this proposed rule, we are requiring that the attending veterinarian conduct on-site evaluations at least once a month of each dolphin used in a SWTD program. The evaluation would have to include a visual inspection of the animal; examination of the behavioral, feeding, and medical records of the animal; and a discussion of each animal with an animal care staff member familiar with the animal. We would require in § 3.111(g)(2) that the attending veterinarian observe an interactive swim sessions at least once a month.

Additionally, under proposed § 3.111(g)(3), the attending veterinarian would be required to conduct a complete physical examination of each dolphin at least once every 6 months. The examination would have to include

a profile of the dolphin, including the following: The dolphins's identification (name and/or number, sex, and age), weight, length, axillary girth, appetite, and behavior. The attending veterinarian would also be required to conduct a general examination to evaluate body condition, skin, eyes, mouth, blow hole and cardio-respiratory system, genitalia, and feces (gastrointestinal status). In addition, the examination would have to include a complete blood count and serum chemistry analysis, and cytology and parasite evaluation of fecal and blow hole smears. As part of the examination, the attending veterinarian would be required to record the nutritional and reproductive status of the dolphin (whether in active breeding program, pregnant, or nursing). While at the site, the attending veterinarian would also be required to examine water quality records and make an assessment of the overall water quality during the preceding month.

In proposed  $\S 3.111(g)(6)$ , we are providing that, should a dolphin used in a SWTD program die, complete necropsy results, including all appropriate histopathology, must be recorded in the animal's individual file and be made available to APHIS officials during facility inspections, or as requested by APHIS. The necropsy would be required to be performed within 48 hours of the dolphin's death, by a veterinarian experienced in marine mammal necropsies. If the necropsy is not to be performed within 3 hours of the discovery of the dolphin's death, the dolphin must be refrigerated. We would require that written results of the necropsy be available in the dolphin's individual file within 7 days after death for gross pathology and within 45 days after death for histopathology.

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

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Under this proposed rule, operators of SWTD programs would be required to meet specified standards for those programs. These standards would include requirements for handling, facility design, reporting, and recordkeeping. Currently, 135 exhibitors in the United States are licensed by APHIS to hold marine mammals. Of this number, four operate SWTD programs. Three of these four exhibitors already meet the standards we are proposing. The fourth exhibitor would have to make certain design changes and provide for additional training to

comply with the proposed standards. The cost of the additional training requirements would be approximately \$15,000. The estimated costs of materials to complete the design changes would be approximately \$850. Based on information provided by the industry concerning the average annual gross revenue of SWTD programs, the additional costs involved in complying with the proposed standards should not pose a significant economic burden on exhibitors.

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

#### **Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

## **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810. Riverdale, MD 20738, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

## **List of Subjects**

9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Humane animal handling, Research facilities.

9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 1 and 3 would be amended as follows: