

### § 3.103

### 9 CFR Ch. I (1-1-01 Edition)

and well-being and to prevent discomfort, in accordance with the currently accepted practices as cited in appropriate professional journals or reference guides, depending upon the species housed therein. Rapid changes in air and water temperatures shall be avoided.

(b) *Ventilation.* Indoor housing facilities shall be ventilated by natural or artificial means to provide a flow of fresh air for the marine mammals and to minimize the accumulation of chlorine fumes, other gases, and objectionable odors. A vertical air space averaging at least 1.83 meters (6 feet) shall be maintained in all primary enclosures housing marine mammals, including pools of water.

(c) *Lighting.* Indoor housing facilities for marine mammals shall have ample lighting, by natural or artificial means, or both, of a quality, distribution, and duration which is appropriate for the species involved. Sufficient lighting must be available to provide uniformly distributed illumination which is adequate to permit routine inspections, observations, and cleaning of all parts of the primary enclosure including any den areas. The lighting shall be designed so as to prevent overexposure of the marine mammals contained therein to excessive illumination.<sup>7</sup>

[44 FR 36874, June 22, 1979; 63 FR 2, Jan. 2, 1998]

#### § 3.103 Facilities, outdoor.

(a) *Environmental temperatures.* Marine mammals shall not be housed in outdoor facilities unless the air and water temperature ranges which they may encounter during the period they are so housed do not adversely affect their health and comfort. A marine mammal shall not be introduced to an outdoor housing facility until it is acclimated to the air and water temperature ranges which it will encounter

therein. The following requirements shall be applicable to all outdoor pools.

(1) The water surface of pools in outdoor primary enclosures housing polar bears and ice or cold water dwelling species of pinnipeds shall be kept sufficiently free of solid ice to allow for entry and exit of the animals.

(2) The water surface of pools in outdoor primary enclosures housing cetaceans and sea otters shall be kept free of ice.

(3) No sirenian or warm water dwelling species of pinnipeds or cetaceans shall be housed in outdoor pools where water temperature cannot be maintained within the temperature range to meet their needs.

(b) *Shelter.* Natural or artificial shelter which is appropriate for the species concerned, when the local climatic conditions are taken into consideration, shall be provided for all marine mammals kept outdoors to afford them protection from the weather or from direct sunlight.

(c) *Perimeter fence.* On and after May 17, 2000, all outdoor housing facilities (*i.e.*, facilities not entirely indoors) must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for polar bears or less than 6 feet high for other marine mammals must be approved in writing by the Administrator. The fence must be constructed so that it protects marine mammals by restricting animals and unauthorized persons from going through it or under it and having contact with the marine mammals, and so that it can function as a secondary containment system for the animals in the facility when appropriate. The fence must be of sufficient distance from the outside of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator. For natural seawater facilities, such as lagoons, the perimeter fence must prevent access by animals and unauthorized persons to the natural seawater facility from the abutting land, and must

<sup>7</sup>Lighting intensity and duration must be consistent with the general well-being and comfort of the animal involved. When possible, it should approximate the lighting conditions encountered by the animal in its natural environment. At no time shall the lighting be such that it will cause the animal discomfort or trauma.

encompass the land portion of the facility from one end of the natural seawater facility shoreline as defined by low tide to the other end of the natural seawater facility shoreline defined by low tide. A perimeter fence is not required:

(1) Where the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(2) Where the outdoor housing facility is protected by an effective natural barrier that restricts the marine mammals to the facility and restricts entry by animals and unauthorized persons and the Administrator gives written approval; or

(3) Where appropriate alternative security measures are employed and the Administrator gives written approval; or

(4) For traveling facilities where appropriate alternative security measures are employed.

[44 FR 36874, June 22, 1979, as amended at 64 FR 56147, Oct. 18, 1999]

### § 3.104 Space requirements.

(a) *General.* Primary enclosures, including pools of water housing marine mammals, shall comply with the minimum space requirements prescribed by this part. They shall be constructed and maintained so that the animals contained therein are provided with sufficient space, both horizontally and vertically so that they are able to make normal postural and social adjustments with adequate freedom of movement, in or out of the water. An exception to these requirements is provided for in § 3.110, "Veterinary care." Primary enclosures smaller than required by the standards are also allowed to be used for temporary holding purposes such as training and transfer. Such enclosures shall not be used for permanent housing purposes or for periods longer than specified by an attending veterinarian.

(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 fluke<sup>8</sup>), 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 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

<sup>8</sup>The 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.