

§3.111

9 CFR Ch. I (1–1–15 Edition)

of the cetacean or sirenian. These examinations must include, but are not limited to, a hands-on physical examination, hematology and blood chemistry, and other diagnostic tests as determined by the attending veterinarian.

(g)(1) A complete necropsy, including histopathology samples, microbiological cultures, and other testing as appropriate, must be conducted by or under the supervision of the attending veterinarian on all marine mammals that die in captivity. A preliminary necropsy report must be prepared by the veterinarian listing all pathologic lesions observed. The final necropsy report must include all gross and histopathological findings, the results of all laboratory tests performed, and a pathological diagnosis.

(2) Necropsy records will be maintained at the marine mammal’s home facility and at the facility at which it died, if different, for a period of 3 years and must be presented to APHIS inspectors when requested.

[66 FR 253, Jan. 3, 2001]

§3.111 Swim-with-the-dolphin programs.

Swim-with-the-dolphin programs shall comply with the requirements in this section, as well as with all other applicable requirements of the regulations pertaining to marine mammals.

(a) *Space requirements.* The primary enclosure for SWTD cetaceans shall contain an interactive area, a buffer area, and a sanctuary area. None of these areas shall be made uninviting to the animals. Movement of cetaceans into the buffer or sanctuary area shall not be restricted in any way. Notwithstanding the space requirements set forth in §3.104, each of the three areas required for SWTD programs shall meet the following space requirements:

(1) The horizontal dimension for each area must be at least three times the average adult body length of the species of cetacean used in the program;

(2) The minimum surface area required for each area is calculated as follows:

(i) *Up to two cetaceans:*

$$\text{Surface Area (SA)} = \left( \frac{3 \times \text{average adult body length (L)}}{2} \right)^2 \times 3.14$$

(ii) *Three cetaceans:*

$$\text{SA} = \left( \frac{3 \times L}{2} \right)^2 \times 3.14 \times 2$$

(iii) *Additional SA for each animal in excess of three:*

$$\text{SA} = \left( \frac{2 \times L}{2} \right)^2 \times 3.14$$

(3) The average depth for sea pens, lagoons, and similar natural enclosures at low tide shall be at least 9 feet. The average depth for any manmade enclosure or other structure not subject to tidal action shall be at least 9 feet. A portion of each area may be excluded when calculating the average depth, but the excluded portion may not be used in calculating whether the interactive, buffer, and sanctuary area meet

the requirements of paragraphs (a)(1), (a)(2), and (a)(4) of this section.

(4) The minimum volume required for each animal is calculated as follows:

$$\text{Volume} = \text{SA} \times 9$$

(b) *Water clarity.* Sufficient water clarity shall be maintained so that attendants are able to observe cetaceans and humans at all times while within the interactive area. If water clarity does not allow these observations, the interactive sessions shall be canceled until the required clarity is provided.

(c) *Employees and attendants.* Each SWTD program shall have, at the minimum, the following personnel, with the following minimum backgrounds (each position shall be held by a separate individual, with a sufficient number of attendants to comply with §3.111(e)(4)):

(1) Licensee or manager—at least one full-time staff member with at least 6 years experience in a professional or managerial position dealing with captive cetaceans;

(2) Head trainer/behaviorist—at least one full-time staff member with at least 6 years experience in training cetaceans for SWTD behaviors in the past 10 years, or an equivalent amount of experience involving in-water training of cetaceans, who serves as the head trainer for the SWTD program;

(3) Trainer/supervising attendant—at least one full-time staff member with at least 3 years training and/or handling experience involving human/cetacean interaction programs;

(4) Attendant—an adequate number of staff members who are adequately trained in the care, behavior, and training of the program animals. Attendants shall be designated by the trainer, in consultation with the head trainer/behaviorist and licensee/manager, to conduct and monitor interactive sessions in accordance with §3.111(e); and

(5) Attending veterinarian—at least one staff or consultant veterinarian who has at least the equivalent of 2 years full-time experience (4,160 or more hours) with cetacean medicine within the past 10 years, and who is licensed to practice veterinary medicine.

(d) *Program animals.* Only cetaceans that meet the requirements of §3.111(e)(2) and (3) may be used in SWTD programs.

(e) *Handling.* (1) Interaction time (*i.e.*, designated interactive swim sessions) for each cetacean shall not exceed 2 hours per day. Each program cetacean shall have at least one period in each 24 hours of at least 10 continuous hours without public interaction.

(2) All cetaceans used in an interactive session shall be adequately trained and conditioned in human interaction so that they respond in the session to the attendants with appropriate behavior for safe interaction. The head trainer/behaviorist, trainer/supervising attendant, or attendant shall, at all times, control the nature and extent of the cetacean interaction with the public during a session, using the trained responses of the program animal.

(3) All cetaceans used in interactive sessions shall be in good health, including, but not limited to, not being infectious. Cetaceans undergoing veterinary treatment may be used in interactive sessions only with the approval of the attending veterinarian.

(4) The ratio of human participants to cetaceans shall not exceed 3:1. The ratio of human participants to attendants or other authorized SWTD personnel (*i.e.*, head trainer/behaviorist or trainer/supervising attendant) shall not exceed 3:1.

(5) Prior to participating in an SWTD interactive session, members of the public shall be provided with oral and written rules and instructions for the session, to include the telephone and FAX numbers for APHIS, Animal Care, for reporting injuries or complaints. Members of the public shall agree, in writing, to abide by the rules and instructions before being allowed to participate in the session. Any participant who fails to follow the rules or instructions shall be removed from the session by the facility.

(6) All interactive sessions shall have at least two attendants or other authorized SWTD personnel (*i.e.*, head trainer/behaviorist or trainer/supervising attendant). At least one attendant shall be positioned out of the water. One or more attendants or other authorized SWTD personnel may be positioned in the water. If a facility has more than two incidents during interactive sessions within a year's time span that have been dangerous or harmful to either a cetacean or a human, APHIS, in consultation with the head trainer/behaviorist, will determine if changes in attendant positions are needed.

(7) All SWTD programs shall limit interaction between cetaceans and humans so that the interaction does not harm the cetaceans, does not remove the element of choice from the cetaceans by actions such as, but not limited to, recalling the animal from the sanctuary area, and does not elicit unsatisfactory, undesirable, or unsafe behaviors from the cetaceans. All SWTD programs shall prohibit grasping or holding of the cetacean's body, unless under the direct and explicit instruction of an attendant eliciting a

specific cetacean behavior, and shall prevent the chasing or other harassment of the cetaceans.

(8) In cases where cetaceans used in an interactive session exhibit unsatisfactory, undesirable, or unsafe behaviors, including, but not limited to, charging, biting, mouthing, or sexual contact with humans, such cetaceans shall either be removed from the interactive area or the session shall be terminated. Written criteria shall be developed by each SWTD program, and shall be submitted to and approved by APHIS<sup>11</sup> regarding conditions and procedures for maintaining compliance with paragraph (e)(4) of this section; for the termination of a session when removal of a cetacean is not possible; and regarding criteria and protocols for handling program animal(s) exhibiting unsatisfactory, undesirable, or unsafe behaviors, including retraining time and techniques, and removal from the program and/or facility, if appropriate. The head trainer/behaviorist shall determine when operations will be terminated, and when they may resume. In the absence of the head trainer/behaviorist, the determination to terminate a session shall be made by the trainer/supervising attendant. Only the head trainer/behaviorist may determine when a session may be resumed.

(f) *Recordkeeping.* (1) Each facility shall provide APHIS<sup>12</sup> with a description of its program at least 30 days prior to initiation of the program, or in the case of any program in place before September 4, 1998, not later than October 5, 1998. The description shall include at least the following:

(i) Identification of each cetacean in the program, by means of name and/or number, sex, age, and any other means the Administrator determines to be necessary to adequately identify the cetacean;

(ii) A description of the educational content and agenda of planned interactive sessions, and the anticipated average and maximum frequency and duration of encounters per cetacean per day;

(iii) The content and method of pre-encounter orientation, rules, and instructions, including restrictions on types of physical contact with the cetaceans;

(iv) A description of the SWTD facility, including the primary enclosure and other SWTD animal housing or holding enclosures at the facility;

(v) A description of the training, including actual or expected number of hours each cetacean has undergone or will undergo prior to participation in the program;

(vi) The resume of the licensee and/or manager, the head trainer/behaviorist, the trainer/supervising attendant, any other attendants, and the attending veterinarian;

(vii) The current behavior patterns and health of each cetacean, to be assessed and submitted by the attending veterinarian;

(viii) For facilities that employ a part-time attending veterinarian or consultant arrangements, a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits; and

(ix) A detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of the cetaceans.

(2) All SWTD programs shall comply in all respects with the regulations and standards set forth in parts 2 and 3 of this subchapter.

(3) Individual animal veterinary records, including all examinations, laboratory reports, treatments, and necropsy reports shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection.

(4) The following records shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection:

(i) Individual cetacean feeding records; and

(ii) Individual cetacean behavioral records.

(5) The following reports shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection:

<sup>11</sup> Send to Administrator, c/o Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, Maryland 20737-1234.

<sup>12</sup> See footnote 11 in §3.111(e)(8).

(i) Statistical summaries of the number of minutes per day that each animal participated in an interactive session;

(ii) A statistical summary of the number of human participants per month in the SWTD program; and

(6) A description of any changes made in the SWTD program, which shall be submitted to APHIS<sup>13</sup> on a semi-annual basis.

(7) All incidents resulting in injury to either cetaceans or humans participating in an interactive session, which shall be reported to APHIS within 24 hours of the incident.<sup>14</sup> Within 7 days of any such incident, a written report shall be submitted to the Administrator.<sup>15</sup> The report shall provide a detailed description of the incident and shall establish a plan of action for the prevention of further occurrences.

(g) *Veterinary care.* (1) The attending veterinarian shall conduct on-site evaluations of each cetacean at least once a month. The evaluation shall 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.

(2) The attending veterinarian shall observe an interactive swim session at the SWTD site at least once each month.

(3) The attending veterinarian shall conduct a complete physical examination of each cetacean at least once every 6 months. The examination shall include a profile of the cetacean, including the cetacean's identification (name and/or number, sex, and age), weight,<sup>16</sup> length, axillary girth, appetite, and behavior. The attending veterinarian shall also conduct a general examination to evaluate body condi-

tion, skin, eyes, mouth, blow hole and cardio-respiratory system, genitalia, and feces (gastrointestinal status). The examination shall also include a complete blood count and serum chemistry analysis. Fecal and blow hole smears shall be obtained for cytology and parasite evaluation.

(4) The attending veterinarian, during the monthly site visit, shall record the nutritional and reproductive status of each cetacean (*i.e.*, whether in an active breeding program, pregnant, or nursing).

(5) The attending veterinarian shall examine water quality records and provide a written assessment, to remain at the SWTD site for at least 3 years, of the overall water quality during the preceding month. Such records shall be made available to an APHIS official upon request during inspection.

(6) In the event that a cetacean dies, complete necropsy results, including all appropriate histopathology, shall be recorded in the cetacean's individual file and shall be made available to APHIS officials during facility inspections, or as requested by APHIS. The necropsy shall be performed within 48 hours of the cetacean'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 cetacean's death, the cetacean shall be refrigerated until necropsy. Written results of the necropsy shall be available in the cetacean's individual file within 7 days after death for gross pathology and within 45 days after death for histopathology.

(Approved by the Office of Management and Budget under control numbers 0579-0036 and 0579-0115)

[63 FR 47148, Sept. 4, 1998]

EFFECTIVE DATE NOTE: At 64 FR 15920, Apr. 2, 1999, §3.111 was suspended, effective Apr. 2, 1999.

#### TRANSPORTATION STANDARDS

### §3.112 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any marine

<sup>13</sup> See footnote 11 in §3.111(e)(8).

<sup>14</sup> Telephone numbers for APHIS, Animal Care, regional offices can be found in local telephone books.

<sup>15</sup> See footnote 11 in §3.111(e)(8).

<sup>16</sup> Weight may be measured either by scale or calculated using the following formulae:

Females: Natural log of body mass =  $-8.44 + 1.34(\text{natural log of girth}) + 1.28(\text{natural log of standard length})$ .

Males: Natural log of body mass =  $-10.3 + 1.62(\text{natural log of girth}) + 1.38(\text{natural log of standard length})$ .