

§3.101

9 CFR Ch. I (1-1-08 Edition)

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 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 must be structurally sound and must be maintained in good repair to protect the animals from injury, to contain the animals within the facility, and to restrict the entrance of unwanted animals. Lagoon and similar natural seawater facilities must maintain effective barrier fences extending above the high tide water level, or other appropriate measures, on all sides of the enclosure not contained by dry land to fulfill the requirements of this section.

(2) All marine mammals must be provided with protection from abuse and harassment by the viewing public by the use of a sufficient number of uniformed or readily identifiable employees or attendants to supervise the

viewing public, or by physical barriers, such as fences, walls, glass partitions, or distance, or any combination of these.

(3) All surfaces in a primary enclosure must be constructed of durable, nontoxic materials that facilitate cleaning, and disinfection as appropriate, sufficient to maintain water quality parameters as designated in §3.106. All surfaces must be maintained in good repair as part of a regular, ongoing maintenance program. All facilities must implement a written protocol on cleaning so that surfaces do not constitute a health hazard to animals.

(4) Facilities that utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tide-water action), for housing marine mammals are exempt from the drainage requirements of paragraph (c)(1) of this section.

(b) *Water and power supply.* Reliable and adequate sources of water and electric power must be provided by the facility housing marine mammals. Written contingency plans must be submitted to and approved by the Deputy Administrator 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 in the facility. Contingency plans must include, but not be limited to, specific animal evacuation plans in the event of a disaster and should describe back-up systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water. If the emergency contingency plan includes release of marine mammals, the plan must include provision for recall training and retrieval of such animals.

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

(2) Drainage must be provided for primary enclosures and areas immediately surrounding pools. All drain covers and strainers must be securely fastened in order to minimize the potential risk of animal entrapment. Drains must be located so as to rapidly eliminate excess water (except in pools). Drainage effluent must be disposed of in a manner that complies with all applicable Federal, State, and local pollution control laws.

(d) *Storage.* Supplies of food must be stored in facilities that adequately protect such supplies from deterioration, spoilage (harmful microbial growth), and vermin or other contamination. Refrigerators and freezers (or chilled and/or iced coolers for under 12 hours) must be used for perishable food. No substances that are known to be or may be toxic or harmful to marine mammals may be stored or maintained in the marine mammal food storage or preparation areas, except that cleaning agents may be kept in secured cabinets designed and located to prevent food contamination. Food, supplements, and medications may not be used beyond commonly accepted shelf life or date listed on the label.

(e) *Waste disposal.* Provision must be made for the removal and disposal of animal and food wastes, dead animals, trash, and debris. Disposal facilities must be provided and operated in a manner that will minimize odors and the risk of vermin infestation and disease hazards. All waste disposal procedures must comply with all applicable Federal, State, and local laws pertaining to pollution control, protection of the environment, and public health.

(f) *Employee washroom facilities.* Washroom facilities containing basins, sinks, and, as appropriate, showers, must be provided and conveniently located to maintain cleanliness among employees, attendants, and volunteers. These facilities must be cleaned and sanitized daily.

(g) *Enclosure or pool environmental enhancements.* Any nonfood objects provided for the entertainment or stimulation of marine mammals must be of sufficient size and strength to not be ingestible, readily breakable, or likely to cause injury to marine mammals,

and be able to be cleaned, sanitized, and/or replaced effectively.

[66 FR 251, Jan. 3, 2001]

§ 3.102 Facilities, indoor.

(a) *Ambient temperature.* The air and water temperatures in indoor facilities shall be sufficiently regulated by heating or cooling to protect the marine mammals from extremes of temperature, to provide for their good health 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.⁷

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

⁷Lighting 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.