

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2020–0068]

RIN 0579–AE61

## Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** We are proposing to amend the regulations to establish standards governing the humane handling, care, treatment, and transportation of birds, excluding birds bred for use in research, covered under the Animal Welfare Act. This action would ensure the humane handling, care, treatment, and transportation of birds not bred for use in research and covered under the Act. **DATES:** We will consider all comments that we receive on or before April 25, 2022.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federale Rulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS–2020–0068 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at [www.regulations.gov](http://www.regulations.gov) or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Cody M. Yager, DVM, Supervisory Animal Care Specialist, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3751; [cody.m.yager@usda.gov](mailto:cody.m.yager@usda.gov). Secondary Contact: Dr. David Miller, DVM, Ph.D., National Animal Welfare Specialist, Animal Care, APHIS, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526; (301) 851–3751; [david.s.miller@usda.gov](mailto:david.s.miller@usda.gov).

## SUPPLEMENTARY INFORMATION:

## Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards are established under the AWA and are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

The Act initially defined *animal* to mean “live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits.” In 1970, amendments to the Act expanded the definition of *animal* to include “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet,” and to explicitly exclude horses not used for research purposes and other farm animals; amendments in 1976 clarified that dogs used for hunting, security, or breeding purposes fell within the scope of the Act.

The Farm Security and Rural Investment Act of 2002<sup>1</sup> (the “Farm Bill”) included provisions that amended the definition of *animal* in the Act yet

again by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of *animal* contained in the AWA regulations at that time excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition also excluded all birds, not just those birds bred for use in research. Congress' amendment to the Act meant that birds not bred for research and not otherwise excluded under its provisions were, for the first time, explicitly subject to AWA regulation.

In a final rule published on June 4, 2004 in the **Federal Register** (69 FR 31513–31514, Docket No. 98–106–3), we amended the definition of *animal* in the AWA regulations to make it consistent with the revised definition of *animal* in the Act by limiting the exclusion to only those birds bred for use in research (*i.e.*, breeding stock). On the same date, we published an advance notice of proposed rulemaking (69 FR 31537–31541, Docket No. 98–106–4) notifying the public that we intended to extend enforcement of the AWA to birds not bred for use in research that are sold as pets at the wholesale level, or transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes. To determine what regulations and standards are appropriate for those birds, we solicited and received 7,486 public comments and began reviewing these comments preliminary to drafting a proposed rule.

Beginning in 2013, several animal welfare organizations filed lawsuits against USDA for failure to promulgate regulations for birds not bred for use in research. As a result of one of those lawsuits,<sup>2</sup> on January 10, 2020, the U.S. Court of Appeals for the D.C. Circuit found that the AWA requires APHIS to issue standards applicable to birds not bred for use in research and that APHIS has not issued such standards. On remand, the U.S. District Court for the District of Columbia granted the parties' joint motion to stay the action and adopted the parties' proposed rulemaking schedule, ordering that USDA must publish a proposed rule establishing regulatory standards for birds not more than 18 months after publication of a notice of listening sessions, and promulgate them in a final rule to be published in the **Federal Register** no later than 1 year from that proposed rule's publication date. We

<sup>1</sup> Public Law 107–171, May 13, 2002; the text can be viewed at <https://www.govinfo.gov/content/pkg/PLAW-107publ171/pdf/PLAW-107publ171.pdf>.

<sup>2</sup> *American Anti-Vivisection Society and Avian Welfare Coalition v. USDA*, 946 F.3d 615 (D.C. Cir. 2020); [https://www.cadc.uscourts.gov/internet/opinions.nsf/80846063820C52F6852584EB005413E4/\\$file/19-5015-1823484.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/80846063820C52F6852584EB005413E4/$file/19-5015-1823484.pdf).

published the notice for a listening session, discussed below, on August 20, 2020, which under the Court's order requires that we publish the proposed rule no later than Tuesday, February 22, 2022.<sup>3</sup>

Beyond the Court's requirement that we publish a proposed rule, we believe there to be a significant welfare-based need for regulating birds and agree that this rulemaking is necessary. Although we currently do not consider birds when inspecting regulated facilities maintaining other animals due to the absence of AWA regulations regarding standards for birds, APHIS receives complaints from the public about inhumane conditions for birds. Additionally, if APHIS inspectors find birds kept in such conditions in the course of other duties, they are instructed to report their observations to the appropriate local or State authority. Moreover, some commenters during the listening sessions provided video and photographic documentation of birds held in unsanitary and inhumane conditions at several facilities across the United States. Based on our experience with animal welfare issues in the currently regulated community, we recognize that there are common challenges to maintaining humane conditions for animals—regardless of species—pertaining to shelter, health, husbandry, transport, and related needs. As a community covered under the AWA, persons dealing in, exhibiting, and transporting birds are also responsible for providing these needs. The standards we are proposing for birds include requirements that ensure animal welfare in the same areas of need.

Accordingly, we are proposing to establish new regulations and standards and amend existing regulations governing the humane handling, care, treatment, and transportation of birds covered by the AWA. Specifically, we propose to establish and amend definitions of terms used throughout parts 2 and 3 to inform licensees and registrants of their responsibilities under the Act with respect to birds that are not bred for use in research and not otherwise exempted from regulation. We also propose to amend several sections in part 2 to clarify the requirements and responsibilities for regulated parties with birds. Finally, we propose to establish specific standards in a new subpart in part 3 for the humane handling, care, treatment, and

transportation of birds covered under the AWA.

### Notice of Listening Sessions

As noted above, the schedule ordered by the District Court required APHIS to publish a notice of virtual listening sessions to gather comments on the topic of establishing standards for birds prior to drafting a proposed rule. We scheduled three virtual listening sessions and published a notice in the **Federal Register** (85 FR 51368, Docket No. APHIS–2020–0068) asking the public to comment on establishing exemptions for dealers, exhibitors, and certain bird species and activities; licensing thresholds; performance-based standards; and ways of minimizing potential disturbances to nesting and breeding resulting from compliance inspections and implementation of standards.

We received 10,330 written comments on [www.regulations.gov](http://www.regulations.gov)<sup>4</sup> in response to the listening session notice, as well as approximately 75 comments excerpted from the three listening session transcripts. Comments came from breeders and fanciers of finches, canaries, parrots, cockatiels, and other pet and show birds; raptor breeders, conservationists, and hobbyists; exotic poultry hobbyists; owners and breeders of show and racing pigeons; national and regional animal welfare organizations; organizations representing zoos, shelters, and rescues; avian veterinarians, ornithologists, and aviculturists; organizations promoting the conservation of waterfowl and wild birds; a Federal government agency; and members of the public. We have reviewed and considered all of the comments, which we have summarized below.

### Exemptions From Licensing

The current regulations in § 2.1(a)(3) include licensing exemptions based on criteria such as how the animals are used, whether and how they are sold, and size of business based on gross income or the number of covered animals maintained.

An exemption is provided for dealers who maintain four or fewer breeding females of pet animals, small exotic or wild animals, and/or domesticated farm type animals and offer their offspring for sale. Also exempted in this section are retail pet stores as the term is defined

in § 1.1,<sup>5</sup> dealers who breed and sell 25 or fewer dogs and/or cats to research facilities annually, individuals who solely buy, sell, transport, or negotiate the sale, purchase, or transportation of an animal for food or fiber, and exhibitors covered under the AWA who maintain eight or fewer pet animals, small exotic or wild animals (sometimes referred to colloquially as “pocket” mammals), and domesticated farm type animals for exhibition. An income threshold exemption applies to any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals during any calendar year. Finally, any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals is exempt from licensing if not otherwise required to obtain one.

During the listening sessions, we asked for comments and supporting data on adding or revising licensing exemptions for certain dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers of birds not bred for use in research. We also asked specifically if certain species of birds should be exempted. The comments that immediately follow address these questions, including the status of birds at shelters, birds that are part of conservation efforts, and the scope of regulatory authority. Comments for exemptions based on business size appear in the section following this one, under “De Minimis Exemptions.”

Several commenters suggested that all bird breeders be exempted from regulation, with one stating that it has not been demonstrated that the current welfare of birds in breeding facilities are deficient and that bird breeders are continually improving captive bird care. A few commenters recommended that all persons exhibiting birds at shows be exempt from regulation.

On the other hand, a substantial number of commenters asked that all birds covered under the Act be subject to the regulations, regardless of species or use, particularly as some States do not have laws protecting birds. Many other commenters stated that there should be no exemptions for birds sold

<sup>5</sup> *Retail pet store* is defined as a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domesticated ferrets, domesticated farm-type animals, birds, and coldblooded species.

<sup>3</sup> February 20, 2022, falls on a Sunday, and Monday, February 21, is a Federal holiday. As a result, the Court-imposed deadline would be the next business day that the **Federal Register** publishes, which is Tuesday, February 22.

<sup>4</sup> To view the comments we received, go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS–2020–0068 in the Search field. Transcripts of the listening sessions are available at <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/aw-news/bird-listening-sessions>.

in retail pet stores, noting that some pet stores house birds in poor sanitary conditions. One commenter added that no persons selling birds at auction should be exempt, stating that these are often the most egregious of offenders with respect to animal abuse.

Some commenters noted that many persons keep birds to preserve threatened or endangered species and safeguard them from extinction due to habitat loss and other threats, and recommended that any exemptions for wholesale trade and exhibition should also include birds bred for conservation or for sale or transfer to other breeding programs. On the other hand, a commenter stated that the majority of bird breeding in the United States ostensibly done in the name of conservation contributes little or nothing to conservation efforts because most captive breeding is done outside of official species survival plans and conservation efforts.

We also asked whether certain species of birds should qualify for exemption from licensing. In response, we received a wide range of explanations as to why certain species of birds covered under the AWA should or should not require a license.

Many bird owners and the organizations representing them commented that most non-agricultural bird species kept in the United States are for personal enjoyment and not for profit and should be exempted from AWA licensing.

Some commenters stated that the AWA should only be concerned about inspecting budgies, cockatiels, and other common species of birds bred for profit for the pet market. Several commenters stated that persons breeding or maintaining any types of finches, canaries, or songbirds should be exempt from licensing due to the enormous number of species, subspecies, and hybrids kept and their special requirements.

Commenters concerned about species conservation asked that we exempt from licensing breeders of endangered and non-native bird species, including rare poultry and waterfowl.

Several persons with an interest in raptors commented that existing U.S. Department of the Interior, U.S. Fish and Wildlife Service (USFWS) regulations likely meet or exceed proposed AWA standards and that no additional regulations are needed to ensure raptor welfare. Many noted that raptor owners are already subject to a robust regulatory system and that any new standards and regulations for most captive raptor breeders would be burdensome and duplicative. Some

commenters stated that State and local laws already provide an adequate layer of regulation to ensure the welfare of their birds. Several commenters stated that raptors are migratory birds, not “pet animals” as defined in § 1.1, with some noting that the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703 *et seq.*) already covers raptors. A commenter noted that falconers fall under the definition of neither “dealer” nor “exhibitor,” and the few that engage in exhibition should be exempted *de minimis*.

On the other hand, a commenter representing an animal welfare organization noted that the USDA has never considered activities regulated under other Federal, State, and local laws as a basis for granting exemptions for regulated activities and species from the AWA’s requirements. Other commenters opined that the AWA does not discriminate or authorize the agency to discriminate between different species of warmblooded animals, or between different regulated uses, and that all are protected under the Act. In addition, a commenter noted that raptors are large animals and asked that they not be subject to the exhibitor licensing exemption.

A commenter representing the USFWS noted that exhibition of migratory birds and raptors is the primary area of overlap between that agency and the USDA with respect to regulation. The commenter stated that it is important that agencies are not in conflict with respect to regulating birds.

Several commenters asked that persons maintaining racing and show pigeons be exempt from licensing. One commenter stated that most pigeon racers are not dealers or exhibitors and therefore should be exempt from regulation. The commenter added that pigeon racing has elements of the farm in its origins and that farm animals are excluded from AWA regulation.

Conversely, one commenter stated that racing pigeons are prone to disease due to inadequate sanitation and veterinary care, that prominent race organizers and veterinarians acknowledge that disease leads to substantial numbers of racing pigeon deaths, and that racing pigeons pose a threat of spreading disease among wild pigeons and domestic poultry.

We received several comments from persons and organizations on the subject of bird rescues and shelters. Several commenters emphasized that rescues should never be exempt from inspections or regulations. Many commenters expressed concern about animal welfare, overcrowding, and health and sanitation conditions at bird

rescues and shelters, and supported regulation of such facilities under the AWA. A commenter suggested that rescues who accept public donations or charge admission to their facilities should be required to be licensed just as mammal facilities are. Another commenter indicated that rescues and sanctuaries for pet birds that receive government grant money should not be exempt and be held to a higher standard. On the other hand, other commenters asked that shelters and rescues be exempted from licensing and that caregivers who foster or shelter birds on a temporary basis should be exempted also.

Some commenters asked that persons maintaining wild bird species be exempted from licensing. One commenter stated that for many wild species, the appropriate conditions for maintaining them are unknown and would need to be determined once the birds are brought into captivity. The commenter added that the range of taxa is broad and that species within a taxon may have very different requirements. Other commenters stated that all wild bird rescues should be subject to regulation and licensing.

One commenter asked that we be careful in describing wild birds with the terms “domestic/domesticated,” “non-domestic/exotic,” and “wild/wildlife.” The commenter noted that domesticated species of certain birds have husbandry and veterinary needs that differ substantially from those of closely related, captive-managed wild species.

### De Minimis Exemptions

Section 2133 of the Act includes the provision that “a dealer or exhibitor shall not be required to obtain a license as a dealer or exhibitor under this chapter if the size of the business is determined by the Secretary to be *de minimis*.” Section 2.1(a)(3) of the current regulations includes *de minimis* threshold licensing exemptions for dealers (including breeders) and exhibitors of AWA-covered animals based on gross income, numbers of animals maintained, and intended use of the animals, with exemptions granted accordingly for businesses under each threshold.

During the listening sessions, we asked persons to comment on whether there are thresholds beyond which an entity should not be required to be licensed. We noted that most bird breeding businesses are very small and invited persons to comment on what threshold criteria we might use to exempt such entities from licensing, which by their size have historically

posed an insignificant, or *de minimis*, risk to animal welfare.

Several commenters requested that we exempt certain dealers and exhibitors of birds from licensing, and many suggested specific exemption thresholds based on income or number of birds bred or exhibited. Many commenters asked that the exemption in § 2.1(a)(3)(i), the *retail pet store* exemption, remain in place for birds sold at retail.

One commenter stated that APHIS cannot exempt birds beyond the plain text of the AWA and its existing *de minimis* exemption, adding that the AWA statute plainly applies to warm-blooded animals that are used for regulated activities.

Some commenters stated that any individual or facility that raises fewer than 500 birds per year should be considered *de minimis* and exempt from regulation. Another commenter asked that the regulatory threshold be set at 500 or fewer breeding pairs of parakeets, finches, and other small birds, and 200 or fewer breeding pairs of larger birds such as parrots and gamebirds. The commenter asked that offspring not be counted toward the total number of pairs. Another commenter suggested that facilities with fewer than 100 breeding female birds should be exempt regardless of sales volume. Yet another recommended that small breeding operations (up to 25 pairs of birds) should be exempted from licensing under the AWA regulations and that not doing so will impose unnecessary regulatory burden on the public and APHIS personnel.

Other commenters recommended that proposed bird regulations follow the current *de minimis* thresholds for other animals in the regulations. One such commenter asked that we harmonize the bird regulations with—but not expand—the *de minimis* exemptions in § 2.1(a)(3)(iii).

A commenter recommended that birds under 4 pounds should not be regulated or require licensing. Another commenter stated that if someone cares for non-wild birds and some of those birds generate offspring unintentionally, such persons should be exempt from licensing.

One commenter stated that although an aviary may breed many birds, the total sales may only be \$100 or less per year. In contrast, the commenter noted, a pair of hyacinth macaws may produce a single chick per year that sells for \$10,000. The commenter noted that one pair of birds producing a single chick per year is below the level that USDA should spend resources on regulating even though the dollar amount is above

what is considered *de minimis*. On this point, another commenter stated that birds with low monetary value are often subjected to the cruelest of conditions and in greatest need of oversight.

One commenter stated that to avoid the creation of a double standard for birds, any proposed regulations must exclude from the exemption in § 2.1(a)(3)(ii) all exotic or wild birds just as it currently does for all other covered wild or exotic animals. Another commenter stated that the exemption from licensing for facilities with annual sales not exceeding \$500 is inadequate. Due to the capital expenditure and time investment required for successful hobby aviculture, the commenter recommended a threshold of \$50,000.

With respect to bird exhibitors, a few commenters stated the need for an exemption like the current one in § 2.1(a)(3)(vii) for exhibitors of eight or fewer pet type or “pocket” mammal species.

One commenter who recommended against allowing species-specific exemptions for birds noted that the only current *de minimis* exemptions in the regulations that could reasonably apply to birds would be for “domesticated farm-type animals,” which could include domesticated species of chickens, ducks, and turkeys.

#### Performance-Based Standards

Section 2143 of the Act provides that standards for the humane care of animals must include requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and, when warranted, separation by species. The AWA regulations in 9 CFR part 3 fulfill this statutory obligation by listing standards for the humane handling, care, treatment, and transportation of animals, grouped under separate subparts for dogs and cats; guinea pigs and hamsters; rabbits; nonhuman primates; marine mammals; and warmblooded animals not included in the other subparts.

Most of the standards are performance-based, meaning that whenever practicable they do not mandate a single, prescribed approach to meeting the standard. For example, the standard for food storage and bedding for dogs and cats in § 3.1(e) states that “supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation.” Similarly, in the proposed standards for birds under § 3.150(e), we require that “supplies of food, including food supplements, bedding, and substrate

must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation.” In each case, the specific manner and location of storage is not prescribed, and any approach that protects the supplies from the conditions listed will meet the standard.

To cite another example, § 3.81 of the standards for nonhuman primates requires that the primary enclosures of the animals be provided with environmental enrichments for expressing noninjurious species-typical activities, which includes perches, swings, mirrors, and other increased cage complexities, and that species differences should be considered when determining the type or methods of enrichment. Likewise, we are proposing in § 3.154 an environmental enrichment standard for birds requiring that perches and other objects provided to enrich a bird’s environment be species-appropriate and designed, constructed, and maintained so as to prevent harm to the bird. Businesses may use their own experience and knowledge with the species in question to determine the composition of the perches and other objects, their size and location, and other relevant considerations, so long as they are meeting the proposed standard.

Many of the comments we received during the listening sessions noted the great number of bird species and the highly diverse care and husbandry needs of each, and remarked on the challenge of establishing a single set of standards that could accommodate the scope of these needs. We acknowledge the concerns of these commenters and agree that birds constitute a uniquely diverse class, which is why we consider a performance-based, flexible approach to standards for birds especially important.

We asked commenters whether there are appropriate performance-based standards that could cover the wide variety of bird species. We also asked persons to comment on the feasibility of separating birds into smaller classes and setting performance-based standards appropriate for each class, and what such classes might look like.

A number of commenters supported regulating the humane handling, care, treatment, and transportation of covered birds under the existing standards in part 3, subpart F, which cover warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. Other commenters supported the establishment of standards developed specifically for birds. Many commenters recommended that any performance standards developed for

birds should consider their specific physiological and behavioral needs.

An animal welfare organization proposed a set of avian performance standards to serve as a regulatory model and asked that they be included as a separate section in part 3 and reflected accordingly in parts 1 and 2. We note that the standards submitted by the commenter reflect in large part the standards we propose, with requirements that address handling, housing, feeding, watering, sanitation, ventilation, shelter, veterinary care, separation of species as warranted, and environmental enrichment.

A commenter asked APHIS to consult with ornithological professional organizations before drafting standards for birds, and others recommended that APHIS enlist the help of aviculturists and organizations representing raptor and parrot owners, rescues, conservation, and other avian interests to develop standards.

APHIS-Animal Care has engaged in such consultations to the extent we can, which is standard practice for the program with regard to other covered animals.

Conversely, several commenters questioned whether any set of standards could be developed that would address the husbandry needs of all bird species, with some noting that industry self-regulation has failed to prevent substandard care, welfare, and husbandry of birds. As we note in a previous section, some commenters submitted field reports, photographs, and videos showing birds held in unsanitary and barren cages throughout the United States and noted in particular the unhealthy appearance of the birds and abnormal behaviors resulting from confinement under such conditions.

One commenter stated that there are far too many species of exotic birds kept in aviculture to be able to set up individual standards, and another commented that generic standards that apply to large groups of birds probably do not encompass the needs of all species, even in family groups of birds. A commenter added that because the needs of many birds are influenced by age, geographical location, and seasonal changes, specifying exact standards of care may not allow enough flexibility to address these variable factors. One commenter acknowledged that due to the wide differences in size, morphology, diet, and social structure in the class Aves, it is impossible to present one set of minimum housing standards for all avian species.

Some commenters stated that the aviculturist community already has

adequate best practices in place and that no government regulation is necessary. Several cited the Model Avicultural Program, adding that it represents a higher level of care than is typically required for AWA licensing.

While the program cited by these commenters includes general housing, husbandry, and other standards that we consider to be appropriately species-specific and performance-based, the standards we propose in this rule are both more detailed and comprehensive and include additional requirements governing transportation, enrichment, research uses, and identification, among others. We consider these requirements to be necessary to maintain consistency with the current regulations for mammals and to ensure a level of animal welfare commensurate with that required by the AWA.

### Facilities and Operating Standards

While some commenters proposed standards that differ in degree from those we have proposed, we agree with the majority of comments from the listening sessions indicating that facility and operating standards for regulating birds must address their special physiological, anatomical, behavioral, and psychological needs, and the standards we have proposed have been developed with those needs in mind. We discuss those standards in greater detail below.

### Enclosures

In accordance with the Act, we include enclosure standards in each subpart of part 3 to ensure that captive animals are confined safely and humanely. For example, the general standards for primary enclosures for dogs and cats under subpart A require that they be constructed and maintained so as to contain the animals securely, protect them against injury, and provide sufficient space commensurate with the animal species confined. The standards we propose for birds include similar requirements that are performance-based and allow flexibility to meet the wide diversity of needs among bird species cited by commenters.

Several commenters addressed the topic of bird enclosures, particularly with respect to size and the ability to permit movement. A few commenters submitted proposed standards that include detailed, performance-based shelter specifications for space, flooring and surfaces, lighting, humidity, and air quality. One such commenter noted that overcrowding causes stress in birds and spreads disease, and that small enclosures can cause stereotypic behaviors such as spot picking and

route tracing. Some commenters also asked APHIS to develop standards requiring that enclosures be large enough to allow natural fliers to have enough space to fly, while other commenters stated that birds need room to stretch and flap wings, but not necessarily to fly.

We note that the standards we propose for enclosures mirror to a large degree those submitted by commenters, the objective being to provide an environment that ensures humane treatment of animals as required by the Act. The standard in proposed § 3.153(b) requires that the space in all primary enclosures housing birds be adequate and allow for normal postural and social adjustments, such as dust-bathing and foraging, with adequate freedom of movement and freedom to escape from aggression demonstrated by other animals in the enclosure according to the program of veterinary care developed, documented in writing, and signed by the attending veterinarian. While we acknowledge the desire by many commenters that sufficient enclosure space be available for birds to fly, birds can be in good health and maintained humanely in accordance with the Act without such a requirement.

A commenter stated that due to the way pigeons live in communities and can tolerate disease, standards for lofts must be specific to the species. One commenter stated that wire flooring is harmful to the feet of many birds and proposed that we set standards requiring safe, non-toxic substrate (newspaper, towels, litter, straw, etc.) for the species being housed. We include in this proposal a performance-based requirement that floors of primary enclosures be constructed in a manner that protects the birds' feet and legs from injury, which addresses issues of harmful flooring regardless of composition, as well as a requirement that substrate be safe and non-toxic to the birds being housed.

### Sanitation

As noted above, the AWA requires that sanitation standards for regulated animals be issued for dealers, exhibitors, and research facilities that keep those animals. In the existing AWA regulations, consistent with this statutory obligation, we include standards for facility sanitation within each subpart for dogs and cats, rabbits, and other mammals. As with these standards, those that we propose for facilities having birds require a sanitary, pest-free environment conducive to their health and welfare but also allow for flexibility in how the standards are

met. Consistent with what we are proposing, several commenters called for standards specific to birds regarding waste disposal, food storage, and enclosure and pool cleaning to reduce disease and pest hazards.

### Lighting and Climate

As lighting and climate needs differ considerably among animal species, the existing standards in the regulations for animals covered under each subpart are performance-based to allow for lighting, humidity, temperature, and other climatic considerations appropriate for the species involved. We have proposed similar such standards for birds to accommodate the widely different temperature, humidity, and lighting needs of each species.

Some commenters advocated for more prescriptive lighting standards, specifically natural or artificial light in the same spectrum as sunlight. One commenter recommended that appropriate circadian rhythms must also be provided for nocturnal species, as well as adequate ventilation, temperature, and humidity control appropriate to the species. We agree with the latter commenter that lighting should be species-specific and need not mimic sunlight if the species is nocturnal, and our proposed standards reflect that. Another commenter stated that there should be standards to protect birds from sunlight and extreme heat, with appropriate shelter from rain and snow. We agree with this commenter, as providing shelter from weather extremes is consistent with animal welfare.

### Recordkeeping

The existing regulations require that dealers and exhibitors keep and maintain records which fully disclose certain identification and disposition information for animals other than dogs and cats that are purchased or otherwise acquired, owned, held, leased, or otherwise in their possession or under their control, or that they transport, sell, euthanize, or otherwise dispose of. Among other things, the records must include any offspring born of any animal while in the dealer's or exhibitor's possession or under his or her control. Similarly, operators of auction sales and brokers are required to maintain records for any animal consigned for auction or sold, whether or not a fee or commission is charged.

During the listening sessions, many commenters asked APHIS to require that records be kept of all transactions for birds that are sold or transferred to another owner. Commenters also called for APHIS to require bird dealers and

exhibitors to keep health records on their birds.

On the other hand, several commenters stated that the recordkeeping requirements now required for mammals would be unreasonable and burdensome for commercial, high volume-produced birds such as budgies, zebra finches, cockatiels, lovebirds, waterfowl, pigeons, and gamebirds.

We propose to apply the existing recordkeeping requirements to persons engaging in these AWA-covered activities involving birds, unless otherwise exempt. We consider an accounting of each covered animal important for the purposes of ensuring adequate health and welfare, even for high-volume produced birds. If, for example, an individual bird moved to or from a premises is diagnosed with a serious, communicable disease, a record of that bird's movement is necessary to protect other birds from potential exposure and harm.

### Research Concerns

Regulations concerning AWA-covered animals at research facilities are located in 9 CFR part 2, subpart C. They require that facilities register with APHIS, that an Institutional Animal Care and Use Committee (IACUC) be established to assess facility treatment and use of animals, and that animals be treated by an attending veterinarian under a program of veterinary care. Personnel and recordkeeping requirements for research facilities are also included in subpart C. As these regulations ensure that activities on animals at research facilities are humanely designed and practiced in accordance with the Act, we propose that they also be applied to birds not bred for use in research.

Some commenters expressed concerns with the effects that establishing AWA standards for birds could have on research activities.

A commenter stated that the proposed regulation would hamper biomedical and ecological research using avian species. One commenter stated that additional regulation could be detrimental to ornithological research without improving protection for birds, noting that unlike biomedical research and testing that does not benefit the animals being used, such research is conducted for understanding bird biology and ecology and is already regulated through the Public Health Service.

A commenter asked USDA to clarify that neither a facility's IACUC nor APHIS inspection is required for field research sites involving wild birds. Another commenter asked that any

proposed standards for birds do not prohibit field surgeries on wild birds and that biologists not be required to transport wild birds to dedicated facilities. APHIS' proposed changes to the regulations do not require that field studies involving wild birds be inspected, nor do we propose to prohibit field surgeries on wild birds, provided that such activities are conducted in accordance with current established veterinary medical procedures. As provided in proposed § 2.31(d)(1)(ix), we would not require that persons transport wild birds to dedicated facilities for medical procedures.

### Animal Health and Husbandry

During the listening sessions, commenters frequently cited the need for health and husbandry standards that are performance-based, noting the wide range of requirements among different species of birds. The current standards for other animals in Part 3 include performance-based requirements for health and husbandry addressing grouping, feeding, sanitation, and other needs. We have likewise proposed similar health and husbandry standards for birds in this document that address the needs cited by commenters.

### Feeding and Watering

As noted above, the AWA requires that feeding and watering standards be established for regulated animals for dealers, exhibitors, and research facilities that contain those animals. In the existing regulations, we have implemented this statutory obligation by establishing feeding and watering standards. Generally, these require that food be uncontaminated, nutritious, easily accessible, and appropriate for the species involved. Current standards also require that clean water be provided sufficient to maintain health and that receptacles for food and water be kept clean and sanitary. Competent bird dealers and exhibitors are knowledgeable as to the types of food their birds require to remain in good health. As with persons maintaining other types of animals covered under the regulations, we acknowledge this fact, and as we have done with those animals, we have proposed a feeding standard that is flexible enough to ensure the health and well-being of all birds.

Several animal welfare organizations proposed performance standards for the feeding and watering of birds consistent with the standards we propose. We would require that food be nutritious, species-appropriate, and presented in a manner that encourages natural foraging

behaviors specific to the species, which as one commenter noted is exceptionally important to bird welfare.

### **Environmental Complexity**

Many commenters during the listening sessions noted that some species of birds are highly intelligent and social animals and can benefit from being able to practice natural behaviors in captivity, such as social interaction and foraging. Accordingly, they proposed standards to provide species-appropriate environmental complexity for birds in the living space to promote the expression of natural behaviors and opportunities for positive interactions with the environment. A commenter noted that species-specific perches, substrates, hide boxes and shelters, visual barriers, and water and dust baths are important to promoting such interactions and included details of these in the standards proposed.

One commenter stated that parrots should receive special consideration for enrichment under the AWA regulations because of their taxonomic uniqueness, documented intelligence, and popularity in domestic markets. Some commenters cited research showing that enrichment activities such as foraging enhance the psychological well-being of birds, reducing stereotypic behaviors and minimizing stress. One commenter proposed that an environmental enrichment plan be developed and maintained for all birds in consultation with a qualified veterinarian or veterinary behaviorist, and that behavioral assessments include a review of nutrition, husbandry, and housing to develop an appropriate treatment plan.

APHIS agrees that environmental enrichment is important to ensuring the health and well-being of birds consistent with the Act. We note that the current regulations in subpart D, § 3.81, require persons maintaining nonhuman primates to provide an environmental enhancement plan that includes enrichment requirements. Accordingly, we would include similar enrichment requirements specifically for birds.

### **Contact With Birds**

The existing AWA regulations contain provisions regarding contact between captive animals being sold or exhibited and members of the public. These are intended to protect persons from injury while minimizing the risk of animals contracting a zoonotic disease, receiving inappropriate food, or being handled in an inappropriate manner. For example, a standard in each subchapter requires that primary enclosures used to transport animals be constructed to

ensure that anyone handling the enclosure will not be in contact with the animals contained inside. In this document we propose a similar standard for birds.

Some commenters asked that APHIS create standards that restrict or prohibit public contact and interaction with exhibited birds. One commenter stated that exhibitors allow dangerous birds to be too close to the public. Others opined that direct contact programs pose a dramatically increased risk of zoonotic disease transmission between humans and animals. A commenter cited research indicating that hand-rearing of parrots and other birds can contribute to the development of aberrant behaviors such as stereotypy and feather plucking.

On the other hand, a commenter stated that many birds desire and will initiate interaction with their owners. Another commenter was concerned that breeders would be restricted from hand-rearing and handling young birds, noting that such activities are a necessary part of taming. We are not proposing regulations that would restrict breeders from handling their birds humanely.

### **Veterinary Care**

Veterinary requirements applicable to all animals covered under the Act are located in § 2.40 of the regulations. These require that each facility maintain a program of veterinary care and have an attending veterinarian, as we acknowledge from commenter input to be the current practice for many facilities that would be affected by the proposed standards. Under the regulations we propose, birds covered under the Act would be subject to veterinary requirements to ensure animal welfare.

Several commenters stated that veterinary care should be a requirement for all birds that are subject to AWA regulations. Several such commenters proposed that regulated facilities be required to maintain a program of preventative veterinary healthcare for regulated birds, with annual physical exams for each bird and health records maintained for each regulated bird and available for review by APHIS. Many commenters called for health certificates for birds as is the case for covered animals currently.

A majority of commenters asked that we establish regulations to prohibit painful physical mutilations, including pinioning (disabling wings), toe clipping, devoicing, and beak alterations. A commenter recommended that when beak trimming is done for corrective purposes, it should be performed by a qualified avian

veterinarian, and clipping or pinioning a bird's wings to prevent flight should be prohibited except to address a specific health issue. We acknowledge commenter concerns over these practices, but also acknowledge, as several commenters did themselves, that there can sometimes be health-based reasons for the practices. We encourage additional comments that address the concerns raised in light of animal welfare.

Also, a commenter proposed that facilities be required to consult with a veterinarian or nutritionist to formulate appropriate species-specific diets, and that facilities follow and keep records of a dietary plan that is reviewed annually by a qualified veterinarian or nutritionist who has directly evaluated the animals at the facility. We agree that the food provided to the birds should be species-specific and nutritious. This could be accomplished by consulting a veterinarian or nutritionist, but we do not consider recourse to a veterinarian or nutritionist to be the only way of obtaining or validating this information. Our proposed standards allow for such flexibility in determining the appropriate diet for the birds.

### **Identification**

We received a number of comments on the identification standards for birds. Several commenters supported a standard requiring that all birds have a humane form of permanent identification, such as a microchip, leg band, or wing band.

Some commenters requested that we not require permanent forms of identification on birds because they should not be subjected to unnecessary stressful surgical procedures. Another commenter stated that given the fragile nature of birds, ID marking should not be required for live birds. The commenter recommended either leg bands or microchips as being suitable for all bird species.

In these proposed regulations, we include identification standards for birds that allow for flexibility in meeting the requirements, including attaching information to primary enclosures identifying each bird housed within, using leg and wing bands for identifying birds, and employing microchips. We believe that these methods are the safest and most acceptable means of identifying birds humanely.

### **Nesting and Breeding Activities**

We asked commenters to provide information on how bird breeders avoid interfering with nesting and breeding or other biological activities of birds. We



also asked for comments to help APHIS ensure that housing, feeding, or inspection requirements do not interfere with these activities.

Several bird breeders commenting on the notice raised concerns about regulatory inspections disturbing nesting and breeding activity at their facilities, potentially resulting in losses due to damage to eggs, chicks, and mates. Some stated that licensees should have a say in when inspections occur and asked that inspections not be conducted during breeding cycles.

Many commenters raised biosecurity concerns about inspections and inspectors transmitting pathogens into the facility. Another commenter noted that operators frequently care for their birds in the early morning hours or evening hours before or after work, so these facilities would be inaccessible for the unannounced inspections called for in the AWA regulations.

Conversely, some commenters emphasized the importance of inspections for animal welfare, stating that procedures by trained APHIS inspectors are no more intrusive than normal human-interactive behaviors in many situations where birds are housed. Another commenter stated that rather than disease posing a barrier to regulation, the risk of which is overstated, it is another factor to consider when developing safe inspection practices. Another commenter stated that based on her experience, parrots are motivated to nest and breed regardless of the presence of humans. Other commenters stated that nesting and breeding concerns should not hamper the ability of officials to conduct inspections and noted that remote camera technology can allow inspectors to view birds without entering the nesting area.

We acknowledge the concerns of many commenters about the impact that inspections could have on the health and safety of their birds, particularly during periods of breeding and nesting. We note that APHIS inspectors would work with newly regulated persons to identify optimal times for inspections so that disruptions are minimized while maintaining the unannounced nature of inspections. As with inspections of other types of animals, APHIS inspectors are required to observe professionally accepted standards for minimizing the risk of introducing disease into facilities.

### Transportation

The transportation standards we propose for birds provide the same consideration for humane care as is required in the current regulations for

other species of AWA-covered animals, and we acknowledge the point made by many commenters that some birds have highly specialized transportation needs. For example, while most birds require space to make normal postural adjustments during transport, there are some birds that may injure themselves if their movements are not restricted. Therefore, the intention of the proposed transportation standards for birds is to account for these animals' unique needs and provide them with equivalent protection and care as other covered animals.

One commenter stated that despite many concerns about the welfare of baby and unweaned birds, birds should not be subject to minimum age requirements for shipping. The commenter noted that precocial species, such as gallinaceous birds, have been shipped as "day-old" hatchlings for many years as an accepted practice in the poultry industry. Another commenter recommended that any person handling a primary enclosure containing a bird be required to use care and avoid causing physical harm or distress to the bird, while some commenters stated that all temporary transportation and housing of birds in trade or enroute to shows should be exempted as these constitute a temporary condition and not a permanent living space.

Conversely, numerous commenters requested that we establish regulations prohibiting the sale of unweaned and prematurely weaned baby birds, noting that such birds risk succumbing to disease, mishandling, and transport hazards.

We acknowledge that there could be legitimate reasons to transport an unweaned bird, but also agree with the concerns cited above. We note that under the standards we propose, carriers and intermediate handlers would not be permitted to accept unweaned birds for transport unless transport instructions are specified as a part of the program of veterinary care.

A commenter representing the USFWS recommended not requiring AWA licensing for transporters who are transporting birds under a valid MBTA permit to and from the wild for compensation at or less than recouping costs. The commenter noted that there are situations in which volunteers transport wild migratory birds for minimal compensation for the health and safety of these birds. The proposed regulations include an exemption from AWA licensing for anyone transporting a migratory bird covered under the MBTA from the wild to a facility for rehabilitation and eventual release in

the wild, or between rehabilitation facilities. Any person transporting a migratory bird is currently required to obtain authorization to do so from USFWS.

### Proposed Regulations and Standards

The proposed regulations and standards in this document are intended to ensure the humane handling, care, treatment, and transportation of birds not bred for use in research that are used, or intended for use, for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. Consistent with most of the comments we received during the listening sessions, these proposed animal welfare standards accommodate the species-specific needs of birds and consider their significant differences with respect to their biological and behavioral requirements. In every case, the goal of the proposed standards for birds is to provide each individual bird with acceptable conditions consistent with ensuring its good health and well-being and meeting its physical and behavioral needs as required under the Act.

### Definitions

In § 1.1, we would revise the definitions of several terms used throughout parts 2 and 3. Specifically, we would revise the definitions of *carrier*, *exhibitor*, *farm animal*, *intermediate handler*, *pet animal*, *retail pet store*, and *weaned*. We would also add new definitions of *bird*, *bred for use in research*, and *poultry* to § 1.1. The proposed revisions are discussed below. In addition to these proposed revisions, regulated parties with birds would be subject to all other applicable definitions contained in § 1.1 if this proposed rule is adopted as a final rule.

#### *Bird*

We would define the term *bird* as any members of the class Aves, excluding eggs. We consider a bird to no longer be an egg when the bird is fully separated from the eggshell.

We considered regulating the welfare of live avian eggs during the development of this proposed rule. However, we found that there was not enough scientific data available for each species of bird to determine the stages when human management can cause an animal welfare concern.

#### *Bred for Use in Research*

We propose to add a definition for the term *bred for use in research* to clarify what animals are considered bred for use in research under the AWA regulations. This term would cover animals that are bred in captivity and



that are being used or are intended for use for research, teaching, testing, or experimentation purposes.

The definition of *animal* in the AWA and the regulations excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.<sup>6</sup> Therefore, under this proposal, the following birds not bred for use in research would be covered by the regulations:

- Birds that are obtained from their natural habitat and used or intended for use for research, teaching, testing, or experimentation purposes; and
- Birds that are being used or intended for use for exhibition purposes or for use as pets.

#### Carrier

We would revise the definition of *carrier* to include an exemption from AWA licensing for anyone transporting a migratory bird covered under the MBTA from the wild to a facility for rehabilitation and eventual release in the wild, or between rehabilitation facilities, and who has authorization from USFWS for that purpose. As transport of such migratory birds is regulated by the USFWS, any person transporting a migratory bird is currently required to obtain authorization to do so from that agency. We are proposing this exception because APHIS and USFWS agree that the continued transport of MBTA-covered birds for rehabilitation without additional regulation is beneficial for species preservation and outweighs any potential risk to animal welfare. If USFWS receives animal welfare-related complaints about transport of such birds, USDA will work with that agency to address them.

#### Exhibitor

We would also revise the definition of *exhibitor*. Currently, an *exhibitor* is defined as “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as

determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.”

Like horse and dog races and purebred dog and cat shows, we consider pigeon races and bird fancier shows to be exhibitions traditionally intended to advance agricultural arts and sciences. Therefore, we would amend the definition of *exhibitor* by adding pigeon races and bird fancier shows to the list of exhibitions that are excluded from coverage. In addition, for clarity, we would add free-flighted bird shows as an example of a type of animal act that is included under the definition of *exhibitor*.

#### Farm Animal; Poultry

Currently, § 1.1 defines a *farm animal* as “any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.” *Poultry* is not currently defined in the AWA regulations.

We are proposing to make several changes to the definition of *farm animal* to ensure appropriate coverage for birds. Like cattle, sheep, and other farm animals, there are domestic species of poultry that have historically been kept and raised on farms in the United States and used for food or fiber or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. Therefore, we are proposing to amend this term to include such poultry. This proposed amendment would also make the definition of *farm animal* consistent with the definition of *animal*, which lists poultry as a kind of farm animal that is exempt from coverage when used or intended for use as food or fiber, for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

We are also proposing to revise *farm animal* to include animals when used solely for their feathers or skins. The proposed addition of feathers to the list accounts for morphological differences between birds and other animals and is the avian equivalent to the current inclusion of animals when used solely for the purposes of fur. The proposed addition of skins to the list reflects the common practice of using ostrich and other skins of birds for leathers. Further, we would add ratites (e.g., ostrich, rhea, or emu) to the illustrative list of animals that are included in this term when used solely for purposes of meat, fur, feathers, or skins.

In addition to these changes to the definition of *farm animal*, we would also add a separate definition of *poultry* to the AWA regulations to clarify what birds are considered poultry. This term would be defined as any species of chickens, turkeys, swans, partridges, guinea fowl, and pea fowl; ducks, geese, pigeons, and doves; grouse, pheasants, and quail.

#### Intermediate Handler

We would amend the definition of *intermediate handler* to include an exemption from AWA licensing for anyone transporting a migratory bird from the wild to a facility for rehabilitation and eventual release in the wild, or between rehabilitation facilities, with USFWS authorization. Any person transporting a migratory bird covered under the MBTA is currently required to obtain authorization from USFWS.

#### Pet Animal

Under the current regulations, *pet animal* is defined as “any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.” We are proposing to include birds under the definition of *pet animal* and amend the illustrative list of animals contained in the definition by adding examples of pet birds. Such birds would include but not be limited to parrots, canaries, cockatiels, lovebirds, and budgerigar parakeets. Although there are too many bird species that exist in the United States and are kept as pets to list under the definition, we propose to list these particular birds because they constitute the majority of birds bought and sold as pets in the United States and are thus a good illustrative example of what constitutes a pet bird.

<sup>6</sup> Birds are otherwise covered under the definition of *animal* in the Act and the current regulations by the term “warm-blooded animal.”

### Retail Pet Store

Currently, a *retail pet store* is defined as “a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domesticated ferrets, domesticated farm-type animals, birds, and coldblooded species.” The current definition goes on to exclude establishments or persons conducting certain activities, meaning that these establishments or persons do not meet the *retail pet store* definition. These exclusions are as follows:

- Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;
- Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;
- Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes;
- Any establishment wholesaling any animals (except birds, rats, and mice); and
- Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

We are proposing to revise the definition of *retail pet store* by removing the parenthetical exceptions for birds from the lists of exclusions above. Those exclusions exist as a result of the historical exclusion of all birds from the definition of *animal* in § 1.1 of the regulations and are inconsistent with the current definition of *animal*.

### Weaned

Currently, § 1.1 defines *weaned* to mean that “an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.” We are proposing to amend this definition to make it applicable to birds. Specifically, we propose to add that a bird is weaned if it has become accustomed to take food and has so done, without supplemental feeding from a parent or human caretaker, for at least 5 consecutive days. Signs that a bird or other animal has become accustomed to take food

include the animal’s ability to maintain a constant body weight during weaning.

### Regulations in 9 CFR Part 2 Pertaining to Newly Regulated Persons Under This Proposal

In addition to the amendments we propose, newly regulated persons under this proposal would be subject to all other applicable AWA regulations in effect for licensing, registration, research, and inspections under 9 CFR part 2. These regulations, addressed below, are intended as an overview of how newly regulated persons maintaining birds as dealers or exhibitors may be affected.

Under Subpart A—Licensing, persons who plan to maintain and use animals covered under the AWA regulations and who are not otherwise exempt from licensing are required to apply to APHIS for a license, which is valid for 3 years, in accordance with § 2.1, and agree to a prelicensing inspection demonstrating that his or her location(s) and any animals, facilities, vehicles, equipment, or other locations used or intended for use in the business comply with the Act and the regulations and standards.

We are uncertain regarding the number of dealers and exhibitors who will now be subject to this licensing requirement, but believe, however, that under the regulations in part 2, many small bird dealers and exhibitors would be exempted from licensing. The retail pet store exemption exempts persons or businesses defined in § 1.1 as a *retail pet store*, which means a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase. Under the *de minimis* exemptions in § 2.1(a)(3), the income threshold exemption in that paragraph applies to “any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals during any calendar year and is not otherwise required to obtain a license.” A licensing exemption is also provided for dealers who maintain four or fewer breeding females of pet animals, small exotic or wild animals, and/or domesticated farm type animals, and offer only their offspring for sale. Also, in § 2.1(a)(3), individuals who buy, sell, transport, or negotiate the sale, purchase, or transportation of an animal solely for food or fiber are exempt from licensing, as are exhibitors covered under the AWA who maintain eight or fewer pet animals, small exotic or wild

animals, and/or domesticated farm type animals for exhibition.

Under Subpart B—Registration, carriers and intermediate handlers newly regulated under this proposal would not require a license to transport birds, but would be required to register by completing and filing a form provided by APHIS. Registrations, unlike licenses, do not have an expiration date.

Under Subpart C—Research facilities, a newly regulated research facility under this proposal would need to register by completing and filing a form available from APHIS. The chief executive officer of the newly registered research facility would be required to appoint an IACUC consisting of qualified persons to assess the research facility’s animal program, facilities, and procedures. Each research facility would also need to have an attending veterinarian and maintain a program of veterinary care. Lastly, registered research facilities would be required to maintain records of IACUC meetings, activities involving animals, and animals purchased or acquired by the facility.

In addition, newly licensed dealers and exhibitors under part 2, subpart D, § 2.40, also would be required to have an attending veterinarian and a program of veterinary care. Subpart E requires that dealers and exhibitors of all animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of by any dealer or exhibitor would have to be identified by the dealer or exhibitor at the time of delivery for transportation, purchase, sale, acquisition or disposal, as provided in the subpart. Primary enclosures would require a means for identifying each of the animals within.

Subpart F prohibits any person from buying, selling, exhibiting, using for research, transporting, or offering for transportation, any stolen animal.

Subpart G would require dealers and exhibitors newly regulated under this proposal to make, keep, and maintain records or forms which fully and correctly disclose certain information as indicated in the subpart, concerning animals purchased or otherwise acquired, owned, held, leased, or otherwise in their possession or under their control, or which are transported, sold, euthanized, or otherwise disposed of by that dealer or exhibitor. Operators of an auction sale or broker would need to make, keep, and maintain records or forms which disclose the information indicated in the subpart concerning each bird consigned for auction or sold, whether or not a fee or commission is

charged. Carriers and intermediate handlers newly registered under this proposal would need to keep records concerning C.O.D. shipments of live birds.

Subpart I includes miscellaneous requirements for dealers, exhibitors, operators of auction sales, intermediate handlers, and carriers. Newly regulated persons under this proposal would agree to provide any information concerning the business which APHIS may request in connection with the enforcement of the provisions of the Act, the regulations, and the standards. Also, each dealer, exhibitor, intermediate handler, and carrier would be required to provide APHIS officials with access to and inspection of property and records during business hours. Any regulated person who intends to exhibit an animal at any location other than the person's approved site (including, but not limited to, circuses, traveling educational exhibits, animal acts, and petting zoos), except for travel that does not extend overnight, is required to submit a written itinerary to APHIS. The regulations in subpart I also include provisions for missing animals, situations in which captive animals are determined to be suffering, and demonstration of adequate experience and knowledge of the species maintained.

Lastly, under current part 2, subpart I, newly regulated dealers, exhibitors, intermediate handlers, and carriers under this proposal would be required to develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in their possession).

### Proposed Changes to 9 CFR Part 2

The proposed amendments to the regulations are discussed below by section. In addition to these proposed amendments, newly regulated persons under this proposal would be subject to all other applicable AWA regulations for licensing, registration, research and inspections as summarized above.

#### Requirements and Application—§ 2.1

As noted previously, § 2.1 of the regulations includes requirements for licensing, as well as exemptions from licensing. One such exception in § 2.1(a)(3)(vi) exempts “any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any

animals used only for the purposes of food or fiber (including fur).” To accommodate birds under this exemption, we would add “feathers” to the list of purposes for which birds are used.

Paragraph (b)(1) states that licenses are issued to specific persons, and are issued for specific activities, types and numbers of animals, and approved sites. As each license specifies the numbers and types of animals that a licensee can maintain, under paragraph (b)(2)(ii) a licensee is required to obtain a new license before acquiring or using any covered animal beyond those types or numbers of animals specifically authorized under the existing license.

We are aware that a number of currently licensed facilities, in addition to maintaining mammals of various types, are also maintaining birds that might be covered under the proposed changes to the regulations. These birds are not currently listed on the license. However, in order to minimize redundant administrative burden on these facilities, we would not require that they apply for a new license only for the purpose of meeting the effective date of these proposed regulations, if promulgated. Therefore, we propose to add a statement to § 2.1(b)(2)(ii) explaining that a current licensee with birds is not required to apply for a new license until the recommended 90 days prior to the scheduled expiration date of that license (APHIS encourages such persons to apply for a new license at least 90 days before expiration of the current one). Licenses are valid for 3 years. We would also add to paragraph (b)(2)(ii) a reference to proposed subpart G in part 3, which lists standards for birds, and an effective date.

APHIS intends to provide guidance to both new and current licensees through documents, guides, and training to help them achieve compliance with the new regulations for birds. We invite potential licensees and other interested persons to comment on the types of training and guidance they need and the modes by which it might be best provided.

#### *Birds Covered Under the Migratory Bird Treaty Act*

The MBTA implements a series of treaties between the United States and Canada, Mexico, Japan, and Russia intended to protect and sustain populations of migratory birds. Under regulations developed and enforced by USFWS, the MBTA prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior

authorization.<sup>7</sup> With some exceptions,<sup>8</sup> any activity involving the use, possession, or transport of a migratory bird, or the parts, nests, or eggs of such birds, requires a USFWS permit specific to the activity. Types of migratory bird permits and their provisions, listed in 50 CFR part 21, subpart C, include but are not limited to those intended for import or export, scientific collecting, falconry, raptor propagation, and rehabilitation.<sup>9</sup>

As noted above, the 2002 amendments to the AWA by Congress subjected birds to regulation under the AWA, which does not distinguish migratory birds from other birds and therefore does not exclude them from regulation under its authority. Although migratory birds are currently covered under the MBTA and its regulations, the primary purpose of the MBTA is to sustain native populations of such birds rather than to establish specific standards of care and humane treatment for birds in captivity. For this reason, we acknowledge that a small number of persons maintaining captive migratory birds for some activities under USFWS regulation would also fall under AWA coverage and potentially be subject to APHIS regulation. In particular, some persons currently authorized under permit by USFWS to exhibit or breed migratory birds may be required to follow AWA regulations and obtain a license from APHIS to ensure that such birds are receiving humane care and treatment.

As noted above, we propose to revise the definitions of *carrier* and *intermediate handler* in § 1.1 to include an exemption from AWA registration for anyone transporting a migratory bird covered under the MBTA from the wild to a facility for rehabilitation and eventual release in the wild, or between rehabilitation facilities.

APHIS continues to work closely with USFWS to determine situations where regulatory overlap may occur, and both agencies are coordinating efforts in order to minimize dual regulation of persons possessing and using migratory birds for breeding, exhibition, education, and research. To help us reduce regulatory burden on such persons, we invite comments that address specific activities and concerns

<sup>7</sup> A list of migratory birds protected under the MBTA can be found at <https://ecfr.federalregister.gov/current/title-50/chapter-I/subchapter-B/part-10/subpart-B/section-10.13>.

<sup>8</sup> See 50 CFR 21.12, “General exceptions to permit requirements.” Exceptions address handling and transport of migratory birds by certain persons and institutions for the purpose of ensuring their health and safety.

<sup>9</sup> Regulations and permits specific to bald and golden eagles are located in 50 CFR part 22.

involving migratory birds potentially covered under both APHIS and USFWS regulations.

*Registration Requirements and Procedures—§ 2.25*

Section 2.25 provides in part that each carrier and intermediate handler is required to register with the Secretary by completing a form furnished, upon request, by the Deputy Administrator. This requirement typically applies to persons who transport AWA-covered animals. Persons already registered to transport other animals would not be required to update their registration to transport birds.

We note that some persons transport wild migratory birds between rehabilitation facilities and the wild as part of conservation projects. As the transport of migratory birds covered under the MBTA requires authorization by USFWS under regulations in 50 CFR parts 21 and 22, we would not require that such transporters register with APHIS. Accordingly, we would revise the definitions of *carrier* and *intermediate handler* to exempt such persons from AWA licensing.

*Institutional Animal Care and Use Committee (IACUC)—§ 2.31(d)*

Under § 2.31 of the regulations, each registered research facility must establish an IACUC to assess its animal program, facilities, and procedures. The IACUC must have at least three members, one of whom must be a Doctor of Veterinary Medicine, with training or experience in laboratory animal science and medicine, who has direct or delegated program responsibility for activities involving animals at the research facility. Another member must not be affiliated with the facility at all, and is intended to provide representation for general community interests. In order to approve proposed activities or proposed significant changes in ongoing activities, paragraph (d) of § 2.31 requires that the IACUC conduct a review of those components of the activities related to the care and use of animals and determine that the proposed activities are in accordance with the regulations, unless acceptable justification for a departure is presented in writing.<sup>10</sup> The IACUC is also required

<sup>10</sup> APHIS has issued guidance exempting field studies, defined by APHIS as studies conducted on free-living wild animals in their natural habitat, from this requirement. However, this term excludes any study that involves an invasive procedure, harms, or materially alters the behavior of an animal under study. For more detail, see the APHIS Tech Note, "Research Involving Free-living Wild Animals in Their Natural Habitat," at [https://www.aphis.usda.gov/animal\\_welfare/downloads/tech-note-free-living-wild-animals.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/tech-note-free-living-wild-animals.pdf).

to determine that the proposed activities or significant changes in ongoing activities meet a number of requirements, including ones related to activities that involve surgery. We are proposing no additional requirements for IACUC membership, but research facilities that use birds not bred for use in research could choose to enlist additional IACUC members with avian expertise.

Under current § 2.31(d)(1)(ix), activities that involve surgery must include appropriate provision for pre-operative and post-operative care of the animals in accordance with established veterinary medical and nursing practices, which means that survival surgery must be performed using aseptic procedures, including surgical gloves, masks, and sterile instruments. Major operative procedures on non-rodents must be conducted only in facilities intended for that purpose and must be operated and maintained under aseptic conditions. Non-major operative procedures and all surgery on rodents do not require a dedicated facility but also must be performed using aseptic procedures. Operative procedures conducted at field sites need not be performed in dedicated facilities but must be performed using aseptic procedures.

We would apply the same requirements for operative procedures for birds as we do for rodents in § 2.31(d)(ix). Our determination for this decision is twofold. First, we are aligning our requirements with U.S. Public Health Service policy for the humane care and use of laboratory animals, which does not require a separate, dedicated surgical area for rodents, but does require a surgical area used solely for survival surgeries involving higher vertebrate species.<sup>11</sup> Second, we have considered the operative conditions and practices for rodents and concluded that they would be humane and consistent with the AWA if applied to birds. As we noted above, the surgical standards currently listed in § 2.31(d)(1)(ix) include appropriate provisions for aseptic surgery and pre-operative and post-

<sup>11</sup> *Guide for the Care and Use of Laboratory Animals*, 8th Edition, National Research Council: <https://grants.nih.gov/grants/olaw/guide-for-the-care-and-use-of-laboratory-animals.pdf>. Page 144 of the *Guide* states that, "for most survival surgery performed on rodents and other small species such as aquatics and birds, an animal procedure laboratory is recommended; the space should be dedicated to surgery and related activities *when used for this purpose, and managed to minimize contamination from other activities conducted in the room at other times.*" [Our emphasis.] In other words, a surgical area for rodents and birds is not exclusively intended for that purpose as it is for higher vertebrate species.

operative care of the animals in accordance with established veterinary medical and nursing practices, which apply regardless of whether or not the surgery is performed in a dedicated facility used wholly for that purpose. Moreover, under current § 2.31(d)(1)(ix), medical care for all AWA-covered animals at a registered research facility is required to be available and provided as necessary by a qualified veterinarian.

*Time and Method of Identification—§ 2.50*

We are proposing to amend § 2.50 of the regulations, which addresses methods of identifying animals. Currently, paragraph (e)(1) requires dealers and exhibitors to identify all animals, except for dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of, at the time of delivery for transportation, purchase, sale, acquisition, or disposal. Paragraph (e)(2) requires such animals, when confined to a primary enclosure, to be identified using one of three methods: (1) A label attached to the primary enclosure that bears a description of the animals in the primary enclosure; (2) marking the primary enclosure with a painted or stenciled number which shall be recorded in the records of the dealer or exhibitor together with a description of the animals; or (3) a tag or tattoo applied to each animal in the primary enclosure that individually identifies each animal by description or number. When such an animal is not confined to a primary enclosure, paragraph (e)(3) provides that the animal must be identified on a record that must be kept and maintained by a dealer or exhibitor as part of his or her records.

Labels attached to primary enclosures, leg and wing bands, and transponders (also referred to as microchips) are preferred methods of identification for birds. These methods are commonly and safely used to identify birds in all segments of the avian industry that we would regulate. The ability to identify animals is a part of basic animal husbandry and allows for APHIS to track animals to monitor movement. Therefore, we propose to require dealers and exhibitors to identify their birds that are confined to a primary enclosure using one of the following: (1) A label attached to the primary enclosure that bears a description of the birds in the primary enclosure, including the number and species of birds and any distinctive physical features or identifying marks of the birds; (2) a leg or wing band applied to each bird in the primary enclosure by the dealer or

exhibitor that individually identifies each bird by description or number; or (3) a transponder (microchip) placed in a standard anatomical location for the species in accordance with currently accepted professional standards, provided that the facility has a compatible transponder reader that is capable of reading the transponder and that the reader is readily available for use by an APHIS official and/or facility employee accompanying the APHIS official. We would add these proposed requirements as a new paragraph (e)(2) in § 2.50 and redesignate current paragraphs (e)(2) and (3) as paragraphs (e)(3) and (4), respectively, to accommodate that new paragraph. Birds that are not confined to a primary enclosure would be subject to the identification requirements contained in redesignated paragraph (e)(4) (current paragraph (e)(3)). Under that paragraph, such birds would have to be identified on a record, as required by § 2.75 of the regulations, which would have to accompany the bird at the time it is delivered for transportation, transported, purchased, or sold, and would have to be kept and maintained by the dealer or exhibitor as part of his or her records.

*Records: Dealers and Exhibitors—§ 2.75*

Currently, § 2.75(b)(1) of the regulations requires that dealers (other than operators of auction sales and brokers to whom animals are consigned) and exhibitors make, keep, and maintain records or forms which fully and correctly disclose certain identification and disposition information concerning animals other than dogs and cats that are purchased or otherwise acquired, owned, held, leased, or otherwise in their possession or under their control, or that they transport, sell, euthanize, or otherwise dispose of. Among other things, the records must include any offspring born of any animal while in the dealer's or exhibitor's possession or under his or her control.

We propose to apply these recordkeeping requirements to dealers and exhibitors of birds and would apply to all birds covered under the AWA. While we acknowledge that some stakeholders commented that maintaining records of individual birds in large flocks is infeasible, we consider an accounting of each covered animal important for the purposes of ensuring adequate animal welfare for every animal. For example, among other purposes, it is necessary in order to account for additions of covered animals to the inventory at the facility, as well as mortalities. The only change

that would be necessary in § 2.75(b)(1) to reflect its applicability to dealers and exhibitors of birds would be to add the words "or hatched" after the word "born" in the previously cited provision regarding records for offspring born to animals while they are under a dealer's or exhibitor's possession or control.

*Records: Operators of Auction Sales and Brokers—§ 2.76*

Section 2.76 requires that operators of auction sales and brokers maintain records for any animal consigned for auction or sold, whether or not a fee or commission is charged. Paragraph (a) of § 2.76 provides that those records must include such information as the name and address of the buyer or consignee who received the animal, the USDA license or registration number (if applicable) of the person selling, buying, or receiving the animals, the date of consignment, the band, microchip, or other durable individualized identification method assigned to the animal under § 2.50 or § 2.54, and a description of each animal. Currently, § 2.76(a)(7) requires a description of each animal that includes the species and breed or type of animal, the sex of the animal, the date of birth or approximate age, and the color and any distinctive markings.

Because the sex of some birds may not be readily determinable, we are proposing to amend paragraph (a)(7) to require operators of auction sales and brokers to record the sex of a bird only if it is readily determinable. To reflect the fact that birds lay eggs, rather than give birth to live young, we would also add the words "or hatch date" after the words "date of birth" in paragraph (a)(7)(iii).

The regulations currently allow operators of auction sales and brokers to provide an approximate age in lieu of an animal's date of birth in those instances where the exact date of birth of the animal is unknown. We recognize that it is sometimes difficult to even estimate the approximate age of certain species of birds, so we also would allow the approximate developmental stage of an animal to be provided if the date of birth or hatch date is unknown. For example, an operator of an auction sale or broker who does not know the hatch date or approximate age of a bird may disclose that the bird is a chick, juvenile, or adult on the records or forms maintained for that bird in accordance with § 2.76 of the regulations.

**Proposed Standards in 9 CFR Part 3**

As we noted above, the Act authorizes the Secretary of Agriculture to promulgate standards governing the

humane handling, care, treatment, and transportation of covered animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. For dealers, research facilities, and exhibitors of animals covered by the Act, such standards must include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extreme weather and temperatures, adequate veterinary care, and separation by species where necessary.

The standards relating to the humane handling, care, treatment, and transportation of animals currently covered by the AWA are contained in 9 CFR part 3, subparts A through F. Subparts A through E contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals respectively, while subpart F sets forth general standards for warmblooded animals not otherwise specified in that part. In this document, we are proposing to add a new subpart G to contain standards for birds.

The proposed standards for birds are divided into three broad areas: Facilities and operating standards; animal health and husbandry standards; and transportation standards. The standards in these areas address requirements under the Act. In the listening sessions held on this rulemaking, many commenters asked that we consider standards for birds that are flexible enough to ensure their species-specific needs are met. Many commenters also stated that, given the vast number of bird species, prescriptive standards would generally be impracticable and burdensome to the aviculture community. We agree with commenters on these points and have developed the proposed standards accordingly. As a whole, these standards provide APHIS the means to effectively measure compliance and ensure animal welfare, while also affording breeders, dealers, exhibitors, and transporters flexibility to implement the standards using the expertise and knowledge they have of their particular birds. On this point, we invite comments on ways that APHIS might assist regulated entities with implementation of these standards, whether through documents, guides, training, or other means. The standards for proposed Subpart G—Specifications for the Humane Handling, Care, Treatment, and Transportation of Birds are discussed below by topic.

*Facilities and Operating Standards*

## Facilities, General

## Facilities, General: Structure; Construction—Proposed § 3.150(a)

Housing facilities must be safe and secure not only for birds but also for the persons attending to them and to the general public. As we noted above, the current regulations in part 3 for animals include requirements for housing that consider both animal and human safety. Therefore, we are proposing in § 3.150(a) to require that housing facilities for birds be designed and constructed so that they are structurally and safely sound for the species of bird housed in them. We would also require that they be kept in good repair, protect the birds from injury, and restrict the entry of other animals. The facilities would have to employ security measures that contain all the birds securely. Such measures may include safety doors, entry/exit doors to the primary enclosure that are double-doored, or other equivalent systems designed to prevent escape of the birds. For birds that are flight-restricted or cannot fly and are allowed to roam free within the housing facility or a portion thereof, we would require that the birds have access to safety pens, enclosures, or other areas that offer the birds protection during overnight periods and at times when their activities are not observed by staff.

## Facilities, General: Condition and Site—Proposed § 3.150(b)

Housing facilities and areas used for storing animal food or bedding would have to be adequately free of any accumulation of trash, waste material, other discarded materials, junk, weeds, and brush. We would also require that such areas be kept neat and free of clutter, including equipment, furniture, and stored material, except for materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs.

## Facilities, General: Surfaces—Proposed § 3.150(c)

The surfaces of housing facilities would have to be constructed in a manner and made of materials that allow them to be readily cleaned and/or sanitized, or removed and replaced when worn or soiled. Interior surfaces and surfaces that come in contact with birds would also have to be nontoxic to the bird, free of rust or damage that affects the structural integrity of the surface or prevents cleaning, and free of jagged edges or sharp points that could injure the birds. This proposed standard

would allow for thorough cleaning of the primary enclosure to prevent bacterial, excrement, or other organic buildup that could be a health hazard to the birds. It would also ensure that the birds are contained securely and that the surfaces that come in contact with the birds are not harmful to them.

## Facilities, General: Water and Electric Power—Proposed § 3.150(d)

A reliable source of water and power must be available. Therefore, we are proposing that the facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the proposed standards for birds. We also propose that the facility provide adequate potable water for the birds' drinking needs and adequate water for cleaning and carrying out other husbandry requirements.

## Facilities, General: Storage—Proposed § 3.150(e)

Supplies of food, including food supplements, bedding, and substrate, would have to be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. We would require that the supplies be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. All food would have to be stored at appropriate temperatures and in a manner that prevents contamination and deterioration of its nutritive value, and food would not be allowed to be used beyond its shelf-life date or expiration date listed on the label. All open supplies of food and bedding would have to be kept in waterproof containers with tightly fitting lids to prevent deterioration and contamination, except for live, frozen, or refrigerated food. We would also require that live food be maintained in a manner to ensure wholesomeness. We would also provide that substances such as cleaning supplies and disinfectants that are harmful to birds but required for normal husbandry practices may not be stored in food storage and preparation areas but may be stored in cabinets in the animal areas, provided that they are stored in properly labeled containers that are adequately secured to prevent potential harm to the birds. Finally, we would prohibit animal waste and dead animals and animal parts not intended for food from being kept in food storage or food preparation areas, food freezers, food refrigerators, and animal areas.

## Facilities, General: Waste Disposal—Proposed § 3.150(f)

Proper waste disposal is essential in maintaining the cleanliness and sanitary condition of facilities housing birds and directly affects the health and well-being of such animals. Therefore, we are proposing to require that housing facility operators provide for regular and frequent collection, removal, and disposal of animal and food wastes, substrate, dead animals, debris, garbage, water, and any other fluids and wastes in a manner that minimizes contamination and disease. We would require that trash containers in housing facilities and in food storage and food preparation areas be leakproof and have tightly fitted lids.

## Facilities, General: Drainage—Proposed § 3.150(g)

Proper drainage must be provided in order to maintain cleanliness and sanitary conditions. Therefore, we are proposing the following standards:

- Housing facilities would have to be equipped with disposal and drainage systems that are constructed and operated so that animal wastes and water, except for water located in pools or other aquatic areas (*e.g.*, ponds, waterfalls, fountains, and other water features), are rapidly eliminated and the animals have the option of remaining dry. We would require that any pool or other aquatic area be maintained in accordance with the regulations in proposed § 3.157, which are discussed below.

- Disposal and drainage systems would have to minimize vermin and pest infestation, insects, odors, and disease hazards.

- All drains would have to be properly constructed, installed, and maintained so that they effectively drain water. If closed drainage systems are used, they would have to be equipped with traps and prevent the backflow of gases and the backup of sewage. If the facility uses sump ponds, settlement ponds, or other similar systems for drainage and animal waste disposal, the system would have to be located a sufficient distance from the bird area of the housing facility to prevent odors, diseases, insects, pests, and vermin infestation in the bird area.

- If drip or constant flow watering devices are used to provide water to the animals, excess water would have to be rapidly drained out of the animal areas by gutters or pipes so that the animals have the option of remaining dry.

Facilities, General: Toilets, Washrooms, and Sinks—Proposed § 3.150(h)

Toilets and washing facilities, such as washrooms, basins, sinks, or showers, would have to be provided for and be readily accessible to animal caretakers.

Facilities, Indoor

Facilities, Indoor: Temperature and Humidity—Proposed § 3.151(a)

Maintaining appropriate air temperature and humidity levels and, if present, pool or other aquatic area (*e.g.*, ponds, waterfalls, fountains, and other water features) temperature is vital to the health and well-being of birds. Therefore, we would require that the air temperature and humidity levels and, if present, pool or other aquatic area temperatures in indoor facilities be sufficiently regulated and appropriate to the bird species to protect them against detrimental temperature and humidity levels, to provide for their health and well-being, and to prevent discomfort or distress, in accordance with current professionally accepted standards. Prescribed temperature and humidity levels would be part of the written program of veterinary care or part of the full-time veterinarian's records.

Facilities, Indoor: Ventilation—Proposed § 3.151(b)

Ventilation is important to ensure that birds are provided adequate fresh air for their respiratory needs in both quantity and quality. Therefore, we would require that indoor housing facilities be sufficiently ventilated at all times when birds are present to provide for their health, to prevent their discomfort or distress, accumulations of moisture condensation, odors, and levels of ammonia, chlorine, and other noxious gases. We would also require that the ventilation system minimize any drafts.

Facilities, Indoor: Lighting—Proposed § 3.151(c)

Indoor housing facilities would need to have lighting, by natural or artificial means, or both, of appropriate quality, distribution, and duration for the bird species. We would require that such lighting be sufficient to permit routine inspection and cleaning and be designed to protect the birds from excessive illumination that may cause discomfort or distress.

Facilities, Indoor: Indoor Pool and Other Aquatic Areas—Proposed § 3.151(d)

Indoor pools or other aquatic areas (*e.g.*, ponds, waterfalls, fountains, and other water features) would have to have sufficient vertical air space above the pool or other aquatic area to allow

for behaviors typical to the species of bird under consideration. Such behaviors may include, but are not limited to, diving and swimming.

Facilities, Outdoor

Facilities, Outdoor: Acclimation—Proposed § 3.152(a)

Birds come from a great variety of climatic conditions. There is also a wide range of climatic conditions within the United States. Outdoor housing facilities are completely dependent on the local environmental conditions. Therefore, we are proposing that birds may not be housed in outdoor facilities unless the air humidity and temperature ranges they may encounter do not adversely affect their health and comfort. This provision would also apply to the temperature of pools and other aquatic areas (ponds, waterfalls, fountains, and other water features). Further, we would provide that birds may not be introduced to an outdoor housing facility until they are acclimated to the ambient temperature and humidity and, if applicable, pool or other aquatic area temperature range which they will encounter therein.

Facilities, Outdoor: Shelter From Inclement Weather—Proposed § 3.152(b)

Outdoor housing facilities would have to provide adequate shelter, appropriate to the species and physical condition of the birds, for the local climatic conditions, in order to protect the birds from any adverse weather conditions. We would require that such shelters be adequately ventilated in hot weather and have one or more separate areas of shade or other effective protection that is large enough to contain all the birds at one time and prevent their discomfort from direct sunlight, precipitation, or wind. The shelter would have to be constructed to provide sufficient space to comfortably hold all of the birds at the same time without adverse intraspecific aggression or grouping of incompatible birds. For birds that form dominance hierarchies and that are maintained in social groupings, we would make it explicit that such shelter(s) would have to be constructed so as to provide sufficient space to comfortably hold all the birds at the same time, including birds that are low in the hierarchy.

Primary Enclosures

Primary Enclosures: General Requirements—Proposed § 3.153(a)

Primary enclosures would have to be designed and constructed of suitable materials so that they are structurally

sound. We would also require that the primary enclosures be kept in good repair and be constructed and maintained so that they:

- Have no sharp points or edges that could injure the birds;
  - Protect the birds from injury;
  - Contain the birds securely;
  - Restrict other animals from entering the enclosure;
  - Ensure that birds have the option to remain dry and clean;
  - Provide shelter and protection for each bird from climatic and environmental conditions that may be detrimental to its health and well-being;
  - Provide sufficient shade to comfortably shelter all birds housed in the primary enclosure at one time, including low ranking birds that are maintained in social groupings that form dominance hierarchies;
  - Provide all the birds with easy and convenient access to clean food and potable water;
  - Ensure that all surfaces in contact with the birds may be readily cleaned and/or sanitized in accordance with proposed § 3.158 of the regulations, or be replaced when worn or soiled; and
  - Have floors that are constructed in a manner that protects the birds' feet and legs from injury. If flooring material is suspended, it would have to be sufficiently taut to prevent sagging under the birds' weight. If substrate is used in the primary enclosure, the substrate would have to be clean and made of a suitably absorbent material that is safe and nontoxic to the birds.
- In addition, we would require that furniture-type objects, such as perches and other objects that enrich a bird's environment, be species-appropriate and designed, constructed, and maintained so as to prevent harm to the birds. If the enclosure houses birds that rest by perching, there would have to be perches available that are appropriate to the age and species of birds housed therein and a sufficient number of perches of appropriate size, shape, strength, texture, and placement to comfortably hold all the birds in the primary enclosure at the same time, including birds that are ranked low in a dominance hierarchy.
- Finally, we would require primary enclosures that are adjacent to one another or that share a common side with another enclosure to be suitably screened from each other or kept at a sufficient distance apart in order to prevent injury of the occupants due to predation, territorial disputes, or aggression.



**Primary Enclosures: Space Requirements—Proposed § 3.153(b)**

Space requirements for the wide variety of birds that are subject to the Act are quite variable. Therefore, the proposed space requirements contained in this proposal are performance-based standards intended to provide adequate space to ensure the health and well-being of the birds. The primary enclosures would have to be constructed and maintained to allow each bird to make normal postural and social adjustments, such as dust-bathing and foraging, with adequate freedom of movement and freedom to escape from aggression by other animals in the enclosure according to the program of veterinary care developed, documented in writing, and signed by the attending veterinarian. The attending veterinarian for a facility, whether full- or part-time, would need to document and maintain a record that the space in all enclosures housing birds are adequate and allow for normal postural and social adjustments. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

We would provide three exceptions to this space requirement. First, we are proposing that the species-typical postural or social adjustments of a bird may be restricted when the attending veterinarian determines that allowing the bird to make normal postural and social adjustments would be detrimental to its good health and well-being. We propose that the species-typical postural or social adjustments of a bird may be restricted—for instance, in the case of a bird having undergone a medical procedure whose recovery could be adversely impacted unless movement is restricted—where the attending veterinarian determines that making normal postural and social adjustments would be detrimental to the bird's good health and recovery. The attending veterinarian would have to document the reason and recommended duration for the restriction and make such records available for review by an APHIS inspector.

Second, we would provide that a bird's normal postural and social adjustments may be restricted where the bird is tethered in accordance with professionally accepted standards. We would provide that a bird may only be tethered if: (1) It is appropriate for the species; (2) it will not cause any form of harm to the bird; (3) the bird is maintained on a perch appropriate for the species and age of the bird while tethered; (4) the bird has sufficient space to fully extend its wings without

obstruction; and (5) the tether does not entangle the bird.

Third, we would provide that, when dealers, exhibitors, and research facilities breed or intend to breed their birds, such birds would have to be provided with structures and/or materials that meet the reproductive needs of the species during the appropriate season or time periods. A sufficient number of structures and materials must be provided to meet the needs of all breeding birds in an enclosure and to minimize aggression.

Fourth, we would provide that birds intended for breeding sale, in need of medical care, exhibited in traveling exhibits, or traveling for other reasons would have to be kept in enclosures that, at minimum, meet the specific space, safety, bedding, perch, and physical environment (including, but not limited to, temperature, humidity, sun and wind exposure) requirements for transport enclosures as specified in proposed § 3.162. At all other times, we would require that birds be housed in enclosures that meet the space requirements of this section.

**Primary Enclosures: Special Space Requirements for Wading and Aquatic Birds—Proposed § 3.153(c)**

Wading and aquatic birds are active on both land and water and require access to pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features) to ensure their health and well-being. Therefore, we are proposing to require that primary enclosures housing wading and aquatic birds contain a pool or other aquatic area and a dry activity area that allows easy ingress or egress of the pool or other aquatic area. We would require that the pool or other aquatic area be of sufficient surface area and depth to allow each bird to make normal postural and social adjustments, such as immersion, bathing, swimming, and foraging, with adequate freedom of movement and freedom to escape from aggression demonstrated by other birds in the enclosure. Similarly, the dry areas would have to be of sufficient size to allow each bird to make normal postural and social adjustments with adequate freedom of movement and freedom to escape from aggression demonstrated by other birds in the enclosure. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

**Environment Enhancement To Promote Psychological Well-Being—Proposed § 3.154**

As evidenced by first-hand observation and scientific studies, many

species of birds exhibit a level of intelligence and an ability to solve problems approaching that of higher mammals. As the regulations in subpart D, § 3.81, require a plan to provide environmental enhancement for nonhuman primates that includes social grouping and enrichment requirements, we are likewise proposing a set of requirements specifically for birds in a proposed § 3.154.

Under the proposed requirements, dealers, exhibitors, and research facilities would need to develop, document, and follow a species-appropriate plan for environment enhancement adequate to promote the psychological well-being of birds. The plan, which would be part of the required program of veterinary care, would have to be approved by a veterinarian and be in accordance with the other regulations proposed in Subpart G—Specifications for the Humane Handling, Care, Treatment, and Transportation of Birds. The plan would also have to conform with currently accepted professional standards.

We note that environmental enhancements, while essential to the psychological well-being of many birds, do not typically require extensive or costly facility modifications. Depending on the species, enhancement actions in a plan could include ensuring that birds are kept in appropriate social groupings, that they are given opportunities to forage, or that they have access to species-appropriate perches and chewing materials.

The plan for environment enhancement would be made available to APHIS upon request, and also, in the case of research facilities, to officials of any pertinent funding agency. The plan, at a minimum, would need to address social grouping needs, environmental enrichment, special considerations for young birds and birds needing to be isolated due to aggression or disease, use of restraints, and birds exempted from the plan.

**Environment Enhancement To Promote Psychological Well-Being: Social Grouping—Proposed § 3.154(a)**

Under proposed § 3.154(a), the environment enhancement plan would need to include specific provisions to address the social needs of birds of species known to exist in social groups in nature. Such specific provisions would have to be in accordance with currently accepted professional standards. Birds that are overly aggressive, debilitated, or in need of isolation due to a contagious disease may be excepted from social grouping requirements. One or more birds

suspected of contagious diseases may be isolated from healthy animals prior to and as directed by the attending veterinarian or as instructed in the program of veterinary care. When an entire group or room of birds is known to have been or believed to be exposed to an infectious agent, the group could be kept intact during the process of diagnosis, treatment, and control.

We also propose to require that birds may only be housed with other animals, including members of their own species, if they are compatible, do not prevent access to food, water, or shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. We would require that bird compatibility be determined in accordance with generally accepted professional practices and observations by the attending veterinarian during his or her regularly scheduled visits to the facility. In addition, we would require that individually housed social species of birds are able to see and hear birds of their own or compatible species unless determined otherwise by the veterinarian.

**Environment Enhancement To Promote Psychological Well-Being: Environmental Enrichment—Proposed § 3.154(b)**

Proposed § 3.154(b) would require that the plan address species-specific environmental enrichment for birds. Under this requirement, the plan would include enrichment materials or activities that would provide the birds with the means to express noninjurious species-typical activities. Examples of environmental enrichments could include providing perches, swings, mirrors, and other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.

**Environment Enhancement To Promote Psychological Well-Being: Special Considerations—Proposed § 3.154(c)**

Proposed paragraph (c) would require that special considerations for certain birds be included in the enhancement plan. Such birds, determined based on the needs of the individual species and under the instructions of the attending veterinarian, include infants and young juveniles, birds showing signs of psychological distress through behavior or appearance, birds used in research for which an IACUC-approved protocol requires restricted activity, and individually housed social species of

birds that are unable to see and hear birds of their own or compatible species.

**Environment Enhancement To Promote Psychological Well-Being: Restraint Devices—Proposed § 3.154(d)**

We would impose restrictions on restraint devices in proposed paragraph (d). Birds would not be permitted to be maintained in restraint devices unless required for health reasons as determined by the attending veterinarian or approved by a research facility. Any restraining actions would have to be for the shortest period possible. If the bird is to be restrained for more than 12 hours, it must be provided the opportunity daily for unrestrained activity for at least 1 continuous hour during the period of restraint, unless continuous restraint is required by the research proposal approved by the IACUC at research facilities.

**Environment Enhancement To Promote Psychological Well-Being: Exemptions—Proposed § 3.154(e)**

Proposed § 3.154(e) would provide that the attending veterinarian may exempt a bird from participation in the environment enhancement plan due to considerations of health or condition and well-being. The basis of the exemption would have to be recorded by the attending veterinarian for each exempted bird. Unless the exemption is based on a permanent condition, we would require a review of the exemption by the attending veterinarian every 30 days.

For a research facility, the IACUC may exempt an individual bird from participation in some or all of the otherwise required environment enhancement plans for scientific reasons set forth in the research proposal. The basis of the exemption shall be documented in the approved proposal and must be reviewed at appropriate intervals as determined by the IACUC, but not less than annually.

Finally, we would also require in paragraph (e) that records of any exemptions must be maintained by the dealer, exhibitor, or research facility for at least 1 year in accordance with § 2.80 and must be made available to APHIS officials, and also to officials of any pertinent funding agency upon request.

**Animal Health and Husbandry Standards**

**Feeding—Proposed § 3.155**

The nutritional needs of birds vary greatly. Therefore, we are proposing a general feeding standard that is flexible

enough to ensure the health and well-being of all birds. Specifically, we would require that the diet be appropriate for the species, size, age, and condition of the bird. The food would have to be wholesome, palatable to the birds, and free of contamination. The food would also have to be of sufficient quantity and nutritive value to maintain a healthy condition and weight range of the bird and to meet its normal daily nutritional requirements. We would require that birds be fed at least once a day except as directed by the attending veterinarian. If birds are maintained in group housing, measures appropriate for the species would have to be taken to ensure that all the birds receive a sufficient quantity of food. For example, for some flighted birds, such measures may include locating multiple food receptacles at different levels in the enclosure to ensure that all the birds have access to food receptacles and the food contained therein, including birds that are ranked low in a dominance hierarchy.

Food and, if used, food receptacles would have to be readily accessible to all the birds being fed. Food and any food receptacles would have to be located so as to minimize any risk of contamination by excreta, precipitation (e.g., rain, hail, and snow), and pests. Food receptacles and feeding areas would have to be kept clean and sanitized in accordance with proposed § 3.158. Used food receptacles would have to be cleaned and sanitized before they can be used to provide food to birds maintained in a separate enclosure. We would also require that measures be taken to ensure there is no molding, deterioration, contamination, or caking or undesirable wetting or freezing of food within or on food receptacles. Food receptacles would have to be made of a durable material that can be easily cleaned and sanitized or replaced when worn or soiled. Group-housed birds would have to have multiple food receptacles where needed to ensure that all birds have access to sufficient feed.

**Watering—Proposed § 3.156**

Under proposed § 3.156, potable water would have to be provided in sufficient quantity to every bird housed at the facility, unless restricted by the attending veterinarian. If potable water is not continually available to the birds, it would need to be offered to them as often as necessary to ensure their health and well-being. In addition, water receptacles would have to be kept clean and sanitized in accordance with § 3.158 as often as necessary to keep them free of contamination. Used water

receptacles must be cleaned and sanitized before they may be used to provide water to birds maintained in a separate enclosure. Finally, group-housed birds would have to have multiple water receptacles where needed to ensure that all birds have access to sufficient water.

#### Water Quality—Proposed § 3.157

Water quality is important for birds active on both land and water, and at least minimum water quality standards need to be maintained for the good health and well-being of the animals. Therefore, we are proposing that, if the primary enclosure or other areas in which birds may enter contain pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features), such areas must not be detrimental to the health of the birds contained therein. Particulate animal and food waste, trash, or debris that enters such pools or other aquatic areas would have to be removed as often as necessary to maintain the required water quality and minimize health hazards to the birds. Pools or other aquatic areas that are equipped with drainage systems would have to provide adequate drainage so that all of the water contained in such areas may be effectively eliminated when necessary to clean the pool or other aquatic area and for other purposes while not risking harm to birds. Pools or other aquatic areas with standing water, such as some ponds, would have to be aerated and have an incoming flow of fresh water or be managed in another manner to maintain appropriate water quality in accordance with current professionally accepted standards for the bird species in these ponds.

When the water is chemically treated, the chemicals would have to be added so as not to cause harm, discomfort, or distress to the animals. Natural organisms (such as fish, reptiles, amphibians, mammals, algae, commensal bacteria, protozoa, coelenterates, or mollusks) that do not degrade water quality, prevent proper maintenance, or pose a health hazard to the birds would not be considered contaminants. Should birds appear to be harmed by water quality, appropriate action would have to be taken immediately.

Finally, pools or other aquatic areas would have to be salinized for birds that require salinized water for their good health and well-being in accordance with current professionally accepted standards.

Cleaning, Sanitization, Housekeeping, and Pest Control

#### Cleaning—Proposed § 3.158(a)

Proper cleaning of primary enclosures is necessary to prevent the accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors. Therefore, we are proposing to require that excreta and food waste be removed from primary enclosures and from under and around primary enclosures as often as necessary to prevent excessive accumulation of feces and food waste, to prevent soiling of the birds contained in the primary enclosures, and to reduce disease hazards, insects, pests, and odors. When steam or water is used to clean primary enclosures, measures would have to be taken to protect birds from being harmed, wetted involuntarily, or distressed in the process. Standing water, except in pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features), would have to be removed from the primary enclosure.

Scheduled cleaning may be modified or delayed during breeding, egg-sitting, or feeding of chicks for those species of birds that are easily disrupted during such behaviors. Scheduled cleaning would have to resume when cleaning would no longer disrupt such behaviors. In these situations, we would require that a schedule of cleaning be documented that includes when breeding season began, when the primary enclosure was last cleaned, and when cleaning is expected to resume. Such records would have to be available for review by an APHIS inspector.

#### Sanitization—Proposed § 3.158(b)

Proper sanitary practices directly affect the good health and well-being of birds. Primary enclosures and food and water receptacles for birds would have to be sanitized as often as necessary to prevent accumulation of dirt, debris, food waste, excreta, and other disease hazards. However, as with cleaning, sanitization may be modified or delayed during breeding, egg-sitting, or feeding of chicks for those species of birds that are easily disrupted during such behaviors but would have to resume when it no longer disrupts such behaviors. In such situations, we would require that a schedule of sanitization be documented that includes when breeding season began, when the primary enclosure was last sanitized, and when sanitization is expected to resume. Such records would have to be available for review by an APHIS inspector.

We would require that the hard surfaces of primary enclosures and food

and water areas and equipment be sanitized before a new bird may be brought into a housing facility or if there is evidence of infectious disease among the birds in the housing facility. Finally, we would require that primary enclosures using materials that cannot be sanitized using conventional methods, such as gravel, sand, grass, earth, planted areas, or absorbent bedding, be sanitized by removing all contaminated material as necessary or by establishing a natural composting and decomposition system that is sufficient to prevent wasted food accumulation, odors, disease, pests, insects, and vermin infestation.

#### Housekeeping for Premises—Proposed § 3.158(c)

Good housekeeping practices are essential in minimizing pest risks that can occur in animal areas. Premises where housing facilities are located, including buildings, surrounding grounds, and exhibit areas, would have to be kept clean and in good repair in order to protect the birds from injury and disease, to facilitate the husbandry practices required in the regulations, and to reduce or eliminate areas where rodents and other vertebrate and invertebrate animals harmful to birds can live and breed. Premises would also have to be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes would have to be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the birds.

#### Pest Control—Proposed § 3.158(d)

A pest control program is necessary to promote the health and well-being of birds at a facility and to reduce contamination by pests in the animal area. Therefore, we are proposing that a safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests be established and maintained so as to promote the health and well-being of the birds and reduce contamination by pests in animal areas. Insecticides, chemical agents, or other methods of controlling pests that may be harmful to the birds would be prohibited in primary enclosures and in other areas or on surfaces with which the birds may come in contact, unless their application is consistent with manufacturer recommendations or otherwise approved for use and does not harm birds.

#### Employees—Proposed § 3.159

A sufficient number of adequately trained employees or attendants would

have to be utilized to maintain the professionally acceptable level of husbandry and handling practices set forth in the proposed standards. The need for personnel to have the knowledge and skill to perform these practices is addressed in the current standards for all other animals covered under the AWA regulations. These practices would be conducted under the supervision of a bird caretaker who has appropriate experience in the husbandry and care of birds that are being managed in a given setting.

#### Compatibility and Separation— Proposed § 3.160

Under this section, we would require that socially dependent birds be housed in social groups, unless the attending veterinarian exempts an individual bird because of its health or condition, or in consideration of its well-being, or specific management needs. Veterinary exemption is also permissible where such social grouping is not in accordance with a research proposal and the proposal has been approved by the research facility IACUC. Birds may only be housed with other animals, including members of their own species, if they are compatible, do not prevent access to food, water, or shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. Compatibility would have to be determined in accordance with generally accepted professional practices, and by actual observation, to ensure that the birds are, in fact, compatible. Finally, we would require that birds that have or are suspected of having a contagious disease or communicable condition must be separated from healthy animals that are susceptible to the disease as directed by the attending veterinarian. These proposed requirements are necessary to allow birds to peacefully coexist in primary enclosures and to protect their physical health and welfare.

#### *Transportation Standards*

The proposed transportation standards contained in §§ 3.161 through 3.168 have been written to provide birds with the same general protection and care as that provided for other species of animals covered by the AWA. Some birds, however, do have special transportation needs. For example, while most birds require space to make normal postural adjustments during transport, there are some birds that may injure themselves if their movements are not restricted. Therefore, the intention of the proposed transportation standards for birds is to account for

these animals' unique needs while still providing them with equivalent protection and care as other covered animals.

We note that many foreign air carriers are members of the International Air Transport Association (IATA) and may already comply with most of the physical requirements contained in this proposed rule. The IATA regulations generally align with the intent of the AWA in ensuring the humane and safe transportation of animals but diverge from the proposed regulations and standards in certain areas, such as recordkeeping requirements. Where such divergences exist, the AWA regulations and standards would need to be followed.

#### Consignments to Carriers and Intermediate Handlers—Proposed § 3.161

Regulated entities, such as dealers and exhibitors, may elect to consign their bird to a carrier or intermediate handler in connection with the animal's transportation in commerce. To ensure the health and well-being of birds during such transport in commerce, we are proposing to establish several conditions that must be met before carriers and intermediate handlers can accept a bird for transport. Specifically, we would provide that carriers and intermediate handlers must not accept a live bird for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, we would provide that a carrier or intermediate handler may agree with anyone consigning a bird to extend this time by up to 2 hours if specific prior scheduling of the animal shipment to a destination has been made, provided that the extension is not detrimental to the health and well-being of the bird as determined by the consignor.

Carriers and intermediate handlers would not be allowed to accept a live bird for transport in commerce unless they are provided with the name, address, and telephone number of the consignee. Carriers and intermediate handlers would also not be allowed to accept a live bird for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the bird was offered food and water during the 4 hours prior to delivery to the carrier or intermediate handler. Carriers and intermediate handlers must not accept unweaned birds for transport unless transport instructions are specified as a part of the program of veterinary care.

Certification for shipment of birds would have to be securely attached to the outside of the primary enclosure in a manner that makes it easy to notice and read. The certification would have to include the following information for each live bird: The consignor's name, address, email address, and telephone number; the number of birds; the species or common names of the birds; the time and date the bird was last fed and watered; and the specific instructions for the next feeding(s) and watering(s) for a 24-hour period; and the consignor's signature and the date and time the certification was signed.

Carriers and intermediate handlers would not be allowed to accept a live bird for transport in commerce in a primary enclosure unless the enclosure meets the requirements of proposed § 3.162. A carrier or intermediate handler would be prohibited from accepting a live bird for transport if the primary enclosure is defective or damaged and cannot be expected to contain the bird safely and comfortably.

Carriers and intermediate handlers would also not be allowed to accept a live bird for transport in commerce unless their animal holding area can maintain climatic and environmental conditions in accordance with the requirements of proposed § 3.168. (As discussed below, § 3.168 sets out climatic and environmental conditions for the transportation of animals and requires, among other things, that such transportation must be done in a manner that does not cause overheating, excessive cooling, or adverse environmental conditions that could cause discomfort or stress.)

Following the arrival of any live birds at the bird holding area of the terminal cargo facility, we would require that carriers and intermediate handlers attempt to notify the consignee at least once in every 6-hour period. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee would have to be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the bird shipment.

#### Primary Enclosures Used To Transport Live Birds

Under proposed § 3.162, no person subject to the AWA regulations would be allowed to transport or deliver for transport in commerce a bird unless the following requirements are met:

Primary Enclosures: Construction of Primary Enclosures—Proposed § 3.162(a)

Birds would have to be contained in a primary enclosure such as a compartment, transport cage, carton, or crate, except as provided in proposed paragraph (e) in § 3.162. Primary enclosures used to transport birds would have to be constructed so that:

- The primary enclosure is strong enough to contain the birds securely and comfortably and to withstand the rigors of transportation normally encountered during transportation;
- The interior of the enclosure has no sharp points or edges and no protrusions that could injure the birds contained therein;
- The bird is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to other persons or to other animals nearby;
- The birds can be easily and quickly removed from the enclosure in an emergency;
- Unless the enclosure is permanently affixed to the conveyance, adequate handholds or other devices such as handles are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not be in contact with the bird contained inside;
- Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words “Live Animals,” in letters at least 1 inch (2.5 centimeters) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;
- Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the bird and not harmful to its health or well-being;
- A bird that has a fractious or stress-prone disposition must be contained in an enclosure that is padded on the top and sides and has protective substrate on the bottom to prevent injury to the bird during transport;
- Proper ventilation must be provided to the birds in accordance with proposed paragraph (b) in § 3.162;
- The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray. If a mesh or other nonsolid floor is used in the enclosure, it would have to be designed and constructed so that the bird cannot put any part of its body through the holes

in the mesh or the openings in the nonsolid floor; and

- If substrate (newspaper, towels, litter, straw, etc.) is used in the primary enclosure, the substrate would have to be clean and made of a suitably absorbent material that is safe and nontoxic to the birds.

These proposed standards would consider the need for birds to be supported and protected from injury during transportation.

Primary Enclosures: Ventilation—Proposed § 3.162(b)

Ventilation is very important to ensure that birds are provided adequate fresh air for their respiratory needs. Therefore, unless the primary enclosure is permanently affixed to the conveyance, there would have to be ventilation openings located on two vertical walls of the primary enclosure that are at least 16 percent of the surface area of each such wall or ventilation openings located on all four walls of the primary enclosure that are at least 8 percent of the total surface area of each such wall. At least one-third of the total minimum area required for ventilation of the primary enclosure would have to be located on the lower one-half of the primary enclosure, and at least one-third of the total minimum area required for ventilation of the primary enclosure must be located on the upper one-half of the primary enclosure. This requirement would be modeled on our existing ventilation requirements for rabbits, which we have found to provide sufficient ventilation for the purposes of humane care.

Unless the primary enclosure is permanently affixed to the conveyance, we would require that projecting rims or other devices be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings. The projecting rims or similar devices would have to be large enough to provide a minimum air circulation space of 0.75 inches (1.9 centimeters) between the primary enclosure and anything the enclosure is adjacent to, unless 90 percent or greater of the surface area of the enclosure wall is open (*e.g.*, cage mesh). We would require that any visually obscuring mesh used to provide security for the bird in the enclosure not interfere with proper ventilation. Again, this requirement is modeled on an existing requirement, found in paragraph (a)(5) of § 3.61 of the regulations, that we have found to be effective.

If a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation

for such primary enclosure, the front opening would have to open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening would have to be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh, or smooth expanded metal.

Primary Enclosures: Cleaning of Primary Enclosures—Proposed § 3.162(c)

Primary enclosures used to hold or transport birds in commerce would have to be cleaned and sanitized before each use in accordance with proposed § 3.158 by the dealer, research facility, exhibitor, or operator of an auction sale.

Primary Enclosures: Compatibility—Proposed § 3.162(d)

Live birds transported in the same primary enclosure would have to be of the same species or compatible species and maintained in compatible groups. Socially dependent birds would have to be able to see and hear each other.

Primary Enclosures: Space and Placement—Proposed § 3.162(e)

We would require that primary enclosures used to transport live birds be large enough to ensure that each bird contained therein has sufficient space to turn about freely and to make normal postural adjustments, except that certain species may be restricted in their movements according to professionally accepted standards when such freedom of movement would constitute a danger to the birds, their handlers, or other persons.

Primary Enclosures: Accompanying Documents and Records—Proposed § 3.162(f)

Documents accompanying the shipment of birds would have to be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment and could not be allowed to obstruct ventilation openings.

Primary Conveyances (Motor Vehicle, Rail, Air, and Marine)—Proposed § 3.163

We would require that the animal cargo space of primary conveyances used in transporting live birds be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and minimizes the entry of exhaust from the primary conveyance during transportation. The animal cargo space would have to have a supply of

air that is sufficient for the normal breathing of all the animals being transported in it, and each primary enclosure containing birds would have to be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each bird enough air for normal breathing. During transportation, we would require that the climatic conditions in the animal cargo area shall be maintained in accordance with the requirements of proposed § 3.168.

We would require that primary enclosures be positioned in the primary conveyance in a manner that allows the birds to be quickly and easily removed from the primary conveyance in an emergency. We would also require that the interior of the bird cargo space be kept clean. Finally, we would provide that live birds may not be transported with any material, substance (*e.g.*, dry ice), or device which may reasonably be expected to be injurious to the health and well-being of the birds unless proper precaution is taken to prevent such injury.

#### Food and Water Requirements— Proposed § 3.164

All weaned birds would have to be offered food and potable water within 4 hours before being transported in commerce. We would also require all birds transported in their own primary conveyance be provided potable water or other source of hydration to at least every 12 hours after such transportation is initiated, except for birds which, according to professionally accepted standards, require watering or feeding more or less frequently.

All weaned birds would have to be fed at least once in each 24-hour period, except as directed by veterinary treatment, normal fasts, or other professionally accepted standards. Birds that require feeding more or less frequently would have to be fed accordingly.

A sufficient quantity of food and water or other source of hydration would have to accompany the bird during period of transport, except as directed by veterinary treatment and other professionally accepted standards. Any dealer, research facility, exhibitor, or operator of an auction sale offering any live bird to any carrier or intermediate handler for transportation in commerce would have to securely affix to the outside of the primary enclosure used for transporting the bird written instructions for the in-transit food and water requirements of the bird contained in the enclosure. We would prohibit carriers and intermediate

handlers from accepting any live birds for transportation in commerce unless written instructions concerning the food and water requirements of the bird being transported are affixed to the outside of its primary enclosure. The instructions would have to be attached in accordance with proposed § 3.162(f) and in a manner that makes them easy to notice and read.

#### Care in Transit—Proposed § 3.165

##### Care in Transit: Surface Transportation (Ground and Water)—Proposed § 3.165(a)

During surface transportation, we would require in § 3.165(a) that any person subject to the AWA regulations transporting birds in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, visually observes the birds as frequently as circumstances may allow, but not less than once every 4 hours, to ensure that the birds are receiving sufficient air for normal breathing, that climatic and environmental conditions are being maintained in accordance with the requirements in proposed § 3.168, and that all other applicable standards are met. The regulated person would have to ensure that the operator or person accompanying the operator determines whether any of the birds are in physical distress and obtains any veterinary care needed for the birds as soon as possible.

##### Care in Transit: Air Transportation— Proposed § 3.165(b)

Similarly, when transported by air, we would require in § 3.165(b) that live birds be visually observed by the carrier as frequently as circumstances may allow, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier would have to visually observe the live birds whenever they are loaded and unloaded and whenever the bird cargo space is otherwise accessible to ensure that they are receiving sufficient air for normal breathing, that climatic and environmental conditions are being maintained in accordance with the requirements in proposed § 3.168, and that all other applicable standards are met. The carrier would have to determine whether any such live birds are in physical distress and arrange for any needed veterinary care as soon as possible.

##### Care in Transit: Prohibition on the Transport of Ill, Injured, or Distressed Birds—Proposed § 3.165(c)

Finally, in proposed § 3.165(c), we would prohibit any person subject to the

AWA regulations from transporting in commerce birds that are ill, injured, or in physical distress, except to receive veterinary care for the condition.

#### Terminal Facilities—Proposed § 3.166

##### Terminal Facilities: Placement— Proposed § 3.166(a)

We would require that carriers and intermediate handlers not commingle shipments of live birds with other animals or inanimate cargo in animal holding areas of terminal facilities. This proposed standard would help to ensure that the live birds are accessible and that the following standards concerning cleaning, sanitization, and pest control in terminal facilities are met.

##### Terminal Facilities: Cleaning, Sanitization, and Pest Control— Proposed § 3.166(b)

We are proposing to require that all animal holding areas of terminal facilities be cleaned and sanitized in a manner prescribed in proposed § 3.158, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities would have to follow an effective program in all animal holding areas for the control of insects, ectoparasites, and other pests.

##### Terminal Facilities: Ventilation— Proposed § 3.166(c)

We would require that ventilation be provided in any animal holding area in a terminal facility containing birds, by means of windows, doors, vents, or air conditioning. The air would have to be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation.

##### Terminal Facilities: Climatic and Environmental Conditions—Proposed § 3.166(d)

We would require that the climatic and environmental conditions in animal holding areas be maintained in accordance with the proposed performance standard in § 3.168.

#### Handling—Proposed § 3.167

We are proposing to require that any person subject to the AWA regulations who moves (including loading and unloading) live birds within, to, or from the animal holding area of a terminal facility or a primary conveyance does so as quickly and efficiently as possible and provides sufficient shade to protect the birds from the direct rays of the sun and sufficient protection to allow the birds the option to remain dry during rain, snow, and other precipitation. We would also require that climatic and

environmental conditions be maintained in accordance with the proposed requirements in § 3.168.

We would require that any person handling a primary enclosure containing a live bird uses care and avoids causing physical harm or distress to the bird. We would not allow a primary enclosure containing a live bird to be tossed, dropped, or tilted, or stacked in a manner which may reasonably be expected to result in its falling.

#### Climatic and Environmental Conditions During Transportation—Proposed § 3.168

Finally, we are proposing to require that the transportation of all live birds be done in a manner that does not cause overheating, excessive cooling, or adverse environmental conditions that could cause discomfort or stress. When climatic or environmental conditions, including temperature, humidity, exposure, ventilation, pressurization, time, or other environmental conditions, or any combination thereof, present a threat to the health or well-being of a live bird, appropriate measures would have to be taken immediately to alleviate the impact of those conditions. The different climatic and environmental factors prevailing during a journey would have to be considered when arranging for the transportation of and when transporting live birds. Considerations may include, but would not be limited to:

- The temperature and humidity level of any enclosure used during transportation of live birds would have to be controlled by adequate ventilation or any other means necessary;
- Appropriate care would have to be taken to ensure that live birds are not subjected to prolonged drafts detrimental to their health or well-being;
- Appropriate care would have to be taken to ensure that live birds are not exposed to direct heat or cold if detrimental to their health or well-being, such as placement in direct sunlight or near a hot radiator; and
- During prolonged air transit stops in local climatic conditions that could produce excessive heat for live birds held in aircraft compartments, the aircraft doors would have to be opened and, if necessary, ground equipment must be used to control the condition of the air within compartments containing live birds.

We would also provide examples of factors to consider when meeting these requirements. Specifically, we would state that, in order to determine what climatic and environmental conditions

are appropriate for a live bird, factors such as, but not limited to, the bird's age, species, physiological state, last feeding and watering, and acclimation would have to be considered when such information is available.

Finally, for birds that are not able to maintain a constant body temperature at ambient temperatures, we would require their transportation in a brooder or other temperature-regulating unit that effectively assists the bird in maintaining a constant body temperature during transport. Signs that a bird is able to independently maintain a constant body temperature include the bird's ability to open its eyes fully and sit erect and the appearance of full or partial feathering on the body of the bird.

We would require that the temperature of the brooder or other temperature-regulating unit would have to be monitored during transportation and appropriate for the live bird. Written instructions for the temperature requirements of birds transported in brooders or other temperature-regulating units would have to be securely affixed to the outside of the primary enclosure used for transporting the bird. The instructions would have to be attached in accordance with proposed § 3.162(f) in a manner that makes them easily noticed and read.

We believe the standards we propose in this document would ensure the humane handling, care, treatment, and transportation of birds covered by the AWA.

#### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The

economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

We are proposing to establish new regulations and standards and amend existing regulations governing the humane handling, care, treatment, and transportation of birds, other than birds bred for use in research, covered under the Animal Welfare Act. This action would ensure the humane handling, care, treatment, and transportation of birds not bred for use in research covered under the Act. The benefit of this rule would be improved animal welfare because certain birds would be brought under the protection of the AWA. The proposed rule would help ensure the humane handling and care of birds and help ensure that such birds are monitored for their health and humane treatment.

The proposed rule would affect U.S. facilities that handle or maintain birds not bred for use in research that are sold as pets at the wholesale level or at retail if not face-to-face, or transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes. Facilities affected would include research facilities that use wild-caught birds, breeders and distributors of birds, and exhibitors of birds, as well as carriers and intermediate handlers of birds.<sup>12</sup>

We note that under the current AWA regulations, several licensing exemptions exist that would apply to persons possessing and using birds who are not otherwise required to obtain a license. Retail pet stores, as defined in the regulations and requiring the seller,

<sup>12</sup> Only those research facilities that use wild-caught birds for research, testing, teaching, or experimentation, including activities such as investigations into animal propagation and wildlife ecology, would be subject to the provisions of this proposed rule. Facilities using birds bred for use in research would not be subject to this rule.



buyer, and the animal available for sale be physically present, are exempt from the licensing requirements. Therefore, under this proposed rule, bird breeders who sell pet birds strictly under the conditions of the definition would not be affected. In addition, the current regulations provide an exemption for any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals during any calendar year and is not otherwise required to obtain a license. Exemptions are also provided for any person who maintains four or fewer breeding females and sells only the offspring for pets or exhibition; any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license; any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber; any person who maintains eight or fewer animals for exhibition; and any person who buys animals solely for his or her own use or enjoyment and who does not sell or exhibit animals. Under this proposal, these exemptions to licensing would apply to bird breeders and bird exhibitors as well.

Newly regulated entities would be subject to licensing, animal identification, and recordkeeping requirements, as well as standards for facilities and operations, animal health and husbandry, and transportation under this proposed rule. Licensing costs would be incurred by all new licensees. Other costs would depend on the manner and extent to which entities are not currently complying with the basic standards under the AWA. Some of these costs would be one-time costs in the first year, such as providing adequate shelter; others would recur

yearly, such as providing adequate veterinary care.

A great deal of uncertainty surrounds the number of facilities that would be affected by this proposed rule. Uncertainty also surrounds the number of those facilities that would need to make structural or operational changes, as well as the extent of such changes. We are seeking public input on those numbers and request any data support for those comments. For the purposes of this analysis, we have estimated that there could be as many as 5,625 new licensees—1,625 newly regulated breeders and distributors and 4,000 newly regulated exhibitors, and as many as 350 new registrants—250 newly regulated research facilities and 100 newly regulated carriers and intermediate handlers. For those new licensees, total new licensing costs could be about \$675,000, or about \$225,000 annually. We have estimated that the total annualized cost of the recordkeeping and other information collection requirements to be about \$4.5 million. If all newly regulated licensees and registrants must develop new contingency planning costs, the total cost could be from about \$388,000 to \$1.4 million. If all newly regulated dealers and research facilities must develop a new written plan of veterinary care, the total new cost could be about \$881,000. Together, annually these costs range from about \$3.3 million to \$7 million. To the extent that facilities are already keeping records, have already done contingency planning, and have already developed a plan of veterinary care for their birds, these costs could be overestimated.

For example, both the 2011 Guide for Care of Laboratory Animals and the 2010 Guide for the Care of Agricultural Animals in Research (“the Guide”) and the 2010 Guide for the Care of Agricultural Animals in Research and Teaching (“the Ag-Guide”) require contingency planning and emergency preparedness. Research facilities receiving funding from the U.S. Public Health Service (PHS) are required to

follow standards of care set forth in the Guide. PHS-funded research facilities that utilize farm animals for biomedical research must follow either the Guide or the Ag-Guide. Research facilities may voluntarily acquire accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC). AAALAC uses the Guide as the standard when assessing animal care and use programs in the United States. We are seeking comments from the public on the accuracy of these costs and request any data support for those comments.

In addition to those requirements, newly regulated entities would also need to meet regulatory standards for bird identification, performance standards for facilities and operations, health and husbandry, and transportation. However, as acknowledged by a wide spectrum of commenters in listening sessions and during previous APHIS actions, bird dealers and exhibitors are often complying with professionally accepted standards to protect avian health and prevent discomfort and thus maintain their facilities well above the minimum standards of this proposed rule. Many of the proposed regulations are performance based, rather than having specific engineering standards. Therefore, a number of newly regulated entities would not need to make significant structural and/or other operational changes in order to comply with the standards in this proposed rule. Neither the number of entities that would need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that would be incurred due to this rule is also unknown. However, commenters have identified potential costs that could have an impact on regulated activities with birds and the general potential magnitude of those costs are discussed. In addition, APHIS estimates that the public outreach, guidance, and training would cost about \$726,000.

TABLE A—POTENTIAL COST CATEGORIES FOR LICENSEES ASSOCIATED WITH THE RULE  
[2021 Dollars]

Activity	Certain potential costs
Licensing .....	\$120/3 years.
Recordkeeping and Other Information Collection .....	20 hours annually; \$720/respondent.
Contingency Planning .....	1 to 2 hours preparation, and 1 hour training; \$65 to \$226/entity.
Plan of Veterinary Care .....	\$150 per facility, new; \$50 per facility for an update.
<b>Other Structural or Operational Changes</b>	
Bird identification .....	Leg or wing band \$0.03–\$0.50/each; Microchip \$4–\$15/each; Microchip reader \$60–\$375/facility; Labor for banding or microchipping \$28–\$57; Primary enclosure label <\$0.02/bird.

TABLE A—POTENTIAL COST CATEGORIES FOR LICENSEES ASSOCIATED WITH THE RULE—Continued  
[2021 Dollars]

Activity	Certain potential costs
Veterinary care, as needed .....	\$46–\$350/bird.
Facilities .....	\$57–\$114/repair.
Water and Electrical Power .....	For facility with 20 birds \$546 for plumbed water or \$90–\$300 for bottles; \$400–\$2,000/generator.
Temperature & Humidity .....	Brood box thermometer \$6–\$150/each; Space heating \$25–\$200.
Ventilation .....	Hardware cloth \$20–\$50; Attic fan \$50–\$200 plus installation; HEPA filter \$100–\$200.
Shelter .....	Nest box \$57–\$114.
Primary enclosures .....	Commercial enclosures \$100 to \$1,000/each; Repair or upgrade of existing enclosure \$278–\$432.
Environment enhancement .....	\$100–\$200/enclosure.
Cleaning, sanitation, and pest control .....	Storage container/shed \$150–\$1,000; Label maker \$20.
<b>Personnel</b>	
Labor (includes other listed activities) .....	1–10 hours/week; \$1,477–\$14,768/year.
Training .....	\$45–\$75/employee.
Nutrition .....	Containers \$10–\$100; Commercial freezer \$250–\$1,500.
Primary enclosures during transport .....	Pet crates approved for air travel \$60–\$350.
Food, water, and health monitoring during transit .....	Brooder \$150–\$600.

The majority of businesses potentially affected by this proposed rule are likely to be small entities. As explained, the wide range in potential cost is mainly derived from the uncertainty surrounding the total number of breeders that would need to become licensed as a result of this proposed rule and the number of those newly regulated entities that would then need to make structural or operational changes, as well as from the structural or operational changes that would be chosen to remedy instances of noncompliance.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

**Executive Order 13175**

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-

to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

APHIS has determined that this proposed rule, if finalized, may have substantial direct effects on one or more Tribes, and that affording Tribes an opportunity for consultation is therefore warranted. This initial consultation occurred on November 4, 2021. No questions were raised during the consultation, but one participant intended to email a question to APHIS at a future date. A summary of how APHIS incorporated consultation feedback in this rulemaking will be shared with Tribes that participate in consultation and in the next rulemaking iteration, once published. APHIS is committed to full compliance with the provisions of Executive Order 13175.

**Paperwork Reduction Act**

Many activities resulting from this proposed rule are currently approved under the Office of Management and Budget (OMB) control number 0579–0036; however, 0579–0036 does not capture the respondents or burden described in this proposed rule. Therefore, in accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the activities with respondents’ burden resulting from this proposed rule that

are not covered under 0579–0036, and new activities and their burden associated with this proposed rule, have been submitted to OMB as a new information collection for approval. After a final rule is published, this information collection request will be scheduled for merger into 0579–0036 in the future.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS–2020–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250.

Administering the AWA requires the use of several information collection activities. The increase in respondents resulting from this proposed rule would result in a corresponding increase in burden for activities currently approved under 0579–0036. In addition to recordkeeping, they include online tools for licensing or registration packets; applications for new license or registration, and updates; filing of a debt collection form and payment of licensing fees; written requests for correction of renewal applications; request for appeals or hearings; requests for pre-licensing inspections;

inspections by licensed veterinarians; written programs of veterinary care for research facilities, exhibitors, or dealers; annual reports of research facilities; health certificates for transport; requests for variance; written guarantees; submission of itineraries of exhibition; complaint submissions; access and inspection of records and property; and creating instituted animal care and use committees.

The proposed changes to the regulations would also result in the creation of new reportable activities. These activities and any additional ones announced in the final rule resulting from public comment will be merged into 0579–0036 in the future after OMB approval. In addition to recordkeeping, information collected includes, but is not limited to, dealers and exhibitors identifying their confined birds using either an enclosure label, leg or wing bands, or transponders. They and research facilities will also be required to develop and document a species-appropriate plan for environment enhancement adequate to promote the psychological well-being of birds. Facilities maintaining enclosed birds will be required to create and document schedules of enclosure cleaning and sanitizing. Consignors will be required to provide carriers and intermediate handlers certification in writing that transported birds were offered food and water, and information about the sender.

These information collection activity requirements provide APHIS with the data necessary for the review and evaluation of program compliance by regulated facilities, and they provide a workable enforcement system to carry out the requirements of the AWA and the intent of Congress.

APHIS expects to solicit feedback from a variety of respondents affected by this proposed rule. They might request and submit licensure or registration packets or other documentation, and include private hobbyists; breeders and other for-profit businesses and farms; not-for-profit institutions such as foundations, refuges, zoos, rehabilitation facilities, as well as educational institutions; and State, local, or Tribal authorities partnering with USDA to enforce these regulations. For wage calculations reported in the information collection request, APHIS used the Bureau of Labor Statistics' Occupational Employment and Wage Statistics to estimate wages, specifically those for government animal health officials, ranchers (SOCC 11–9013), caretakers (SOCC 39–2021), transporters (SOCC 53–7199), and individuals (SOCC 00–

0000). More information can be found in the information collection request supporting statement.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Respondents:* Individuals or households; businesses or other for-profit entities; not-for-profit institutions; farms; and State, local, and Tribal governments.

*Estimated annual number of respondents:* 6,268.

*Estimated annual number of responses per respondent:* 24.

*Estimated annual number of responses:* 150,685.

*Estimated total annual burden on respondents:* 128,298 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Information about the information collection process may be obtained from Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483. APHIS will respond to any information collection-related comments in the final rule. All comments will also become a matter of public record.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to

provide increased opportunities for citizen access to Government information and services, and for other purposes. APHIS estimates that 10 percent of the total responses can be processed electronically. Most of the activities that require forms also require original signatures or the completed forms must accompany the animals they were prepared for; processing them electronically is not feasible. APHIS is working towards making required forms available as fillable PDF format.

Certification, accreditation, registration, permits, and other licensing activities and processes currently can be uploaded into DocuSign or eFile information systems, or emailed. Respondents are free to maintain required records as best suited for their organization. Details about specific forms for reportable activities can be found in the information collection request supporting statement.

For assistance with E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483, or the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### List of Subjects

##### 9 CFR Parts 1 and 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

##### 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR parts 1, 2, and 3 as follows:

#### PART 1—DEFINITION OF TERMS

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 1.1 is amended as follows:

■ a. By adding, in alphabetical order, definitions for “Bird” and “Bred for use in research”;

■ b. By revising the definitions of “Carrier”, “Exhibitor”, “Farm animal”, “Intermediate handler”, and “Pet animal”;

■ c. By adding, in alphabetical order, a definition for “Poultry”; and

■ d. By revising the definitions of “Retail pet store” and “Weaned”.

The additions and revisions read as follows:

##### § 1.1 Definitions.

\* \* \* \* \*

*Bird* means any member of the class *Aves* (excluding eggs).

*Bred for use in research* means an animal that is bred in captivity and is being used or is intended for use for research, teaching, testing, or experimentation purposes.

\* \* \* \* \*

*Carrier* means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire. Except anyone transporting a migratory bird covered under the Migratory Bird Treaty Act from the wild to a facility for rehabilitation and eventual release in the wild, or between rehabilitation facilities, and has obtained authorization from the U.S. Fish and Wildlife Service for that purpose, is not a “carrier”.

\* \* \* \* \*

*Exhibitor* means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts (including free-flighted bird shows), zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse, dog, and pigeon races, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows, bird fancier shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

\* \* \* \* \*

*Farm animal* means any domestic species of cattle, sheep, swine, goats, llamas, horses, or poultry, which are normally and have historically been kept and raised on farms in the United States and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, chinchilla, and ratites when they are used solely for purposes of meat, fur, feathers, or skins, and animals such as horses and llamas when used solely as work and pack animals.

\* \* \* \* \*

*Intermediate handler* means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce. Except anyone transporting a migratory bird covered under the Migratory Bird Treaty Act from the wild to a facility for rehabilitation and eventual release in the wild, or between rehabilitation facilities, and has obtained authorization from the U.S. Fish and Wildlife Service for that purpose, is not an “intermediate handler”.

\* \* \* \* \*

*Pet animal* means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, hamsters, and birds. This term also includes but is not limited to such birds as parrots, canaries, cockatiels, lovebirds, and budgerigar parakeets. This term excludes exotic animals and wild animals.

\* \* \* \* \*

*Poultry* means any species of chickens, turkeys, swans, partridges, guinea fowl, and pea fowl; ducks, geese, pigeons, and doves; grouse, pheasants, and quail.

\* \* \* \* \*

*Retail pet store* means a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domesticated ferrets, domesticated farm-type animals, birds, and coldblooded species. Such definition excludes—

- (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;
- (2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;
- (3) Any establishment or person selling warmblooded animals (except laboratory rats and mice) for research or exhibition purposes;

- (4) Any establishment wholesaling any animals (except rats and mice); and
- (5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

\* \* \* \* \*

*Weaned* means that a mammal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 consecutive days; or that a bird has become accustomed to take food and has so done, without supplemental feeding from a parent or human caretaker, for a period of at least 5 consecutive days. Signs that an animal has become accustomed to take food include the animal’s ability to maintain a constant body weight during those 5 days.

\* \* \* \* \*

**PART 2—REGULATIONS**

■ 3. The authority citation for part 2 continues to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

- 4. Section 2.1 is amended as follows:
  - a. In paragraph (a)(3)(vi), by adding “, feathers,” after the word “food”; and
  - b. In paragraph (b)(2)(ii), by removing the words “subparts A through F” in the first sentence and adding the words “subparts A through G” in their place and revising the last sentence.

The revision reads as follows:

**§ 2.1 Requirements and application.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (ii) \* \* \* A licensee must obtain a new license before using any animal beyond those types or numbers of animals authorized under the existing license. Notwithstanding these provisions, a licensee in possession of birds on [Effective date of final rule], may continue to operate under that license until its scheduled expiration date. APHIS encourages such persons to apply for a new license at least 90 days before expiration of the current one.

\* \* \* \* \*

**§ 2.31 [Amended]**

- 5. In § 2.31, paragraph (d)(1)(ix) is amended as follows:
  - a. In the third sentence, by removing the word “non-rodents” and adding the words “animals, other than rodents and birds,” in its place; and
  - b. In the fourth sentence, by adding the words “and birds” after the word “rodents”.
- 6. In § 2.50, paragraph (e) is amended as follows:

■ a. By redesignating paragraphs (e)(2) and (3) as paragraphs (e)(3) and (4), respectively, and adding a new paragraph (e)(2); and

■ b. In newly redesignated paragraph (e)(3) introductory text, by removing the words “dogs or cats” and adding the words “dogs, cats, or birds” in their place.

The addition reads as follows:

**§ 2.50 Time and method of identification.**

\* \* \* \* \*

(e) \* \* \*

(2) When one or more birds are confined in a primary enclosure, the bird shall be identified by:

(i) A label attached to the primary enclosure which shall bear a description of the birds in the primary enclosure, including:

- (A) The number of birds;
- (B) The species of the birds;
- (C) Any distinctive physical features of the birds; and
- (D) Any identifying marks on the birds; or

(ii) A leg or wing band applied to each bird in the primary enclosure by the dealer or exhibitor that individually identifies each bird by description or number; or

(iii) A transponder (microchip) placed in a standard anatomical location for the species in accordance with professionally accepted standards, provided that the receiving facility has a compatible transponder (microchip) reader that is capable of reading the transponder (microchip) and that the reader is readily available for use by an APHIS official and/or facility employee accompanying the APHIS official.

\* \* \* \* \*

■ 7. In § 2.75, paragraph (b)(1) introductory text is amended by revising the last sentence to read as follows:

**§ 2.75 Records: Dealers and exhibitors.**

\* \* \* \* \*

(b)(1) \* \* \* The records shall include any offspring born or hatched of any animal while in his or her possession or under his or her control.

\* \* \* \* \*

■ 8. In § 2.76, paragraph (a)(7) is revised to read as follows:

**§ 2.76 Records: Operators of auction sales and brokers.**

(a) \* \* \*

(7) A description of the animal which shall include:

- (i) The species and the breed or type of animal;
- (ii) The sex of the animal; or if the animal is a bird, only if the sex is readily determinable;

(iii) The date of birth or hatch date; or, if unknown, the approximate age or developmental stage; and

(iv) The color and any distinctive markings; and

\* \* \* \* \*

**PART 3—STANDARDS**

■ 9. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 10. The heading for subpart F is revised to read as follows:

**Subpart F—Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, Marine Mammals, and Birds**

■ 11. Subpart G, consisting of §§ 3.150 through 3.168, is added to read as follows:

**Subpart G—Specifications for the Humane Handling, Care, Treatment, and Transportation of Birds**

Sec.

**Facilities and Operating Standards**

- 3.150 Facilities, general.
- 3.151 Facilities, indoor.
- 3.152 Facilities, outdoor.
- 3.153 Primary enclosures.
- 3.154 Environmental enhancement to promote psychological well-being.

**Animal Health and Husbandry Standards**

- 3.155 Feeding.
- 3.156 Watering.
- 3.157 Water quality.
- 3.158 Cleaning, sanitization, housekeeping, and pest control.
- 3.159 Employees.
- 3.160 Compatibility and separation.

**Transportation Standards**

- 3.161 Consignments to carriers and intermediate handlers.
- 3.162 Primary enclosures used to transport live birds.
- 3.163 Primary conveyances (motor vehicle, rail, air, and marine).
- 3.164 Food and water requirements.
- 3.165 Care in transit.
- 3.166 Terminal facilities.
- 3.167 Handling.
- 3.168 Climate and environmental conditions during transportation.

**Subpart G—Specifications for the Humane Handling, Care, Treatment, and Transportation of Birds**

**Facilities and Operating Standards**

**§ 3.150 Facilities, general.**

(a) *Structure; construction.* Housing facilities for birds must be designed and

constructed so that they are structurally sound for the species of bird housed in them. They must be kept in good repair, protect the birds from injury, and restrict other animals from entering. Housing facilities must employ security measures that contain all birds securely. Such measures may include safety doors, entry/exit doors to the primary enclosure that are double-door, or other equivalent systems designed to prevent escape of the birds. Birds that are flight-restricted or cannot fly and are allowed to roam free within the housing facility or a portion thereof must have access to safety pens, enclosures, or other areas that offer the birds protection during overnight periods and at times when their activities are not monitored.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, other discarded materials, junk, weeds, and brush. Housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices or research needs.

(c) *Surfaces.* The surfaces of housing facilities must be constructed in a manner and made of materials that allow them to be readily cleaned and/or sanitized, or removed and replaced when worn or soiled. Interior surfaces and surfaces that come in contact with birds must be:

- (1) Nontoxic to the bird;
- (2) Free of rust or damage that affects the structural integrity of the surface or prevents cleaning; and
- (3) Free of jagged edges or sharp points that could injure the birds.

(d) *Water and electric power.* The facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subpart. The facility must provide adequate potable water for the birds’ drinking needs and adequate water for cleaning and carrying out other husbandry requirements.

(e) *Storage.* Supplies of food, including food supplements, bedding, and substrate must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. All food must be stored at appropriate temperatures and in a manner that prevents contamination and deterioration of its

nutritive value. Food must not be used beyond its shelf-life date or expiration date listed on the label. All open supplies of food and bedding must be kept in waterproof containers with tightly fitting lids to prevent deterioration and contamination, except for live, frozen, or refrigerated food. Live food must be maintained in a manner to ensure wholesomeness. Substances such as cleaning supplies and disinfectants that are harmful to the birds but that are required for normal husbandry practices must not be stored in food storage and preparation areas but may be stored in cabinets in the animal areas, provided that they are stored in properly labeled containers that are adequately secured to prevent potential harm to the birds. Animal waste and dead animals and animal parts not intended for food must not be kept in food storage or food preparation areas, food freezers, food refrigerators, and animal areas.

(f) *Waste disposal.* Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, substrate, dead animals, debris, garbage, water, and any other fluids and wastes, in a manner that minimizes contamination and disease risk. Trash containers in housing facilities and in food storage and preparation areas must be leakproof and have tightly fitted lids.

(g) *Drainage.* Housing facilities must be equipped with disposal and drainage systems that are constructed and operated so that animal wastes and water, except for water located in pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features), are rapidly eliminated so the animals have the option of remaining dry. Pools and other aquatic areas must be maintained in accordance with the regulations in § 3.157. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained so that they effectively drain water. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage. If the facility uses sump ponds, settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located a sufficient distance from the bird area of the housing facility to prevent odors, diseases, insects, pests, and vermin infestation in the bird area. If drip or constant flow watering devices are used to provide water to the animals, excess water must be rapidly drained out of the animal areas by gutters or pipes so that animals have the option of remaining dry.

(h) *Toilets, washrooms, and sinks.* Toilets and washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

### § 3.151 Facilities, indoor.

(a) *Temperature and humidity.* The air temperature and, if present, pool or other aquatic area (e.g., ponds, waterfalls, fountains, and other water features), and air humidity levels in indoor facilities must be sufficiently regulated and appropriate to bird species to protect the birds from detrimental temperature and humidity levels, to provide for their health and well-being, and to prevent discomfort or distress, in accordance with current professionally accepted standards. Prescribed temperature and humidity levels must be part of the written program of veterinary care or part of the full-time veterinarian's records.

(b) *Ventilation.* Indoor housing facilities must be sufficiently ventilated at all times when birds are present to provide for their health, to prevent their discomfort or distress, accumulations of moisture condensation, odors, and levels of ammonia, chlorine, and other noxious gases. The ventilation system must minimize drafts.

(c) *Lighting.* Indoor housing facilities must have lighting, by natural or artificial means, or both, of appropriate quality, distribution, and duration for the species of birds involved. Such lighting must be sufficient to permit routine inspection and cleaning. Lighting of primary enclosures must be designed to protect the birds from excessive illumination that may cause discomfort or distress.

(d) *Indoor pool or other aquatic areas.* Indoor pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features) must have sufficient vertical air space above the pool or other aquatic area to allow for behaviors typical to the species of bird under consideration. Such behaviors may include, but are not limited to, diving and swimming.

### § 3.152 Facilities, outdoor.

(a) *Acclimation.* Birds may not be housed in outdoor facilities unless the air humidity and temperature ranges and, if applicable, pool or other aquatic area (e.g., ponds, waterfalls, fountains, and other water features) temperature ranges do not adversely affect bird health and comfort. Birds may not be introduced to an outdoor housing facility until they are acclimated to the ambient temperature and humidity and, if applicable, pool or other aquatic area

temperature range which they will encounter therein.

(b) *Shelter from inclement weather.* Outdoor housing facilities must provide adequate shelter, appropriate to the species and physical condition of the birds, for the local climatic conditions to protect the birds from any adverse weather conditions. Shelters must be adequately ventilated in hot weather and have one or more separate areas of shade or other effective protection that is large enough to comfortably contain all the birds at one time and prevent their discomfort from direct sunlight, precipitation, or wind. Shelter must also be constructed to provide sufficient space to comfortably hold all of the birds at the same time without adverse intraspecific aggression or grouping of incompatible birds. For birds that form dominance hierarchies and that are maintained in social groupings, shelter(s) must be constructed so as to provide sufficient space to comfortably hold all the birds at the same time, including birds that are low in the hierarchy.

### § 3.153 Primary enclosures.

(a) *General requirements.* Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.

(1) Primary enclosures must be constructed and maintained so that they:

- (i) Have no sharp points or edges that could injure the birds;
- (ii) Protect the birds from injury;
- (iii) Contain the birds securely;
- (iv) Restrict other animals from entering the enclosure;
- (v) Ensure that birds have the option to remain dry and clean;
- (vi) Provide shelter and protection for each bird from climatic and environmental conditions that may be detrimental to its health and well-being;
- (vii) Provide sufficient shade to comfortably shelter all birds housed in the primary enclosure at one time, including low ranking birds that are maintained in social groupings that form dominance hierarchies;
- (viii) Provide all the birds with easy and convenient access to clean food and potable water;
- (ix) Ensure that all surfaces in contact with the birds may be readily cleaned and/or sanitized in accordance with § 3.158 or be replaced when worn or soiled; and

(x) Have floors that are constructed in a manner that protects the birds' feet and legs from injury. If flooring material is suspended, it must be sufficiently taut to prevent excessive sagging under the

bird's weight. If substrate is used in the primary enclosure, the substrate must be clean and made of a suitably absorbent material that is safe and nontoxic to the birds.

(2) Furniture-type objects, such as perches and other objects that enrich a bird's environment, must be species-appropriate and be designed, constructed, and maintained so as to prevent harm to the bird. If the enclosure houses birds that rest by perching, there must be perches available that are appropriate to the age and species of birds housed therein and a sufficient number of perches of appropriate size, shape, strength, texture, and placement to comfortably hold all the birds in the primary enclosure at the same time, including birds that are ranked low in a dominance hierarchy.

(3) Primary enclosures that are adjacent to one another or that share a common side with another enclosure must be suitably screened from each other or kept at a sufficient distance apart in order to prevent injury of the occupants due to predation, territorial disputes, or aggression.

(b) *Space requirements.* Primary enclosures must be constructed and maintained so as to allow each bird to make normal postural and social adjustments, such as dust-bathing and foraging, with adequate freedom of movement and freedom to escape from aggression demonstrated by other animals in the enclosure according to the program of veterinary care developed, documented in writing, and signed by the attending veterinarian. Both part-time and full-time attending veterinarians at a facility must document and maintain a record that the space in all enclosures housing birds are adequate and allow for normal postural and social adjustments. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. The normal postural and social adjustments of a bird may be restricted:

(1) When the attending veterinarian determines that making species-typical postural or social adjustments, such as dust-bathing, foraging, or running, would be detrimental to the bird's good health and well-being. The attending veterinarian must document the reason and recommended duration for the restriction and make such records available for review by an APHIS inspector.

(2) When the birds are tethered in accordance with current professionally accepted standards. Birds must not be tethered unless:

(i) It is appropriate for the species of bird;

(ii) It will not cause harm to the birds;

(iii) The birds are maintained on perches appropriate for the species and age of the bird while tethered;

(iv) The birds have sufficient space to fully extend their wings without obstruction; and

(v) The tether does not entangle the birds.

(3) When dealers, exhibitors, and research facilities breed or intend to breed their birds, such birds must be provided with structures and/or materials that meet the reproductive needs of the species during the appropriate season or time periods. A sufficient number of structures and materials must be provided to meet the needs of all breeding birds in an enclosure and to minimize aggression.

(4) Birds intended for breeding sale, in need of medical care, exhibited in traveling exhibits, or traveling for other reasons must be kept in enclosures that, at minimum, meet the individual specific space, safety, bedding, perch, and physical environment (including, but not limited to, temperature, humidity, sun and wind exposure) requirements for transport enclosures as specified in § 3.162. At all other times, birds must be housed in enclosures that meet the space requirements of this section.

(c) *Special space requirements for wading and aquatic birds.* Primary enclosures housing wading and aquatic birds must contain a pool or other aquatic area (e.g., ponds, waterfalls, fountains, and other water features) and a dry area that allows easy ingress or egress of the pool or other aquatic area. Pools and other aquatic areas must be of sufficient surface area and depth to allow each bird to make normal postural and social adjustments, such as immersion, bathing, swimming, and foraging, with adequate freedom of movement and freedom to escape from aggression demonstrated by other birds in the enclosure. Dry areas must be of sufficient size to allow each bird to make normal postural and social adjustments with adequate freedom of movement and freedom to escape from aggression demonstrated by other birds in the enclosure. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

**§ 3.154 Environment enhancement to promote psychological well-being.**

Dealers, exhibitors, and research facilities must develop, document, and follow a species-appropriate plan for environment enhancement adequate to

promote the psychological well-being of birds. The plan is part of the required program of veterinary care and must be approved by a veterinarian and must be in accordance with the regulations in this subpart and with currently accepted professional standards. This plan must be made available to APHIS upon request, and, in the case of research facilities, to officials of any pertinent funding agency. The plan, at a minimum, must address each of the following:

(a) *Social grouping.* The environment enhancement plan must include specific provisions to address the social needs of species of birds known to exist in social groups in nature. Such specific provisions must be in accordance with currently accepted professional standards. The plan may provide for the following exceptions:

(1) If a bird exhibits vicious or overly aggressive behavior, or is debilitated as a result of age or other conditions (e.g., arthritis), it can be housed separately if approved by the veterinarian;

(2) Additionally, birds that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony as directed by the attending veterinarian. When an entire group or room of birds is known to have been or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

(3) Birds may not be housed with other species of birds or animals unless they are compatible, do not prevent access to food, water, or shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. Compatibility of birds must be determined in accordance with generally accepted professional practices and actual observations by the attending veterinarian during his or her regularly scheduled visits to the facility. Individually housed social species of birds must be able to see and hear birds of their own or compatible species unless the attending veterinarian determines that it would endanger their health, safety, or well-being.

(b) *Environmental enrichment.* The physical environment in the primary enclosures must be enriched by materials or activities that would provide the birds with the means to express noninjurious species-typical activities. Species differences should be considered when determining the type or methods of enrichment. Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing objects to manipulate; varied food items; using foraging or task-



oriented feeding methods; and providing interaction with the care giver or other familiar and knowledgeable person consistent with personnel safety precautions.

(c) *Special considerations.* Certain birds must be provided special attention regarding enhancement of their environment, based on the needs of the individual species and in accordance with the instructions of the attending veterinarian. Birds requiring special attention are the following:

(1) Infants and young juveniles;

(2) Those that show signs of being in psychological distress through behavior or appearance;

(3) Those used in research for which the Institutional Animal Care and Use Committee (IACUC)-approved protocol requires restricted activity; and

(4) Individually housed social species of birds that are unable to see and hear birds of their own or compatible species.

(d) *Restraint devices.* Birds must not be permitted to be maintained in restraint devices unless required for health reasons as determined by the attending veterinarian or by a research proposal approved by the IACUC at research facilities. Any restraining actions must be for the shortest period possible. If the bird is to be restrained for more than 12 hours, it must be provided the opportunity daily for unrestrained activity for at least 1 continuous hour during the period of restraint, unless continuous restraint is required by the research proposal approved by the IACUC at research facilities.

(e) *Exemptions.* (1) The attending veterinarian may exempt an individual bird from participation in the environment enhancement plan because of its health or condition, or in consideration of its well-being. The basis of the exemption must be recorded by the attending veterinarian for each exempted bird. Unless the basis for the exemption is a permanent condition, the exemption must be reviewed at least every 30 days by the attending veterinarian.

(2) For a research facility, the IACUC may exempt an individual bird from participation in some or all of the otherwise required environment enhancement plans for scientific reasons set forth in the research proposal. The basis of the exemption shall be documented in the approved proposal and must be reviewed at appropriate intervals as determined by the IACUC, but not less than annually.

(3) Records of any exemptions must be maintained by the dealer, exhibitor, or research facility for at least 1 year in

accordance with § 2.80 of this subchapter and must be made available to APHIS upon request, and, in the case of research facilities, to officials of any pertinent funding agency.

### **Animal Health and Husbandry Standards**

#### **§ 3.155 Feeding.**

(a) The diet for birds must be appropriate for the species, size, age, and condition of the bird. The food must be wholesome, palatable to the birds, and free of contamination. It must be of sufficient quantity and nutritive value to maintain a healthy condition and weight range of the bird and to meet its normal daily nutritional requirements. Birds must be fed at least once a day except as directed by the attending veterinarian. If birds are maintained in group housing, measures appropriate for the species must be taken to ensure that all the birds receive a sufficient quantity of food.

(b) Food and, if used, food receptacles must be readily accessible to all the birds being fed. Food and any food receptacles must be located so as to minimize any risk of contamination by excreta, precipitation, and pests. Food receptacles and feeding areas must be kept clean and sanitized in accordance with § 3.158. Used food receptacles must be cleaned and sanitized before they can be used to provide food to birds maintained in a separate enclosure. Measures must be taken to ensure there is no molding, deterioration, contamination, or caking or undesirable wetting or freezing of food within or on food receptacles. Food receptacles must be made of a durable material that can be easily cleaned and sanitized or be replaceable when worn or soiled. Group-housed birds must have multiple food receptacles where needed to ensure that all birds have access to sufficient feed.

#### **§ 3.156 Watering.**

Potable water must be provided in sufficient quantity to every bird housed at the facility, unless restricted by the attending veterinarian. If potable water is not continually available to the birds, it must be offered to them as often as necessary to ensure their health and well-being. Water receptacles must be kept clean and sanitized in accordance with § 3.158 as often as necessary to keep them clean and free of contamination. Used water receptacles must be cleaned and sanitized before they may be used to provide water to birds maintained in a separate enclosure. Group-housed birds must have multiple water receptacles where

needed to ensure that all birds have access to sufficient water.

#### **§ 3.157 Water quality.**

(a) The primary enclosure or any other area in which birds may enter must not contain pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features) that are detrimental to the health of the birds contained therein.

(1) Particulate animal and food waste, trash, or debris that enters the pool or other aquatic area must be removed as often as necessary to maintain the required water quality and minimize health hazards to the birds.

(2) Pools or other aquatic areas with drainage systems must provide adequate drainage and must be located so that all of the water contained in such pools or other aquatic areas may be effectively eliminated when necessary for cleaning the pool or other aquatic area or for other purposes. Pools or other aquatic areas without drainage systems must be aerated and have an incoming flow of fresh water or be managed in a manner that maintains appropriate water quality in accordance with current professionally accepted standards appropriate for the species.

(b) When the water is chemically treated, the chemicals must be added in a manner that does not cause harm, discomfort, or distress to the animals. Should birds appear to be harmed by water quality, appropriate action must be taken immediately.

(c) Pools and other aquatic areas must be salinized for birds that require such water for their good health and well-being in accordance with current professionally accepted standards.

#### **§ 3.158 Cleaning, sanitation, housekeeping, and pest control.**

(a) *Cleaning.* (1) Excreta and food waste must be removed from primary enclosures and from under and around primary enclosures as often as necessary to prevent excessive accumulation of feces and food waste, to prevent soiling of the birds contained in the primary enclosures, and to reduce disease hazards, insects, pests, and odors. When steam or water is used to clean primary enclosures, measures must be taken to protect birds from being harmed, wetted involuntarily, or distressed in the process. Standing water, except for such water in pools or other aquatic areas (e.g., ponds, waterfalls, fountains, and other water features), must be removed from the primary enclosure.

(2) Scheduled cleaning may be modified or delayed during breeding, egg-sitting, or feeding of chicks for birds that are easily disrupted during such

behaviors. Scheduled cleaning must resume when such cleaning no longer disrupts breeding, egg-sitting, or feeding of chicks. A schedule of cleaning must be documented and must include when breeding season began, when the primary enclosure was last cleaned, and when cleaning is expected to resume. Such records must be available for review by an APHIS inspector.

(b) *Sanitization.* (1) Primary enclosures and food and water receptacles for birds must be sanitized as often as necessary to prevent accumulation of dirt, debris, food waste, excreta, and other disease hazards. *Provided, however,* that sanitization may be modified or delayed during breeding, egg-sitting, or feeding of chicks for those birds that are easily disrupted during such behaviors. Sanitization must resume when such activity no longer disrupts breeding, egg-sitting, or feeding of chicks. A schedule of sanitization must be documented that includes when breeding season began, when the primary enclosure was last sanitized, and when sanitization is expected to resume. Such records must be available for review by an APHIS inspector.

(2) The hard surfaces of primary enclosures and food and water areas and equipment must be sanitized before a new bird is brought into a housing facility or if there is evidence of infectious disease among the birds in the housing facility.

(3) Primary enclosures using materials that cannot be sanitized using conventional methods, such as gravel, sand, grass, earth, planted areas, or absorbent bedding, must be sanitized by removing all contaminated material as necessary or by establishing a natural composting and decomposition system that is sufficient to prevent wasted food accumulation, odors, disease, pests, insects, and vermin infestation.

(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings, surrounding grounds, and exhibit areas, must be kept clean and in good repair in order to protect the birds from injury and disease, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the birds.

(d) *Pest control.* A safe and effective program for the control of insects,

ectoparasites, and avian and mammalian pests must be established and maintained so as to promote the health and well-being of the birds and reduce contamination by pests in animal areas. Insecticides, chemical agents, or other pest control products that may be harmful to the birds must not be applied to primary enclosures and other bird contact surfaces unless the application is consistent with manufacturer recommendations or otherwise approved for use and does not harm birds.

#### **§ 3.159 Employees.**

A sufficient number of adequately trained employees or attendants must be utilized to maintain the professionally acceptable level of husbandry and handling practices set forth in this subpart. Such practices must be conducted under the supervision of a bird caretaker who has appropriate experience in the husbandry and care of birds that are being managed in a given setting.

#### **§ 3.160 Compatibility and separation.**

(a) Socially dependent birds, such as clutch-mates, must be housed in social groups, except where the attending veterinarian exempts an individual bird because of its health or condition, or in consideration of its well-being, or for specific management needs, or where such social grouping is not in accordance with a research proposal and the proposal has been approved by the research facility IACUC.

(b) Birds may not be housed with other animals, including members of their own species, unless they are compatible, do not prevent access to food, water, or shelter by individual animals, and are not known to be hazardous to the health and well-being of each other. Compatibility must be determined in accordance with generally accepted professional practices and by actual observations to ensure that the birds are, in fact, compatible.

(c) Birds that have or are suspected of having a contagious disease or communicable condition must be separated from healthy animals that are susceptible to the disease as directed by the attending veterinarian.

#### **Transportation Standards**

##### **§ 3.161 Consignments to carriers and intermediate handlers.**

(a) Carriers and intermediate handlers must not accept a live bird for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a

carrier or intermediate handler may agree with anyone consigning a bird to extend this time by up to 2 hours if specific prior scheduling of the animal shipment to a destination has been made, provided that the extension is not detrimental to the health and well-being of the bird as determined by the consignor.

(b) Carriers and intermediate handlers must not accept a live bird for transport in commerce unless they are provided with the name, address, and telephone number of the consignee.

(c) Carriers and intermediate handlers must not accept a live bird for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the bird was offered food and water during the 4 hours prior to delivery to the carrier or intermediate handler; provision for unweaned birds is made in paragraph (g) of this section. The certification must be securely attached to the outside of the primary enclosure in a manner that makes it easy to notice and read. The certification must include the following information for each live bird:

(1) The consignor's name, address, telephone number, and email address;

(2) The number of birds;

(3) The species or common names of the birds;

(4) The time and date the bird was last fed and watered and the specific instructions for the next feeding(s) and watering(s) for a 24-hour period; and

(5) The consignor's signature and the date and time the certification was signed.

(d) Carriers and intermediate handlers must not accept a live bird for transport in commerce unless the primary enclosure in which the birds are contained meets the requirements of § 3.162. A carrier or intermediate handler must not accept a live bird for transport if the primary enclosure is defective or damaged and cannot be expected to contain the bird safely and comfortably.

(e) Carriers and intermediate handlers shall not accept a live bird for transport in commerce unless their animal holding area maintains climatic and environmental conditions in accordance with the requirements of § 3.168.

(f) Carriers and intermediate handlers must attempt to notify the consignee at least once in every 6-hour period following the arrival of any live birds at the bird holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee must be recorded on the copy of the shipping

document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the bird shipment.

(g) Carriers and intermediate handlers must not accept unweaned birds for transport unless transport instructions are specified as a part of the consignee's program of veterinary care.

### **§ 3.162 Primary enclosures used to transport live birds.**

Any person subject to the Animal Welfare regulations (parts 1, 2, and 3 of this subchapter) must not transport or deliver for transport in commerce a bird unless the following requirements are met:

(a) *Construction of primary enclosures.* The bird must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport birds must be constructed so that:

(1) The primary enclosure is strong enough to contain the bird securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the enclosure has no sharp points or edges and no protrusions that could injure the bird contained therein;

(3) The bird is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to other persons or to animals nearby;

(4) The bird can be easily and quickly removed from the enclosure in an emergency;

(5) Unless the enclosure is permanently affixed to the conveyance, adequate handholds or other devices such as handles are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not be in contact with the bird contained inside;

(6) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 inch (2.5 centimeters) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the bird and not harmful to its health or well-being;

(8) A bird that has a fractious or stress-prone disposition must be contained in an enclosure that is padded on the top and sides and has

protective substrate on the bottom to prevent injury to the bird during transport;

(9) Proper ventilation is provided to the animal in accordance with paragraph (b) of this section; and

(10) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray. If a mesh or other nonsolid floor is used in the enclosure, it must be designed and constructed so that the bird cannot put any part of its body through the holes in the mesh or the openings in the nonsolid floor. If substrate (newspaper, towels, litter, straw, etc.) is used in the primary enclosure, the substrate must be clean and made of a suitably absorbent material that is safe and nontoxic to the birds.

(b) *Ventilation.* (1) Unless the primary enclosure is permanently affixed to the conveyance, there must be ventilation openings located on two vertical walls of the primary enclosure that are at least 16 percent of the surface area of each such wall or ventilation openings located on all four walls of the primary enclosure that are at least 8 percent of the total surface area of each such wall; *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure must be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure must be located on the upper one-half of the primary enclosure.

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or other devices must be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 inches (1.9 centimeters) between the primary enclosure and anything the enclosure is adjacent to, unless 90 percent or greater of the surface area of the enclosure wall is open (*e.g.*, cage mesh).

(3) Any visually obscuring mesh used to provide security for the bird in the enclosure must not interfere with proper ventilation.

(4) If a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening must open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening must be at least 90 percent of the total surface area of the

front wall of the primary enclosure and covered with bars, wire mesh, or smooth expanded metal.

(c) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport birds in commerce must be cleaned and sanitized before each use in accordance with § 3.158 by the dealer, research facility, exhibitor, or operator of an auction sale.

(d) *Compatibility.* Live birds transported in the same primary enclosure must be of the same species or compatible species and maintained in compatible groups. Socially dependent birds must be able to see and hear each other.

(e) *Space and placement.* Primary enclosures used to transport live birds must be large enough to ensure that each bird contained therein has sufficient space to turn about freely and to make normal postural adjustments; *Provided, however,* That certain species may be restricted in their movements according to professionally accepted standards when such freedom of movement would constitute a danger to the birds, their handlers, or other persons.

(f) *Accompanying documents and records.* Documents accompanying the shipment must be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment and must not obstruct ventilation openings.

### **§ 3.163 Primary conveyances (motor vehicle, rail, air, and marine).**

(a) The animal cargo space of primary conveyances used in transporting live birds must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and prevents the entry of exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing birds must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each bird enough air for normal breathing.

(d) During transportation, the climatic conditions in the animal cargo area shall be maintained in accordance with the requirements of § 3.168.

(e) Primary enclosures must be positioned in the primary conveyance in a manner that allows the birds to be quickly and easily removed from the primary conveyance in an emergency.

(f) The interior of the bird cargo space must be kept clean.

(g) Live birds may not be transported with any material, substance (e.g., dry ice), or device which may reasonably be expected to be injurious to the health and well-being of the birds unless proper precaution is taken to prevent such injury.

**§ 3.164 Food and water requirements.**

(a) All weaned birds must be offered food and potable water within 4 hours before being transported in commerce.

(b) Dealers, exhibitors, research facilities, and operators of auction sales must provide potable water to all weaned birds transported in their own primary conveyance at least every 12 hours after such transportation is initiated, except for birds which, according to professionally accepted standards or under the direction of the attending veterinarian, require watering or feeding more or less frequently. Carriers and intermediate handlers must provide potable water to all live, weaned birds at least every 12 hours after accepting them for transportation in commerce, except for birds which, according to professionally accepted standards or under the direction of the attending veterinarian, require watering or feeding more or less frequently.

(c) All weaned birds must be fed at least once in each 24-hour period, except as directed by veterinary treatment, normal fasts, or other professionally accepted standards. Birds that require feeding more or less frequently must be fed accordingly.

(d) A sufficient quantity of food and water or other source of hydration must accompany the bird to provide food and water for such bird during period of transport, except as directed by veterinary treatment and other professionally accepted standards.

(e) Any dealer, research facility, exhibitor, or operator of an auction sale offering any live bird to any carrier or intermediate handler for transportation in commerce must securely affix to the outside of the primary enclosure used for transporting the bird written instructions for the in-transit food and water requirements of the bird contained in the enclosure. The instructions must be attached in accordance with § 3.162(f) and in a manner that makes them easily noticed and read.

(f) No carrier or intermediate handler may accept any live bird for transportation in commerce unless written instructions concerning the food and water requirements of such bird while being so transported is affixed to the outside of its primary enclosure. The

instructions must be attached in accordance with § 3.162(f) and in a manner that makes them easily noticed and read.

**§ 3.165 Care in transit.**

(a) *Surface transportation (ground and water).* During surface transportation, any person subject to the Animal Welfare regulations in parts 1, 2, and 3 of this subchapter transporting birds in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, visually observes the birds as frequently as circumstances may allow, but not less than once every 4 hours, to ensure that the birds are receiving sufficient air for normal breathing, that climatic and environmental conditions are being maintained in accordance with the requirements in § 3.168, and that all other applicable standards are met. The regulated person must ensure that the operator or person accompanying the operator determines whether any of the birds are in physical distress and obtains any veterinary care needed for the birds as soon as possible.

(b) *Air transportation.* When transported by air, live birds must be visually observed by the carrier as frequently as circumstances may allow, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier must visually observe the live birds whenever they are loaded and unloaded and whenever the bird cargo space is otherwise accessible to ensure that they are receiving sufficient air for normal breathing, that climatic and environmental conditions are being maintained in accordance with the requirements in § 3.168, and that all other applicable standards are met. The carrier must determine whether any such live birds are in physical distress and arrange for any needed veterinary care as soon as possible.

(c) *Prohibition on the transport of ill, injured, or distressed birds.* Any person subject to the Animal Welfare regulations in parts 1, 2, and 3 of this subchapter may not transport in commerce birds that are ill, injured, or in physical distress, except to receive veterinary care for the condition.

**§ 3.166 Terminal facilities.**

(a) *Placement.* Carriers and intermediate handlers must not commingle shipments of live birds with other animals or inanimate cargo in animal holding areas of terminal facilities.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of

terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.158 as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and other pests of birds.

(c) *Ventilation.* Ventilation must be provided in any animal holding area in a terminal facility containing birds, by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation.

(d) *Climatic and environmental conditions.* The climatic and environmental conditions in an animal holding area containing live birds shall be maintained in accordance with the requirements of § 3.168.

**§ 3.167 Handling.**

(a) Any person subject to the Animal Welfare regulations (parts 1, 2, and 3 of this subchapter) who moves (including loading and unloading) live birds 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 provide the following during movement of the live birds:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade shall be provided to protect the live birds from the direct rays of the sun.

(2) *Shelter from rain and snow.* Sufficient protection shall be provided to allow the live birds the option to remain dry during rain, snow, and other precipitation.

(3) *Climatic and environmental conditions.* Climatic and environmental conditions during movement shall be maintained in accordance with the requirements of § 3.168.

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

(c) A primary enclosure containing a live bird must not be tossed, dropped, or tilted, and must not be stacked in a manner which may reasonably be expected to result in its falling.

**§ 3.168 Climatic and environmental conditions during transportation.**

(a)(1) Transportation of all live birds shall be done in a manner that does not cause overheating, excessive cooling, or adverse environmental conditions that could cause discomfort or stress. When climatic or environmental conditions, including temperature, humidity,

exposure, ventilation, pressurization, time, or other environmental conditions, or any combination thereof, present a threat to the health or well-being of a live bird, appropriate measures must be taken immediately to alleviate the impact of those conditions. The different climatic and environmental factors prevailing during a journey must be considered when arranging for the transportation of and when transporting live birds. Corrections may include, but would not be limited to:

(i) The temperature and humidity level of any enclosure used during transportation of live birds must be controlled by adequate ventilation or any other means necessary;

(ii) Appropriate care must be taken to ensure that live birds are not subjected to prolonged drafts detrimental to their health or well-being;

(iii) Appropriate care must be taken to ensure that live birds are not exposed to

direct heat or cold if detrimental to their health or well-being; and

(iv) During prolonged air transit stops in local climatic conditions that could produce excessive heat for live birds held in aircraft compartments, the aircraft doors must be opened and, if necessary, ground equipment must be used to control the condition of the air within compartments containing live birds.

(2) In order to determine what climatic and environmental conditions are appropriate for a live bird, factors such as, but not limited to, the bird's age, species, physiological state, last feeding and watering, and acclimation shall be considered when such information is available.

(b) Birds that are not able to maintain a constant body temperature at ambient temperatures must be transported in a brooder or other temperature-regulating unit that effectively assists the bird in

maintaining a constant body temperature during transport.

(1) The temperature of the brooder or other temperature-regulating unit must be monitored during transportation and appropriate for the live bird.

(2) Written instructions for the temperature requirements of birds transported in brooders or other temperature-regulating units must be securely affixed to the outside of the primary enclosure used for transporting the bird. The instructions must be attached in accordance with § 3.162(f) in a manner that makes them easily noticed and read.

Done in Washington, DC, this 14th day of February 2022.

**Jennifer Moffitt,**

*Under Secretary for Marketing and Regulatory Programs.*

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