

Summary of USDA Animal & Plant Health Inspection Service (APHIS) Proposed Rule “Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act (9 CFR Parts 1, 2 &#) Published on Feb. 22, 2022, at 87 FR 9880

Comments Due: April 25, 2022

This summary focuses on requirements that apply to or that will have the most impact on research facilities. It addresses general requirements, facility and operating standards, and animal health and husbandry standards. COGR’s Research Ethics & Compliance Committee is heading up the development of comments on the proposed regulations that will be submitted to USDA.

Purpose of Proposed Rule: Amends the Animal Welfare Act regulations to regulate the handling, care, treatment, and transportation of birds that are not bred for use in research. The proposed rule covers dealers, exhibitors, breeders, transporters, and research facilities.

Performance Based Standards: The standards set forth are designed to provide the necessary flexibility to address the diverse requirements of the various species of birds.

Areas for which Comments are Requested: Specific items on which USDA has requested comments are highlighted in **yellow**.

Definitions of Note:

- **“Bird”** is defined “any member of the class Aves (excluding eggs).
- **“Farm Animal”:** The proposed rule will make changes to the definition of “farm animal” to include the term “poultry,” which will be separately defined. Poultry will be 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. The definition of “farm animal” will also be modified to included “animals when used solely for their feathers or skins.” Finally, the term poultry will be defined as “chickens, turkeys, swans, partridges, guinea fowl, pea fowl, ducks, geese, pigeons, doves; grouse, pheasants, and quail.
- **“Bred for Research”** is defined as “animals that are bred in captivity and that are being used or are intended for use for research, teaching, testing, or experimentation purposes.” These birds are excluded from the application of the rule; however, the following are included within the rule’s coverage:
 - 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.
- **“Weaned”** is defined as a bird that has “become accustomed to take food and has so done, without supplemental feeding from a parent or human caretaker for at least five consecutive days.”
- **“Exhibitor”** is defined as any person “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.” The definition includes “educational exhibits” and encompasses both those operating for profit, as well as non-profit operations. [**Note:** Institutions that operate educational exhibits that are open to the public for compensation may fall under this definition (e.g., botanical gardens, aviaries).]

Dealers/Exhibitors Requirements

Institutions that breed and sell birds to other research institutions may fall within the scope of the term “dealer.” In this respect, two items of note with respect to dealers/exhibitors include (a) the need to identify birds through labels attached to primary enclosures, leg or wing bands, or microchips; and (b) the need to keep records of “any offspring born or hatched” while in the dealer/exhibitor’s possession or control.

Research Facilities

- **Registration:** The proposed rule estimates that there will be 250 newly regulated Research Facilities as a result of the rule. Research Facilities that are already registered, do not need to do anything further, even if birds are not presently covered on the license. All current requirements that research facilities must meet will also apply to the use in research of birds not bred for research. Similarly, entities registered to transport other animals are not immediately required to update their registrations to transport birds. Rather licenses must be updated at the time that the current license expires.
- **IACUCs:** The proposed rule does not change any requirements re. IACUCs for research facilities, but states that IACUCs “could choose to enlist additional IACUC members with avian expertise.”
- **Operative Procedures:** Non-major operative procedures on birds do not need to be performed in a dedicated facility but must be performed using aseptic procedures. Operative procedures at field sites do not need to be performed in dedicated facilities but must be performed using aseptic procedures.
- **Field Studies:** APHIS guidance exempting field studies will also apply to birds.

Facilities & Operating Standards:

- **Structure & Construction of Housing Facilities:** Facilities must be designed and constructed “so they are structurally and safely sound for the species of bird” housed in them. For flight restricted/non-flying birds that can roam free in the housing facility, birds must have access to “safety pens, enclosures, or other areas that offer” protection overnight and at times when activities are not observed by staff.
- **Outdoor and Indoor Housing Facilities:** Indoor housing standards are prescribed for temperature, humidity, ventilation, lighting, and indoor aquatic areas. Birds may not be housed in outdoor facilities unless humidity and temperature (including water feature temperature) do not adversely affect bird health and comfort and shelter from weather is provided.
- **Facility Standards:** There are many similarities between the requirements for bird housing facilities and food/supply storage areas and those for other species. Notably, the standards call for surfaces that can be readily cleaned and/or sanitized. Standards are provided for indoor and outdoor shelter, with the caveat that birds should not be housed outdoors unless the temperature/humidity will not adversely affect their health and comfort.
- **Water and Drainage:** There are specific standards governing drainage and aquatic areas (ponds waterfalls, fountains, water features). Water features must allow for species behavior such as swimming and diving.

- **Enclosures and Movement in Enclosures:**
 - **Notably primary enclosures need not allow for birds to fly**, but they must allow normal “postural and social adjustments,” adequate freedom of movement, and freedom to escape from aggression by other animals in the same enclosure.
 - **Tethering:** Tethering is permitted (a) if appropriate for species; (b) will not cause harm to the bird; (c) maintained on an appropriate perch; (d) bird has sufficient space to extend wings without obstruction; and (e) tether does not entangle bird.
- **Enrichment:** There must be a documented species-appropriate plan for environmental enhancement “adequate to promote the psychological well-being of birds.” The plan would be part of the program of veterinary care and would be available to APHIS and funding agencies on request. The plan would also need to address the birds’ psychological well-being such as through the use of enrichment materials.
- **Contact with Birds:** Regulations will not restrict humane handling of birds.
- **Social Housing:** The plan would need to address the social needs of birds that live in social groups. Socially dependent birds are to be housed in social groups unless the Attending Vet exempts an individual bird because of specific health/mgmt. needs. Birds may not be housed with other species of birds or animals unless they are compatible. Birds may not be housed with other animals, including members of their own species, unless they are compatible, and the housing is not hazardous to their health/well-being.
- **Birds Requiring Special Attention:** Infants, young juveniles, birds used in IACUC approved protocols requiring restriction, and individually housed social species that are “unable to see and hear birds of their own or compatible species” require special attention regarding environmental enhancement.
- **Wading and Aquatic Birds:** These birds must have access to pools or other aquatic areas. There is a specific standard for indoor pools and other aquatic areas (e.g., waterfalls, fountains, water features).
- **Breeding:** When a research facility breeds or intends to breed their birds, the birds must be provided with structures/materials that meet the species’ reproductive needs.
- **Restraint Devices:** Birds are not permitted to be maintained in restraint devices unless required by the attending vet for health reasons or per a research protocol approved by the IACUC. Restraint must be for the shortest period and if the restraint period is for more than 12 hours daily, the bird must be provided for at least one continuous hour of unrestrained activity unless otherwise approved by the IACUC. [NOTE: It is unclear how the tethering provision interplays with the restraint provision of the proposed regulations.]

Animal Health & Husbandry Standards

- **Feeding:** Birds must be fed at least once per day, or as directed by the attending vet. For birds housed in groups, the facility must ensure that all birds receive sufficient quantities of food.
- **Water:** Potable water must be provided in sufficient quantity and group housed birds must have multiple water receptacles. Primary enclosures or other areas cannot contain water features if they detrimental to the health of any of the birds contained therein.
- **Physical Alterations to Birds:** The NPRM requests additional comments concerning practices such as pinioning, toe clipping, beak alterations. The NPRM recognizes that there may be health reasons for these alternations, and it does not prohibit them.

- **Cleaning/Sanitization:** Primary enclosures “using materials that cannot be sanitized using conventional methods, such as gravel, sand, grass, earth, planted areas, or absorbents, must be sanitized by removing all contaminated material as necessary or by establishing a natural composting and decomposition system.” **[Note:** This may be potentially problematic for research taking place in enclosures designed to emulate natural settings and/or natural settings in which birds may be incidentally exhibited (e.g., arboretums).]

Migratory Birds:

The proposed rule will regulate a small number of persons/entities that maintain captive migratory birds under both the AWA and the U.S. Fish & Wildlife Service standards. **USDA has requested comments on specific activities in this area.**

Transportation of Live Birds

The proposed rule includes regulations that apply to (a) the transportation of live birds by any person/entity subject to the AWA (e.g., dealers, exhibitors, research facilities); and (b) to carriers and intermediate handlers who are engaged in the business of transporting animals in commerce or receiving animals in connection with their transportation in commerce

- **Transportation Requirements that Apply to Research Facilities:** The proposed rules that apply to transportation conducted by research facilities include the following requirements:
- **Primary Enclosures for Transport:** Birds will need to be transported in primary enclosures and the rule allows for consideration of the bird type’s particular needs in determining the amount of space that the enclosure affords. The standards for enclosures (e.g., no sharp edges, ventilation, cleaning) are similar to those for other animals.
- **Conveyances:** Conveyances used to transport live birds must be designed and maintained to protect the health and safety of the birds and must provide ventilation and appropriate climatic conditions.
- **Food and Water:** Weaned birds must be offered food and potable water within four hours of being transported. Thereafter they must be offered water at least every 12 hours and food every 24 hours while in transit operated by the research facility, unless otherwise determined by a veterinarian. If birds are given to a carrier or intermediate handler for transport the instructions for feeding and watering must be securely affixed to the bird’s primary enclosure.
- **Surface Transport:** During surface transport, birds must be visually observed at least once every four hours, and if the research facility is not operating the transport, it must ensure that the operator of the transport performs this inspection.
- **Air Transport:** If the cargo area is accessible during flight, the birds must be visually observed at least once every four hours, and if the cargo area is not accessible, then birds must be observed at loading and unloading, and whenever else the cargo space is accessible.
- **Climatic and Environmental Conditions:** When a research facility takes a bird to or from a transportation terminal, it must provide shelter from the elements (including extreme heat) and appropriate climate conditions. Transportation must be conducted in a manner that does not cause overheating, excessive cooling, or other climatic conditions that would cause injury or stress. Care must be taken to provide appropriate temperature and climatic conditions during transport and “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.”