Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act by the Animal and Plant Inspection

SUMMARY: 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.

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. 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 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.

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Background: 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,[3] 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 Start Printed Page 9881 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.[3]

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 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 rescue centers; 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. (If you are interested in reading these comments, they can be found on pages 9881 to 9887 in February 22, 2022 issue of the Federal Register)

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 Start Printed Page 9888 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. 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 feathers. 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 peafowl; 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.

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 which conduct 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 warm blooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;
- Any establishment or person selling warm blooded 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 solid food and has 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 pre-licensing 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. **Go to page 9889 to read more about exemptions and licensing. I am going to add some highlights from the 33-page proposed regulation.**

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.

Dealers and exhibitors newly regulated under this proposal would need 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.

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. With some exceptions, 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 parts 21, subpart C, include but are not limited to those intended for import or export, scientific collecting, falconry, raptor propagation, and rehabilitation.

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.

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. The IACUC is also required 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-rodsents must be conducted only in facilities intended for that purpose and must be performed 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. 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-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 re-
uirements 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 flexi-
bility 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: 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. Start Printed Page 9894

**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: 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.
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,

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 intra-specific 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 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© 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 Start Printed Page 9896 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 Start Printed Page 9897 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 IA-CUC. 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.

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.

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. (See USDA’s Table Potential Cost Categories for Licensees Associated with the Rule)

**Time and method of identification.**

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.