



United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Riverdale, MD 20737

Dear Tribal Leader:

September 30, 2021

The Animal and Plant Health Inspection Service (APHIS) values its developing partnership with the Tribal Nations. Our Agency strives to keep Tribes informed of actions that could have an impact on tribal members and resources. For this reason, I would like to notify you of our pending proposal to establish standards for the humane care and handling of birds covered under the Animal Welfare Act (AWA).

We are proposing to establish new regulations and standards and amend existing regulations governing birds covered by the AWA. We intend to amend definitions of terms to inform licensees and registrants of their responsibilities under the Act with respect to covered birds and clarify the requirements and responsibilities for regulated parties with birds. We also propose to establish specific standards for the humane handling, care, treatment, and transportation of birds covered under the Act.

APHIS would like to invite you to participate in a **Tribal Consultation Webinar for the new bird regulations being held on November 4, 2021 from 1:00-3:00 EDT**, where we will provide an update on the proposed APHIS-Animal Care bird regulations and give you an opportunity to express any issues or concerns you may have. You can register for the webinar by clicking on the following link:

<https://attendee.gotowebinar.com/register/1656085931322116619>

Once registered, you will receive a personal link to the webinar and automatic reminders prior to the webinar.

Current Status of Birds under the AWA

Until 2002, the AWA excluded all birds from regulation. That year, however, Congress amended the definition of *animal* in the AWA to limit the exclusion only to birds bred for use in research, meaning that birds not otherwise excluded were, for the first time, included in the definition and newly covered under the AWA. In 2004, APHIS finalized a rule to cover birds under its regulations but did not include standards for doing so.

In 2020, the U.S. Court of Appeals for the D.C. Circuit found that the AWA requires us to issue such standards for birds not bred for use in research or otherwise excluded from regulation. The Court ruled that we must schedule virtual listening sessions to gather comments on establishing standards for birds, which we have done, and publish a proposed rule no later than February 21, 2022. We published a notice in the *Federal Register* on August 20, 2020 that announced three public listening sessions, which were held on September 29, October 7, and October 15, 2020.

During the listening sessions, we asked the public to comment on possible 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 humane standards enforcement. We are now in the process of developing the proposed rule for publication by the Court-ordered date.

Proposed Changes

We believe the regulations and standards we propose will help to ensure the humane handling, care, treatment, and transportation of birds not bred for use in research and not otherwise excluded from regulation. 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.

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. The standards are intended to provide flexibility for their implementation to bird breeders, dealers, exhibitors, and transporters by drawing on their professional knowledge and experience. With the proposed standards, we intend to provide each individual bird covered under the AWA with acceptable conditions consistent with ensuring its good health and well-being and meeting its physical and behavioral needs.

As part of our effort to propose standards for birds, we are coordinating with the U.S. Fish and Wildlife Service to better understand how these proposed regulations will impact persons or organizations maintaining birds covered under the Migratory Bird Treaty Act.

Your participation in this process is valued, and we ask that you consider and inform APHIS of any comments you may have on this rule. We intend to publish the proposal in the *Federal Register* and solicit comments for 60 days. After the comment period ends, we will review and consider all comments.

If you have any questions relating to Tribal concerns, please contact Dr. Terry Clark, National Tribal Liaison at (301) 440-4388, or by e-mail at Terry.W.Clark@usda.gov. For information related to specific regulations and standards for birds, please contact Dr. Cody Yager at (937) 308-0285, or by email at cody.m.yager@usda.gov.

We look forward to continued collaboration with the Tribal Nations and to discussing the proposed rule.

Sincerely,



Betty Goldentyer
Deputy Administrator Animal Care
Animal and Plant Health Inspection Service