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United States Department of Agriculture, Proposed Rule: Standards for Birds Not Bred for Use  
in Research Under the Animal Welfare Act  
APHIS-2020-0068

**Attorneys for Animals Comment on Proposed Rule: Standards for Birds Not Bred for Use  
in Research Under the Animal Welfare Act**

**Submitted Electronically via eRulemaking Portal:**

<http://www.regulations.gov/commenton/APHIS-2020-0068-8062>

Attorneys for Animals, Inc. (AFA) is a Michigan non-profit and 501(c)(3) organization that includes attorneys, law students, law school graduates, and other advocates who work to improve the lives of animals. Founded in the 1990s, our mission is to work within the legal system to encourage efforts to ensure that animals are recognized, treated, and protected as individuals with inherent value. We actively follow legislative, administrative, and policy actions related to the welfare of animals, both in Michigan and nationwide.

We write to express our support, in-part, for these long-overdue protections for birds, while calling into question some areas in this proposed rule that seem incongruous with the standards and outcomes the agency claims as its goals. Specifically, we applaud the acknowledgment by APHIS (hereafter “agency”): “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” (<https://www.federalregister.gov/d/2022-03565/p-18>).

In reviewing comments related to the environmental enrichment needs of these highly intelligent and social creatures, the agency notes that this area of the rule “...is important to ensuring the health and well-being of birds consistent with the Act.” If this is the standard by which the agency proposes its rule will measure the “handling, care, treatment, and transportation” of birds as “humane”, as required under the statute, some areas of this proposed rule are lacking. The agency notes the welfare-based need for the rule and suggests that a rule consistent with the Animal Welfare Act must ensure the health and well-being of birds. We agree but see some areas of the proposed rule that are clearly out of alignment with this standard.

AFA calls upon the agency to apply this high standard to all aspects of the rule, such as non-therapeutic physical alterations, tethering restrictions, adequate space for flight while confined, restrictions on public contact, pet shop licensing and an explicit ban on pigeon racing.

Perhaps the agency's most inexplicable conclusion is that "birds can be in good health and maintained humanely" without space for flight, given the agency's stated focus on health and well-being (<https://www.federalregister.gov/d/2022-03565/p-69>). We assert that to make this conclusion without any support is arbitrary, capricious, and an abuse of discretion.

The International Association of Animal Behavioral Consultants has provided background information on the basic need for birds to have flight in the article "Birds Need to Fly" (<https://iaabcjournal.org/birds-need-fly/>). This article lays out many reasons why flight is critical for their health and well-being, to include sufficient exercise, stress reduction and avoidance of illness.

Other instances where the rule ignores agency standards is in its allowance for wing-clipping and extensive tethering. All other non-therapeutic physical alterations of birds should be explicitly disallowed as negatively impacting the health and well-being of birds.

Further, if APHIS truly feels bound by the Act to "ensure the health and well-being of birds," it must use these standards uniformly, when weighing interests of birds against the profits and historical motivations of human industry and institutions. Public contact in bird exhibits can increase risk of stress, illness or injury to the birds or human visitors and more should be done to license and establish guidelines for such exhibits.

Another area of concern and incongruity in the proposed rule is the allowance for an exemption for pigeon racing, suggesting that such activities advance "agricultural arts and sciences" (<https://www.federalregister.gov/d/2022-03565/p-119>). First, this seems like an archaic description of these events, which often lead to the deaths of a significant number of those participating pigeons (<https://theecologist.org/2020/aug/03/against-pigeon-racing>). Second, the agency appears to adopt, without analysis or skepticism, the statements of the American Pigeon Racing Union, a trade organization which itself admitted in 2020, "Of course, racing pigeons are not used for food today, but they were generations ago. ... Pigeon racing is a highly evolved and specialized agricultural art and science. As such, pigeons are a form of farm animal and, like other farm animals, should be excluded from coverage under the AWA" (<https://www.pigeon.org/pages/pdf/arpucCommentsonUSDA-APHISBirdRegulationRulemaking2020.pdf>). By adopting conclusory statements that rely on long-ago agricultural practices in this country, the agency squanders an opportunity to make a reasoned judgment that comports with its high standards of ensuring health and well-being for birds.

Finally, history provides many examples of how the pet store industry will weigh profits over the health and well-being of animals and therefore bird sales from pet stores must include

oversight and licensing. APHIS already licenses many pet stores for the sale of dogs and other animals and in doing so has helped to protect those animals found in pet stores (<https://www.cincinnati.com/story/news/your-watchdog/2015/11/08/investigation-your-puppies-may-never-have-chance/74279370/>, [www.azcentral.com/story/money/business/consumers/2016/05/24/usda-uncovers-abuse-rodent-supplier-peta-claims-used-petsmart/84855732/](http://www.azcentral.com/story/money/business/consumers/2016/05/24/usda-uncovers-abuse-rodent-supplier-peta-claims-used-petsmart/84855732/)). One of our attorney members, Rose Stern, submitted a comment (Comments Tracking Number: 135-zd8a-qwts and 135-zqu2-x42e). Her perspective is useful, and we reinforce her statement: “My comments are based on almost 30 years of personal experience as a caretaker for a Cockatoo named Al. In interacting with breeders, sellers, bird fanciers and veterinarians, it doesn’t take long to see greed-motivated neglect and abuse of birds in the avian industry. ... Breeders keep pushing sales, including over-the-counter sales through commercial outlets like Petco, where smaller species of birds are warehoused and treated like inanimate objects for sale alongside bags of food and rubber balls. Salesclerks are typically uninformed on the special needs of the birds they sell.” This rule must extend some level of licensing requirement to pet stores trafficking in birds of all breeds.

APHIS has set high standards in areas of this proposed rule, which are worthwhile and worthy of praise, such as the environmental enrichment protections, described above. We simply encourage APHIS to extend those high standards adequately across all areas of bird welfare, to ensure that the health and humane treatment of birds is adequately protected under the law, in accordance with the Animal Welfare Act.

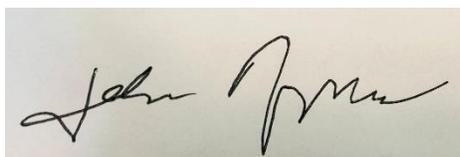
Very truly yours,

**Attorneys for Animals, Inc.**

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