

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

HUMANE WORLD FOR ANIMALS,  
1255 23rd Street NW, Suite 450,  
Washington, DC 20037,

AMERICAN ANTI-VIVISECTION  
SOCIETY,  
801 Old York Road, Suite 204,  
Jenkintown, PA 19046,

*and*

AVIAN WELFARE COALITION,  
P.O. Box 40212  
St. Paul, MN 55104,

*Plaintiffs,*

v.

BROOKE L. ROLLINS, *in her official  
capacity as Secretary of Agriculture,*  
U.S. Department of Agriculture,  
1400 Independence Ave., SW,  
Washington, DC 20250,

*and*

ANIMAL AND PLANT HEALTH  
INSPECTION SERVICE,  
George Washington Carver Center  
5601 Sunnyside Ave.  
Beltsville, MD 20705,

*Defendants.*

Case No. 1:26-cv-2253

**COMPLAINT FOR DECLARATORY AND VACATUR RELIEF**

**INTRODUCTION**

1. Plaintiffs Humane World for Animals (“Humane World”),<sup>1</sup> American Anti-Vivisection Society (“AAVS”), and Avian Welfare Coalition (“AWC”) (collectively, “Plaintiffs”) challenge the United States Department of Agriculture’s (“USDA”) Animal and Plant Health Inspection Service’s (“APHIS” or “the Agency”) promulgation of a rule under the Animal Welfare Act (“AWA” or “the Act”) setting minimum standards for the care of captive birds at covered facilities, including facilities that breed and sell birds for use in exhibition and as pets. Specifically, Plaintiffs challenge APHIS’ exemption from the standards contained in that rule for some bird breeders—styled by APHIS as a “*de minimis* exemption”—as arbitrary, capricious, and not in accordance with law, and as promulgated without proper procedure.

2. In 2002, Congress confirmed that the AWA’s protections included birds in commerce who were not bred for use in research, by amending the Act’s definition of “animal.” But APHIS, the agency charged with administering the Act, failed to implement this change in its regulatory and enforcement scheme, leaving an untold number of animals without the protections granted to them by Congress.

3. In 2004, APHIS acknowledged that the AWA now applied to birds, Animal Welfare; Definition of Animal, 69 Fed. Reg. 31513 (June 4, 2004), and published a notice in the Federal Register that it intended to develop “standards [that] are appropriate” for birds not bred for use in research, Animal Welfare; Regulations and Standards for Birds, Rats, and Mice, 69 Fed.

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<sup>1</sup> Humane World for Animals was formerly called the Humane Society of the United States. The organization changed its name in 2025.

Reg. 31537 (June 4, 2004). In response, Plaintiffs and other animal welfare organizations submitted a forty-two-page set of recommendations for the regulation of birds under the AWA.

4. One year later, in the fall of 2005, APHIS stated that promulgating bird-specific regulations was a regulatory priority and that it intended to propose those regulations by September 2006. USDA, Statement of Regulatory Priorities, 70 Fed. Reg. 64097, 64104 (Oct. 31, 2005). In December 2006, APHIS stated that bird-specific regulations would be a regulatory priority for 2007. USDA, Statement of Regulatory Priorities, 71 Fed. Reg. 72736, 72741 (Dec. 11, 2006). In 2007, APHIS stated it intended to propose bird-specific regulations by February 2008. USDA, Unified Agenda, 72 Fed. Reg. 22266, 22267 (Apr. 30, 2007). In May 2008, APHIS stated it would propose those standards by September 2008. USDA, Unified Agenda, 73 Fed. Reg. 24640, 24640 (May 5, 2008). Then in November 2008, APHIS stated bird-specific regulations would be a regulatory priority for 2009. USDA Unified Agenda, Statement of Regulatory Priorities, 73 Fed. Reg. 71112, 71117 (Nov. 24, 2008). This pattern continued in 2009, in 2010, in 2011, in 2012, and in 2013.

5. In 2014, APHIS suddenly stopped including bird-specific regulations as a regulatory “priority” for the upcoming year.

6. In 2018—sixteen years after Congress amended the AWA to unequivocally include birds not bred for use in research—Plaintiffs AAVS and AWC, filed suit against APHIS for its failure to promulgate regulations for birds under the AWA. In 2020, the D.C. Circuit Court of Appeals told the Agency in no uncertain terms that it was required to set these standards—and that the plaintiff organizations had standing to sue the Agency for its failure to do so. It was only then that APHIS agreed to begin the rulemaking process to set standards for birds under the AWA.

7. Finally, in early 2023, now over two decades after Congress directed APHIS to do so, the Agency published a final rule under the AWA setting standards for the humane care of birds not bred for use in research. Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act, 88 Fed. Reg. 10654 (Feb. 21, 2023) (hereinafter, “Final Rule”).

8. The Final Rule lays out some minimum standards for the humane keeping of birds by different types of entities, including breeders who sell their animals’ offspring for use in exhibition or as pets. These standards, long overdue, include basic requirements for safe housing, waste removal, unspoiled food, and access to potable water.

9. This otherwise commonsense rule contains a glaring flaw, which amounts to a continuation of the Agency’s years of refusal to comply with the Congressional mandate to protect these animals. Through its “*de minimis* exemption,” APHIS makes clear its intention to continue its refusal of required AWA coverage, this time exempting bird breeders from AWA coverage as long as they sell 200 or fewer “small” birds per year.

10. This sales-based exemption was not included in the rule as originally proposed by the Agency and therefore was not subject to public notice and comment.

11. This exemption renders the rule irrational, ignores Congressional intent, and removes an unknown (even by the Agency itself) number of facilities and number of animals from APHIS’ oversight and humane care requirements.

12. APHIS fails to provide a reasoned explanation for its departure from the metric used in other *de minimis* rules under the Act, and it fails to provide any explanation whatsoever, let alone the reasoned explanation required by law, for the specific number of birds that could be sold without oversight that it arrived at for this sales-based exemption.

13. Instead, APHIS appears to have improperly responded to industry pressure without otherwise having any good reason to eliminate so many entities and animals from regulation.

14. APHIS developed and finalized the *de minimis* exemption on the basis of wholly inadequate information, lacking entirely any understanding of how many entities it would cover, the share of the total market that it would exempt from regulation, or how many animals it would impact.

15. This exemption is not tied to and does not further the purposes of the AWA. To the contrary, the likely number of birds and businesses covered by the exemption is antithetical to the purposes of the AWA and its 2002 amendment. The exemption ensures that animals Congress explicitly intended to receive protection under the AWA are pushed outside of the Act's reach.

16. For these reasons, the exemption is arbitrary and capricious and not in accordance with law, within the meaning of the Administrative Procedure Act and the Animal Welfare Act.

17. Plaintiffs therefore seek declaratory relief to vacate the unlawful and overbroad exemption from regulation under the AWA for birds not bred for use in research, obtain a date certain by which the Agency will propose an amended rule that furthers the purposes of the AWA and that does not contain such an overbroad exemption from regulation, award Plaintiffs their fees and costs associated with this lawsuit, and such other relief as may be necessary and proper.

### **JURISDICTION AND VENUE**

18. This action arises under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and the Animal Welfare Act ("AWA"), 7 U.S.C. §§ 2131-2160. The Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 706 (agency action), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1346(a)(2) (actions against the United States government).

19. The requested relief is appropriately awarded under the APA, 5 U.S.C. § 706 (vacatur); the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202 (declaratory relief); and the Court's equitable powers.

20. Venue is proper in the District of Columbia pursuant to 28 U.S.C. § 1391(e)(1), as this civil action is brought against a federal agency and an officer or employee of the United States acting in her official capacity and under the color of law; a substantial part of the events giving rise to Plaintiffs' claim occurred in the District of Columbia; Defendant Secretary Rollins and Plaintiff Humane World for Animals are headquartered in the District of Columbia; and no real property is involved in the action.

21. The APA provides a waiver of the federal government's sovereign immunity. 5 U.S.C. § 702.

## **PARTIES**

### ***Plaintiffs***

22. Plaintiff HUMANE WORLD FOR ANIMALS ("Humane World") is a 501(c)(3) nonprofit organization incorporated in 1954 and headquartered in Washington, D.C. Humane World is the nation's largest animal protection organization, with millions of members, supporters, and constituents. Humane World's mission is to end suffering for all animals. In furtherance of this mission, Humane World has demonstrated a particular commitment to the protection of captive wildlife and animals bred and sold for use in exhibition. Humane World supports efforts aimed at improving the treatment and living conditions of such species, including birds. Humane World regularly submits comments to government agencies concerning proposed actions that would affect captive wildlife and animals bred and sold for use in exhibition, including standards of care under the AWA. Humane World also works to pass legislation at the local, state, and federal

levels to protect captive animals and animals bred and sold for use in exhibition. Humane World also works to educate its members and the general public about the treatment and living conditions of captive wildlife and animals bred and sold for use in exhibition.

23. Humane World has been involved specifically with efforts to protect birds in captivity and birds bred and sold for use in exhibition for decades, spending significant time and organizational resources on efforts both to ensure APHIS compliance with the AWA by providing minimum standards for care and treatment of birds and to inform APHIS and the general public about the treatment of birds in captivity, such as those bred and sold for use in exhibition, including violations of state and federal law.

24. Humane World has called on APHIS for years to comply with the AWA by promulgating minimum standards of care and treatment for birds covered by the Act. After APHIS announced that it “intend[ed] to extend enforcement of the AWA to birds other than birds bred for use in research” and sought public comment on “what regulations and standards are appropriate for them,” 69 Fed. Reg. 31,537, on November 1, 2004, Humane World, along with Plaintiffs AAVS, AWC, and twenty-five other animal welfare organizations, submitted joint comments to the Agency in support of proposed specific regulations for birds, rats, and mice not bred for use in research. As part of the comments, Plaintiffs actively participated in the preparation of a forty-two-page set of recommendations for regulation of birds under the AWA.

25. For the next fourteen years, Plaintiffs waited as APHIS repeatedly promised, and failed to deliver, a final rule setting standards for the care of birds under the AWA. This rulemaking appeared on the Agency’s published list of regulatory priorities every year from 2005 to 2013, *see supra* ¶¶ 3-4, but APHIS never so much as *proposed* such a rule.

26. During this time, APHIS and agency representatives also made repeated oral assertions to interested parties, including Plaintiffs, that the rulemaking process was in progress. In March 2006, APHIS convened an Animal Welfare Stakeholder Meeting where it stated that it was having difficulty determining the number of entities that would be impacted by the addition of birds not bred for use in research to the AWA. The Agency also stated that it planned to hire an Avian Specialist to help develop bird-specific regulations.

27. The following year, on May 15, 2007, Chester Gipson, the then-Deputy Director of APHIS, announced at another Animal Welfare Stakeholder Meeting that bird-specific regulations had been drafted and were awaiting clearance from the Agency.

28. At the July 2008 Animal Welfare Stakeholder Meeting, APHIS stated that the bird-specific regulations were indeed drafted but were still being reviewed by the Agency's Office of General Counsel ("OGC").

29. At the March 2009 Animal Welfare Stakeholder Meeting, APHIS stated that the OGC review had been completed and the bird-specific rule was now with the Office of Management and Budget ("OMB") for review.

30. At the March 2010 Animal Welfare Stakeholder Meeting, APHIS assured attendees that the proposed rule would be published in August of that year.

31. Thirteen months later, at the April 2011 Animal Welfare Stakeholder Meeting, Dr. Johanna Briscoe, the Avian Specialist for the Agency, stated that USDA was "reassessing" the information it had gathered in connection with issuing bird-specific regulations.

32. In 2012 and 2013, APHIS told animal protection advocates that the "reassessed" proposed rule had not yet been passed to OMB for review.

33. Sixteen years after being instructed by Congress to regulate birds not bred for use in research under the AWA, APHIS had not so much as proposed a rule setting bird-specific standards under the AWA. And so Plaintiffs AAVS and AWC filed suit against APHIS in 2018, demanding bird-specific regulations under the AWA. In 2020, they won that case.

34. In 2022, two years after the D.C. Circuit decided that case in plaintiffs' favor, and two *decades* after Congress instructed it to do so, APHIS finally published a proposed rule containing standards for birds not bred for use in research under the AWA. Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act, 87 Fed. Reg. 9880 (Feb. 22, 2022) (hereinafter, "Proposed Rule").

35. The Proposed Rule included a *de minimis* exemption for any facility that "maintains four or fewer breeding females and sells only the offspring for pets or exhibition." Proposed Rule at 9902 (hereinafter, "Proposed DME"). The Proposed DME was not based on the number of animals a business sells each year.

36. Humane World submitted comments on the proposed rule with six other animal protection organizations, including Plaintiffs AAVS and AWC.

37. Because the Proposed Rule did not include nor contemplate the possibility of a *de minimis* exemption from regulation based on the number of animals sold by a business every year, Humane World was not given notice of APHIS' intention to promulgate such an exemption, even though such notice was required by the APA. As such, Humane World was deprived of its statutory right under the APA to provide comments to the Agency on this regulatory exemption.

38. The APA requires that agencies give "notice of proposed rule making . . . published in the Federal Register," which must include "the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b).

39. If an agency promulgates a final rule that differs from the proposed rule so significantly that interested parties could not “have anticipated that the relevant modification was possible,” then the agency action violates the APA’s notice requirement. *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1107 (D.C. Cir. 2014). This is referred to as the “logical outgrowth” test. *Id.*

40. In addition to this notice requirement, the APA mandates that an “agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c).

41. These notice and comment requirements are in place to ensure that “interested persons [are able] to participate in the rule making process by submission of relevant views, data and argument.” *Nat’l Soft Drink Ass’n v. Block*, 721 F.2d 1348, 1353 (D.C. Cir. 1983).

42. Humane World submitted comments to APHIS on the bird-specific care standards contemplated in the Proposed Rule, but it was prevented from doing so with regard to the sales-based *de minimis* exemption—the specific regulatory provision at issue here—because the Agency did not provide notice to the public that it was considering such a provision.

43. If given the opportunity, Humane World would have submitted comments to APHIS addressing the consequences—with regard to animal welfare, recordkeeping, AWA enforcement, and transparency—of a sales-based *de minimis* exemption, as well as the Agency’s authority under the AWA to promulgate such an exemption.

44. Humane World was therefore deprived of its right to notice and comment under the APA of the *de minimis* exemption in the Final Rule.

45. As part of its organizational efforts to protect all animals, Humane World regularly engages in a number of educational and enforcement activities related to the AWA. These include

identifying cases of abuse and neglect of birds, reporting such cases to the proper authorities and advocating for appropriate enforcement of federal and state animal protection laws, and educating the public about the treatment of birds bred and sold for use in exhibition at facilities licensed under the AWA.

46. In order to accomplish these efforts, Humane World regularly requests and obtains inspection reports and other documents collected, generated, and held by APHIS through the Freedom of Information Act (“FOIA”). These documents include, but are not limited to, animal welfare complaints, inspection reports, and documentation of enforcement actions.

47. Humane World relies on these records as a primary source of information needed to conduct many of the organization’s efforts to protect birds.

48. Humane World reviews all inspection reports for AWA-licensed facilities, including bird breeders, that are identified as non-compliant. Humane World uses this information to track the numbers of animals kept at licensed facilities; identify trends, such as bird predation or death at licensed facilities; identify and track dangerous incidents with animals (such as bites, escapes, or unsafe public encounters); and monitor agency enforcement action, including with regards to complaints and enforcement requests submitted by Humane World.

49. Humane World uses inspection reports and resulting enforcement actions to track AWA violations, including incidents specifically related to captive birds. This tracking has resulted in the discovery of concerning trends, such as bird predation in AWA-licensed facilities and a high number of deaths of commonly exhibited birds such as parakeets.

50. When it identifies cases of abuse or neglect of birds, Humane World relies on inspection reports to report such conduct to the proper authorities. This includes the development

and submission of enforcement requests to APHIS itself, as well as other relevant regulatory bodies.

51. For example, in recent years, Humane World submitted complaints to both APHIS and local regulatory authorities regarding the conditions, housing, handling, facilities, and veterinary care provided to birds kept at one facility in Nevada and one facility in Texas; a complaint to APHIS regarding the deaths of five animals, including two birds, at a facility it inspected; and a complaint to APHIS regarding an exhibitor whose AWA license had been cancelled but was nevertheless continuing to operate and exhibit birds. In each of these cases, Humane World relied on inspection reports and other documents produced under the AWA to pursue animal welfare enforcement action against these facilities.

52. Humane World also uses records produced under the AWA to educate the public about the conditions and treatment of captive animals, such as birds bred and sold for use in exhibition. Humane World routinely authors and publishes reports and media statements based on APHIS documents, including inspection reports, in order to provide information about the treatment of animals, including captive birds, to its members and the public at large.

53. For example, in recent years, Humane World has published a public investigation report and blog on an AWA licensee's history of noncompliance, highlighted repeated AWA noncompliance in an op-ed authored by Humane World's CEO, and discussed another AWA licensee's history of noncompliance in an investigation report and press release following multiple undercover investigations of that licensee's facilities.

54. Humane World relies on documents produced under the AWA in order to conduct these types of actions to protect captive birds.

55. Because of APHIS' improper and impermissible promulgation of an overbroad *de minimis* exemption in the Final Rule, entities that should be regulated under the AWA are currently not. As such, APHIS is not collecting, generating, or holding records produced under the AWA, such as inspection reports, for these facilities that it would be required to if these facilities were regulated under the AWA.

56. If not for the improper exemption contained in the Final Rule, APHIS would be required to collect or produce various documentation about the care and use of animals at these now-exempt facilities—bird breeders who sell 200 or fewer small birds per year—including, but not limited to, license applications, animal welfare complaints, inspection reports, and documentation of enforcement actions. *See* USDA, Animal Welfare Inspection Guide (June 2025), § 3.3.1, <https://www.aphis.usda.gov/sites/default/files/animal-welfare-inspection-guide.pdf>.

57. Because APHIS is not producing records under the AWA for the entities exempted by the improper *de minimis* exemption contained in the Final Rule, Humane World is prevented from obtaining such records, or the information that would be included in them, through FOIA.

58. Humane World is legally entitled to this information.

59. Because Humane World is unable to obtain AWA records regarding the entities improperly exempted by the Final Rule, it cannot track significant animal welfare concerns, such as incidents of bird predation and numbers of deaths at these facilities. It is also prevented from identifying the number of animals kept at these facilities.

60. Additionally, this deprivation of information about the existence and welfare of likely tens of thousands of birds who Congress has determined should be regulated under the AWA interferes with Humane World's efforts to protect birds.

61. This deprivation of information impedes Humane World's ability to compile reports and enforcement requests for relevant regulatory bodies, including APHIS as well as state and municipal governments.

62. This deprivation of information also interferes with Humane World's efforts to educate its members and the public about the numbers, treatment, and conditions of captive birds kept by "small" breeders, the way that it does for other animals regulated under the AWA.

63. Humane World is thus directly impaired in its ability to engage in its activities, including tracking animal welfare, pursuit of enforcement of animal welfare laws, and its program of public education intended to protect birds because of APHIS' promulgation of an improper *de minimis* exemption in the Final Rule.

64. Humane World is injured by the deprivation of information and records it is legally entitled to under the AWA and FOIA.

65. Therefore, Humane World's interests are directly, adversely, and irreparably injured by APHIS' promulgation of the overbroad *de minimis* exemption contained in the Final Rule. These injuries will continue to occur unless and until this Court provides the relief requested in this Complaint.

66. Plaintiff AMERICAN ANTI-VIVISECTION SOCIETY ("AAVS") is a 501(c)(3) nonprofit organization headquartered in Pennsylvania whose mission is to end the use of animals in science through education, advocacy, and the development of alternative methods. Founded in 1883, AAVS is the first non-profit animal advocacy and educational organization in the United States dedicated to ending experimentation on animals in research, testing, and education. Focused on the objectives of strong animal protection legislation, public awareness, and humane education, AAVS has spent much of its history promoting and seeking alternatives to the use of animals in

science and society. AAVS is the chair of the renowned “Leaping Bunny” certification program, which logo appears on hundreds of products to certify that they are “cruelty-free.”

67. Besides animal experimentation, AAVS also opposes and works to end other forms of cruelty to animals, participating in issues with respect to the mistreatment of animals in agriculture, entertainment, and other areas. AAVS engages in a broad range of activities on a regular basis, including humane education, support of sanctuaries providing care to retired laboratory animals, investigating alternatives to the use of animals in biomedical research and toxicity testing, and funding special reports on a variety of issues related to AAVS’ work.

68. AAVS has been involved specifically with efforts to protect birds throughout America for more than twenty-seven years.

69. AAVS has called on APHIS for years to comply with the AWA’s Congressional mandate and apply the Act to birds not bred for use in research. *See, e.g., Sue Leary et al., Exclusion of Birds, Rats, and Mice from Legal Protection in the U.S., A-V MAGAZINE (2011).* Although the AWA excludes birds bred for use in research, there are many birds who are not *bred* for use in research but are still used in research. Those birds are a focus of AAVS’ activities.

70. After APHIS announced in 2004 that it “intend[ed] to extend enforcement of the AWA to birds other than birds bred for use in research” and sought public comment on “what regulations and standards are appropriate for them,” 69 Fed. Reg. 31537, AAVS, along with Plaintiffs Humane World and AWC, and twenty-five other animal welfare organizations, submitted joint comments to the Agency in support of proposed specific regulations for birds, rats, and mice not bred for research. As part of the comments, Plaintiffs prepared a forty-two-page set of recommendations for regulations of birds under the AWA.

71. In the fourteen years after AAVS and Plaintiffs Humane World and AWC submitted these comments, APHIS repeatedly promised, and failed to deliver, a final rule setting standards for the care of birds under the AWA. This rulemaking appeared on the Agency's published list of regulatory priorities every year from 2005 to 2013, but APHIS never so much as proposed such a rule, despite repeated assertions to AAVS and other interested parties that a proposed rule was imminent—that it had been drafted, reviewed by APHIS' OGC, and even was with OMB for final approval. *See supra* ¶¶ 2-3, 25-33.

72. In 2018, when APHIS had still not even published a proposed rule setting standards for birds under the AWA, AAVS, along with Plaintiff AWC, filed suit against APHIS.

73. In 2020, the D.C. Circuit held that APHIS was legally required to promulgate regulations setting standards for birds under the AWA. *Am. Anti-Vivisection Soc'y v. United States Dep't of Agric.*, 946 F.3d 615, 620 (D.C. Cir. 2020).

74. When APHIS finally, nearly two decades after being instructed to do so by Congress, published a proposed rule containing standards for birds not bred for use in research under the AWA, Proposed Rule at 9880, AAVS submitted comments on the proposed rule with six other animal protection organizations, including Plaintiffs Humane World and AWC.

75. The Proposed Rule included a *de minimis* exemption for any facility that “maintains four or fewer breeding females and sells only the offspring for pets or exhibition.” Proposed Rule at 9902. The Proposed DME was not based on the number of animals a business sells each year.

76. The APA requires that agencies give “notice of proposed rule making . . . published in the Federal Register,” which must include “the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b).

77. If an agency promulgates a final rule that differs from the proposed rule so significantly that interested parties could not “have anticipated that the relevant modification was possible,” then the agency action violates the APA’s notice requirement. *Allina Health Servs.*, 746 F.3d at 1107. This is referred to as the “logical outgrowth” test. *Id.*

78. In addition to this notice requirement, the APA mandates that an “agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c).

79. Because the Proposed Rule did not include nor contemplate the possibility of a *de minimis* exemption from regulation based on the number of animals sold by a business every year, AAVS was not given notice of APHIS’ intention to promulgate such an exemption, as required by the APA. Without such notice, AAVS was also necessarily deprived of its statutory right under the APA to provide comments to the Agency on this regulatory exemption.

80. While AAVS submitted comments to APHIS on the bird-specific care standards contemplated in the Proposed Rule, it was unable to comment or provide input on the effect of the sales-based *de minimis* exemption—the specific regulatory provision at issue here—because the Agency did not provide notice to the public that it was considering such a provision.

81. These notice and comment requirements are in place to ensure that “interested persons [are able] to participate in the rule making process by submission of relevant views, data and argument.” *Nat’l Soft Drink Ass’n*, 721 F.2d at 1353.

82. If given the opportunity, AAVS would have submitted comments to APHIS addressing the consequences—with regard to animal welfare, recordkeeping, AWA enforcement, and transparency—of a sales-based *de minimis* exemption, as well as the Agency’s authority under the AWA to promulgate such an exemption.

83. AAVS was therefore deprived of its right to notice and comment under the APA of the *de minimis* exemption in the Final Rule.

84. AAVS' use and analysis of records produced under the AWA, such as USDA inspection reports, is central to its mission. AAVS maintains an ongoing program of monitoring, analyzing, and reporting on APHIS' implementation and enforcement of the AWA. This has included detailed analysis of USDA inspection reports issued after the implementation of the Final Rule.

85. AAVS is entitled to such records produced in the course of enforcing the AWA and often requests and obtains such records under FOIA. Indeed, as part of its ongoing program regarding AWA records, AAVS has compiled and analyzed data from more than 45,000 USDA AWA inspection reports from the past six years, including bird-related inspection reports and reports concerning facility licensure, animal inventories, citations, and trends in noncompliance. AAVS uses this information to educate its members and the public, prepare public-facing articles and reports, respond to media inquiries, support policy recommendations, and evaluate whether APHIS is fulfilling its statutory responsibilities under the AWA.

86. One of AAVS' focal functions is the collection and provision of information regarding the condition of animals in regulated facilities. AAVS uses AWA inspection reports and other USDA-generated records to educate the public about the treatment of birds and other animals at AWA-regulated facilities. AAVS regularly publishes these analyses through its publication, the *A-V Magazine*, and other member and public communications. For example, in the Fall 2025 issue of *A-V*, AAVS published its analysis of USDA inspection and enforcement data—including the doubling of AWA-regulated entities in recent years as inspector numbers dropped significantly and birds were added to USDA's enforcement responsibilities—to educate readers about bird-

related AWA oversight. See Eric Kleiman, *The Canaries in the Coal Mine*, A-V MAGAZINE, at 4-6 (Fall 2025), [https://issuu.com/aavs/docs/a-v\\_magazine\\_fall\\_2025\\_the\\_canaries\\_in\\_the\\_coal\\_](https://issuu.com/aavs/docs/a-v_magazine_fall_2025_the_canaries_in_the_coal_).<sup>2</sup>

87. AAVS also provides data, context, and analysis to external publications reporting on APHIS' animal welfare oversight. For example, *Science* quoted AAVS in an August 2025 article, discussing the implementation of APHIS' bird regulations and their significant impact on AWA enforcement. David Grimm, *Facing "Impossible" Workload, USDA Struggles to Oversee Lab Animal Welfare*, SCIENCE (Aug. 19, 2025), <https://www.science.org/content/article/facing-impossible-workload-usda-struggles-oversee-lab-animal-welfare>. AAVS also provided extensive documentation and analysis to *Science* during the course of its reporting. This type of public education depends on AAVS' ability to collect and analyze licensing, inspection, inventory, and enforcement records under the AWA.<sup>3</sup>

88. AAVS also uses data from AWA inspection reports to track birds at breeding facilities across the country. AAVS uses this information to identify trends in AWA licensure, including the number of facilities, number of animals impacted, and number of citations for noncompliance with the AWA. To date, AAVS has compiled information from well over 45,000 AWA inspection reports from the last six years alone to analyze this data.

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<sup>2</sup> Other examples of AAVS' use of USDA-generated records to educate the public include an analysis of AWA regulated entities published in the Spring 2026 issue of A-V, Eric Kleiman, *Flights of Fancy*, A-V MAGAZINE (Spring 2026), and a regular feature entitled *For the Birds* in the *A-V Magazine*, *For the Birds*, A-V MAGAZINE (Fall 2025); *For the Birds*, A-V MAGAZINE (Spring 2026).

<sup>3</sup> AAVS has also provided data, documentation, context, and analysis for other articles published in *Science*, as well as for articles in other external publications, see, e.g., Rachel Fobar, *Death of Research Hummingbird at UC Riverside Triggers Third Animal Welfare Citation in 3 Years*, ORANGE COUNTY REGISTER (May 24, 2026), <https://www.ocregister.com/2026/05/24/death-of-research-hummingbird-at-uc-riverside-triggers-third-animal-welfare-citation-in-3-years/>.

89. Every year AAVS sends a report to its members based on APHIS' reports with respect to AWA-covered animals.

90. The promulgation of the challenged *de minimis* exemption directly impairs these public education efforts.

91. Because APHIS improperly exempted "most small [bird] breeders" from regulation under the Final Rule, Final Rule at 10671, APHIS is not producing records under the AWA, such as inspection reports, for these entities.

92. Because APHIS is not producing or collecting records under the AWA for these breeders, AAVS is unable to obtain these records or the information that would be included in them via FOIA.

93. APHIS' promulgation of the *de minimis* exemption in the Final Rule therefore deprives AAVS of information it would be entitled to under FOIA. Because APHIS improperly exempted "most" small bird breeders from regulation under the AWA, it does not generate the records AAVS ordinarily uses to identify facilities, count animals, evaluate conditions, track noncompliance, compare trends across facilities, analyze the adequacy of USDA oversight and enforcement, and educate its members and the public.

94. As a result, AAVS is unable to include exempt bird breeders and the birds held by them in its ongoing monitoring, reporting, and public education work regarding the AWA and USDA's oversight and enforcement of the Act.

95. APHIS' promulgation of an improper exemption therefore impairs AAVS' mission-driven programs, including humane education, public awareness, sanctuary-support work, and advocacy to end the use of animals in science.

96. If APHIS had not exempted an untold number of entities and animals from regulation under the AWA, it would be legally required to maintain records on the treatment of these animals at these facilities, as it does for all other animals covered by the AWA. AAVS would then be able to use FOIA to obtain APHIS records that would assist it in identifying situations of abuse and neglect of birds, so that it could report such conduct to its members and the proper authorities.

97. Therefore, AAVS' interests are directly, adversely, and irreparably injured by APHIS' promulgation of the overbroad *de minimis* exemption contained in the Final Rule. These injuries will continue to occur unless and until this Court provides the relief requested in this Complaint.

98. Plaintiff AVIAN WELFARE COALITION ("AWC") is an all-volunteer advocacy group created in 2000 to provide a voice in the animal protection community for captive birds. AWC is a working alliance dedicated to the ethical treatment of captive birds. AWC is based in St. Paul, Minnesota.

99. AWC's mission is to protect and raise awareness about the plight of captive birds and to serve as an educational resource for the humane community, lawmakers, and the general public. Its daily activities are dedicated to fulfilling that mission. AWC provides educational resources for animal advocates, the media, and the general public, and it collaborates with like-minded organizations and professionals in related fields.

100. AWC has a long history of calling on APHIS to comply with the AWA by applying its requirements to birds and promulgating appropriate minimum standards for the care and use of birds under the AWA. After APHIS announced that it "intend[ed] to extend enforcement of the AWA to birds other than birds bred for use in research" and sought public comment on "what

regulations and standards are appropriate for them,” 69 Fed. Reg. 31537, on November 1, 2004, AWC, along with Plaintiffs Humane World and AAVS, and twenty-five other animal welfare organizations, submitted joint comments to the Agency in support of proposed specific regulations for birds, rats, and mice not bred for research. As part of the comments, Plaintiffs prepared a forty-two-page set of recommendations for regulations of birds under the AWA.

101. For fourteen years after this comment period closed, APHIS made repeated written and oral promises to AWC and other interested parties, including Plaintiffs Humane World and AAVS, that it was in the process of or on the verge of finalizing a proposed rule setting minimum standards for birds under the AWA. *See supra* ¶¶ 2-3, 25-33. For the first nine of these years, APHIS included this rulemaking on its list of priorities for the upcoming regulatory year. *Id.* Despite repeated assertions to AWC and other organizations that a rule had been drafted, was in review with OGC, or was even in final review with OMB, APHIS never published even a proposed rule setting bird-specific standards under the AWA. *Id.*

102. In 2018, AWC, along with Plaintiff AAVS, filed suit against APHIS, challenging the Agency’s failure to promulgate a final rule—or indeed so much as publish a proposed rule—setting standards for birds under the AWA.

103. It was only in 2020, after the D.C. Circuit held that APHIS’ failure to promulgate any regulations setting standards for birds under the AWA caused ongoing injury to AWC and made clear that APHIS was legally required to promulgate regulations setting standards for birds under the AWA, *Am. Anti-Vivisection Soc’y*, 946 F.3d at 619-20, that APHIS finally actually began the rulemaking process.

104. In 2022, nearly two decades after being instructed to do so by Congress, APHIS published a proposed rule containing standards for birds not bred for use in research under the

AWA. Proposed Rule at 9880. AWC submitted comments on the Proposed Rule with six other animal protection organizations, including Plaintiffs Humane World and AAVS.

105. The Proposed Rule included a *de minimis* exemption for any facility that “maintains four or fewer breeding females and sells only the offspring for pets or exhibition.” Proposed Rule at 9902. The Proposed DME was not based on the number of animals a business sells each year.

106. The APA requires that agencies give “notice of proposed rule making . . . published in the Federal Register,” which must include “the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b).

107. If an agency promulgates a final rule that differs from the proposed rule so significantly that interested parties could not “have anticipated that the relevant modification was possible,” then the agency action violates the APA’s notice requirement. *Allina Health Servs.*, 746 F.3d at 1107. This is referred to as the “logical outgrowth” test. *Id.*

108. In addition to this notice requirement, the APA mandates that an “agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c).

109. Because the Proposed Rule did not include nor contemplate the possibility of a *de minimis* exemption from regulation based on the number of animals sold by a business every year, AWC was not given notice of APHIS’ intention to promulgate such an exemption, as required by the APA. Without such notice, AWC was also necessarily deprived of its statutory right under the APA to provide comments to the Agency on this regulatory exemption.

110. AWC submitted comments to APHIS on the bird-specific care standards contemplated in the Proposed Rule, but it was unable to comment or provide input on the effect of

the sales-based *de minimis* exemption—the specific regulatory provision at issue here—because APHIS failed to provide notice to the public that it was considering such a provision.

111. If given the opportunity, AWC would have submitted comments to APHIS addressing the implications and negative consequences of a sales-based *de minimis* exemption. These include significant impacts on animal welfare, recordkeeping under the AWA, enforcement of the AWA, and government transparency. AWC also would have addressed the Agency's authority under the AWA to promulgate a sales-based *de minimis* exemption, had it been provided proper notice and opportunity to do so.

112. AWC was therefore deprived of its statutory right to notice and comment under the APA of the *de minimis* exemption in the Final Rule.

113. APHIS' promulgation of an improper *de minimis* exemption to regulation under the AWA for bird breeders who sell 200 or fewer small birds per year has resulted in a gap in enforcement of the Act for these entities, which should, by Congressional mandate and but for APHIS' action, be regulated by APHIS under the AWA.

114. This gap in regulation has left an untold number of birds without minimum safeguards for their daily needs and care, such as potable water, veterinary care, unspoiled food, and safe and secure housing.

115. If APHIS had not exempted these entities from regulation under the AWA improperly, these facilities—and therefore these birds—would be subject to and protected by these standards.

116. Because the animals at these facilities are not currently protected under the AWA, despite Congress' mandate that they receive such protection, AWC is forced to devote organizational resources to address the care and condition of these birds.

117. AWC expends resources on certain specific activities described below to protect birds that it would not otherwise have to expend, because of the absence of AWA regulation at facilities improperly exempted in the Final Rule.

118. AWC regularly provides support and resources to shelters, species-specific rescues, and members of the public dealing with unwanted or neglected birds originating from commercial breeding operations

119. AWC continues to devote a significant portion of its limited operational resources to providing training and education on the importance of proper bird care and treatment to facilities that house birds but are not subject to regulation under the AWA because of APHIS' overbroad *de minimis* exemption. For instance, AWC has developed and continues to promote a series of webinars that provide training to animal care professionals on the specialized care of exotic birds. *See Webinars for Bird Shelters and Care Facilities*, AVIAN WELFARE COALITION, [www.avianwelfare.org/webinars/](http://www.avianwelfare.org/webinars/) (last visited June 24, 2026).

120. AWC maintains and distributes information regarding proper identification and reporting of abuse and neglect of birds. *See, e.g.*, Avian Welfare Coalition, *Evaluating Neglect, Abuse, Suffering, and Illness in Parrots and Other Captive Exotic Birds*, [https://www.avianwelfare.org/action/17\\_AW\\_Booklet\\_01-15-18.FINALpdf.pdf](https://www.avianwelfare.org/action/17_AW_Booklet_01-15-18.FINALpdf.pdf); *Reporting Bird Abuse or Neglect*, AVIAN WELFARE COALITION, <https://www.avianwelfare.org/action/report.htm> (last visited June 24, 2026).

121. Maintaining this comprehensive website requires AWC to devote significant organizational time and financial resources. These expenditures include staff time needed to develop and maintain online educational materials, as well as costs associated with hosting large and complex graphics and maintaining downloadable files and resources that are not otherwise

available online. Providing public access to these materials increases storage and bandwidth demands and requires ongoing technical maintenance, resulting in a diversion of AWC's limited resources toward addressing issues related to the inadequate regulation of birds in the pet trade.

122. AWC has also been forced to divert resources to assist shelters, rescues, and individuals dealing with birds produced by inadequately regulated breeding facilities. The absence of effective oversight contributes to the overproduction and improper care of birds sold through the pet trade, increasing the number of unwanted or neglected animals requiring rescue and rehoming assistance—burdens that AWC works to address.

123. AWC has also been required to divert resources to help members of the public find placement for unwanted birds. *See, e.g., Bird Adoption and Surrender*, AVIAN WELFARE COALITION, <https://www.avianwelfare.org/links/organizations.htm> (last visited June 24, 2026).

124. These many efforts are necessary because of APHIS' improper exemption from AWA oversight and regulation of so many facilities where birds are kept.

125. The resources that AWC has used and continues to use on these projects would have been used for other projects, were it not for the need to address the lack of protection for birds at facilities improperly exempted from regulation by APHIS.

126. If not for APHIS' failure to properly regulate these facilities, AWC would spend its resources on different programs. APHIS' conduct has thus subjected AWC to operational costs beyond those it would normally expend.

127. By exempting these bird breeders from regulation, APHIS has harmed AWC by forcing it to undertake efforts to monitor and assist these exempted birds and to work to provide minimum protections for birds at these facilities, which Congress determined almost twenty-five years ago should be protected under the AWA. These efforts include educating unregulated

facilities about the proper care and treatment of birds, seeking enforcement and intervention in cases of abuse and neglect, investigating and responding to complaints about birds subjected to inhumane treatment, and obtaining appropriate and necessary relief for these animals—all actions that APHIS would be required to take under the AWA, if not for its promulgation of an overbroad *de minimis* exemption.

128. APHIS' promulgation of the *de minimis* exemption contained in the Final Rule results in a deprivation of Congressionally mandated standards, care, and oversight of birds at an untold number of facilities across the country. AWC is forced to step up to address this lack of care and oversight, which necessarily requires it to divert its limited resources from other work it would be pursuing to protect birds if APHIS had not improperly exempted these facilities from the AWA; this other work includes public education, promotion of humane treatment of birds, responding to complaints about cruelty to birds at non-commercial facilities, and other programs dedicated to the protection and welfare of birds.

129. Therefore, AWC's interests are directly, adversely, and irreparably injured by APHIS' promulgation of the illegal *de minimis* exemption contained in the Final Rule. These injuries will continue to occur unless and until this Court provides the relief requested in this Complaint.

130. Because of APHIS' promulgation of the exemption, Plaintiffs Humane World, AAVS, and AWC are deprived of key information they rely on to fulfill their missions, meaningfully impairing Plaintiffs' organizational interests, and are forced to divert resources to address the gap in regulation left by APHIS' action.

131. The relief sought in this Complaint would redress Plaintiffs' injuries because it would vacate the unlawful *de minimis* exemption and require that APHIS promulgate an amended

final rule that does not improperly exclude a large swath of the bird breeding industry from legally mandated standards and oversight, as contemplated and required by Congress. Under this amended rule, APHIS would be legally obligated to produce inspection reports and other records related to the care and use of birds at these sites, and Plaintiffs would be legally entitled to obtain these records which are vital for their mission-driven work to protect birds, such as their public education and enforcement campaigns. This amended rule would result in the application of the AWA's minimum care standards for birds to facilities currently improperly exempted by the Final Rule, allowing Plaintiffs to devote their resources to their mission-driven work, remedying their injuries.

132. These are actual, concrete injuries from which Plaintiffs presently suffer, are directly caused by APHIS' action, and will continue to occur unless the Court grants relief. The relief sought herein would redress these injuries. Plaintiffs have no other adequate remedy at law.

### *Defendants*

133. Defendant BROOKE L. ROLLINS is the Secretary of Agriculture and the federal official with final responsibility for promulgating regulations required by and in accordance with the AWA, including standards for birds not bred for research. Secretary Rollins is sued in her official capacity.

134. Defendant UNITED STATES ANIMAL AND PLANT HEALTH INSPECTION SERVICE is the agency within the Department of Agriculture that is charged with implementing the AWA and promulgating regulations thereunder. This authority encompasses the proposed and final rules regulating the care of birds not bred for use in research.

## FACTUAL ALLEGATIONS AND LEGAL BACKGROUND

### *Animal Welfare Act*

135. In 1966, Congress enacted the AWA in order to, *inter alia*, “insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment” and “to assure the humane treatment of animals during transportation in commerce.” 7 U.S.C. § 2131(1). Congress determined it was “essential to regulate . . . the transportation, purchase, sale, housing, care, handling, and treatment of animals” in the United States. 7 U.S.C. § 2131.

136. To accomplish this protective regulation, the AWA requires USDA to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of animals covered by the AWA. 7 U.S.C. § 2143.

137. The agency within USDA that is responsible for implementing and enforcing the AWA is APHIS.

138. APHIS, as the agency responsible for writing these regulations under USDA, is thus mandated to “promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.” *Id.*

139. The AWA establishes a system of licensure, registration, and initial inspection for compliance with its standards. *See, e.g.*, 7 U.S.C. §§ 2133, 2136.

140. The AWA also requires USDA to inspect and investigate facilities on a regular and complaint-based basis, for potential violations of the statute and any regulatory standards adopted under it. 7 U.S.C. § 2146.

141. The AWA’s original definition of “animal” only included “live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits.” 7 U.S.C. § 2132(h) (1966).

142. Four years later, Congress amended the AWA to expand the definition of “animal” to include “such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for . . . exhibition purposes, or as a pet.” 7 U.S.C. § 2132(g) (1970).

143. Birds are warm-blooded animals.

144. The year after Congress amended the definition of “animal” to include warm-blooded animals, USDA nevertheless promulgated regulations that excluded birds, along with rats and mice, from coverage under the AWA. Miscellaneous Amendments to Chapter, 36 Fed. Reg. 24917, 24919 (Dec. 24, 1971).

145. In 2002, Congress again amended the AWA’s statutory definition of “animal.” Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, § 10301, 116 Stat. 134, 491. The new definition, which is in place today, still includes warm-blooded animals, but also expressly “excludes . . . birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.” 17 U.S.C. § 2132(g). Under this definition, while birds “bred for use in research” are not covered animals, birds bred for use other than research are covered by the AWA.<sup>4</sup> Thus, this definition was intended by Congress to ensure protection under the AWA to birds used in regulated activities, including birds sold by commercial dealers, birds used for exhibition, and birds used in research but not bred for such use.

146. In the 2014 Farm Bill, Congress amended the AWA by giving the Secretary the authority to set thresholds for regulated activities involving animals under which businesses could

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<sup>4</sup> Congressional Research Service, *The Animal Welfare Act: Background and Selected Animal Welfare Legislation*, at 5 (2016) (“the 2002 farm bill also amended the AWA’s definition of ‘animal’ to include rats, mice, and birds as animals covered under the AWA. Birds, rats, and mice bred for use in research were excluded from the amended definition.”).

be exempted from licensure as a dealer or exhibitor “if the size of business is determined by the Secretary to be *de minimis*.” 7 U.S.C. § 2133.

147. Congress noted in its Conference Report that this change “codifie[d]” the agency’s finding “that no license is required for small-scale breeders of certain animals (i.e., those that maintain four or fewer breeding cats and dogs and who sell only the offspring of those animals which were born and raised on the premises for pets or exhibition).” H.R. Rep No. 113-333, at 562 (2014).

148. Congress further explained that this authorization “allow[s] USDA to determine that animal breeders who raise animals on their own premises need not obtain a license if the number of animals they breed or sell, or the gross annual dollar amounts earned from such activities, are so minor as to merit disregard,” thereby “allow[ing] the Secretary of Agriculture to focus [APHIS’] limited budget and inspection and enforcement staff on entities that pose the greatest risks to animal welfare and public safety.” *Id.*

149. An exemption from regulation granted under this provision is known as a “*de minimis* exemption.”

#### ***Administrative Procedure Act***

150. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500-596, 701-706, governs how executive agencies, such as APHIS, promulgate regulations and the scope of judicial review over such decisions.

151. Courts are instructed to “decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706.

152. Under the APA, courts must “hold unlawful and set aside agency action, findings, and conclusions” that are, *inter alia*, “arbitrary, capricious, an abuse of direction, or otherwise not in accordance with law”; “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right”; or “without observance of procedure required by law.” 5 U.S.C. § 706(2).

153. An agency action is “arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

154. Agency action is “not in accordance with law” when that action “effectively nullif[ies]” a directive or requirement of law, such as by “establish[ing] blanket . . . deviations and . . . exceptions” to a requirement, or by making a “broad designation . . . without regard to the specific criteria mandated by [the operative authority].” *N. Am.'s Bldg. Trades Unions v. Dep't of Def.*, 783 F. Supp. 3d 290, 310 (D.D.C. 2025). In other words, agencies may not “abandon[] . . . individualized, criteria-based analysis mandated by [law] in favor of sweeping generalizations inconsistent with that authority.” *Id.* at 311.

155. Agency action is conducted without observance of procedure when “agencies . . . use the rulemaking process to pull a surprise switcheroo” and publish a final rule that differs from the proposed rule in such a manner that interested parties would have had to “divine [the agency's] unspoken thoughts” in order to provide meaningful comment. *Env't Integrity Project v. E.P.A.*, 425 F.3d 992, 996 (D.C. Cir. 2005) (citations omitted).

***The Birds Rule***

156. After Congress amended the AWA in 2002 to exclude “birds bred for use in research” from the definition of covered “animals”—thereby necessarily including birds *not* bred for use in research within the AWA’s scope—APHIS announced in 2004 that it “intend[ed] to extend enforcement of the AWA to birds other than birds bred for use in research” and sought public comment on “what regulations and standards are appropriate for them.” 69 Fed. Reg. 31537.

157. Over the course of the following fourteen years, APHIS publicly stated that it planned to publish a proposed rule setting forth standards for birds under the AWA no fewer than fifteen separate times: once in 2005, once in 2006, twice in 2007, twice in 2008, twice in 2009, twice in 2010, twice in 2011, once in 2012, and once in 2013.<sup>5</sup>

158. In each of these years, APHIS included the promulgation of bird-specific regulations under the AWA on its list of regulatory priorities for the upcoming year.<sup>6</sup>

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<sup>5</sup> USDA, Statement of Regulatory Priorities, 70 Fed. Reg. 64097, 64104 (Oct. 31, 2005); USDA, Statement of Regulatory Priorities, 71 Fed. Reg. 72736, 72741 (Dec. 11, 2006); USDA, Statement of Regulatory Priorities, 72 Fed. Reg. 22266, 22266 (Apr. 30, 2007); USDA, Statement of Regulatory Priorities, 72 Fed. Reg. 69755, 69763 (Dec. 10, 2007); USDA, Statement of Regulatory Priorities, 73 Fed. Reg. 24640, 24640 (May 5, 2008); USDA, Statement of Regulatory Priorities, 73 Fed. Reg. 71112, 71117 (Nov. 24, 2008); USDA, Statement of Regulatory Priorities, 74 Fed. Reg. 21873, 21873 (May 11, 2009); USDA, Statement of Regulatory Priorities, 74 Fed. Reg. 64149, 64156 (Dec. 7, 2009); USDA, Statement of Regulatory Priorities, 75 Fed. Reg. 21736, 21736 (Apr. 26, 2010); USDA, Statement of Regulatory Priorities, 75 Fed. Reg. 79467, 79474 (Dec. 20, 2010); USDA, Semiannual Regulatory Agenda, Spring 2011, 76 Fed. Reg. 39998, 40003 (July 7, 2011); Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, RIN 0579-AC02 (2011), <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201104&RIN=0579-AC02>; Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 77 Fed. Reg. 7664, 7685 (Feb. 13, 2012); USDA, Semi-Annual Regulatory Agenda, Fall 2012, 78 Fed. Reg. 1522, 1526 (Jan. 8, 2013).

<sup>6</sup> *Supra* note 5, at 33 (listing the no fewer than fifteen times APHIS stated its intent to establish standards for birds under the AWA).

159. APHIS did not propose bird-specific regulations under the AWA in 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, or 2017.

160. In 2018, suspecting that APHIS was not in fact prioritizing the promulgation of bird-specific regulations under the AWA, Plaintiffs AAVS and AWC sued the Agency under the APA. Those plaintiffs alleged the Agency's failure not only to finalize, but indeed to even propose, any bird-specific regulations under the AWA constituted agency action unlawfully withheld under § 706(1) of the APA.

161. In 2020, the Court of Appeals for the District of Columbia ruled that the plaintiffs had standing to continue their challenge to the Agency's inaction. *Am. Anti-Vivisection Soc'y*, 946 F.3d at 618-620.

162. The D.C. Circuit held that the AWA "requires USDA to issue standards governing the humane treatment, not of animals 'generally,' as the Department argues, but of 'animal[s]' as a defined category of creatures including 'birds' not 'bred for use in research.'" *Id.* at 620 (citations omitted). As such, the court found that the "USDA ha[d] yet to fulfill its statutory responsibility to issue standards regarding the humane treatment of birds: the general standards do not apply, and the Department has issued no standards specifically applicable to birds." *Id.*

163. In response to this ruling, USDA agreed to a timeline to promulgate regulations setting standards for birds not bred for use in research. Finally, in early 2022—twenty years after Congress amended the AWA to expressly include birds not bred for use in research—APHIS published a proposed rule setting standards for the care and use of birds not bred for use in research under the AWA. Proposed Rule at 9880.

164. The Proposed Rule included a *de minimis* exemption for any facility that “maintains four or fewer breeding females and sells only the offspring for pets or exhibition.” Proposed Rule at 9902.

165. This Proposed DME for birds was structured similarly to *de minimis* exemptions for dealers of other animals under the AWA. *See, e.g.*, Thresholds for De Minimis Activity and Exemptions From Licensing Under the Animal Welfare Act, 83 Fed. Reg. 25549, 25555 (June 4, 2018) (providing a *de minimis* exemption of four or fewer breeding females of dogs, cats, “small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas)”).

166. On February 21, 2023, APHIS published its final rule setting standards for birds not bred for use in research under the AWA. Final Rule at 10654.

167. The Final Rule includes a *substantially* different *de minimis* exemption for licensure under the AWA for entities that sell “200 or fewer pet birds 250 grams or less annually, and/or . . . 8 or fewer birds over 250 grams annually.” Final Rule at 10655 (hereinafter, “Final DME”).

168. Plaintiffs were not provided notice of, nor did they have the opportunity to comment on, this *de minimis* exemption. Because the Proposed Rule included a *de minimis* exemption based on the number of breeding females held at a facility, Plaintiffs were unaware that APHIS was considering shifting to a sales-based formulation for the *de minimis* exemption. If APHIS had contemplated this sales-based formulation in the Proposed Rule, Plaintiffs would have provided the Agency with comments specifically addressing the enforcement, tracking, and animal welfare implications of such a decision, as well as the limitations of the Agency’s authority to exempt regulated entities under the AWA’s *de minimis* provision.

169. In the Final Rule, APHIS purports that “the revised *de minimis* exemption from licensing will apply to most small breeders, while very few businesses selling birds would qualify for the \$500 dollar or less gross income exemption.” Final Rule at 10671. The Final Rule does not provide a definition for “small breeder.” The Final Rule also does not explain how many entities it considers to be “small breeders” or how many small breeders it believes will be exempted under the Final DME.

***APHIS’ Lack of Justification of the De Minimis Exemption***

*The Sales-Based Metric*

170. While the Proposed Rule contained a *de minimis* exemption based on the number of breeding females, the Final Rule contains a substantively different and larger exemption based on an altogether different standard: the number of birds of a certain weight sold per calendar year, including up to 200 small birds per year.

171. APHIS offers no reasoned justification related to administration of the AWA for this change. Instead, it simply references unsubstantiated concerns with accurately counting or determining the number of breeding females a facility keeps. APHIS points exclusively to a survey submitted by a “coalition of three national avicultural organizations” that found “many small aviculturalists are uncertain about counting breeding females for the purposes of determining exemption status.” Final Rule at 10656.

172. This survey, however, does not actually say anything about confusion in counting breeding females. The cover letter submitted with the survey states only that “[t]here is also some discussion among aviculturists as to how females should be counted. If the aviculturist has females to [sic] young to breed, or retired.”

173. The Final Rule does not recognize or consider the option to address these questions by providing more detailed guidance as to how to count breeding females—as reflected in other commenters “ask[ing] for more explanation”—rather than completely changing the exemption.

174. APHIS also purports that the change in exemption standard is justified because it is more difficult to determine the sex of birds than it is of mammals. APHIS does not explain why members of an industry whose job it is to breed birds are unable to determine which animals are male or female.

175. Further, APHIS says that “breeding habits and number of offspring . . . can range dramatically” between different species of birds, as a justification for relying on the number of birds sold as an appropriate standard for a *de minimis* exemption. If true, such wild variation would suggest the opposite conclusion: a dramatic variation in the number of offspring a breeding female produces per year would suggest that the number of offspring sold per year is a very *bad* proxy for the number of animals housed at the operation and therefore the risk of animal welfare concerns or violations of the AWA. APHIS fails to explain this discrepancy.

176. APHIS also cites objections from the regulated community that the originally proposed *de minimis* exemption would apply to too few entities. Even if this is a permissible consideration, which Plaintiffs dispute, it does not explain a need for a change in the *metric* of the exemption, rather than a change in the *size* of the exemption (*i.e.*, the number of breeding females). Moreover, APHIS does not provide any accounting of how many entities would be exempt under either the Proposed DME or the Final DME, and so this is not a reasoned basis for the change in the exemption.

*The Number of Birds Sold*

177. APHIS also fails to ever explain how it arrived at the specific threshold included in the Final DME: 200 “small” birds sold per calendar year.

178. The only explanation APHIS provides as to the specific number contained in the Final DME is, perhaps, that 200 is somewhere in between “dozens” and “thousands.” Final Rule at 10672.

179. APHIS fails to explain why it now thinks that a threshold of 200 birds would “be most equitable,” *id.* at 10671, or “not unduly burden small pet bird businesses while ensuring animal welfare,” *id.* at 10672, altogether failing to articulate a satisfactory explanation for its action based on the data before it.

*The Number of Impacted Entities*

180. APHIS further admits in the Final Rule that it does not know how many entities will be affected by the Final Rule at all, nor how many will be exempted under the Final DME.

181. APHIS alternatively “estimate[s] that the number of newly regulated entities is likely between . . . 1,625 to 3,563 newly licensed breeders and distributors,” but also admits that a “great deal of uncertainty surrounds the number of facilities that will be affected by this rule.” *Id.* at 10709.

182. Moreover, APHIS claims that “the revised de minimis exemption from licensing will apply to most small breeders, while very few businesses selling birds would qualify for the \$500 dollar or less gross income exemption,” but does not provide any definition or any accounting of “small breeders,” nor does it explain its belief that “very few businesses” would qualify for other exemptions. *Id.* at 10671.

*The AWA's Purpose and Congressional Intent*

183. In the Final Rule, APHIS does not provide any explanation of how the Final DME is connected to or otherwise promotes the purpose of the AWA: to “insure that animals intended for use in . . . exhibition purposes or for use as pets are provided humane care and treatment.” 7 U.S.C. § 2131(1).

184. To the contrary, the justifications that APHIS does provide for the Final DME are only rooted in concerns around ease of enforcement and the wishes of (at least some portion of) the regulated community.

185. On information and belief, the Final DME excludes such a large number of entities from regulation that it effectively departs from the Congressional mandate that birds not bred for use in research be regulated under the AWA. Even this is difficult to determine absolutely, based on the stunning lack of data provided by APHIS.

186. Agencies may not use a *de minimis* exemption to exclude from regulation entities that Congress explicitly determined should be regulated. Rather, “situations covered by a *de minimis* exemption must be truly *de minimis*. . . . for otherwise the exemption reflects impermissible ‘second-guess[ing] [of] Congress's calculations.’” *Shays v. Fed. Election Comm'n*, 414 F.3d 76, 113-114 (D.C. Cir. 2005) (citations omitted).

187. The AWA permits APHIS to exempt dealers from the statutory licensing scheme only “if the size of the business is determined by the Secretary to be *de minimis*.” 7 U.S.C. § 2133.

188. APHIS’ promulgation of the Final DME exceeds that authority because the Agency did not and in fact could not determine whether the businesses exempted under the Final DME are in fact *de minimis*.

189. Because APHIS did not know the total number of bird breeders, or the number of bird breeders who sell “small” birds in the United States, or the number of birds sold by these breeders every year, or even the number of birds currently kept at these facilities, the Agency was acting arbitrarily and irrationally, and was incapable of “determin[ing]” which of these businesses are of a *de minimis* “size.” The Agency’s own admission that it does not know even the number of businesses potentially impacted by the Final Rule, nor the number of businesses exempted by the DME, demonstrates that it could not have “determined” these businesses to be *de minimis*, as required by the AWA.

190. The Agency therefore exceeded its statutory authorization and acted contrary to law by promulgating an exemption that it could not realistically support or explain, based on the record before it.

191. By prioritizing exemptions from regulation and industry’s desire to be unregulated over not only animal welfare, but a Congressional mandate, APHIS’ authorization of an overbroad Final DME may effectively gut the Final Rule in its entirety.

192. The Agency lacked the information to conclude that this exemption would not undermine the effectiveness of the rule because, for the reasons outlined above, it lacked the information to determine the impact of the Final DME altogether.

193. For these reasons, APHIS has failed to consider or provide a reasoned explanation for the Final DME contained in the Final Rule.

### **CLAIMS FOR RELIEF**

#### **Violation of the Administrative Procedure Act 5 U.S.C. § 706(2)(A)**

194. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs in this Complaint as though fully set forth below.

195. APHIS has failed to provide a reasoned basis for the Final DME, including the Agency's departure from the exemption originally considered in the Proposed Rule.

196. APHIS has failed to provide sufficient reasoning or support for the specific threshold included in the Final DME.

197. APHIS has failed to consider important aspects of the problem, including how many entities will be exempted under the Final DME and the proportion of all potentially regulated entities that will be exempted from regulation under the Final DME.

198. APHIS' promulgation of the Final DME is contrary to and not tied to the purposes of the AWA: ensuring humane care and use of animals.

199. The Final DME effectively swallows the Final Rule, preventing Congress' mandate that the AWA be applied to birds not bred for use in research.

200. The Final DME is not in accordance with law because APHIS lacks the necessary information to determine what entities should be subject to any *de minimis* exemption and what criteria to apply when creating a *de minimis* exemption.

201. In all of the foregoing ways, the Final DME contained in the Final Rule constitutes agency action that is arbitrary, capricious, and not in accordance with law, within the meaning of the APA. 5 U.S.C. § 706(2)(A).

**Violation of the Administrative Procedure Act  
5 U.S.C. § 706(2)(D)**

202. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs in this Complaint as though fully set forth below.

203. Because the Proposed Rule did not contain the sales-based DME that APHIS included in the Final Rule, Plaintiffs were deprived of the ability to comment on the Final DME, as required by the APA.

204. For this reason, the Final DME constitutes agency action conducted without observance of procedure as required by law, within the meaning of the APA. 5 U.S.C. § 706(2)(D).

### REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

A. Declare that Defendants' promulgation of the *de minimis* exemption contained in the Final Rule violates the Animal Welfare Act, 7 U.S.C. §§ 2131-2160, is "arbitrary and capricious" and "not in accordance with law" in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), and was "without observance of procedure required by law," in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D);

B. Vacate the *de minimis* exemption contained within the Final Rule, while leaving the remainder of the Final Rule in effect;

C. Remand the *de minimis* exemption contained within Final Rule to Defendants for action consistent with this Court's order;

D. Compel Defendants to publish for comment in the Federal Register, by a date certain, a proposed rule that regulates the care and use of birds not bred for use in research that does not contain the unlawful *de minimis* exemption;

E. Award Plaintiffs their fees and related costs;

F. Retain continuing jurisdiction to review Defendants' compliance with all judgments and orders herein; and

G. Grant Plaintiffs such other equitable relief as the Court deems just and proper.

Dated: June 25, 2026

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