

migratory bird rehabilitation if it makes him or her uncomfortable. Also, the veterinary relationship has been a requirement of the rehabilitation permit for many years, and we have not heard any concerns from veterinarians regarding this provision.

*Comment:* The rule should state that an applicant must have "State authorization" rather than a State "permit or license" if required by the State. Some States require authorization, but it is not in the form of either a permit or a license.

*Service response:* The rule has been revised to include "other authorization."

*Comment:* The rule does not say what happens when the rehabilitator loses his or her State permit.

*Service response:* Section 21.31(g) has been revised to further clarify that the Federal permit is not valid unless the permittee possesses and adheres to the terms of his or her State authorization.

*Facilities § 21.31(e)(1).* *Comment:* The Service should not use the Minimum Standards for Wildlife Rehabilitation (MSWR) as guidelines because the MSWR includes references to requirements that are outside the purview of the Service.

*Service response:* The rule has been revised to clarify that it refers only to the suggested caging dimensions within the MSWR, and not to the other topics within the MSWR.

*Comment:* The Service should not require rehabilitators to conform to MSWR recommendations because they are too restrictive, and could be cost prohibitive.

*Service response:* The rule does not require anyone to conform to the MSWR; rather it states that the Service will use the MSWR as guidelines in evaluating applicants' facilities. This provision reflects the Service's current policy. Use of the Minimum Standards provides the permit issuing office with preliminary parameters to use as guidelines for judging what constitutes suitable avian housing. The use of a common reference will foster consistent treatment for applicants.

*Comment:* The Service may be too rigid about enforcement of the MSWR caging dimensions.

*Service response:* We have revised the language of this section to state that the Service will authorize variation from the standards where doing so is reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless a determination is made that such variation will jeopardize migratory birds. The revised language states more strongly that the Service will apply flexibility in our use of the Minimum

Standards. We will use the Minimum Standards as a "starting point" for evaluating what are acceptable cage sizes, without forcing rehabilitators to have cages with the published dimensions. The rule leaves room for variation, while providing the regulated community with basic parameters that the Service considers acceptable.

*Comment:* The Service's reliance on the MSWR disenfranchises those rehabilitators who do not belong to IWRC and NWRA and those who are unaware of the existence of the standards document.

*Service response:* We do not agree that the proposal would disenfranchise nonmembers of the IWRC/NWRA, since that MSWR document is widely available to members and nonmembers alike, and we have been using it and referencing it for years in the Standard Conditions for rehabilitation permits.

*Comment:* The rule should not reference an external document (MSWR), because it is privately published and subject to change. Which edition does the Service mean to use?

*Service response:* The rule has been revised to state that it refers to the 2000 (3rd Edition) of the MSWR.

*Comment:* The Service should replace the use of the MSWR as guidelines with the exact language on Page 20, paragraph 2, of the MSWR. This would give the applicant more flexibility, but ensure high standards.

*Service response:* The language to which the commenter refers does not include any mention of actual cage dimensions. We need established general parameters for what the Service will consider acceptable cage dimensions. Such parameters give the Service something consistent to work with in assessing applicants' facilities, as well as providing guidance for applicants to use in planning their facilities.

*Comment:* The rule makes no provision for flight caging. Birds need to do more than open their wings to be conditioned for release.

*Service response:* Cages used to condition birds for release are addressed in the MSWR as part of the caging dimensions that the Service will use as guidelines.

*Comment:* No mention is made of overcrowding. No mention is made of providing clean, fresh water and food. No mention is made of the need to safely clean the cage.

*Service response:* We have added the following conditions to the rule: "Birds must not be overcrowded" and "You must provide the birds in your care with a diet that is appropriate and nutritionally approximates the natural

diet consumed by the species in the wild, with consideration for the age and health of the individual bird." We also replaced the requirement to keep the floor clean and well-drained with the following condition: "Enclosures must be kept clean, well-ventilated, and hygienic."

*Comment:* The rule should require that birds not be in sight of predators, including predatory birds. Also, the rule should require facilities to have quarantine areas to protect against the spread of infectious diseases.

*Service response:* While we view these suggestions as good advice, we consider them beyond the threshold of what ought to be mandated by this regulation.

*Comment:* The caging dimensions of the MSWR are too "ambitious" for Unlimited Activity and Limited Activity birds, more than a reasonable minimum. Some reduction in overall sizes should be acceptable.

*Service response:* We realize that some recommendations within the MSWR are viewed by some rehabilitators to be ambitious or optimum rather than minimal, and we agree that in many instances, some reduction in cage size will be acceptable. The rule provides for variation from the suggested dimensions of the MSWR where such variation will not jeopardize migratory birds.

*Comment:* The MSWR recommends too much water depth in pools for wading birds. Two feet of water can be a struggle for a recuperating pelican. It could also result in hypothermia. These minimum depths should either be reduced or dropped entirely.

*Service Response:* We appreciate observations like this because they can help us to evaluate facilities. Common sense information from applicants with experience is valuable and will help us to understand why variation from the standards may not jeopardize birds.

*Comment:* The MSWR recommends wood as a caging material. However, this is a bad material to use in some areas, such as Florida, because it rapidly rots, fails to withstand tropical storms, and blocks healthy air flow in humid environments. Also, soft netting can entangle birds and interfere with air circulation.

*Service Response:* The rule does not state what specific materials must be used for caging or netting, nor does it reference the MSWR's recommendations for materials.

*Comment:* The facilities criteria in the rule give no guidance to permit applicants and leave too much to the discretion of the Service.