

**The update below was prepared by the AU's Lobbyist, Greg Smith. Greg practices law in Washington, D.C. and monitors legislation that may impact the sport on behalf of pigeon fanciers nation-wide. One of the main challenges he has championed on your behalf is that of the pending Animal Welfare Act (AWA) regulations.**

**Initially, Mr. Smith posted comments to the Federal Register in 2004 to demonstrate that pigeon fanciers do not need to be regulated by the government. He posted on our behalf again in 2020. In view of the pigeon racing sport regulating itself through use of bio-security protocols and the National Loft Certification program, it is reasonable to request exemption.**

## **Federal Regulatory Alert**

### **April 4, 2022**

#### ***USDA Issues Proposed Rule for Regulation of Certain Birds Under the Animal Welfare Act—AU Acts to Protect the Right to Fly***

**Proposed Federal Regulations Applying the Animal Welfare Act to Birds.** The Animal Welfare Act (AWA), and the regulations established thereunder, set standards of care and treatment for certain animals that are exhibited to the public, sold for use as pets, used in research, or transported commercially. These regulations extend to breeders, exhibitors and to the facilities where regulated animals are housed, requiring that there be adequate sanitation, nutrition, water, and veterinary care.

On February 22, 2022, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) [released](#) a proposed rule on Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act (the "Proposed Rule"). The Proposed Rule would amend the AWA regulations to expand their coverage to certain birds. Comments on the proposed rule are due by **April 25, 2022**.

As described below, APHIS/USDA adopted AU positions in the Proposed Rule that pigeon racing should not be subject to these regulations, but there is enough ambiguity in this complex law and regulation that the AU will continue its advocacy efforts and will be submitting comments by the deadline seeking further clarification that pigeon racing is not a covered activity.

**AU Lobbying and Legal Work to Protect the Right to Fly.** The AU has fought the application of federal laws to the sport of pigeon racing going back to 2004, when the AU first retained a lawyer/lobbyist in DC to oppose an earlier proposed rulemaking that was triggered by lawsuits brought by animal rights groups. At that time, the AU submitted detailed comments and engaged in extensive meetings, arguing that federal regulations should not be imposed on our sport and its members. USDA/APHIS officials told the AU that the comments were very effective and, in the end, USDA/APHIS chose

not to issue any regulations governing birds.

Unfortunately, in May 2020, as a result of renewed litigation, a federal district court ordered USDA/APHIS to initiate a rulemaking process for “governing the humane handling and care” of “birds” not “bred for use in research.” ***Read narrowly, this potentially could include racing pigeons.*** The court ordered USDA/APHIS to publish a Notice of Proposed Rulemaking by February 2022, with a Final Rule to follow within a year (by February 2023).

In Fall 2020, the AU participated in listening sessions with APHIS, where the AU outlined its position that racing pigeons should not be subject to federal regulation. The AU also submitted detailed written comments opposing any such regulation, not only pointing out that pigeon racing falls within several exceptions within the AWA, but also that it is absurd to impose federal regulations on backyard lofts especially where, as here, the racing pigeon community already voluntarily engages in a range of best practices and bio-security protocols that likely exceed any possible federal standards. **LINK TO THOSE COMMENTS.**

**Are Racing Pigeons Covered in the Proposed Rule?** The following birds not bred for use in research would be covered by the Proposed Rule:

- Birds that are obtained from their natural habitat and used or intended for use for research, teaching, testing, or experimentation purposes; and
- Birds that are being used or intended for use for exhibition purposes or for use as pets.

Racing pigeons do not fit in the first category, as they are not obtained from their natural habitat, and are not generally used for research, teaching (except perhaps for limited school and community demonstrations), testing or experimentation purposes. As for the second category, the Proposed Rule, at the urging of the AU, would amend the term “exhibitor” **to specifically exclude pigeon racing.** In the comment section, APHIS explains that it “consider[s] pigeon races . . . to be exhibitions traditionally intended to advance agricultural arts and sciences. Therefore, we would amend the definition of *exhibitor* by adding pigeon races . . . to the list of exhibitions that are excluded from coverage [under the AWA and these regulations].”

As for pet animals, racing pigeons are not generally considered pets. Notably, APHIS proposes to amend the term “pet animal” so that it “includes but is not limited to such birds as parrots, canaries, cockatiels, lovebirds, and budgerigar parakeets.” Pigeons are not on this list. APHIS states that the listed birds “constitute the majority of birds bought and sold as pets in the United States and are thus a good illustrative example of what constitutes a pet bird.” However, APHIS emphasized that the list is not considered exhaustive, so there remains some uncertainty regarding the treatment of pigeons. The AU will seek to clarify this language in its follow up comments.

Farm animals, including poultry, are generally not covered by the AWA. The Proposed Rule adds a definition for "Poultry" that includes pigeons "when used or intended for use as food or fiber, for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber." APHIS has not specifically addressed whether racing pigeons satisfy this standard. However, as discussed above, APHIS has stated that pigeon racing "advance(s) agricultural arts and science" which supports the interpretation that racing pigeons are included within the definition of "Farm Animals" and would not be subject to the AWA and its regulations.

**Return of an Old Adversary.** Animal rights extremists, through this court action, are seeking the imposition of onerous Federal regulations on our sport and on our members. These same extremists, backed by multi-million-dollar budgets, have promoted legislation in the Congress which could ultimately affect our right to raise and race pigeons. Historically, they have also lobbied the U.S. Postal Service to prohibit or greatly restrict the transportation of live birds which, again, would cripple our sport. They remain a determined foe.

**Our Sport's Best Defense to Federal Regulation is Strict Self-Regulation.** A high level of self-regulation makes Federal regulation unnecessary and even potentially harmful. Working with AU members and veterinarians, the AU has promulgated rules and standards for the betterment of our sport which we urge our membership to closely follow.

- AU Constitution and Bylaws (<https://www.pigeon.org/pdf/constitutions-bylaws.pdf>)
- AU Racing Rules (<https://www.pigeon.org/pdf/AmericanunionRacingRules.pdf>)
- AU Code of Ethics (<https://www.pigeon.org/codes.htm>)
- AU Policy on Administration of Prohibited Substances to Racing Pigeons (<https://www.pigeon.org/substances.htm>)
- AU Loft Registration Program Criteria (<https://www.pigeon.org/loftcertificationpolicy.htm>)
- AU Loft Registration Requirements, Registration, Questionnaire and Application (<https://www.pigeon.org/loftcertificationpolicy.htm>)
- AU Biosecurity for Racing Pigeon Lofts, (<https://www.pigeon.org/biosecurity.htm>)

See generally, <https://www.pigeon.org/policies.htm>.

**Please Contribute to the AU Legal Defense Fund.** Protecting the Right to Fly requires resources. To fund this effort, the AU urges its members and clubs to contribute to the AU Legal Defense Fund. The AU has a separate account for this fund, to assure proper accountability. It will be used to expand our existing legal and lobbying efforts at the national level and to respond to this latest threat.