

**American Racing Pigeon Union
Comments on Proposed Regulations and Standards
For Birds, Rats, and Mice under the
Federal Laboratory Animal Welfare Act**

Docket No. 98-106-4

PART I. INTRODUCTION

The American Racing Pigeon Union (AU) is a non-profit organization with 700 affiliated clubs around the United States and approximately 10,000 members.¹ The AU "exists to promote, protect, and enhance the sport of racing homing pigeons, to cooperate with other organizations, which directly or indirectly accomplish those goals, and to provide services and benefits to its members." (See Attachment A, AU Constitution, Article I.) As a necessary corollary to that purpose, the AU is committed to the preservation and humane treatment of the racing pigeon whose unique homing abilities have served the interests of the human race for thousands of years. (See Attachment B, "A Brief History of the Racing Pigeon.")

For a host of legal, policy and practical reasons set forth in detail in these comments, racing pigeons do not fall within the definition of "animal" under the Federal Laboratory Animal Welfare Act (more commonly known as the Animal Welfare Act or AWA) and should not be subject to regulations enforcing its provisions. (See Part II,

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below.) Similarly, racing pigeon fanciers do not engage in the types of activities restricted by the AWA (e.g., they are not dealers, exhibitors, carriers, etc. within the meaning of the AWA) and should not be subject to regulation. (See Part III, below.)

The AU is a member of the National Avian Welfare Alliance (NAWA), which is also submitting comments on this proposed rulemaking. The AU broadly supports the excellent comments of NAWA. In particular, the AU agrees with NAWA that all birds should be exempt from regulation under the AWA, that any such regulation would have a harmful impact on aviculture, that such regulation is inconsistent with the original intent of the 1999 lawsuit that resulted in the initiation of this rulemaking but which was solely focused on research birds who are not the subject of this rulemaking, and that the AWA regulatory model does not fit the bird industry and would result in numerous negative consequences including disruption of breeding, increased theft of valuable stock and the closing of numerous bird facilities due to the financial hardship of meeting additional regulatory requirements. The AU agrees with NAWA's conclusion that the regulation of birds is unnecessary, detrimental to the welfare of the birds and would be overly burdensome to bird facility operations and to USDA resources alike.

The only other national pigeon racing organization, the International Federation of Homing Pigeons, has fully endorsed these comments.

Throughout these comments reference is made to a number of attachments that provide critical insight into the high level of self-regulation that is already in place in the racing pigeon community. This high level of self-regulation makes Federal regulation unnecessary and even potentially harmful. We urge your close review of the following attachments:

- ?? Attachment A - AU Constitution and Bylaws
- ?? Attachment B - "A Brief History of Racing Pigeons"
- ?? Attachment C - American Union Racing Rules
- ?? Attachment D - AU Code of Ethics
- ?? Attachment E - AU Policy on Administration of
Prohibited Substances to Racing Pigeons
- ?? Attachment F - AU Loft Registration Program Criteria
- ?? Attachment G - AU Loft Registration Requirements,
Registration, Questionnaire and
Application
- ?? Attachment H - AU Biosecurity for Racing Pigeon Lofts
- ?? Attachment I - AU Biosecurity Survey, Recommendations
& Suggested Protocols
- ?? Attachment J - AU Minimum Standards of Care for Racing
Pigeons (Best Accepted Practices)
(Draft)

**PART II - RACING PIGEONS ARE NOT "ANIMALS" AS DEFINED IN
THE AWA**

The Animal Welfare Act and the Regulation of Birds. The AWA has never expressly stated that birds should be subject

to regulation. For several years, the act only regulated live dogs, cats, nonhuman primates, guinea pigs, hamsters and rabbits as the Secretary of Agriculture "may determine" are used for research, testing, experimentation, or exhibition purposes, or as a pet. Then, for over 30 years the AWA was expanded to include such other warmblooded species, again, as the Secretary of Agriculture "may determine" are used for the limited purposes cited above. During this period, the Secretary determined not to include birds. The U.S. Congress, which authored the AWA and is intensely involved in the oversight of American agriculture, never complained that the Secretary had failed to include birds and never amended the AWA to specifically require that birds be covered even though birds are commonly owned in the United States. In 2002, Congress, for reasons explained below, amended the AWA to exempt birds bred for research, even though one of the principal purposes of the AWA was to address the treatment of research animals. Now the Animal and Plant Health Inspection Service is proposing to regulate non-research birds. However, a review of the history behind this rulemaking demonstrates that Congress has little interest in significant regulation of non-research birds.

This proposed rulemaking has its origin in a petition brought by certain animal rights groups, notice of which was published in the Federal Register in January 1999, seeking a rulemaking that would require the Secretary of Agriculture to amend the definition of "animal" in the Animal Welfare Act regulations to remove a provision that excluded birds (and certain rats and mice) from that definition. Notably, the petition was solely focused on

making the Secretary regulate birds (and certain rats and mice) that are *used in research*.

In March 1999, these same groups sued the USDA in the U.S. District Court for the District of Columbia seeking an order requiring the USDA to review its regulations and delete the exclusion for birds (as well as the exclusion for certain rats and mice) as having been arrived at in an arbitrary and capricious manner in violation of the law. The USDA sought to have the suit dismissed but the court denied the USDA's motion. In September 2000, the USDA reached a settlement with these groups that provided that the USDA would initiate and complete a rulemaking process addressing this issue. *The USDA did not guarantee the outcome of that rulemaking, however. Such a guarantee would have, itself, violated the law.* It is AU's strong belief that the USDA, after careful analysis, can and should conclude that the regulation of racing pigeons is not warranted under the AWA. Such a reasoned conclusion lies within the power of the USDA and would not be arbitrary and capricious.

Before the USDA could act, Congress passed legislation prohibiting the USDA from implementing a rulemaking process for both FY 2001 and FY 2002. Then, in 2002, Congress passed the Farm Security and Rural Investment Act, which, among other things, amended the definition of "animal" in the Animal Welfare Act (AWA) to specifically exclude *birds used for research*.² The AWA still does not specifically

² AWA Definition of "Animal":

list birds as covered under its provisions (unlike dogs, cats, nonhuman primates, guinea pigs, hamsters and rabbits). Rather, birds are covered today to the same degree that they have been covered since 1970 when the AWA was amended to provide that the Secretary "may determine" if warmblooded animals should be included in the AWA's definition of "animal". The statutory language is permissive in nature, not mandatory (ie. it uses the word "may" not "must" or "shall" to describe the Secretary's authority to make determinations to add warmblooded species to the list of "animals" subject to AWA regulation). The Secretary is not mandated to regulate all warmblooded animals.

On June 4, 2004, APHIS published two notices in the Federal Register. One notice was a final rule amending the AWA regulations to conform to the new definition for "animal" in the AWA. The second notice was an Advance Notice of Proposed Rulemaking indicating APHIS' intention "to extend enforcement of the AWA to birds other than birds bred for use in research." While it is entirely appropriate for APHIS to evaluate whether a warmblooded species, such as birds, should be regulated, it is not a foregone conclusion

(g) The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes

- (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research,
- (2) horses not used for research purposes, and
- (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes;

that APHIS must regulate such species if to do so would make little policy or practical sense. The Secretary retains discretion, so long as it is not applied in an arbitrary and capricious manner, to not include a particular species of warmblooded animal in the AWA's definition of "animal", or to only minimally regulate that species.

When Congress amended the AWA to exclude birds used in research it was responding to a very specific threat arising out of a lawsuit brought by animal rights groups. Congress was not saying, either expressly or impliedly, that it thought that there had been a failure to properly regulate non-research birds under the AWA. If Congress took that view it could have easily said so in a wide variety of ways since 1970 when birds, as warmblooded animals, potentially became subject to AWA regulation.

In 2002, Congress, in response to urgent pleas from the research community, fixed a problem resulting from the lawsuit brought by the animal rights groups with regard to birds used for research. The extraordinary nature of this Congressional fix is highlighted by the fact that it directly contravenes the first purpose of the AWA listed in the act's Congressional Statement of Policy which is "(1) to insure that animals intended for use in research facilities . . . are provided humane care and treatment;" 7 U.S.C. Section 2131. These extraordinary circumstances make it clear that no inference should be drawn that Congress intended wide-spread regulation of birds, much less regulation of the racing pigeon. Congress was acting reactively to an attack on the use of birds for research

without understanding that this would lead to an ongoing process that could result in the regulation of non-research birds. Congress has been satisfied for 34 years (since 1970) with the status of birds under the AWA. Its recent action to address solely birds bred for research does not indicate any change in this view.

Racing Pigeons are not and should not be deemed "animals" for purposes of AWA regulation. The AWA provides that the definition of "animal" includes such "warmblooded animal[s], as the Secretary may [not shall or must] determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet." 7 U.S.C Section 2132(g).

If a warmblooded animal is not used for research, testing, experimentation, or exhibition or as a pet, the Secretary cannot deem it an "animal" under the AWA and cannot regulate it. Moreover, even if a warmblooded animal is used for one of these purposes, the permissive language in the act that the Secretary "may determine", not "shall determine" or "must determine" gives the Secretary discretion on legal, policy and practical grounds to not so designate a species, or to provide only very limited regulation. Finally, the definition of "animal" in the AWA has three specific exclusions that are applicable here for: (1) birds bred for research; (2) horses not used for research purposes; and (3) farm animals. On all of these bases, racing pigeons are not "animals" within the meaning of the AWA.

The five regulated uses (research, testing, experimentation, exhibition and as a pet) do not apply to racing pigeons:

?? **Racing pigeons and research.** The racing pigeon is bred for research purposes but, since this regulated use is also the subject of a specific exclusion for birds bred for research, racing pigeons are not subject to the AWA.³ Racing pigeons have been selectively bred for thousands of years in an effort to improve their homing abilities and strengthen their flying abilities, all for the purpose of serving humankind in a wide variety of areas including banking, military communications, news services and sport. Such selective breeding (essentially the earliest form of DNA manipulation) was critical in the 12th century to the Sultan of Syria when he established an air mail network using these birds; it was critical in the 18th century when Julius Reuter founded his global news service in part on information delivered through a network of pigeon posts; it was critical during World War I and World War II, when racing pigeons were used for military communications and credited with saving thousands of allied lives; it was critical in 1976 when the U.S. Coast Guard launched a project in which pigeons were trained to assist the crew of an aircraft in daylight search missions; and it was critical in 2003 when the Austrian army, reported to have lost patience with the ability of enemy troops to listen in on its radio communications,

³ Some pigeons, but not racing pigeons, are used in standard laboratory research. Of course, those birds are also exempt from coverage under the AWA under the "birds bred for research" exclusion.

decided to reactivate its corps of homing pigeons. It remains critical to several other countries, including Israel and France, which still incorporate homing pigeons in their military operations today. In a very real sense, homing pigeons have been selectively bred on a research basis to develop their abilities to serve mankind. That research continues to this day in the same way that it has continued for thousands of years - through selective breeding practices by pigeon fanciers. Where a thousand years ago, a homing pigeon could travel perhaps 100 miles/day, by the early 19th century, through selective breeding that range had been extended to 200 miles/day. (See Attachment B, "A Brief History of Racing Pigeons") Today, the birds bred by fanciers can travel up to 600 miles per day and have heightened homing abilities. These abilities, and their enhancement in the coming years through selective breeding, will continue to be available to serve the interests of the human race. In 2002, Congress excluded "birds ... bred for use in research" from the AWA, and even though the racing pigeon research is not carried out in a conventional laboratory, it is a legitimate basis for excluding racing pigeons from coverage under the AWA.

?? Racing pigeons are not used for testing and experimentation purposes. The AU is aware of no testing or experimentation done on or with racing pigeons and, therefore, the racing pigeon does not fall within the AWA's definition of "animals" on the basis of these two regulated uses. Of course, if there were such testing or experimentation it would

mean that the birds were being used for research purposes and, therefore, would also be excluded from coverage under the AWA as described above. Obviously, if there is an outbreak of a disease, such as the recent Exotic Newcastle Disease outbreak, racing pigeons are tested, along with other birds such as chickens, but this is done for the health of the birds as part of their care and as part of responsible management and containment of a specific problem, not for the principle purpose of scientific advancement which is the basis for regulating testing and experimentation uses of "animals" (see the discussion regarding the AU's cooperation with the USDA during the recent Exotic Newcastle Disease outbreak below).

?? Racing pigeons are not "exhibited" within the meaning of the AWA. The definition of "exhibitor" in the AWA is limited to a person exhibiting animals "to the public for compensation" and cites as examples "carnivals, circuses, and zoos" 7 U.S.C. Section 2132(h). Although the sport's enthusiasts do occasionally show their birds, the vast majority of the time at local elementary and secondary schools to promote interest in the sport of racing pigeons, this activity is incidental to the primary function of having racing pigeons - which is to race, and is not done for commercial purposes. Racing pigeon fanciers do not get compensation for display of their birds and clearly are not the type of commercial entity that the act is intended to cover. Notably, the definition of "exhibitor" specifically excludes organizations and persons participating in "fairs or exhibitions

intended to advance agricultural arts and sciences." As noted in the attached history of racing pigeons (Attachment B), the development of homing pigeons is directly from, and an offshoot of, their use on farms, first as food and fertilizer, and then as messengers. Essentially, the sport of racing pigeons is a highly evolved and specialized agricultural art and science. Therefore, on this basis, too, any one displaying or showcasing racing pigeons would not be considered an "exhibitor" within the meaning of the AWA.

?? Racing Pigeons are not kept as pets. Pigeons fanciers do not keep racing pigeons as pets, but as the necessary element in their hobby of breeding and racing pigeons. Pets are essentially animals that are kept by humans for companionship. A race horse would not be considered a pet. Similarly, a racing pigeon is not a pet. Pigeon fanciers do not look to their loft of birds, typically 60-100 in number for companionship.

The AWA's three specific exclusions to the definition of "animal" also apply to racing pigeons. The first exclusion, "birds ... bred for use in research", has already been discussed at length above. The long history of selectively breeding homing pigeons on a research basis for major human enterprises (including communications, war and sport) continues to this day and brings these birds and their fanciers within this exclusion to the AWA.

The second exclusion, for "horses not used for research purposes", is relevant because it underlies a policy

consideration that horses and racing pigeons share. The horse exception was advocated by the horse racing industry, which is today the most high profile of horse-related activities. In many senses pigeon racing is akin to horse racing. Although little known, racing pigeons are thoroughbreds. Their bloodlines are closely tracked, just like in horse racing, for generations. Like race horses, racing pigeons are highly trained, fed careful diets, kept on a strict sanitary and medical regimen, and much prized for their athletic accomplishments. Championship birds can be worth thousands of dollars (the record price for a racing pigeon was approximately \$125,000 for the winner of the Barcelona race in Spain several years ago). Racing pigeon events are highly regulated events, governed by national rules, with a national system for issuing bands that mark birds. (See Attachment C, American Union Racing Rules.) Although the sport of racing pigeons does not have the glamour associated with horse racing, it is virtually identical in character, except that it is not commercial in nature, making it even less suitable for AWA regulation than horse racing. In some sense racing pigeons could be described as a "poor man's" race horse and the sport of racing pigeons as a way for average citizens to participate in an extraordinary sporting activity.

The third exclusion, for "farm animals ... used or intended for use as food or fiber, or ... used or intended for use for improving animal nutrition, breeding, management, or production efficiency . . . ", is also relevant to racing pigeons. The sport of racing pigeon traces its ancient roots back to the farm. (See Attachment B, "A Brief History of Racing Pigeons") Of course, racing pigeons are

not used for food today, but they were generations ago. Through selective breeding, the ability of racing pigeons to return home has been enhanced, refined and made more efficient, exactly the qualities addressed by this exception for farm animals. As already noted above, the sport of racing pigeons is a highly evolved aspect of the farm. As such, pigeons are a form of farm animal and, like other farm animals, should be excluded from coverage under the AWA.

PART III - THE AWA ONLY REGULATES PARTICULAR ACTIVITIES, NONE OF WHICH APPLY TO RACING PIGEON FANCIERS.

Racing pigeon fanciers typically do not fall under any of the regulated categories of activity as they are not dealers, research facilities, exhibitors, carriers or intermediate handlers.

?? Pigeon Fanciers are not "Dealers" within the meaning of the AWA. The AWA defines dealers as "any person who, in commerce, for compensation or profit, ... buys, or sells ... any ... animal ... for research, teaching, exhibition, or use as a pet..." 7 U.S.C Section 2132(f). While the typical racing pigeon fancier may sell a few birds every year, they are sold to other racing pigeon fanciers for racing purposes, and not for the purposes of teaching, exhibition or use as a pet. As we have noted above, while not used in laboratory research, racing pigeons are part of a broader research and selective breeding effort going on for centuries to expand the capabilities of the racing pigeon to better serve

humankind. To the extent that they are part of this broader research effort, sales of the racing pigeon are exempt from coverage under the "birds ... bred for research" exclusion to the definition of "animals." The definition of "dealer" also includes an exemption for any one who derives no more than \$500 gross income from the sale of animals during a calendar year. While we have described above why racing pigeon fanciers are not "dealers", even if they were considered dealers and even though \$500 is a ridiculously low threshold (especially for gross income) most racing pigeon fanciers would fall within this exception, too. Although racing pigeons can cost thousands of dollars, a typical racing pigeon might sell for \$100. Most fanciers might sell two or three in a year, and never cross the \$500 threshold. However, some racing pigeons are costly and even the sale of one bird would break the \$500 amount. On its face, it is absurd that the sale of a single bird or any other animal could turn someone into a dealer. The AU agrees with other organizations that this threshold amount should be raised to \$50,000.

?? Whether the sport of racing pigeons involves research or not, a racing pigeon facility is not a "research facility" within the meaning of the AWA. Again, as described above, racing pigeon fanciers, at a broad level are engaged in research and as such racing pigeons are not "animals" within the meaning of the AWA due to the exclusion for "birds ... bred for research" and therefore racing pigeon facilities

are not "research facilities" within the meaning of the AWA. Should the USDA take issue with whether racing pigeons are used for research the result is the same because if racing pigeons are not used for research than racing pigeon facilities are still not "research facilities" within the meaning of the AWA because the definition of "research facility" requires the use of live animals in "research, tests, or experiments", none of which would then apply to racing pigeons.

?? **Racing pigeon fanciers are not exhibitors.** As already described above, racing pigeon fanciers are not exhibitors as that term is defined in the AWA as they do not exhibit racing pigeons to the public for compensation.

?? **Racing Pigeon Fanciers are not intermediate handlers.** Under the AWA, an "intermediate handler" is any person who is engaged in any "business in which he receives custody of animals in connection with their transportation in commerce", but is not a dealer, exhibitor, carrier or operator of an auction sale. This definition is obviously intended to capture various shipping companies. Racing pigeons fanciers do not engage in transportation in commerce. Racing pigeon fanciers transport their birds to be released for races, but no compensation is paid to anyone for doing that transport and the birds are not being delivered to a third party. The

racing pigeons are being released by their owners so that they can, in effect, transport themselves home!

?? **Racing Pigeon Fanciers are not Carriers.** Under the AWA, a "carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire." Racing pigeon fanciers do not transport animals for hire.

PART III - THE SPORT OF RACING PIGEONS ENGAGES IN A HIGH DEGREE OF SELF-REGULATION TO ENSURE THE INTEGRITY OF THE SPORT AND THE HEALTH OF THE BIRDS, MAKING FEDERAL REGULATION UNNECESSARY

The sport of pigeon racing was formally established in the early 1800s in Europe. The first club was established in the United States in 1872 (www.pigeon.org/history.htm). Over the years, the sport has developed rules and a culture of strict self-regulation to assure the integrity of the races, as well as the health of the birds. (See Attachment C, American Union Racing Rules.) The AU, as the leading national organization for racing pigeon fanciers, has taken the lead in establishing stringent standards of care and conduct which are incorporated in the AU Constitution and Bylaws (Attachment A), the AU Code of Ethics (Attachment D), the AU Policy on Administration of Prohibited Substances to Racing Pigeons (Attachment E), the AU Loft Registration Program and Criteria (Attachment F), the AU Loft Registration Requirements, Registration, Questionnaire and Application (Attachment G), the AU Policy on Biosecurity

for Pigeon Lofts (Attachment H) and the AU Biosecurity Survey, Recommendations & Suggested Protocols (Attachment I). The AU has also developed, and will be adopting formally in the near future, Minimum Standards of Care for Racing Pigeons (Best Accepted Practices), which add further detail to the policies that are already in place (Attachment J). Most racing pigeon fanciers already meet or exceed these high standards.

These are not just paper policies, but are given real meaning by a culture of enforcement that includes not only the national organization, but also its 700 member clubs, as well as 10,000 individual members. Our motivations are obvious: just like any other sport, strict regulation is necessary to ensure the fairness of the event, the credibility of the sport and the satisfaction of the sport's participants. Without such strict regulation, the sport would dissolve into chaos. Because the athletes, in this case racing pigeons, are the heart and soul of the sport, their care and protection is a fundamental value to this community.

A good example of the AU's commitment to self-regulation occurred last year during the outbreak of Exotic Newcastle Disease ("eND"). The USDA engaged in an extensive program of depopulating chicken and other species, including racing pigeons. The AU ceased all races in the affected areas and, in consultation with a Professor of Veterinary Science, developed biosecurity protocols (See Attachments H and I). It then submitted these protocols to the USDA, which reviewed them, found them to be excellent but made a few minor suggestions that the AU immediately adopted.

Those protocols have been widely disseminated to the AU membership and are now an integral part of the AU Loft Registration Criteria. Throughout the eND crisis, the AU worked closely with the USDA to ensure that the sport of racing pigeons acted responsibly and professionally in dealing with this crisis. This relationship was productive for both parties.

The USDA will never have the resources to duplicate the effective level of regulation that the sport of racing pigeons has already established in its own interest. Not only is Federal regulation unnecessary, but it is also impractical. There are 15,000 registered lofts in the United States. With such a large number, and with the need to restrict access during breeding periods, the cost to implement a Federal program to regulate racing pigeons would be prohibitive both to the Federal government and to racing pigeon fanciers.

The AU fears that Federal regulation would not only result in costs that most racing pigeon fanciers simply cannot bear but also, potentially, could lead to an erosion in the current culture of self-regulation if an attitude were to be established that the only real regulator is the Federal government. The internal standards of the racing pigeon community are high and should not be jeopardized by unnecessary Federal regulation.

Questions from the Federal Register Notice

1. As mentioned above, part 3 of the regulations contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA. Among other things, the standards in part 3 address the following considerations: ??*Facilities and operations* (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities); ??*Animal health and husbandry* (including requirements for sanitation and feeding, watering, and separation and classification of animals); and ??*Transportation* (including specifications for primary enclosures, primary conveyances, terminal facilities and the feeding, watering, care, and handling of animals in transit). Please describe minimum standards that would be appropriate for birds other than birds bred for use in research, including requirements for facilities and operations, animal health and husbandry, and transportation. Please submit specific data to support any suggested standards.

Although neither racing pigeons nor racing pigeon fanciers should be regulated under the AWA as explained in detail above, the American Racing Pigeon Union, in addition to the standards already established in its Constitution (Attachment A), Code of Ethics (Attachment D), Policies on Substance Abuse (Attachments E), AU Loft Registration Criteria (Attachments F and G) and educational materials, has developed Minimum Standards of Care for Racing Pigeons (Best Accepted Practices) that will be formally adopted by

the AU in the near future (Attachment J). Although these standards are being formalized, they represent the high standards already in place in the racing pigeon community. It is worth noting that racing pigeon lofts are built today to standards that equal those set by federal and state law for falconry and caged birds. Within the avian community, racing pigeon fanciers are highly regarded for the standards of health they have for their birds.

Interestingly, there are a number of veterinarians in the United States who specialize in racing pigeon medical treatment.

2. We are aware of several published programs of humane care and use for birds. Should the standards we develop for birds, except for birds bred for use in research, be consistent with any published program(s) for the care and use of birds? If so, please submit a copy of any suggested programs and specific data to support those standards.

Racing pigeons are unique, with unique requirements. The best published programs of humane care for these birds have been developed by the AU and are attached hereto.

3. Sections 2.1 and 2.25 of the regulations provide licensing and registration requirements for dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers. In § 2.1, paragraph (a)(3) provides exemptions from licensing requirements for certain entities, such as retail pet stores that sell non-dangerous, pet-type animals, including birds, at retail only. Should we revise or add exemptions for certain dealers, exhibitors, operators of auction sales, and

carriers and intermediate handlers of birds not bred for use in research? If so, what should those exemptions be? Please provide supporting data. (For example, we are aware that there are many entities who breed small numbers of birds; if we should exempt those entities, what criteria should we use to determine which entities should be exempt?)

As we have stated above, the typical racing pigeon fancier does not fall into any of these categories. For clarity sake, any future regulations should expressly state that racing pigeons and racing pigeon fanciers do not fall within these categories.

4. Currently, § 2.130 provides minimum age requirements for the commercial transportation of dogs and cats. Should we establish minimum age requirements for the transportation of birds other than birds bred for use in research? If so, what factors should we consider when determining those requirements? (For example, if the animals are weaned, the species of bird under consideration, etc.) Please provide specific supporting data.

Generally, racing pigeons are not transported when they are young and are not commingled with birds outside of their home loft for some time. The birds need to be trained before they are transported and released, so minimum age requirements are not significant to this species.

Commercial breeders of racing pigeons do not transport until birds are weaned from their parents, which is after about 30 days.

5. When conducting an inspection, USDA inspectors follow a given facility's biosafety procedures or use recommended protective clothing and equipment, such as coveralls, disposable gloves, and disposable or sanitizable boots. We invite comments on what procedures, equipment, and supplies should inspectors use in order to protect birds from transmitted diseases. Should additional procedures, equipment, or supplies be employed to inspect nesting birds? Please explain.

The AU has put extensive efforts into developing biosecurity standards as well as promoting their active use. (See Attachments H and I.) These biosecurity standards were developed in close coordination with the USDA.

6. Comments are also invited concerning the number and size of entities that may be affected if we were to regulate birds other than birds bred for use in research. (Such entities may include dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers of birds not specifically bred for use in research that are sold as pets at the wholesale level, transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes.)

There are approximately 15,000 registered racing pigeon lofts in the United States. AU knows of only about five relatively large breeders of racing pigeons, although there may be up to 20 breeding operations that would sell more than \$50,000 worth of racing pigeons every year. These

breeding operations participate in AU events and comply with AU regulations. They also impose the strictest biosecurity standards on their operations.

7. What is the number of each species of birds, except for birds bred for use in research, that are currently sold as pets at the wholesale level, transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes?

The Racing Pigeon is a member of a single species: *Columba Livia*, although within that species there are a number of different pigeons of which only one has the extraordinary homing and flight abilities of the racing pigeon. As described at length above, racing pigeons are not used for any of the purposes described in this question except that the entire sport is a research exercise in selective breeding that is excluded from coverage under the AWA.

8. Comments are invited regarding the current physical structures, equipment, staffing, licensing, and paperwork used in the handling, care, treatment, and transportation of birds other than birds bred for use in research and how those operations may be affected if we were to extend enforcement of the AWA to those animals. In addition, if you are submitting suggested standards for birds in response to questions 1 or 2, please address how those standards would affect facility operations.

The standards that the AU has submitted with these comments essentially are already in place and reflect, by and large,

the state of things as they are today in the racing pigeon community.

9. What are the potential economic effects, in terms of time and/or money, on entities that may be affected if we were to regulate birds other than birds bred for use in research?

The economic effect on racing pigeon fanciers of having to comply with federal regulations could essentially end the viability of this sport in the United States. Although the sport has an intensely loyal following, its participants, as a general rule, are people of limited means. The imposition of significant additional regulatory costs literally could tip the scale against this sport. These small operations are not financially equipped to meet Federal licensing, recordkeeping and other regulatory standards.

10. Do you have any other specific concerns or recommendations pertaining to the regulation of birds other than birds bred for use in research?

Logically, racing pigeons should be no more regulated than race horses under the Animal Welfare Act, which is to say they should not be regulated at all. The analogy between racing pigeons and race horses is almost perfect, except that horse racing is a commercial enterprise, while pigeon racing is not, and therefore there is even less reason under the AWA to regulate racing pigeons. The USDA should provide specific language in any regulations that it may adopt regarding birds that clearly states that the AWA and

its implementing regulations do not apply to the sport of pigeon racing, racing pigeons, racing pigeon fanciers or racing pigeon breeders.