

Right to Fly Protected!

U.S. Department of Agriculture Adopts Key AU Positions in Federal Bird Regulations

Federal Regulations Released—Do Not Apply to Racing Pigeons! On February 21, 2023, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) [released](#) a long-awaited final rule on Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act (the "Final Rule"). This Final Rule amends the Animal Welfare Act (AWA) regulations to expand their coverage to certain birds and responds to comments previously provided by the public regarding the proposed rule published last year. The AU actively engaged in the Federal rulemaking process, including providing extensive written comments (see attached comments) and participating in multiple APHIS listening sessions where the AU argued that Federal regulations should not be applied to racing pigeons. As described below, APHIS/USDA adopted key AU positions in the Final Rule concluding that pigeon racing should not be subject to these regulations and setting forth express language to support this interpretation.

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 broadly, 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.

AU-Right to Fly Positions Prevail in Final Rulemaking—Racing Pigeons are Expressly Excluded in the Final Rule. The following birds not bred for use in research are covered by the Final 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.

APHIS/USDA concluded that 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 Final Rule, following advocacy by the AU, amends the term "exhibitor" **to specifically exclude pigeon racing.**

In response to public comment urging the regulation of pigeon racing, APHIS further noted that it considers pigeon races as "exhibitions rooted historically in the advancement of agricultural arts and sciences" and that such "[a]nimals exhibited or intended to exhibit in agricultural exhibitions [have been] determined [by USDA] to advance agricultural arts and sciences [and] are not covered under the AWA". Additionally, APHIS noted that it considers racing pigeons "to be used in an agricultural context, and animals used in such a manner are excluded from regulation." Therefore, USDA/APHIS, on the justification that pigeon racing is intended to advance agricultural arts and sciences, rejected public comments calling for the inclusion of pigeon racing as regulated "exhibitors".

As for pet animals, APHIS expressly noted in the Final Rule that "racing pigeons do not meet the definition of *pet animal*". In its proposed rule, APHIS amended the term "pet animal" so that it "includes but is not limited to such birds as parrots, canaries, cockatiels, lovebirds, and budgerigar parakeets" based on the justification that these birds "constitute the majority of birds bought and sold as pets in the United States. While pigeons were not specifically included on that list, APHIS emphasized that the list is not considered exhaustive leaving uncertainty regarding the treatment of pigeons. APHIS' express language in the Final Rule that racing pigeons are not considered pet animals was in response to comments by the AU seeking clarity on this definition.

Our Sport's Best Defense to Governmental Regulation is Strict Self-Regulation. A high level of self-regulation makes governmental 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 threats against the right to fly.