

**The National Avian Welfare Alliance
and the Regulation of Birds
Under the Animal Welfare Act**

NAWA

When the USDA was forced to regulate birds under the Animal Welfare Act, they informed various bird-keeping organizations of the need for input in drafting the regulations since they had no prior experience with regulating birds. To facilitate a coordinated effort, AFA president, Dr. Benny Gallaway, invited representatives from various avicultural organizations to a meeting in Houston in May, 2003 to establish a group to respond to the USDA's request. As a result, the National Avian Welfare Alliance (NAWA) was formed with representatives from a broad cross-section of bird specialty groups including, bird trainers and avian veterinarians, as well as organizations for keepers of racing pigeons, waterfowl and pheasants, finches, softbills, and parrots.

It was decided that NAWA would function as a roundtable between these organizations. It is hoped that the working structure of NAWA will form a foundation for a permanent formal organization that will respond to legislative issues and will serve as a means to disseminate information about pending legislation to the broader avicultural community.

The participants of NAWA comprise a unique group of expert aviculturists that not only represents a broad perspective on bird keeping, but represents a vast range of knowledge on the proper husbandry of birds. The combined experience of NAWA participants represents over 600 years in the avicultural world working with over 1000 different species. These representatives have been working for more than a year to formulate a proposal regarding the regulation of birds under the Animal Welfare Act. This proposal has been carefully crafted to allow for the appropriate regulation of bird facilities while minimizing the negative impacts that such regulation would have on the keeping of birds.

For further information about NAWA, please visit: www.nawabirds.org. Your thoughts and input about the regulation of birds under the Animal Welfare Act can be emailed to NAWA at comments@nawabirds.org. Your input is greatly appreciated. Individuals who have questions are also recommended to contact the specialty organization representatives listed above for further information on the draft regulations. The list of NAWA participating organizations is also available at www.nawabirds.org/Members.html

How Birds came under the Animal Welfare Act A Brief History

The Federal Laboratory Animal Welfare Act commonly referred to as the Animal Welfare Act, was enacted in 1966 to protect owners from pet theft, prevent use of stolen pets, and ensure the humane treatment of research animals. Under the Act at that time, an animal was defined as live dogs, cats, monkeys (nonhuman primates), guinea pigs, hamsters, and rabbits. The Animal Welfare Act of 1970 expanded the list of covered animals to include all warm-blooded animals determined by the Secretary of Agriculture as being used, or intended for use, in research, testing, experimentation, or exhibition, or as a pet, and specifically excluded horses not used for research purposes and other farm animals when used for agricultural purposes.

In 1971, USDA amended the definition of animal to incorporate the 1970 amendments to the Act and to specifically exclude birds, rats, and mice for enforcement purposes. In 1989, USDA further amended that definition by, among other things, narrowing the exclusion for rats and mice to only those rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research. The AWA's definition of animal has excluded the types of rats and mice commonly bred and used in research and all birds from coverage for over 30 years. Other types of rats and mice, such as wild rats and mice, are covered by the AWA.

A number of Animal Rights groups had been urging the USDA to cover birds, rats and mice under the AWA. They contended that the exclusion of these animals was arbitrary and capricious. Birds, rats, and mice account for roughly 95% of the animals used in research. The Alternatives Research and Development Foundation (ARDF), an animal rights group affiliated with the Anti-vivisection Society, filed a petition in April of 1998 then sued in March of 1999 for the USDA to cover birds, rats and mice. USDA settled the lawsuit with ARDF in October of 2000 and agreed to cover birds, rats and mice out of fear that a court settlement would force immediate coverage. The settlement allowed USDA time to develop regulations before requiring licensing for facilities that deal with birds, rats, and mice.

The Farm Security and Rural Investment Act of 2002 included the Helms Amendment which amended the definition of animal in the AWA by specifically excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. It was thought that all birds would be excluded by the Helms Amendment but a later determination held that only birds bred for use in research would be exempt.

On June 4, 2004, the USDA published The Advanced Notice of Rulemaking regarding the regulation of birds under the AWA in the Federal Register. Comment periods run for 60 days from the publication of such notices which put the end of the comment period on August 3, 2004, just before the 2004 AFA Convention where NAWA had hoped to discuss this issue with the broader avicultural community. Participants of NAWA wrote to the USDA requesting an extension of this comment period to allow input from aviculturists at the AFA Convention. The USDA granted this request and the new comment deadline is now set for November 1, 2004.

The USDA included 10 questions about birds and bird facilities in the Advanced Notice of Rulemaking. The purpose of these 10 questions is to gather data and input from the public regarding the impact of AWA regulation on bird facilities. Input from the avicultural community on these 10 questions is due by the close of the comment period. The issues regarding each of these questions are explored later in this report.

Navigating the Animal Welfare Act

The Animal Welfare Act (the law) is contained in the United States Code 7 USC 2131 et seq. This law can only be changed by Congress (eg: the Helms Amendment) or changed by an interpretation of a court (this is what the ARDF lawsuit was about). As of 2002 the law was changed so that only birds bred for use in research are exempt from coverage under that AWA.

The Animal Welfare Act Regulations are changed and interpreted by the Secretary of Agriculture to reflect what is written in the law. The Regulations can also be changed or interpreted by a court. Because of the 2002 change in the status of birds in the AWA (the law), a change in the AWA Regulations was necessary to reflect it. This is the matter that the USDA is looking for input on, and this is the scope of NAWA's work.

Changing the AWA act itself is much more difficult since it takes an act of Congress or a successful court interpretation. Because the AWA Regulations are interpreted by the Secretary of Agriculture, they are easier to change, but they must still reflect what is written in the law. Exemptions can be included in the regulations if appropriate supporting data shows that licensing would be overly burdensome to those involved.

The Regulations consist of parts 1, 2 and 3 under Title 9 of the Code of Federal Regulations - Chapter 1 (9CFR-Ch1). There are other parts to 9CFR-Ch1 that cover other animal regulations under the jurisdiction of USDA/APHIS, but only the first 4 parts of 9CFR-Ch1 are known as the Animal Welfare Act Regulations.

Part 1 – Definitions – contains the definitions of the terms used in the Act. For example, terms such as “dealer”, “exhibitor”, “pet animal” and “wild animal” are defined in this part.

Part 2 – Regulations – contains the regulations which outline the requirements of license holders as well as some of the powers APHIS officials under the Act. This part contains the criteria that determine:

- who is subject to licensing
- who is exempt
- annual fees
- annual reports
- record keeping requirements
- violations that can cause a license to be revoked
- other administrative requirements for license holders

The record keeping requirement under Part 2 is particularly ominous and is the primary reason that birds, rats, and mice bred for use in research were exempted by the Helms' amendment. The following is a summarized outline of the record keeping requirements:

- All records must be available for inspection “during normal business hours”.
- Records must be kept for 3 years
- Records include:
 - the source of each animal
 - how many offspring each animal has produced

- the status of each animal – if the animal is still in the collection, where it is housed, or if it was sold, died, euthanized, etc
- Personal information of every buyer for each animal including
 - name
 - address
 - phone
 - drivers license number
 - license plate
 - USDA license if available

It is clear that these record keeping provisions would have been overly burdensome to keep for the numerous rats, mice and birds that are used in research labs. In the same manner, it is also virtually impossible for breeders of high volume birds such as budgies or zebra finches to comply with these record keeping requirements.

Part 3 – Standards – contains the standards of care for animals that are covered under the Act. Part 3 is divided into subparts for each regulated type of animal. Until the inclusion of birds, all of the subparts were for types of mammals. For example, subpart A is for dogs and cats, subpart D is for non-human primates, and subpart E is for marine mammals. Within each of these subparts are sections that cover aspects of care such as housing, cleaning, care during shipping, etc. Many of these sections contain specific requirements for the care and keeping of the animal. The requirements can get very specific, such as how many square inches of floor space are required for each animal in an enclosure. For example under section 3.53(b) of subpart C for rabbits, a 5 pound rabbit requires 144 square inches of floor space and a 7 pound rabbit requires 288 square inches. The standards that include such specific formulas are called “Engineering Standards”.

The last subpart of Part 3 is subpart F which is a catchall section that deals with all mammals that don’t have their own specific subpart already. Because subpart F deals with a wide variety of mammals, from large antelope, to big cats, to tiny exotic rodents, the standards have very generalized language. Rather than spelling out how many square inches of floor space is required, the standards have language that basically requires that there should be enough room for the animal to have normal freedom of movement. These types of standards are called “Performance Standards”.

Considering the many purposes that birds are kept in captivity and the overwhelming variety of husbandry solutions, the only way the regulation of the care of birds under the AWA can be carried out is by implementing performance standards, not engineering standards. Evidence that a bird keeping facility is meeting performance standards will be apparent in the overall health of the birds at that facility.

Part 4 – Rules of Practice – A very small section laying out the legal power and duties of the Administrator (USDA) of the AWA.

NAWA's Approach to the Animal Welfare Act

The Animal Welfare Act is a very complex set of laws and regulations. The requirements of birds and bird facilities are even more complex. Therefore, the impact of AWA regulation on bird keeping is tremendously complex. In order to develop a complete proposal, NAWA has taken a multi pronged approach.

First, NAWA developed reasonable regulations for the Standards of Care that would be the least damaging and most appropriate to aviculture if put in place. These regulations were completed first, but they continue to be fine-tuned as more information comes in.

Second, came the work on exemptions and regulations. The USDA has some discretion over the regulations and who must be licensed. For example, current regulations for dogs and cats allow for the exemption of those who sell at retail only. Due to the potential for adverse effects on bird facilities, NAWA is proposing exemptions for birds that are designed to provide exemptions for the broadest number of breeders and dealers as possible. The data NAWA is gathering will help support the inclusion of the exemptions we are proposing.

Thirdly, NAWA is exploring the possibility of exempting birds completely from AWA regulation. The USDA does not want to cover birds if the effects of licensing are overly burdensome and destructive to aviculture. However, the USDA cannot arbitrarily make a blanket exemption for birds. Such an exemption would need to have strongly documented evidence that the regulations would be unreasonably burdensome to those involved in aviculture. The USDA is not experienced in the regulation of birds so they do not have the knowledge to gather data on the impact of regulating bird facilities. They must rely on aviculture to provide them with the documentation necessary to put in place such an exemption.

Total exemption may seem to contradict the court settlement, but that is not necessarily the case. The court case and settlement determined that birds cannot be excluded from the definition of "animal" in the AWA Law. Now that birds are included in the definition of animal, the USDA must develop appropriate regulations for birds. These regulations are developed by the Secretary of Agriculture who can exempt certain activities or animals from regulation with enough reason to do so. If it is shown that birds and bird keepers will be adversely affected to an unreasonable degree by AWA regulation, then the Secretary of Agriculture can exempt birds on that basis.

Total exemption is a long-shot. It is likely that regulation of bird facilities will occur at some level. NAWA has prepared for the worst and is now working for the best.

The Impact of AWA Regulations on Bird Facilities 10 Questions from the Advanced Notice of Rulemaking

The Unique Needs of Birds and Bird Facilities

Unlike many mammals, nesting birds are negatively affected by disturbances. Many birds are so hypersensitive while nesting that they will immediately destroy their own chicks and eggs upon any unusual occurrence including the entrance of unfamiliar people (inspectors). Stress from the appearance of unfamiliar individuals can also lead to displaced aggression in some species that will result in injury or death to an adult mate. The licensing of bird breeding facilities must consider not only the economic loss to the facility operator from damage to eggs, chicks and mates that can result from the appearance of unfamiliar people, but also the loss of valuable bloodlines and years of effort if bird breeding facilities are inspected. At minimum, these injuries and deaths would represent a net decrease in the welfare of birds in captivity.

Question 1 – Minimum standards of care for birds.

Considering the many purposes that birds are kept in captivity and the overwhelming variety of husbandry solutions, the only way the regulation of the care of birds under the AWA can be carried out is by implementing performance standards only. Evidence that a bird keeping facility is meeting performance standards will be apparent in the overall health of the birds at that facility.

Developing these performance standards has been the bulk of the work that NAWA has done. Considering the wide variety of birds that are kept in captivity, it was essential that these standards be flexible. NAWA has based our recommendations on performance standards such as those currently found in subpart F. The following is a list of sections covered by the NAWA Standards of Care for Birds.

Care Standards for Birds

1. Birds, general.
2. Facilities, general.
3. Facilities, indoor.
4. Facilities, outdoor.
5. Space requirements.
6. Feeding.
7. Watering.
8. Sanitation.
9. Employees.
10. Separation.
11. Health Management.
12. Inspections.
13. Consignments to carriers and intermediate handlers.
14. Primary enclosures used to transport live animals.
15. Primary conveyances (motor vehicle, rail, air, and marine).
16. Food and water requirements.
17. Care in transit.
18. Terminal facilities.

19. Handling.

The NAWA proposal for Care Standards for Birds is lengthy, so an excerpt (section 6) of the regulations is given below to provide an example of the wording used:

§6 Feeding

(a) The food shall be of sufficient quantity and nutritive value to maintain all birds in good health. The diet shall be prepared with consideration for the age, species, condition, size, and type of bird. Birds shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

(b) Food, and food receptacles, if used, shall be sufficient in quantity and located so as to be accessible to all birds in the enclosure and shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

Question 2 – Published programs of humane care and use for birds

The Model Aviculture Program (MAP), or similar voluntary improvement programs, might be used as an example of an industry initiated alternative to licensing under AWA. Requirements under the Model Avicultural Program are designed to promote “best management practices” and they represent a higher level of care than is typically required for AWA licensing. Such programs, designed and implemented by specialists for each group of birds, can be tailored to the needs and requirements of the breeders, dealers, and the birds, ensuring optimum cooperation and minimal impact. AWA licensing on the other hand would need to be broader, with minimum requirements, to avoid negative impact on licensees and birds. For broad applicability AWA regulation cannot determine best management level of care.

Certification under a bird industry inspection and certification program, such as MAP, would have fewer negative impacts on breeding facilities compared to license inspections under the AWA. Such certification programs typically involve inspection by a private, licensed and typically USDA accredited veterinarian. These veterinary inspections could more easily be scheduled during times of low breeding activity or during routine veterinary visits, thus reducing or eliminating disruptions during sensitive nesting activity and minimizing financial losses and losses of valuable bloodlines. It should be unnecessary for USDA veterinarians to inspect facilities that already participate in certification programs since these programs are designed not only to meet minimum standards but to promote higher level of care or “best management practices”. Acceptance of these industry certifications would also represent a tremendous saving to USDA in resources and manpower.

Question 3 – Exemptions, licensing, and registration requirements

The current exemption from licensing for facilities with annual sales not exceeding \$500 is inadequate. Due to the capital expenditure and time investment required for successful aviculture hobby, this value should be raised to \$50,000 if used as a defining point of hobby aviculture.

Facilities with fewer than 100 breeding female birds should also be exempt regardless of sales volume.

All bird breeding facilities should be exempt from AWA licensing. This exemption is broad yet fair for the following reasons;

- a) Inspections would cause disruption to the breeding birds resulting in unacceptable losses due to damage to eggs, chicks or mates or loss of production.
- b) Many bird breeders are working with rare species and such losses could destroy irreplaceable bloodlines that are valuable for the protection of avian genetic biodiversity.
- c) Bird breeders continually research husbandry and avicultural techniques to improve and advance breeding production and captive bird care.
- d) The high percentage of membership in avicultural organizations that promote and disseminate advancements in the breeding of birds reinforces the fact that bird breeders are responsible for enhancing knowledge on the biology of the birds and their care.
- e) Exemption of breeders to licensing under existing retail exemptions only would result in competition between private aviculturists and retail stores for retail sales. This would be very damaging to the pet bird market. Competition and resultant reduction of income for both the breeder and the retailer would result in a loss of funding needed for the private sector to continue preserving avian biodiversity.
- f) Licensing would drive many small business entities underground or out of the bird business altogether having a net negative impact on small businesses.
- g) It has not been demonstrated that the current welfare of birds in breeding facilities are deficient, and that their standards of care require Federal oversight under AWA licensing to promote improvement in these areas.
- h) Licensing of bird facilities that breed birds for pets was not the target of the original lawsuit against USDA. Licensing under the AWA cannot be justified in light of the negative side-effects it would have on breeding facilities and the welfare of the birds housed therein.
- i) The vast majority of bird breeding facilities are small private facilities run as hobby ventures or part-time businesses. Most such enterprises are not staffed throughout the day since avoidance of any un-necessary disturbances of breeding birds improves production. Operators frequently care for their birds in the early morning hours or evening hours before or after work. These facilities would be inaccessible for the unannounced inspections called for in the AWA regulations.
- j) The AWA also requires that records be accessible during normal business hours (defined as between 7 am and 7 pm, Monday through Friday). This would also be an undue burden on these part-time businesses.
- k) Overly burdensome AWA recordkeeping requirements will force bird facility operators to hire individuals just to maintain those records. This represents an unreasonable burden on such small businesses.

Question 4 – Minimum age requirements for the transportation of birds

Birds should not be subject to minimum age requirements for shipping. Precocial species, such as gallinaceous birds with their supply of yolk for post-hatch nutrition, have been shipped as “day-old” hatchlings for many years with great success. This is an accepted practice in the poultry industry and is vital for the distribution of birds from hatchery to growing facilities or from breeder to breeder. Likewise, but lesser known, is that fact that many altricial birds are shipped as chicks, not only

successfully, but often with less stress than adults of the same species. Nestling parrots, for example, have a crop that can hold plenty of food to last during transit and are very secure in the small dark spaces of shipping boxes which are similar to their natural nesting cavities. Such birds transport very well as chicks.

Fertile bird eggs are also shipped with great success. Would an egg be considered a bird? What age would an egg be? The transportation or shipping of birds is an activity that currently enjoys an extremely high success rate due to the level of care provided by shippers and dealers of birds. Unnecessarily restricting shipping options would only have adverse side-effects on this successful activity. There must be no minimum age standards set for the shipping of birds.

Question 5 – Inspection bio-safety procedures

Infectious diseases can be devastating to all aspects of aviculture, and biosecurity is of paramount importance. To ensure proper biosecurity, it will be necessary for inspectors to wear complete protective clothing such as Tyvek coveralls and booties. Although this is required for biosecurity, it is completely incompatible with reducing the impact of the inspector's appearance from the birds' perspective. Such clothing would only increase a fearful reaction from breeding birds and will result in greater losses of eggs, chicks and mates. The need for proper biosecurity during an inspection and the requirement for not frightening nesting birds are contradictory to each other. Despite the risk, such protective clothing will be necessary during inspections since the risk and consequences of disease transmission between facilities is too great. Biosecurity is so important that inspectors will also be required to "shower-in" and "shower-out" of many facilities.

Question 6 – The nature of bird facilities

Birds are unique in that a large segment of private citizens keep birds to preserve species as a safeguard against extinction or extirpation in their home range. Many wild populations of birds are threatened or endangered due to habitat loss, environmental degradation, persecution as pests, and political instability. Private sector American aviculturists have demonstrated success at reproducing birds in captivity. Private aviculturists promote an increase in public awareness through exhibition, education, and pet ownership. Revenue from the sale of birds as pets or breeders provides the necessary funding to run private enterprise preservation efforts. Public and zoological institutions admittedly do not have the space or resources to maintain genetically diverse populations of all avian species which may need avicultural support as insurance against an uncertain future. Only through the dedication of the private sector will there be adequate space and incentive to maintain adequate populations of many species of birds to ensure and preserve avian biodiversity for future generations.

A large percentage of birds produced for the pet trade are bred in small private facilities run as hobby activities or part-time businesses. Similar facilities for dogs and cats are generally exempt under retail sales exemptions. The distribution of birds in the pet trade does not follow a similar pattern as the distribution of dogs and cats in the pet trade. The retail exemption is appropriate, but it must be extended to allow for wholesale sales of birds. Without this extended exemption for birds, many small facilities will avoid selling birds into normal pet bird distribution channels. Instead, they will avoid AWA licensing by selling all of their production at retail. This has potential to disrupt the orderly flow of birds through the breeder-wholesaler-retailer channel and reduce accountability to the consumer. Breeders will be in direct competition with retail suppliers of birds. Retail sales over

the internet will become the norm often resulting in birds going into the hands of inexperienced persons after long distance shipping and with the buyer having no recourse when problems arise. This disruption of the pet bird industry would result in the loss of many aviculturists from the field and the loss of captive populations of many threatened and endangered species.

Question 7 – The Number of each species of birds

Over 9000 avian species inhabit all of the earth's unique ecosystems from the frigid polar regions to the hottest equatorial regions. Birds are an extremely diverse group with equally diverse requirements for survival. Because of this diversity, novel husbandry techniques are often needed to maintain them successfully in captivity. Continuing advancements in knowledge and technology will ensure development of unique husbandry solutions to enhance avian captive management.

Aviculture is an ever-evolving field. Unique solutions, appropriate to special species requirements and local conditions may be required to enhance bird keeping. It is vital that any regulation of birds under the Animal Welfare Act must be flexible and open to the broad array of husbandry choices and innovations that are continually being developed.

According to the 2002 American Pet Products Manufacturers Association Survey, there are estimated to be 17.5 million household pet birds in the United States. This figure does not include birds in breeding facilities, exhibition, research, teaching, testing, or experimentation. In order to maintain this population of pet birds at a stable level and satisfy the demand for pets, the annual production of birds for the pet trade would be well over 2,000,000 birds per year which does not include the additional production of breeding stock, or birds for use for exhibition, research, teaching, testing, or experimentation purposes. Budgies and/or Cockatiels are kept by 66% of pet bird owning households. Budgies and Cockatiels are both colony bred species. *(Note: Due to the small sample size of this survey, the participants in NAWA believe the APPMA data is greatly underestimating the true population of pet birds. Further data is being collected by PIJAC to properly estimate the numbers of birds in the United States. In reality, there may be as many as 65 million pet birds in the United States. Annual production at this level would need to be about 7,000,000 birds.)*

Questions 8 - Staffing, licensing, and paperwork

The record keeping requirements now required for mammals, are unreasonable and overly burdensome for commercial, high volume produced birds such as Budgies, Zebra Finches, Cockatiels, Lovebirds, quail, waterfowl, pigeons, gamebirds, and others. Many of these birds are bred in large multi-pair colonies so that the parentage and the production of individuals would be impossible to determine on a practical basis. Keeping the detailed records required under current AWA regulations will represent an undue burden on the time and finances of bird breeding facilities and on wholesale dealers that ship many thousands of birds in a week.

Question 9 - Potential economic effects

Bird facilities would be required to hire additional staff for record keeping alone. Most facilities do not have the financial means to expand their staff for clerical duties. The financial impact on bird facilities would drive them out of the activity.

If facilities need to be retrofitted to comply with USDA requirements, the cost of material, and labor would be significant. Additionally, the disruption to actively breeding birds would reduce production which would result in further financial losses.

Loss of eggs, chicks or adult birds due to stress related aggression caused by inspections would represent significant losses in revenue for breeding facilities.

Disruption of the orderly flow of birds in the wholesale trade would have major repercussions on the value and availability of birds in the marketplace. This disruption would destroy the ability of breeding facilities to finance their operations.

Question 10 – Any other concerns

Publication of Licensee Information - Birds are often the target of thieves, and breeding facilities are under increasing threat of vandalism from Animal Rights Groups. The publication of licensees' addresses under the AWA licensing requirements will create easy access to information for thieves and will lead to opportunities for harassment from Animal Rights terrorists. The publication of licensee information must not be extended to bird facilities and should be stopped for other animal facilities as well. Bird breeders are noted for protecting their privacy and this provision alone will drive many facility operators underground or out of the activity altogether unless the publication of licensee information is eliminated.

Rust on Cages – Traditionally under AWA licensing, rust on cages is a reportable offense. Due to the fact that breeding pairs of birds, often interpret the changing of their flight cages as a major territorial intrusion, which can result in mate aggression and/or the lack of production in years following this change, it has been customary not to replace cages that show surface rust as long as it does not compromise the enclosure's structural integrity. This practice is not known to cause health problems and is considered within acceptable standards of practice.

AWA Policy Manuals - Birds are unique and widely differing in their needs. It is important that policies under the Animal Welfare Act that were written in regards to mammals are not extended to birds without a clear understanding of the impacts these policies would have. An example is Policy 24, regarding enclosures for flying species. This policy states that enclosures should contain sufficient unobstructed volume for flying species to enable movement by flying. This is not appropriate to extend to all birds because proper management of some species of birds includes flight restricting practices such as wing-clipping, tenotomy, pinioning etc. Birds such as flamingoes, cranes, storks, etc can be maintained in spacious enclosures if rendered flightless, but must be confined if flighted due to the exorbitant cost of expansive flight aviaries. Allowing space for flight may be dangerous in some species. Pheasants and quail can incur head damage if startled with sufficient space to fly upward into the top of an enclosure. Additionally, many birds are kept in enclosures that allow for appropriate opportunities for freedom of movement and activities without the need for flight.

ID Marking - Due to the wide variety and fragile nature of birds, ID marking should not be required for live birds under the AWA. The requirement for ID in the form of collar tags or tattoos that is required for dogs and cats under 9 CFR 2.50 does not apply to birds and should not be extended to include birds. Neither leg bands nor microchips, which are the most common methods of marking birds, are suitable for all bird species. There are no marking systems that are suitable for all species of birds under all conditions.

Temporary Care Facilities - Birds may be transferred to intermediate caregivers, such as boarding facilities, foster homes, or temporary care facilities. Such temporary facilities should not be licensed.

Dietary Requirements - The various dietary requirements for birds are as broad and varied as the birds themselves. Birds are kept under many conditions and for many uses. Accordingly, the dietary requirements of birds can vary dramatically between species and within species. There are many options for appropriate nutrition and no single diet regimen should be required for any species of bird.

Implementation period - To allow time for proper retrofitting and dissemination of AWA licensing requirements, NAWA asks for a 5 year grace period before bird facilities are required to be licensed.

Introduction of Avian Diseases - The demand for pet birds in the United States is sufficiently strong that if breeders are regulated out of aviculture, it will increase the incentive to smuggle birds into the country from abroad. Such an increase in smuggling will have a direct relationship with an increased risk of exposure to foreign diseases such as Exotic Newcastles Disease.

Impact of Regulation - To see what overly restrictive Animal Welfare requirements can do to bird keeping, examine Germany's case history. Reports from pet product suppliers have indicated that pet bird keeping has recently experienced a drastic decline in Germany since the implementation of that country's welfare laws for birds and is directly attributed towards its overly restrictive requirements. It is imperative to consider that AWA regulations for birds in this country could have the same impact.

Take Action to Protect Aviculture

The participants in NAWA would like to urge you to make comments to the USDA to provide them with information on the impact of covering birds under the AWA. These comments can be made by the internet or letters to the USDA. The original comment period has been extended and **Comments must be submitted by November 1, 2004**. If we do not make these comments, the comments of the Animals Rights Activist side will be taken into consideration rather than ours. **It is possible that all or most of us may be exempted from these regulations, if we get enough comments into the USDA showing the negative impact that AWA regulations would have on us.**

NAWA has identified several key issues of concern. When making your comments, please emphasize some of these points:

1. The largest majority of us are hobbyists for which bird breeding is not a money- making venture. Many facilities are lucky just to cover expenses and any added expenses under the AWA would force them out of raising birds.
2. Any inspections will have a detrimental effect on your ability to propagate any rare or endangered species because many rare or endangered species may kill their mates or abandon their nests while being inspected by a stranger.
3. The inspections are done in normal business hours and that most of us hold normal jobs that take us away at those times, so we would not be able to be present at the times we would be inspected or show our records to the inspectors.
4. The quantity of paperwork that is **required under current AWA regulations** (besides the paperwork you already may do for Fish and Wildlife and State Departments) is not possible for most bird keepers to maintain. It would require you to hire someone to keep up with the records alone. This represents an unreasonable burden on most and would force many to sell their birds due to the financial expense of hiring a bookkeeper.
5. The additional cost of keeping the birds to the current USDA requirements would be so costly that we could not afford to keep the birds we now have.
6. When people quit raising birds, the effect will be felt throughout our nation. The ripple effect of this taking place could cost the U.S. economy many hundreds of million of dollars and thousands of jobs as a result of greatly reduced demand for the wide variety of bird foods and bird-related equipment.
7. As the supply of domestic bred birds is decreased, the demand for smuggled birds will increase resulting in greater risk of the introduction of avian diseases such as Exotic Newcastle's Disease.

Please take the time to make comments to the USDA and hopefully keep us from having AWA regulations put in place. If you have any questions, please do not hesitate to contact NAWA at: comments@nawabirds.org . Comments should be sent directly to the USDA per the following information.

Information you need to comment to the USDA:

In order for the USDA to consider your written comments you MUST submit them to the USDA by one of their approved methods:

By postal mail: Send your written letters as follows:

Postal Mail/Commercial Delivery: Please send **four** copies of your comment (an original and three copies) to:

Docket No. 98-106-4

Regulatory Analysis and Development,

PPD, APHIS

Station 3C71

4700 River Road Unit 118

Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 98-106-4.

By email:

Address your email comment to:

regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ``Docket No. 98-106-4 on the subject line.

By commenting on the USDA comments website at:

<http://comments.aphis.usda.gov>. According to the USDA, this webform is designed to allow commenters to associate each of their comments with the issues identified in the advance notice, and to allow APHIS to more easily analyze the comments received regarding each issue.

(BUT please note that this website is not reliable, and is often unavailable – Do not rely on the website as your only method of commenting to the USDA).

Reading Room: You may read any comments received on Docket No. 98-106-4 in the USDA reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and

Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 am. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: You may view APHIS documents published in the Federal Register and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor/ac.html>.

Press Release: http://www.aphis.usda.gov/lpa/news/2004/06/ac_birdratmice.html

If you have any questions regarding bird regulation under the AWA, please contact NAWA at comments@nawabirds.org

Conclusion

USDA/APHIS, through the Animal Welfare Act, is charged with protecting the welfare of regulated animals by insuring minimum standards of care. USDA/APHIS, through the Animal Welfare Act, is also charged with the responsibility to ensure that the enforcement of these regulations does not place undue burdens on regulated businesses. The enforcement of these regulations must also not result in increased risk of stress, injury, or death to animals at inspected facilities. To do so would be contrary to the goals of the Animal Welfare Act. Additionally, inspection and licensing of all bird facilities would place undue burden on USDA/APHIS in terms of manpower and funding, resulting in insufficient resources to properly administer currently licensed facilities under the AWA.

Certain provisions of the AWA, as it is applied to currently licensed mammalian facilities, could have dramatic adverse effects on birds and bird businesses. Inspections of breeding facilities will adversely affect production and will result in the loss of eggs, chicks, or mates. Most bird breeding facilities are small part-time businesses or hobby ventures that are far too numerous to be practically licensed and inspected utilizing available resources. Due to the unique structure of the distribution channels of pet birds, exemptions must include certain wholesale transactions of birds in order to avoid damaging the structure of these distribution channels. By restricting licensing to dealers who buy birds for resale and make wholesale shipments of birds across state lines, the larger commercial bird facilities will be appropriately separated out for licensing.

By virtue of the organizations participating, NAWA is uniquely positioned to offer sound input on the care of birds under the AWA. The foregoing regulations have been carefully crafted by the participants in NAWA to establish appropriate minimum standards for the care of birds without placing undue burdens on bird facilities and the AWA licensing and inspection process.

The care of birds in the United States has made great strides over the past several decades. Advances in bird care and avian medicine would continue to make improvements without the implementation of the AWA. NAWA's primary concern is to protect all aspects of aviculture and ensure its continued advances. If the AWA is implemented without careful consideration of the potential negative impacts that it could create, the survival in captivity of many rare and endangered avian species, as well as the steady advances in avian nutrition, care, and breeding will come to a halt.