

NAWA Position Statement On the Animal Welfare Act Regulation of Birds

After careful consideration of the impacts of Animal Welfare Act inspection and licensing, and the reasons for which birds are now included in the definition of “animal” under the AWA, it is NAWA’s recommendation to USDA that birds should be exempt from regulation under the AWA. This recommendation is based upon the extensive negative impacts that AWA regulation would have on aviculture and the original intent of the ARDF lawsuit.

The 1999 lawsuit that resulted in the settlement that brought birds under the definition of “animal” in the AWA was aimed at birds, rats and mice used for research animals, not at aviculture – the keeping and breeding of birds for exhibit, for pets, or for conservation. Birds bred for use in research were exempted by the Helm’s Amendment to the Farm Security and Rural Investment Act of 2002. Since aviculture was not the intended target of this lawsuit and because birds in aviculture were arbitrarily left out of the Helm’s Amendment, it would be arbitrary and capricious to allow birds in aviculture to come under AWA regulation.

The Model Avicultural Program currently provides guidelines to the avicultural community without the harmful impact that would result from inspections under AWA licensing. The AWA regulatory model does not fit the bird industry and would result in numerous negative consequences. Nesting birds are notoriously sensitive to disturbances and unfamiliar occurrences. Unannounced inspections of breeding facilities would result in damage or death to eggs, chicks or mates. Such disruptions are also likely to reduce egg laying, resulting in loss of revenue from decreased production. Birds are often the target of thieves and when information on licensed bird facilities becomes a matter of public record, it will result in the theft of valuable stock. Even small bird facilities would require additional clerical staff to comply with AWA record keeping provisions. These negative impacts, as well as many others identified by NAWA, would result in a high percentage of bird facilities closing down if AWA licensing were extended to birds.

Regulating birds under the AWA would stretch USDA resources beyond current funding and staffing levels. This is a time when government funding is needed in other areas of far more seriousness to the general public: monitoring B.S.E. in cattle, putting in place programs for the protection of agricultural products from terrorists, and in general maintaining a sound and healthy food supply in the US. Regulating birds under the AWA seems an inadvisable use of USDA staff and funds. There are existing laws that cover sales of birds as pets, transportation of birds, and birds in exhibitions. Regulation of birds under the Animal Welfare Act is unnecessary, detrimental to the welfare of birds, and overly burdensome to bird facility operators and to USDA resources alike.

Although NAWA recommends that bird facilities should be exempt from AWA regulation, NAWA has created the following proposal for such regulations in the event that the USDA does put in place AWA regulations for birds. In an effort to minimize the negative side-effects of AWA licensing and inspection on bird facilities, the following proposal has taken more than a year and a half to create and to review. The NAWA proposal is supported by the Association of Avian Veterinarians as well as the listed participating organizations as being the best model for regulation to protect the welfare of birds, while at the same time minimizing the harmful impacts of regulation on aviculture.

**National Avian Welfare Alliance Proposal
Regarding the Regulation of Birds
Under the Animal Welfare Act**

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.

Birds are kept in captivity for many reasons. Many are kept as pets, some are kept to produce game, some are kept for food production, some are kept for sport, and some are kept to esthetically enhance a garden or room with their songs and colors. 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.

NAWA and the AWA

When the USDA was forced to include birds under the definition of animal in the Animal Welfare Act, they informed various bird-keeping organizations of the need for input on drafting the regulations. To facilitate a coordinated effort, representatives from various avicultural organizations gathered at 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 as a roundtable of representatives from a broad cross-section of bird keeping organizations including, bird trainers and avian veterinarians, as well as organizations for keepers of racing pigeons, waterfowl and pheasants, finches, softbills, and parrots. This broad representation from within the avicultural community is necessary due to the large variety of birds kept in captivity and the wide range of husbandry techniques involved. The combined experience of NAWA participants represents over 600 years in the avicultural world working with over 1000 different species.

Representatives Participating in NAWA and the Development of this Proposal

1. American Federation of Aviculture (AFA)
 - Benny Gallaway, President
 - Natasha Schischakin, Education & Media Services
 - Laurella Desborough, Legislative Vice President
 - Genny Wall, Welfare Chair
2. African Parrot Society (APS)
 - Jeannie Pattison
3. Amazona Society (AS)
 - Wanda Elder
 - Diana Holloway
4. American Lory Society (ALS)
 - Roland Cristo
5. American Pheasant and Waterfowl Society
 - Al Novosad, President
 - E. T. Trader, Past President and Executive Board Member
6. American Racing Pigeon Union
 - Karen Clifton, Executive Director
 - Tom Erskine
 - Frank Greenhall
7. Association of Avian Veterinarians
 - Dr. Susan Clubb
8. Avian Ambassadors
 - Sid Price
9. Avicultural Society of America (ASA)
 - Steve Duncan, Legislative Liaison
10. Bird Clubs of America (BCA)
 - The late Dick Ivy
11. Cockatoo Society
 - Walt Frey
12. Eclectus Group (EG)
 - Laurella Desborough, Chairman
13. The Gabriel Foundation
 - Julie Murad

14. Hanging Parrot & Fig Parrot International Conservancy
 - Matt Schmit
15. International Association of Avian Trainers and Educators (IAATE)
 - Steve Martin, President
 - Barabara Heidenreich, President Elect
 - Kevin Hils, Past President
 - Melissa Horton, Avian Care and Management Committee Chair
16. International Conure Association
 - Cheryl Burns
17. International Parrotlet Society (IPS)
 - Sandee Molenda, Secretary
 - Kathy Heaton, AFA Delegate
18. Model Aviculture Program (MAP)
 - Roland Cristo
19. National Cockatiel Society (NCS)
 - Linda Rubin, Genetics Consultant
20. National Finch and Softbill Society (NFSS)
 - Sally Huntington, President
 - Vince Huntington, Region 6 Vice President, AFA Rep
 - Harry Bryant, 2nd VP
21. National Parrot Rescue and Preservation Foundation (NPRPF)
 - Kathy Heaton, Communications Coordinator
22. National Racing Pigeon Union
 - Scott Landry
23. Orange County Breeders
 - Cathy Kelly
24. Organization of Professional Aviculturists (OPA)
 - Howard Voren, Chairman
25. Parrot Jungle
 - Dr. Susan Clubb
26. The Parrotlet Alliance, Inc.
 - Dennie Saul

27. Pet Industry Joint Advisory Council (PIJAC)

- Marshall Meyers

28. Pionus Breeders Association (PBA)

- Larry Ring

29. Pionus Parrot Research Foundation

- Margrethe Warden

30. Pyrrhura Breeders Association (PBA)

- Elke Davis
- Deryl Davis

31. The Tanygnathus Society

- Susan Ferguson

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. These representatives have been working for more than a year to formulate this 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.

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.

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.

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 design a program tailored to the needs and requirements of both the breeders 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 must be limited to minimum requirements, not best management level of care.

Bird industry 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 a 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.

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.

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.

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 suits 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.

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.

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 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.)*

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.

Due to the fact that breeding pairs, 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.

Because 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 and allowed 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.

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.

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.

The exemption from licensing for facilities with annual sales not exceeding \$500 is inadequate. Due to the capital expenditure and time investment required for successful hobby aviculture, 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.

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

The following pages contain recommended standards of care for birds based on 9CFR Part 3, subpart F as well as definitions and exemptions under part 1 and part 2. The participants in NAWA have reviewed these sections and removed standards that were inappropriate for birds and added recommended standards for birds to create recommendations on the standards for the humane handling, care, treatment, and transportation of birds.

The bird industry has unique needs and qualities that make it vulnerable to negative impacts that will be created if birds are included under the AWA regulatory model. Although NAWA recommends that birds and bird facilities should be exempt from AWA regulation, NAWA has carefully crafted this proposal to minimize the negative side-effects of AWA licensing and inspection.

US Animal Welfare Act Regulations - Birds

A proposal by the National Avian Welfare Alliance on the Specifications for the Humane Handling, Care, Treatment, and Transportation of 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.

In order to allow bird facilities to become familiar with the requirements for licensing under the AWA, a 5 year implementation period must be established before licensing will commence. This will allow time to disseminate regulatory information and will provide time for facilities to perform any retrofitting to comply with the regulations. Facilities which are existing at the time of implementation should be grandfathered, providing their primary enclosures are sound and healthful, until major structural improvements are required.

The following is proposed language to be added to the Animal Welfare Act Regulations under 9CFR1.1, Parts, 1, 2 and 3.

Definitions

Bird mean any animal belonging to the class Aves. Birds are kept under a wide range of situations in captivity. Some birds are kept as household pets, but not all birds are pets. Birds should not be included in the definition of wild animals.

Bird Breeder means any person whose business involving birds consists only of breeding and raising birds on their premises and who acquire birds for the sole purpose of maintaining or enhancing the breeding collection.

Bird Dealer means any person whose business includes the purchase and/or resale of any bird. This term includes brokers, and operators of auction sales. A Bird Dealer may also exhibit animals as a minor part of the business.

Bird Exhibitor means a person whose business involves the showing or displaying of birds to the public. A Bird Exhibitor may buy and sell birds as a minor part of the business in order to maintain or add to his animal collection.

Exemptions

- a) retail stores;
- b) any person who does not sell, or negotiate the purchase or sale of any bird and who derives no more than \$50,000 gross income from the sale of birds during any calendar year;
- c) any bird breeder; (*refer to reasons "a" through "j" above*)

- d) any bird facility existing prior to the implementation of bird regulations under the Animal Welfare Act;
- e) any Bird Breeder, Bird Dealer or Bird Exhibitor that is certified under an inspection and certification program which is available to all within the bird industry (e.g. Model Avicultural Program),
- f) any Bird Dealer who does not place birds into wholesale trade in interstate commerce; or any Bird Exhibitor with fewer than 100 birds.

Care Standards

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.

§1 Birds, general

- a) Bird housing facilities must be designed to meet the specific needs of the species housed within. These facilities will vary according to species requirements, climate, region and use. Use shall include, but not be limited to breeding, exhibition, short term housing by Class B Dealers, and sport and recreational use.
- b) Facilities will be designed and maintained to insure the health and welfare of birds in captivity without restricting the husbandry choices available to bird keepers and caretakers, and without restricting the development of innovative husbandry techniques.
- c) Performance-based standards relying on qualities of the result or end-product of facility activity will be used to assess facility compliance.

§2 Facilities, general

- a) Structural strength. The facility must be constructed of such material and of such strength as appropriate for the birds involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the birds from injury and to contain the birds. Oxidation or rust on the surfaces of primary enclosures is allowable as long as it does not compromise the enclosure's structural integrity.
- b) Water and power. Reliable and adequate electric power, if required to comply with other provisions of this subpart, and adequate potable water shall be available on the premises.

- c) Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.
- d) Waste disposal. Provision shall be made for the removal and disposal of bird and food wastes, bedding, dead birds, trash and debris. It is understood that the regular removal of waste materials during the breeding season may not be practical or practicable in some species and under some circumstances. Natural composting of waste is allowable when it does not contribute to the proliferation of disease vectors. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards.
- e) Washroom and sinks. Facilities, such as washrooms, basins, showers, or sinks, shall be provided to maintain cleanliness among animal caretakers.

§3 Facilities, indoor

- a) Ambient temperatures. Birds in captivity can remain healthy in a wider range of temperatures than they would encounter in their natural habitats. If necessary, temperature in indoor housing facilities can be sufficiently regulated by passive, active, natural or mechanical, heating or cooling methods that would alleviate temperature extremes that are not compatible with the health of the birds.
- b) Ventilation. Indoor housing facilities shall be adequately ventilated by passive or active, natural or mechanical means to provide for the health of the birds at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, air-conditioning, or other appropriate means.
- c) Lighting. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the birds from excessive illumination.
- d) Drainage. A suitable sanitary method shall be provided to rapidly eliminate, excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors and installed so as to prevent any backup of sewage. The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

§4 Facilities, outdoor

- a) Shelter from sunlight. When sunlight is likely to cause overheating of the birds, sufficient shade by natural or artificial means shall be provided to allow all birds kept outdoors to protect themselves from direct sunlight, for species which require such protection. (Example – flamingos, waterfowl, wading birds, ratites – can remain in sun all day without problems. These species are adapted to existing in open areas without shade

- b) Shelter from inclement weather. Birds in captivity can remain healthy in a wider range of climate conditions than they would encounter in their natural habitats. Birds shall be acclimated to local conditions before they are exposed to climate extremes. Natural or artificial shelter or cover, appropriate to the local climatic conditions and the species concerned shall be provided for all birds kept outdoors that require such protection.
- c) Drainage. A suitable method shall be provided to eliminate excess water. The method of drainage shall comply with applicable Federal, State, and local laws and regulations relating to pollution control or the protection of the environment.

§5 Space requirements

- a) Enclosures shall be constructed and maintained so as to provide sufficient space to allow each bird to make normal postural and social adjustments with adequate freedom of movement.
- b) Tethered Birds: The area for each tethered bird shall be large enough to allow the bird to fully extend its wings. Tethered birds shall be provided with a perch designed for the individual species of bird. Tethers and perches shall be constructed to allow the bird freedom of normal movement without the tether becoming entangled.
- c) Enclosures for birds with flight restrictions such as pinioned wings, clipped wing feathers, braided wings, tenotomized wings, or any other method of flight restriction shall be constructed to allow the bird normal freedom of movement and access to feed and water.

§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.
- c) Unweaned birds that are being reared by hand shall be provided with food of sufficient quantity and nutritive value at a frequency that promotes proper growth and development.

§7 Watering

If potable water is not accessible to the birds at all times, it must be provided as often as necessary for the health and comfort of the bird. Frequency of watering shall consider age, species, condition, size, and type of bird. All water receptacles shall be kept clean and sanitary.

§8 Sanitation

- a) Cleaning of enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the birds contained therein and to minimize disease hazards and to reduce odors. The regular removal of waste materials during the breeding season may not be practical or practicable in some species and under some circumstances. Natural composting of waste is allowable when it does not contribute to the proliferation of disease vectors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the birds confined in such enclosures from being injured by the stream of water. During the breeding season, debris and excreta shall be removed from cages and enclosures as appropriate for the individual pairs or species in order to avoid causing stress, injury or death to the eggs, chicks and adults.
- b) Sanitation of enclosures. Subsequent to the presence of a bird with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water (180 F. at source) and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturated live steam under pressure. Pens or runs using gravel, sand, or dirt, shall be sanitized when necessary.
- c) Housekeeping. Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the birds from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the birds.
- d) Pest control. A safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

§9 Employees

A sufficient number of adequately trained employees shall be utilized to maintain the professionally acceptable level of husbandry practices set forth in this subpart. Such practices shall be under a supervisor who has experience in animal care.

§10 Separation

Birds housed in the same primary enclosure must be compatible. Birds shall not be housed near animals that interfere with their health. If necessary, visual barriers may be used between adjacent cages to provide privacy and prevent stressful interactions.

§11 Health Management

- a) Birds are a diverse group and subject to a variety of disease concerns both infectious and non-infectious. Programs of veterinary care must be specifically designed for the taxons of birds in

each facility in cooperation with the attending veterinarian. Psychological well-being of birds must be considered as a part of captive management programs.

- b) Birds often exhibit behaviors or conditions that may not be related to infection or management shortfalls. The presence of birds exhibiting feather picking, contact calling aggression or other behaviors does not necessarily indicate health, welfare or management problems.
- c) Birds with dangerous contagious infections should be isolated from other birds to prevent the spread of disease.
- d) Subsequent to the presence a bird with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized in accordance with section 8(b).
- e) To facilitate the psychological well-being of birds, a plan for environmental enrichment shall be in place to enable birds to reduce stress through mental or physical activity. Items may include any manipulative object, chewable objects which can include nest boxes, perches or food items. The concept of psychological well-being does not lend itself to a precise definition. Facilities are allowed latitude in how they meet this requirement.

§12 Inspections

- a) Birds are extremely sensitive to intrusions by unknown persons into or near their immediate environment and their reactions to such intrusions include accidental and/or purposeful damage to eggs, chicks, or mates. Notwithstanding other provisions of the Animal Welfare Act, during the breeding season it is recognized that inspectors will not inspect the breeding aviaries in order to avoid causing stress, injury or death to the eggs, chicks and adults. If inspectors enter areas with active breeding without the permission of the facility operator, the USDA may be held liable for the cost of any resulting damage to eggs, chicks or adult birds.
- b) Inspectors shall wear an unused set of disposable protective coveralls, disposable over-booties and disposable gloves at each facility. Such coveralls, booties and gloves shall be discarded in an appropriate waste receptacle at the premises upon completion of inspection. Inspectors shall not contact birds or primary enclosures without prior consent of the facility operator.

§13 Consignments to carriers and intermediate handlers

- a) Carriers and intermediate handlers shall not accept any live birds presented by any consignor for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: Provided, however, That the carrier or intermediate handler and any consignor may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the bird shipment to destination has been made.
- b) Any carrier shall only accept for transport any live bird in a primary enclosure which conforms to the requirements: Provided, however, that any carrier may accept for transport, any live bird consigned by any consignor if the consignor furnishes to the carrier a certificate, signed by the consignor, stating that the primary enclosure complies to the standards, unless such primary

enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live bird without causing suffering or injury to such live bird. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

- 1) Name and address of the consignor;
 - 2) The number of birds in the primary enclosure(s);
 - 3) A certifying statement (e.g., "I hereby certify that the __ (number) primary enclosure(s) which are used to transport the bird(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR part 3)."); and
 - 4) The signature of the consignor, and date.
- c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any live bird consigned by consignor if the consignor furnishes to the carrier or intermediate handler a certificate executed by an accredited veterinarian on a specified date which shall not be more than 10 days prior to delivery of such bird for transportation in commerce, stating that such live bird is acclimated to air temperatures lower than those prescribed in §§18 and 19. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:
- 1) Name and address of the consignor;
 - 2) The number of animals in the shipment;
 - 3) A certifying statement (e.g., "I hereby certify that the bird(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 0°C. (32 °F.)"); and
 - 4) The signature of the veterinarian, and date.
- d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live birds at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

§14 Primary enclosures used to transport live birds

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live birds in a primary enclosure which does not conform to the following requirements:

- a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live birds shall be constructed in such a manner that:
 - 1) the structural strength of the enclosure shall be sufficient to contain the live birds and to withstand the normal rigors of transportation;
 - 2) the interior of the enclosure shall be free from any protrusions that could be injurious to the live birds contained therein;
 - 3) An adequate ventilation opening shall be present on a minimum of one wall of a primary enclosure used to transport birds in order to ensure a supply of fresh air and to prevent overheating.
 - 4) except as provided in paragraph (g) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space of 1.9 centimeters (.75 inch) between the primary enclosure and any adjacent cargo or conveyance wall. Projecting rims are not required if the ventilated area is placed on a slant to prevent obstruction of the opening against adjacent surfaces and;
 - 5) except as provided in paragraph (g) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of large or heavy primary enclosures to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the bird.
- b) Live birds transported in the same primary enclosure shall be maintained in compatible groups.
- c) Primary enclosures used to transport live birds shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely and to make normal postural adjustments: Provided, however, that certain species may be restricted in their movements according to professionally acceptable standards when such freedom of movement would constitute a danger to the birds, their handlers, or other persons.
- d) Primary enclosures used to transport live birds as provided in this section shall have solid bottoms to prevent leakage in shipment and still be cleaned and sanitized in a manner prescribed in §8 of the standards, if previously used. Unless the live birds are on a non-solid floor such as wire, such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to the live birds contained therein, in sufficient quantity to absorb and cover excreta, or the primary enclosure shall contain a non-skid floor covering such as carpet or other generally accepted safe and nontoxic material that provides proper footing to the live bird contained therein.
- e) Primary enclosures used to transport live birds, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Live Bird in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings to indicate the correct upright position of the container.

- f) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.
- g) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

§15 Primary conveyances (motor vehicle, rail, air, and marine)

- a) The animal cargo space of primary conveyances used in transporting live birds shall be designed and constructed to protect the health, and ensure the safety and comfort of the live birds contained therein at all times.
- b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.
- c) No live bird shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each live bird has access to sufficient air for normal breathing.
- d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live birds can be removed from the primary conveyance as soon as possible.
- e) The interior of the animal cargo space shall be kept clean.
- f) Live birds shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the birds unless proper precaution is taken to prevent such injury.

§16 Food and water requirements

- a) All live birds shall be offered potable water within 4 hours prior to being transported in commerce.
- b) For such birds that require sustenance during transport, a sufficient quantity of food and water, or moisture providing foods shall accompany the live birds to provide food and water for a period of at least 24 hours, or for the expected duration of transit, whichever is greater. Food, water or moisture providing foods or containers for such, do not need to be provided when shipping birds such as, but not limited to, unweaned birds or meat-eating birds, which may be adversely affected by its presence during transportation, or as directed by veterinary treatment, normal fasts, and other professionally accepted practices.

- c) Emergency contact information for the consignor and the consignee of the shipment to be used in compliance with section (d) shall accompany each enclosure.
- d) Whenever a live bird shipment is delayed in transit, where those delays will cause the shipment to arrive more than 12 hours later than its originally scheduled arrival, the carrier must contact the consignor or the consignee to notify them of the delay of the live bird shipment and to determine the necessity or methods to supply fresh food, water, or moisture providing foods.

§17 Care in transit

- a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live birds as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live birds are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live birds shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live birds whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live birds are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No bird in obvious physical distress shall be transported in commerce.
- b) During the course of transportation in commerce, live birds shall not be taken from their primary enclosure unless the Consignor gives specific instructions to do so, or except under extreme emergency conditions, and provided that a temporary primary enclosure is available to move the birds into, and such temporary primary enclosure must be structurally strong enough to prevent the escape of the bird. Live birds shall not be removed from their primary enclosures unless placed in other primary enclosures or facilities conforming to the requirements provided in this subpart.

§18 Terminal facilities

- a) Carriers and intermediate handlers shall not commingle live bird shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in §3.131 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas.

- b) Any animal holding area containing live birds shall be adequately ventilated by passive or active, natural or mechanical means to prevent the overheating of the birds. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live birds when the air temperature within such animal holding area is 29°C. (85.°F.) or higher. The air temperature around any live bird in any animal holding area shall not be allowed to fall below 0°C. (32°F.) nor be allowed to exceed 35°C. (95°F.) at any time: Provided, however, That no live bird shall be subjected to surrounding air temperatures which exceed 29°C. (85°F.) for more than 4 hours at any time.
- c) To ascertain compliance with the provisions of this section, the air temperature around any live bird shall be measured and read outside the primary enclosure which contains such bird at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§19 Handling

- a) Carriers and intermediate handlers shall move live birds from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility and transfer between connecting primary conveyances as expeditiously as possible. Carriers and intermediate handlers holding any live bird(s) in an animal holding area of a terminal facility or in transporting any live bird(s) from the animal holding area of the terminal facility to the primary conveyance, from the primary conveyance to the animal holding area of the terminal facility, and transfer between connecting primary conveyances, including loading and unloading procedures, shall provide the following:
 - 1) Shelter from sunlight. Sufficient shade shall be provided to protect the live birds from the direct rays of the sun at all times with the exception of the momentary exposure that may occur during their expeditious transfer between conveyances and such live birds shall not be subjected to surrounding air temperatures which exceed 35°C (95°F), and which shall be measured and read in the manner prescribed in §3.141 of this part, for a period of more than 45 minutes.
 - i) Secondary conveyances used to transport birds to or from primary conveyances must be opened on one side and have the opening positioned away from the direct rays of the sun while they are stationary and waiting until the live bird cargo can be transferred to or from the primary conveyance.
 - 2) Shelter from rain or snow. Live birds shall be provided protection to allow them to remain dry during rain or snow.
 - 3) Shelter from cold weather and wind. Transporting devices shall be covered to provide protection for live birds when the outdoor air temperature falls below 10°C. (50°F.) and such live birds shall not be subjected to surrounding air temperatures which fall below 0°C. (32°F.), and which shall be measured and read in the manner prescribed in §18 of this part, for a period of more than 45 minutes unless such birds are accompanied by a certificate of acclimation to lower temperatures as prescribed in §13(c).

- b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live bird(s) contained therein.
- c) Primary enclosures used to transport any live bird(s) shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

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.

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.

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.