

Illinois Federation of Dog Clubs and Owners (IFDCO)
Position Statement on PUPS (Puppy Uniform Protection and Safety) Act
H. R. 835 and S. 707
April 8, 2011

OPPOSE as currently written

Name and number of bills

Puppy Uniform Protection and Safety Act
House of Representatives Bill 835

H.R. 835 was introduced in the House of Representatives on February 28, 2011 by Representative Jim Gerlach (R-PA).

Senate Bill 707

S. 707 was introduced in the Senate on March 31, 2011 by Senator Richard Durbin (D-IL). Complete copies of these bills can be found on the Library of Congress "Thomas" website.¹

Summary of Reasons to Oppose:

- **"Co-ownership" questions would be raised by these bills and would prove problematic to quality purebred dog breeders of various registries**
- **Would force licensing for many hobby breeders under current federal Animal Welfare Act (AWA) regulations, which most home breeders would be unable to meet**
- **Would not improve conditions for dogs residing in substandard kennels of known current AWA violators**
- **The need for the stated exercise requirements, intended for all AWA breeder licensees, is not scientifically proven**
- **Would decrease the number of quality purposefully-bred puppies available for purchase by the American public**

Background

Under current regulations contained in the federal Animal Welfare Act (AWA), dog breeders who do not buy dogs for resale, sell only animals they produce, and sell puppies and dogs directly to the end purchaser for the purchaser's own use ("retail sales") without any sales to brokers, dealers, or pet stores, are exempt from licensing requirements.² Additionally, even if this "retail sales only" exemption is not met, breeders who gross less than \$500 annually from sales of these animals³, or who own 3 or fewer "breeding females" and who sell their offspring as pets, are likewise exempt⁴. Thus, "hobby breeders" of purposefully bred dogs are generally excluded from licensing under this Act. Pet stores that sell puppies and other animals are also excluded, provided that the wholesaler sources of the pets sold in these stores are licensed under the AWA.⁵ The AWA is administered by the Animal and Plant Health Inspection Service (APHIS) under the auspices of the United States Department of Agriculture (USDA).

This "retail sales" exemption is a longstanding one, and has survived a past major court challenge seeking to force its change. In 1998, a rule-making petition was filed by the Doris Day Animal League (DDAL), requesting that the USDA no longer exempt residential operations from AWA licensing and other regulations. In response, the USDA proclaimed the Department's intention of continuing this exemption, defending this position by saying that it was best for the Department to "concentrate [its] resources on those facilities that present the greatest risk of noncompliance with the regulations", and thereby focus only on wholesale dealers. Further reasons given by the USDA in support of this stance included the "self-regulation oversight" for

retail dealers as compared with wholesalers, as well as the numerous state and local laws already in existence which cover these retail operations. The legality of the "retail pet store" exemption later came under judicial review, when DDAL filed suit against Ann M. Veneman, then Secretary of the USDA, seeking to force a change in USDA policy, and end this exemption for "retail sales" breeders. In January 2003, the U.S. Circuit Court of Appeals, District of Columbia, upheld USDA's decision to continue the "retail sales" exemption contained in the AWA. Concluded the Appeals Court, "[t]he Department has decided to focus on wholesale dealers, where its resources are likely to yield the greatest benefit. This is a reasonable choice, keeping in mind the purpose of the Act to promote animal welfare."⁶

In May, 2010, the USDA Office of the Inspector General (OIG) released a report, "Animal and Plant Health Inspection Service, Animal Care Program, Inspections of Problematic Dealers."⁷ This report focused on APHIS inspection of already known and licensed "problematic dealers", 50 breeders and 18 brokers, all currently licensed under the AWA, and all with at least one previous violation under this Act. Many of the violations observed and documented during the audit period were of a highly serious nature, including several that resulted in deaths of the licensees' dogs. Several cases of previously cited unlicensed substandard breeders, who chose to remain unlicensed due to the relatively insignificant monetary penalties assessed by APHIS, were also described. The report detailed many APHIS inspection deficiencies, including ineffective enforcement processes, insufficiently prepared violation documentation, and the Inspectors' misuse of APHIS guidelines to improperly lower penalties assessed these continual violators. There is no question that the substandard practices of these "problematic breeders", abhorrent to everyone, should be remedied, and that AWA regulations should be fairly enforced against all breeders that are required to be licensed under existing wording of this Act.

Supposedly in response to these ongoing APHIS enforcement problems, as well as to close a purported "Internet sales loophole" allegedly used by certain dog breeders to evade AWA licensing, Senator Richard J. Durbin (D-IL) along with Senator David Vitter (R-LA), introduced the PUPS (Puppy Uniform Protection and Safety Act) bill in the U.S. Senate on May 25, 2010⁸, according to a press release appearing on Senator Durbin's official website and carried by various news media outlets.⁹ Representative Sam Farr (D-CA) introduced a similarly worded bill in the House on May 27, 2010.^{10,11} While the OIG report briefly refers to "some large breeders [who] circumvented AWA by selling animals over the Internet" as an area requiring scrutiny under the AWA, it is clear that this is not the major focus of their report. Additionally, there is no hard substantiation offered in the OIG report validating the need to pull these "Internet breeders" under the umbrella of the AWA via new regulations, such as contained in PUPS. Allegations concerning these "Internet breeders" are quite unlike the well-documented cases in the OIG report that described ongoing substandard practices among already licensed breeders, as well as the "wholesale" breeders who illegally refused licensing. Indeed, the OIG audit listed only four cases which mentioned unhealthy puppies, sold over the Internet, and purchased by pet owners from supposedly unlicensed breeders: one case from their own OIG hotline, a second from a Better Business Bureau website response page, and two quoted from popular media articles. The OIG offered no further substantiation, such as veterinarian records, photos, or personal examination of the puppies, to validate the puppy purchasers' statements regarding the puppies' ill health. Significantly more hard data and evidence should be required to understand the scope and magnitude of the supposed "Internet breeder" phenomenon prior to proposing legislation, to best determine what type of legislative solution is needed, or even if new regulations are needed at all. Both the Senate and the House 2010 PUPS bills did not receive sufficient support in their respective houses, and both died at the end of the 111th Congress without being voted on.

In the opening months of the 112th Congress, Representative Jim Gerlach (R-PA) introduced a new version of PUPS, H.R. 835, the text of which appeared identical to the PUPS bills of 2010.

Co-sponsors of the 2011 PUPS include Representatives Sam Farr (D-CA), Lois Capps (D-CA) and Don Young (R-AK). In support of the 2011 PUPS bill, Representative Gerlach presented arguments similar to those of Senator Durbin in 2010. Referring to what he termed the "Internet loophole", Gerlach stated that this legislation "would prevent puppy mill owners from exploiting a loophole in the federal law". Gerlach also repeated this bill would ensure that dogs at "these commercial breeding facilities" would receive "daily exercise", and he pledged to continue to work with both his colleagues and the "Humane Society" on this bill.¹² Senator Richard Durbin (D-IL) also introduced a Senate version identical to that of the House.¹³

What is highly puzzling, however, is that these 2010 and 2011 PUPS bills only address a minor concern named in the OIG report: dog breeders that sell more than 50 dogs per year directly to the public and who are not currently required to be licensed under the AWA. PUPS therefore ignores the major problem described in the OIG report, namely, the inability of APHIS to enforce current AWA regulations against those licensed commercial breeders who incur repeat violations. In addition, Durbin's 2010 bill "also requires that dogs in commercial breeding facilities have appropriate space and opportunity for regular exercise" according to his press release, and Gerlach made a similar claim for the 2011 PUPS bill. However, nowhere in the OIG report is the need for additional regulations to address this "lack of space and opportunity for regular exercise" mentioned! As documented in the OIG report, the USDA already finds itself challenged to enforce the existing AWA regulations. Should the AWA amendments found in PUPS become enacted into law, USDA would be forced to use its limited resources to inspect and license an entirely new segment of breeders, pulling time, money, and attention away from these repeat AWA violators so clearly documented in the 2010 OIG report.

As of this date (March 15, 2011), the FY 2012 federal Budget has a proposed appropriation for APHIS programs of \$837 million, which is 8.3% or \$76 million lower than the amount appropriated for APHIS in FY 2011.¹⁴ It appears uncertain how PUPS backers believe they will obtain additional funding needed for the greatly increased licensing and enforcement policies that PUPS would mandate. What is clear is that PUPS would not improve care and treatment of dogs found in these substandard facilities described in the OIG, which are already in violation of the current AWA.

Analysis: New "High Volume Retail Breeder" category

New breeder category to be licensed under the AWA: PUPS would provide for a new category of breeder, "High Volume Retail Breeder", as one needing USDA licensing under the AWA, and defined on the basis of ownership interests in one or more "breeding female dogs", and sales by any means of more than 50 of the offspring of these "breeding female dogs" in any 1-year period:

- (B) HIGH VOLUME RETAIL BREEDER- The term 'high volume retail breeder' means a person who, in commerce, for compensation or profit—
 - (i) has an ownership interest in or custody of 1 or more breeding female dogs; and
 - (ii) sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of the offspring of such breeding female dogs for use as pets in any 1-year period.

"Breeding female dogs" is defined as follows:

- (A) BREEDING FEMALE DOG—The term 'breeding female dog' means an intact female dog aged 4 months or older.

In other words, any breeder who owns (or co-owns) one or more intact bitches four months of age and older, and – with the total sum of such bitches owned or co-owned – produces more than 50 puppies in any one year period, must now be licensed under the AWA.

Co-ownership questions: PUPS would open up a very onerous situation for many of the best purebred dog breeders of the American Kennel Club (AKC), United Kennel Club (UKC), and other major purebred dog registries, where co-ownership of valuable animals is not only accepted, but encouraged. These co-owned bitches do not normally live in the home of the breeder, yet their offspring would count towards the 50 puppies required for licensing. Even worse, it is very possible that these breeders would, under PUPS, be made responsible for the care and conditions provided for co-owned bitches and their litters residing in distant states from the breeder. Without doubt, this would set up excessive liability for these breeders, and force a reassessment of the entire co-ownership concept, to the detriment of the breeders, the registries, and the dogs themselves.

Definition of “breeding female dog”: Also unsettling is how a “breeding female dog” is defined to be such at four months of age, if intact. Bitches are not biologically capable of being bred at four months of age; therefore, the use of this age is not scientifically supportable. Additionally, “breeding females” would include puppies not intended to be bred until a more mature age; young bitches left intact until a better evaluation of their working talents could be made; elderly intact bitches well past a breedable age; bitches left intact for reasons of veterinary recommendation; or bitches left intact for show, working ability, or any other purpose, even if the bitch was not intended to be bred that year, or ever. Additionally, mandatory spay-neuter laws with a four-month age limit are increasingly being passed across the United States, illustrating the goal of Animal Rights activists to have all dogs spayed or neutered before any reasonable breedable age is achieved. Might the wording of PUPS be interpreted as extra coercion towards having co-owned bitches spayed rather than left intact?

Given the second requirement of more than 50 puppies sold or offered for sale needed to trigger the licensing threshold for a “High Volume Retail Breeder”, the fact that only one “breeding female dog” is included appears odd, given that it is biologically impossible for even the best producing bitch to produce 50 saleable puppies in a one year period! However, the “one breeding female dog” might be a omen of further AWA revisions to come, in which the number of puppies sold is reduced to that more harmonious with what a “breeding female dog” can reasonably be expected to whelp in a given year.

Use of term “sells or offers for sale”: The term “sells or offers for sale” adds further potential complications to these bills. As any long-term breeder knows, the number of puppies the breeder “offers to sell” in any given time period does not mean that all those puppies were actually sold. Perhaps, for example, the number of puppies actually produced was not the optimistic number that the breeder had buyers for, or perhaps a poor economy forced buyers to back out of the deal at the last minute, leaving those puppies unsold. Yet, the breeder would still be classified by the number he or she “offered to sell” in any given year, as opposed to the actual number of puppies sold.

More than just “commercial breeders” who sell via the Internet will be impacted: In Senator Durbin’s May 25, 2010 press release announcing the introduction of PUPS, he stated that the purpose of the bill is to “close the loophole that allows large breeders to sell puppies online, escaping inspection and oversight.” Both Senator Durbin in 2010, and Representative Gerlach in 2011, referred to “commercial breeders” who sell puppies over the Internet as those who would be affected by PUPS wording by being pulled into coverage under the AWA.^{15,16} Quite to the contrary, however, is the bill’s text, which includes the phrase “sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of

the offspring....” This shows that the net is being cast wide to include all breeders that own or co-own at least one intact bitch and sell more than 50 puppies, not just those “commercial breeders” with these threshold numbers who sell “on the Internet.” Additionally, the bill does not make allowances for the many responsible breeders who make use of the Internet (or telephone, or newspaper) as initial first contact only, but who require a meeting in person with the potential purchaser, typically at the home of breeder, prior to the finalization of the sale.

Consequences of the bill for the home hobby breeder: These bills pose enormous ramifications for a home hobby dog breeder that would now be defined under the Animal Welfare Act as a “High Volume Retail Breeder.” In order to be licensed, they would have to be inspected through APHIS to ensure that their facility (i.e., their home in most cases) meets the engineering standards required for a commercial USDA-licensed kennel. Unless such a breeder keeps their dogs kenneled in a separate portion of the home, and away from the “human” home proper, it would be difficult to meet the minimum AWA-mandated engineering standards as directed. Several obvious conflicts arise when attempting to apply the specific kenneling standards contained in the AWA to the typical residential home where most dogs owned by hobby breeders live. These conflicts include:

1. The AWA requires that all walls, floors, and other surfaces in direct contact with dogs must be of a substance “impervious to moisture”.¹⁷ Therefore, carpeting, uncoated wood flooring, upholstered furniture, wallpaper, and fiber matting would generally not be considered as acceptable surfaces in areas of the house in which the dogs live. These materials, however, are extremely common in typical homes, including those of hobby breeders who do not require licensing under the current law.
2. Under the current AWA, “primary enclosure” surfaces and food and water bowls must be sanitized at least once every two weeks using one of the following allowed methods of cleaning: live steam under pressure; hot (minimum 180° F) water combined with soap or detergent; or a professional mixture of detergent with disinfectant.¹⁸ These cleaning methods are not readily available to a typical home owner, who maintains their dogs in their residence. These methods may also not be necessary on a frequent basis for an owner with only a small number of dogs living with the owner in his or her home.
3. The required size of primary enclosures is not in conformance with standard crate sizes for home use. According to dog breeder regulations found in the AWA, a “primary enclosure” (e.g., crate or pen) as defined must have the following square footage: (length of the dog in inches + 6 inches) x (length of the dog in inches + 6 inches) / 144, with “length of the dog” being measured from the tip of the dog’s nose to the base of the dog’s tail. In addition, the required height of the enclosure must be at least 6 inches taller than the dog when it is in a standing position.¹⁹ The results of these calculations provide for a much larger crate size than standard sizes generally used in a home. While perfectly desirable for dogs confined for long periods of time, such as at a professional kennel, these required enclosure sizes do not take into account that a dog which resides in a home with humans is typically crated only for a portion of the day, for example, while the owners are at work, and has the run of the house or yard at other times. Therefore, these mandated crate sizes are unrealistic and unnecessary for home use.
4. AWA regulations state that breeders are not to house their dogs with other species unless the two species are “compatible.”²⁰ Many hobby breeders house other mammalian and non-mammalian species in their residence along with their dogs, in long-term safety and harmony for all of their pets. Should the “primary enclosure” for these dogs be the owner’s residence, shared with other species, it is unclear how an APHIS Inspector would view these multi-pet species households.

Potential impact on the rescue and shelter community: While not specifically aimed at dog rescues and shelters, there is no explicit exclusion made for breed rescues, private shelters, or

public shelters from the regulations detailed in PUPS. It is very common for dog rescuers to take possession of bitches in whelp, or bitches with an unweaned litter of puppies, with the goal of adoptions of both puppies and the dam once the puppies are weaned. Should such a rescue or shelter place more than 50 puppies a year from bitches over which they have possession, and should "adoption", normally done for a fee, be interpreted as a "sale" under the language of these bills, it would be very possible that such a rescue or shelter would be construed as a "High Volume Retail Breeder". This would require these shelters and rescues to become licensed as "High Volume Retail Breeders", and meet all AWA requirements regarding facilities and care of dogs. Additionally, purebred kennels occasionally need to be liquidated due to the sudden death or disability of their owners, requiring emergency placement of their dogs. Often, other recognized breeders, acting out of a sense of responsibility to their breed and concern for these dogs, will step in and take temporary possession of these dogs and then seek suitable homes for them. Again, should they take ownership of bitches in whelp, or bitches with an unweaned litter, the puppies later placed may quite easily put these breeders over the "more than 50 puppies sold or offered for sale" stipulation in these bills, requiring licensing as a "High Volume Retail Breeder", even if they were not the original breeder of that litter. This might cause them financial and legal hardship if they were not previously required to be licensed under the AWA.

Potential impact on kennels primarily selling dogs for working tasks instead of as "pets": The phrase "more than 50 of the offspring of such breeding female dogs for use as pets" would seem to indicate that breeders raising dogs specifically for working roles (such as police dog, guard dog, livestock guardian or herder, service dog, hunting dog as owned by a professional, etc.) would be exempted from specifications of these bills. However, this interpretation is probably not correct. Even the best breeder of "working dogs" produces a fair number of puppies that simply would not make the grade as "working dogs", and which are therefore sold simply as "pets", or sold to amateurs or hobbyists in these fields. Additionally, the roles of "working dog" and "family pet" are often blurred. For example, a hunting dog or herding dog may "work" only a portion of each year, and spend the remainder of the year as a personal pet. Therefore, a number of sales from these "working dog" kennels could well be included in the over 50 offspring sold "for use as pets" requirement and mandate licensing of their breeders.

Additional funding would be required by APHIS for enforcement of the AWA in order to include the additional large category of "High Volume Retail Breeders": Neither Senator Durbin in 2010 nor Representative Gerlach in 2011 provided new sources of funding for APHIS enforcement of these new AWA provisions. Particularly just after this new breeder category licensing would go into effect, when pre-licensing inspections would be required, APHIS inspectors would have a much greater workload than in the past. Unless additional funds can be found to support and train the additional number of APHIS inspectors required for enforcement, inspection time and attention would be pulled away from the problematic already-licensed breeders, as well as breeders who should be currently licensed but aren't, that were described in the 2010 OIG audit. There is no indication that the overall welfare of breeding dogs would improve should APHIS focus on this new segment of AWA licensed breeders, as stipulated in PUPS. To the contrary, in fact, should PUPS be enacted into law, known problem licensed breeders, with ongoing and multiple serious violations, would receive less APHIS attention than in the past. No incentives would exist for these substandard breeders to improve the care and treatment of their dogs. Any new funding sources that come about should be aimed directly at the problematic licensed breeders described in the OIG report, to better attempt to make certain that these breeders come into compliance with the AWA regulations, in addition to addressing the OIG-described concern of breeders who should be licensed under current AWA wording but who are not.

Exactly who will enforce this new High Volume Retail Breeder category is uncertain, should it prove beyond the scope of APHIS: Given the multiple serious ongoing violations of

existing AWA dog breeder licensees as described in the OIG report, APHIS may not have sufficient resources to oversee this new breeder classification. Since current APHIS resources are probably inadequate for enforcement of regulations pertaining to this new large category, there are grounds for concern that oversight and enforcement may occur, formally or informally, via one or more of the major animal welfare (“animal rights”) organizations. Not only do these organizations lack scientific knowledge of animal husbandry to be able to effectively oversee these regulations for the benefit of dogs owned by this new breeder category, but such organizations might have hostile intentions towards certain sectors of the breeding community.

Analysis: Exercise Requirements

PUPS would provide for new exercise requirements for breeders already licensed under the AWA, as well as for breeders in the new “High Volume Retail Breeder” category, as follows:

- (1) IN GENERAL- Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate standards covering dealers that include requirements for the exercise of dogs at facilities owned or operated by a dealer, including exercise regulations that ensure that—
 - (A) each dog that is at least 12 weeks old (other than a female dog with unweaned puppies) has daily access to exercise that—
 - (i) allows the dog—
 - (I) to move sufficiently to develop or maintain normal muscle tone and mass as appropriate for the age, breed, sex, and reproductive status of the dog; and
 - (II) the ability to achieve a running stride; and
 - (ii) is not a forced activity (other than a forced activity used for veterinary treatment) or other physical activity that is repetitive, restrictive of other activities, solitary, and goal-oriented;
 - (B) the provided area for exercise—
 - (i) is separate from the primary enclosure if the primary enclosure does not provide sufficient space to achieve a running stride;
 - (ii) has flooring that—
 - (I) is sufficient to allow for the type of activity described in subparagraph (A); and
 - (II)(aa) is solid flooring; or
 - (bb) is nonsolid, nonwire flooring, if the nonsolid, nonwire flooring—
 - (AA) is safe for the breed, size, and age of the dog;
 - (BB) is free from protruding sharp edges; and
 - (CC) is designed so that the paw of the dog is unable to extend through or become caught in the flooring;
 - (iii) is cleaned at least once each day;
 - (iv) is free of infestation by pests or vermin; and
 - (v) is designed in a manner to prevent escape of the dogs.

Lack of definitions of terminology make requirements, as well as enforcement, unclear, subjecting breeders to unwarranted citations: Two key phrases, “running stride”, and “normal muscle tone and mass”, are not defined in the bill, and could be interpreted in a number of ways without additional details. Licensed breeders would not know how to modify their facility to provide for the fulfillment of these requirements, possibly placing the breeder in violation of the amended AWA should their interpretation be different from that of an APHIS Inspector.

Lack of scientific justification that these exercise requirements are needed: Curiously, “Exercise Requirements” as described in the 2010 and 2011 PUPS bills are nearly identical to

those recommended in the new American Veterinary Medical Association (AVMA) "Model Bill" and "Model Regulations" compiled on April 9, 2010,²¹ and released to the public in an AVMA Press Release dated June 3, 2010.²² In the related paper, "Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets: Background and Context" (April 9, 2010), the AVMA attempts to justify the use of "performance standards" (i.e., "achieve a running stride" and "develop and/or maintain normal muscle tone and mass as pertinent for age, breed, sex, and reproductive status of the dog") as compared with what they term "stringent exercise requirements" regarding size and type of exercise area, or rigid time allotment for exercise.²³

However, even with the citations provided by the AVMA in their "Background and Context" paper in support of these Model Bill and Regulations canine exercise requirements, there remains a striking lack of proof that such exercise improves the physical or psychological well-being of a majority of dogs in such programs. In fact, one study cited by the AVMA, Campbell et al. (1988), actually show little or no benefit to dogs either from structured/repetitive exercise, or from opportunity to exercise freely in an individual enclosure of sufficient space, or ability to exercise in a compatible group. These researchers concluded: "There were no significant differences in laboratory findings among dogs in the four groups. This moderate exercise program had no demonstrable effects. Similarly, continuous cage housing, without a formal exercise program, could not be determined to be detrimental to the physiologic or health status of dogs."²⁴ As with any other facet of animal husbandry, it is important to institute dog care regulations and procedures which are supportable by scientific studies as beneficial to the animals, and not propose sweeping changes based upon supposition of what dogs in an ideal state might need.

That is not to say that evidence might not be produced in the future to show that such required exercise provides health and well-being advantages to the majority of dogs owned by breeding kennels. Perhaps such benefits would be found restricted to certain breeds, ages, living conditions, or health or injury status. But clearly, at this time, there is a lack of hard evidence to show that specific exercise requirements mandated by PUPS would significantly benefit a majority of dogs owned by all breeders and dealers which are to be covered under the amended AWA. Therefore, animal husbandry standards covering AWA-licensed breeders should not include exercise standards until more evidence is found proving clear benefits for dogs would be gained by such a program.

One discrepancy in the language between PUPS and the AVMA Model Bill and Regulations is that PUPS apparently prohibits "goal-oriented" exercise²⁵, while the AVMA Model Regulations support "goal-oriented" exercise, disfavoring other forms of exercise²⁶. Since this analysis is an examination of the wording found in PUPS, our discussion will be limited to a literal interpretation of the PUPS language, and not speculate as to the underlying intentions of this wording, or whether there was a mistake in transcribing wording from one document to another when PUPS was being written. A disavowing of "goal oriented" exercise for dogs as written in PUPS is actually on very tenuous grounds scientifically, since adult wild canids exhibit primarily goal-oriented activities, such as searching for food and mates, and daily movements between shelter and water, and such instinctual behavior undoubtedly carries over to an extent in our own domesticated dogs.

"Forced", "repetitive", "restrictive", "solitary" or "goal oriented" (PUPS wording) activities cannot be counted as exercise under these requirements, unless performed under the order of a veterinarian: Should PUPS amend the existing AWA, these specifications would have a number of negative ramifications for both dogs and breeders, including:

1. Many show breeders living in colder, snowier climates use indoor treadmills during the winter months to keep their dogs in condition when prolonged outside activities are less

inviting for both dogs and their owners. Use of treadmills for this purpose apparently could not fulfill the PUPS “exercise requirements”, and some other exercise program for the winter months would have to be designed. Perhaps a special indoor exercise facility would have to be constructed by the breeder at great expense to fulfill these requirements

2. Probably being defined as “goal oriented”, purposeful training activities, such as hunting, tracking, agility, obedience, and herding, apparently cannot be counted as fulfillment of these exercise requirements in PUPS, no matter how well they condition the dog physically and mentally, nor the level of enjoyment that the dog receives from these pursuits. Breeders licensed under the PUPS language to be included in the AWA would probably be forced to institute other exercise programs even for their working dogs, in addition to or even in place of their current training regimens.
3. Owners who are elderly, disabled, or recuperating from illness or injury, and who are therefore unable to assist the dogs in an exercise program, will often use treadmills, or “repetitive activities” such as ball tossing to provide their dogs with meaningful exercise. Disallowing these, and mandating other forms of exercise, may make it more difficult for these breeders to maintain their AWA license, despite the overall good care they otherwise provide their dogs.

A question exists if natural surfaces (such as vegetated surfaces, bare dirt, sand, or pea gravel) would be allowable in this exercise area: The exercise requirements mandate that the floor of the area to be so utilized must be “cleaned once a day” and is “free from pests and vermin”. A scrupulous application of these terms might rule out “natural” surfaced exercise quarters, no matter how careful the owner was regarding sanitation and pest control of this area.

Even though approved wire flooring is acceptable under current AWA standards²⁷, PUPS specifically states that wire flooring cannot be used as a surface on which these exercise requirements would be met. Even if the “primary enclosures” are deemed to be sufficient size to meet these new exercise requirements, and are well-maintained and are in conformance with AWA specifications, they would need to be replaced should they have wire flooring due to these mandated exercise areas specifications contained in PUPS. Wire flooring has proven useful in larger kennels for reasons of sanitation, dryness, and warmth; there is no reason given in PUPS why these would not be acceptable as flooring in exercise enclosures in addition to primary enclosures.

Analysis: Section 3, Regulations to be later promulgated

Exact methodology of enforcement unknown at the time of the bill’s passage: PUPS Section 3, Regulations, states:

Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall promulgate any regulations that the Secretary determines to be necessary to implement this Act and the amendments made by this Act.

It is not uncommon for bills to be passed in summary form, with the exact regulations and enforcement to be clarified at a later date by administrative rule or other non-legislative means. However, with these bills, there is great concern within the dog breeding community that specific methodologies of enforcement as later written would prove unworkable for a large number of breeders, forcing them to give up their hobby or livelihood.

Final Thoughts

There is no doubt that Senators Durbin and Vitter and Representative Farr in 2010, along with Senator Durbin and Representative Gerlach in 2011, had good intentions with the introduction of the PUPS bills. However, there is also no reason to believe that animal welfare would be improved should the current AWA be amended by the new regulations contained in PUPS. More likely, with reduced APHIS attention spent on known licensee violators, additional serious violations would occur among the “problematic breeders” who are already licensed under current AWA provisions. The result would be higher numbers of dogs becoming ill or injured, or even dying, while under the care of these substandard breeders. New licensing requirements for home hobby breeders would drive many away from this pursuit, lowering numbers of quality purposefully bred puppies available for the American public. It would become increasingly difficult for a pet purchaser to obtain a healthy, socialized puppy with a known pedigree, since the numbers of unregulated and “underground” breeders, producing puppies of questionable health and temperament, would proliferate, as would sources of “random bred” puppies. Potential negative implications from these bills exist also for kennels producing dogs for professionals. Even the rescue community may be substantially harmed by PUPS. Finally, the bill’s provisions show neither an application nor understanding of scientific animal husbandry principles. Therefore, these bills must be opposed in their entirety.

Citations

¹ Puppy Uniform Protection and Safety Act, H.R. 835. Introduced February 28, 2011, 112th Congress. United States Library of Congress THOMAS. < <http://thomas.loc.gov/> >

² 9 CFR Ch. I (1–1–08 Edition) § 2.1(3)(vii) “Any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer’s own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and is not otherwise required to obtain a license.”

³ 9 CFR Ch. I (1–1–08 Edition) § 2.1 (3)(ii) “Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license.”

⁴ 9 CFR Ch. I (1–1–08 Edition) § 2.1(3) (iii) “Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.”

⁵ CFR Ch. I (1–1–08 Edition) § 2.1 (3)(i) “Retail pet stores which sell non-dangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only: Provided, That, Anyone wholesaling any animals, selling any animals for research or exhibition, or selling any wild, exotic, or nonpet animals retail, must have a license.”

⁶ Doris Day Animal League, et al., Appellees v. Ann M. Veneman, in her official capacity as Secretary, United States Department of Agriculture, et al., Appellants Appeal from the United States District Court for the District of Columbia (00cv01057). United States Court of Appeals For the District of Columbia Circuit. Argued November 4, 2002. Decided January 14, 2003. No. 01-5351.

⁷ U.S. Department of Agriculture, Office of the Inspector General. “Animal and Plant Health Inspection Service Animal Care Program, Inspections of Problematic Dealers.” Audit Report 330002-4-SF. May, 2010. < <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf> >

⁸ Puppy Uniform Protection and Safety Act, S. 3424. Introduced May 25, 2010, 111th Congress. United States Library of Congress THOMAS. < <http://thomas.loc.gov/> >

⁹ Durbin Calls for Stronger Policing Standards for Puppy Mills. (May 29, 2010). Press Release - United States Senator Dick Durbin. ENews Park Forest. < <http://www.ewnespf.com/index.php/latest-news/latest-local/16676-durbin-calls-for-stronger-policing-standards-for-puppy-mills-> >

¹⁰ Farr Bill Would Close Loophole on Dog Abuse. (2010 Press Release.) United States Representative Sam Farr (official website.) < http://www.farr.house.gov/index.php?option=com_content&view=article&id=701:may-27-2010-farr-bill-would-close-loophole-on-dog-abuse&catid=29:2010-press-releases&Itemid=31 >

¹¹ Puppy Uniform Protection and Safety Act, H.R. 5434, 111th Congress. Introduced May 25, 2010. United States Library of Congress THOMAS. < <http://thomas.loc.gov/> >

¹² Gerlach reintroduces measure to protect pet owners, crack down on puppy mills. (February 28, 2011). Press Release, Rep. Jim Gerlach (R-PA). < <http://gerlach.house.gov/News/DocumentSingle.aspx?DocumentID=226953> >

¹³ Durbin Introduces Bill to Regulate Online Puppy Sales. (April 1, 2011). Press Release, Sen. Dick Durbin (D-IL). < <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=c493894f-5e1d-4fa5-beb4-bc2127ba1835> >

¹⁴ Vilsack, Thomas. (March 1, 2011). Statement by Thomas Vilsack, Secretary of Agriculture, Before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. Committee on Appropriations, U.S. House of Representatives. < <http://appropriations.house.gov/files/2012VilsackStatementforRecord.pdf> >

¹⁵ Durbin Calls for Stronger Policing Standards for Puppy Mills. (May 28, 2010). United States Senator Dick Durbin (official website.)

¹⁶ Gerlach reintroduces measure to protect pet owners, crack down on puppy mills. (February 28, 2011). Press Release, Rep. Jim Gerlach (R-PA). < <http://gerlach.house.gov/News/DocumentSingle.aspx?DocumentID=226953> >

¹⁷ 9 CFR Ch. I (1-1-08 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. § 3.2 Indoor housing facilities.

¹⁸ CFR Ch. I (1-1-08 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Animal Health and Husbandry Standards. § 3.11 Cleaning, sanitization, house-keeping, and pest control.

¹⁹ 9 CFR Ch. I (1-1-08 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Facilities and Operating Standards. § 3.6 Primary enclosures. “(c) Additional requirements for dogs—(1) Space. (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) × (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/ 144 = required floor space in square feet... (iii) The interior height of a primary enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.”

²⁰ 9 CFR Ch. I (1-1-08 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Animal Health and Husbandry Standards. § 3.7 Compatible grouping. “Dogs and cats that are housed in the same primary enclosure must be compatible, with the following restrictions... (d) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible...”

²¹ Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets. (April 9, 2010.) American Veterinary Medical Association. < http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regulations.pdf >

²² AVMA offers guidance for states regulating dog breeders, retailers. (June 3, 2010). American Veterinary Medical Association. < http://www.avma.org/press/releases/100603_guidance_states_regulating_dog_breeders_retailers.asp >

²³ Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets: Background and Context. (April 9, 2010). American Veterinary Medical Association.

< http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regs_Backgrounder.pdf >

²⁴ Campbell SA, Hughes HC, Griffin HE. (1988). Some effects of limited exercise on purpose-bred dogs. American Journal of Veterinary Research, 1988:49:1298-1301.

²⁵ “(j) Exercise Requirements—... (ii) is not a forced activity (other than a forced activity used for veterinary treatment) or other physical activity that is repetitive, restrictive of other activities, solitary, and goal-oriented.”

Puppy Uniform Protection and Safety Act, H.R. 835. Introduced February 28, 2011. United States Library of Congress THOMAS.

²⁶ “e. Locomotion ...iii. Forced activity, other than for veterinary treatment, is neither sufficient nor appropriate for fulfilling these needs. Physical activity that is repetitive, restrictive of other activities, solitary, and not goal-oriented is neither sufficient nor appropriate for fulfilling all activity needs.” Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets. (April 9, 2010). American Veterinary Medical Association.

< http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regulations.pdf >

²⁷ 9 CFR Ch. I (1-1-08 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. § 3.6 Primary enclosures. “On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a)(2). If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.”