



NAIA Animal Policy Review

A publication of the National Animal Interest Alliance dedicated to analysis of legislation, regulations, and policies that affect animals and animal owners

Summer 2012

©2012 NAIA

USDA draft rule brands home breeders as commercial operators

Fact sheet is at odds with rule proposal

The US Department of Agriculture issued a draft amendment to Animal Welfare Act regulations that the agency says will place an additional 1500 pet breeders under federal oversight.(1)

The proposed rule tightens the definition of retail pet store to eliminate the retail sales exemption for high volume breeders but also classifies home hobby breeders as commercial operators under some circumstances.

The fact sheet(2) that accompanies the proposal contradicts a major component of the draft rule — the mandate that retailers require all buyers to visit their premises to select their puppy or to take delivery. Instead, in direct conflict with the proposal, the fact sheet states that breeders can deliver



Hobby breeders get their puppies outdoors for a romp and a meal so they can learn about different environments before going to their new homes. Under the USDA draft rule, these breeders could be labeled as commercial kennels if they sell puppies to buyers who have not visited their kennels.

puppies to buyers at a different location.

The draft is an apparent reversal of opinion from the agency's 2002 position that narrowing the definition of retail outlet to brick and mortar pet stores would strain agency resources and place federal inspectors in private homes. At that time, officials affirmed the licensing exemption for purebred

Continued on page 3

Egg farmers are trapped between a rock and a hard place

Eggs are a nutritious staple on American tables, and the 200-plus egg farmers that supply them fill a unique niche in our food chain. Unlike farmers who raise livestock for meat, egg farmers operate vertically integrated businesses ... they raise the chicks; house the hens; collect, sort, grade, and package the eggs and take them to market.

Many egg farms are second or even third generation family operations. Through the years, they have adapted to market changes and improved efficiency through science and animal

husbandry expertise. In 1999, United Egg Producers, the industry cooperative, established a scientific committee to examine conventional hen housing practices. The long-term work of the committee resulted in a set of guidelines for optimum hen welfare and a determination to phase in a production system that provides sufficient space for the hens while guarding their health and well-being

But change takes time and money, a factor that allowed the

Continued on page 5

Contents

USDA draft rule brands home breeders as commercial operators	Front
Egg farmers are trapped between a rock and a hard place	Front
NAIA supports egg farmers	Page 5
NAIA lauds hobby breeders	Page 6
Judge allows circus racketeering suit to proceed against ASPCA, HSUS	Page 7
NAIA cheers Feld Entertainment	Page 7
Brave New World: The 2012 NAIA conference is November 10-11	Page 9
Windmills kill Americas eagles, hawks and songbirds but no on pays	Page 11

NAIA Animal Policy Review

Norma Bennett Woolf, editor

NAIA Animal Policy Review is published quarterly; All contents © 2012 NAIA



NAIA supports the responsible and humane use of animals for food, clothing, medical research, companionship, assistance, recreation, entertainment and education. For more information about NAIA and our mission to support responsible animal ownership, go to www.naiaonline.org and www.naiatrust.org

NAIA Board of Directors

Thomas L. Albert, Vice President, Government Relations, Feld Entertainment, Inc.

Lance H. Baumgard, PhD, Assoc. Professor, Nutrition & Physiology, Dept. of Animal Science, Iowa State Univ.

Nancy C. Campbell, Purebred dogs, legislation, rescue, health & welfare

Wendy Davis, Associate Coordinator of the University of Arizona's Race Track Industry Program

Anne Edwards, Pedigreed cats & cat welfare

Nancy Fisk, Dog enthusiast & boarding kennel owner

Arnold L. Goldman DVM, MS, MPH, president Connecticut Veterinary Medical Foundation

Marty Greer, DVM, JD, Canine reproduction & animal law, International Canine Semen Bank-Wisconsin

Dr. Alvin Grossman, Publisher, writer, & AKC dog judge

Donna Herzig, Attorney & advocate for responsible pet legislation

Larry S. Katz, PhD, Professor, Animal Sciences, Director, Rutgers Cooperative Extension - Rutgers Univ.

Patte Klecan, Pet care business & professions outreach

Kenneth A. Marden, Working dogs & canine sports

Paul Mundell, National Director of Canine Programs, Canine Companions for Independence

L. Gabriel Navar, PhD, Professor & Chairman, Dept. of Physiology, Co-Director, Hypertension & Renal Center of Excellence

Julian Prager, attorney, NAIA Legal Analyst & Legislative Coordinator

Cindy Schonholtz, Director of Industry Outreach, Professional Rodeo Cowboys Association

John Richard Schrock, PhD, Professor of Biology & Director of Biology Education, Dept. of Biological Sciences, Emporia State University, Emporia, Kansas

Robert C. Speth, PhD, Professor of Pharmacology, Univ. of Mississippi, Fellow of the American Assoc. for the Advancement of Science

Sharon K. Steckler, Attorney at Law & CPA, NAIA Secretary

Patti Strand, NAIA founder, purebred dog enthusiast, author & commentator on responsible pet ownership

Holly Stump, Biologist, purebred dogs, breed specific legislation, canine therapy work

Ellen Yamada, MS, dog breeder & advocate & writer on canine subjects,

USDA draft rule brands home breeders as commercial kennel operators

Continued from page 1

dog fanciers as retailers who do not need federal oversight.(3)

The appearance of the Internet as a marketing tool for commercial kennels to sell puppies sight unseen at retail caused the agency to reconsider. The resulting proposal does not differentiate between commercial breeders and home hobby breeders and fanciers; instead, it treats all breeders with more than four “breeding females”(4) as commercial operators unless all buyers visit the property where puppies are born and raised. It also mandates a license for breeders with fewer than five “breeding females” if they sell any animals not bred and raised on their premises.

Those who oppose the rule say that the USDA figure of 1500 additional kennels is based on flawed data.(5) They estimate instead that it will potentially add more than 10 thousand breeders who raise puppies in their homes as a hobby or avocation to safeguard the purebred dogs they love. They note that the rule ...

- ❑ fails to define “breeding female,” leaving it open to interpretation by the agency;
- ❑ requires a federal license unless all buyers visit the premises in conjunction with each sale;
- ❑ puts federal inspectors in private homes based on the notion that breeders who possess more than four undefined “breeding female” animals are commercial breeders;
- ❑ requires a license if the breeder sells a puppy or dog received from another breeder or source;
- ❑ counts dogs that are co-owned and do not live with the breeder as part of the allowed limit of four;
- ❑ counts “breeding females” of other species in the limit, so a breeder who has three female dogs may cross the threshold if she also breeds purebred cats or animals sold as pocket pets; and
- ❑ interferes with rescue efforts by individuals who also breed dogs.

These provisions cause great concern because ...

- ❑ many home breeders ship an occasional puppy to a buyer who does not visit their premises;
- ❑ home breeders of uncommon or rare breeds often send puppies to distant buyers in order to find appropriate homes and protect the breed’s genetic diversity;
- ❑ many home breeders occasionally meet buyers in a convenient location to transfer the puppy;
- ❑ many home breeders produce occasional litters of more than a single breed and thus may have more than four “breeding females;”

- ❑ many are also involved in rescue efforts for their breed and fear that the occasional rescue dog they place in a new home will be considered a sale of a dog not bred and raised on their premises; and
- ❑ many need or want the option to keep more than four “breeding females” for flexibility in breeding programs and the ability to evaluate up-and-coming dogs without being labeled as a commercial breeder subject to federal inspection.

The National Animal Interest Alliance and the American Kennel Club are among the organizations that oppose portions of this draft rule even though it closes a loophole that allows inspection of retail commercial kennels.

The Humane Society of the US, the American Society for the Prevention of Cruelty to Animals and other activist organizations support the rule.

The Animal Welfare Act

Congress approved the Animal Welfare Act in 1976 to regulate commercial animal breeders and dealers who sell pets through wholesale channels and are therefore not visited by the customers who buy their animals in pet stores. The AWA specifies that these breeders follow a set of standards for housing, exercise, and veterinary care to assure pet buyers that the animals are humanely raised.

In 1999, the Doris Day Animal League filed suit(5) to force USDA to also license retail outlets, including home breeders. DDAL won the suit in the trial court and USDA appealed. In 2002, the agency argued before the Ninth Circuit Court of Appeals that home breeders do not need federal oversight because they are not only covered by state and local ordinances but are often self-regulated through breed clubs and registries such as the American Kennel Club.

At that time, USDA said that Congressional intent was met by the current definition of retail pet store and gave several reasons why limiting the retail exemption to brick and mortar pet stores would be expensive, redundant, and an invasion of privacy.

“Third, we have determined that amending the definition of “retail pet store” to include only nonresidential, commercial retail businesses would not offer us the regulatory flexibility we need to concentrate our resources on those facilities that present the greatest risk of noncompliance with the regulations. If we were to amend the definition of “retail pet store,” it is conceivable that a significant portion of our annual personnel and financial resources would be used to regulate a very small fraction of the animals covered under our

Continued on page 4

USDA draft rule brands home breeders as commercial kennel operators

Continued from page 3

regulations. This disproportionate expenditure of funds would not be in the best interest of animal welfare.”(7)

The agency also noted that the change would put inspectors into private homes.

“Fifth, our inspectors would have to enforce cleaning, sanitation, handling, and other regulatory requirements in private homes, because most small retail dealers operate from their homes. Many commenters stated that they would regard this as an unnecessary intrusion by the Federal Government and a serious invasion of privacy.”(7)

In 2010, an audit conducted by the agency’s Office of Inspector General(8) concluded in part that some large volume breeders were avoiding inspection by selling animals directly to consumers over the Internet and shipping them to buyers sight unseen. The OIG recommended that the agency seek changes to bring these large volume sellers into the regulations.

The agency responded to the OIG report with a draft proposal that revokes the exemption for many home breeders by restricting the definition of retail outlet to stores or residences visited by buyers and limiting the number of “breeding females” each breeder can own.

Proposal vs fact sheet

As is customary with such proposals, the agency issued a fact sheet to help explain its rationale and answer potential questions about the draft language. On July 6, they issued an updated version of the fact sheet that contradicts the draft rule. The proposal states: “Specifically, we would narrow the definition of retail pet store so that it means *a place of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, ...*” (emphasis added)

and the fact sheet states: “Pet animal retailers *who sell their animals to their customers in face-to-face transactions at a location other than their own premises are subject to some degree of public oversight and therefore are not the focus of this proposed rule and would not need to obtain a license.*” (emphasis added)

In addition, although it does not specifically address rescue organizations that exhibit animals in retail outlets or other off-site locations, rescue groups appear to fall under the definition of dealer or exhibitor in the proposal, yet the fact sheet states that rescue groups are exempt from licensing.

Show and performance dog breeders

Although several pet species are included in the proposal,

home breeders of dogs are likely to be hardest hit by the new regulation. These are people who have made a lifestyle choice to be exemplary breeders of healthy purebred puppies. They follow local and state laws; attend educational seminars to improve their husbandry skills and to understand a broad spectrum of housing, training, and health subjects; and are touchstones for pet owners who need advice about choosing a breed, socializing and training a new puppy or dog, finding a training club, or getting involved in dog sports or therapy work.

Unlike commercial breeders who maximize puppy production, show and performance dog breeders generally produce relatively few litters over a long period of time. Both sell puppies as pets, but the home breeders who produce a few litters here and there also support a broad spectrum of dog-related activities and associated businesses. They work through local, regional, and national clubs to host thousands of events that judge dogs on structure, movement, and temperament as well as the ability to perform various sets of general or breed-specific skills – all qualities that help them produce puppies that are physically and mentally healthy. They follow codes of ethics, screen their dogs for health problems, sponsor canine health clinics, donate to dog-related charities and health research projects, participate in breed rescue efforts, and help pet owners train their dogs.

Most show and performance dog breeders raise dogs and litters in their homes or in small home kennels, situations that allow for close supervision of mother and puppies and puppy acclimation to household sights, sounds and smells. Even if a breeder is willing and able to modify his home or small kennel to meet the regulations, he may be forced out of breeding by local zoning ordinances or other laws that prevent such modifications.

Consumers

Dogs are not “one-size-fits-all”; they differ in size, shape, coat type, trainability, exercise needs, behavior traits, and problem-solving ability. The variety of breeds allows people to select one that fits their lifestyle and preferences and the presence of a network of show and performance dog breeders provides the opportunity to purchase the right puppy at the right time.

Consumers come in all shapes and sizes as well. Male and female; young and middle-aged and senior; suburbanites, urbanites, and rural residents; home owners and apartment dwellers; healthy and not so healthy. Each type of person in each life situation now has a broad choice of breeds, a choice that will disappear if breeders are forced to apply for federal li-

Continued on page 6

Egg farmers are trapped between a rock and a hard place

Continued from page 1

Humane Society of the US and other activist groups to push their agenda of cage-free confinement for egg-laying hens. Using tactics generally associated with mob activity, activists created a perfect storm of vilification, innuendo, and intimidation against a family-based industry that provides billions of safe, healthy eggs for American tables each year. With ballot initiatives, legislative lobbying, harassment of supermarket and restaurant chains, and a devastating anti-industry public manipulation campaign involving carefully-edited undercover videos alleging cruel treatment of hens, they began a state-by-state juggernaut against egg farmers.

These orchestrated campaigns took a toll. A successful 2008 California initiative backed by HSUS forced producers to sink millions of dollars into new facilities by 2015. HSUS then supported a state law to require that eggs imported from other states meet the California standards.(1) Efforts to impose similar HSUS-approved regulations were underway in Oregon and Washington State and the animal rights group promised more.

UEP got the message: Do it our way or face more of the same. In July 2011, in a move that shocked the agricultural world, UEP and HSUS announced an agreement to seek a federal law(2) to dictate hen housing standards. In addition, UEP agreed to continue working on its enriched colony housing plan and HSUS abandoned its demand for cage-free hen housing, said it would drop the campaigns to force state-by-state regulations, and agreed to a longer phase-in period for changes.

In a video entitled *Why Egg Farmers Support this Legis-*

NAIA supports egg farmers

NAIA joins farmers in their quest to balance animal welfare with scientific findings, business needs and property rights considerations. We recognize that the spectrum of safe, cost-effective, and humane farming practices that have emerged from cooperation between farmers and agricultural researchers have improved hen health and well-being while improving egg quality and keeping prices low.



On the flip side, we oppose efforts to impose changes in farming practices by legislative or voter fiat, and we especially condemn campaigns that use distortion, misinformation, and half-truths to scam voters and imply that farmers who use current methods are supporting or condoning abuse.

Hundreds of thousands of leghorn chickens produce eggs for American tables .



lation, UEP chairman David Lathem, an egg farmer for more than 35 years, noted that UEP is has been a leader in improving the industry and meeting customer preferences.

“UEP saw that things were happening and it became ‘do you want to control your destiny or do you want someone else to control it?’” he asked.

The bills

Two bills addressing the issue are pending in Congress. Representative Kurt Schrader (D-OR) introduced HR 3798 for himself and Representatives Elton Gallegly (R-C), Sam Farr (D-CA), and Jeff Denham (R-CA), and Senator Dianne Feinstein (D-CA) introduced companion bill S3239(1) in the Senate with cosponsors Senators Richard Blumenthal (D-CT), Scott Brown (R-MA), Maria Cantwell (D-WA), Jeff Merkley (D-OR), David Vitter (R-LA), and Ron Wyden, (D-OR).

Both bills are amendments to the Egg Products Inspection Act and have been sent to the agriculture committees in their respective chambers. Both versions were briefly considered as amendments to the 2013 Farm Bill but didn’t make the cut.

The bills require labeling of egg cartons to inform consumers of the type of housing the hens were kept in and a complete switch to enriched confinement housing by 15 years after enactment. They give farmers the opportunity to slowly increase the space allotted to each hen until it is nearly double the current requirement.

The bills describe four types of hen housing: Conventional cages, enriched cages, cage free, and free range. Conventional cages lack enhancements such as scratching areas, roosts, and nest boxes that are included in the larger enriched confinement systems. Cage-free environments are indoor systems with tiers of perching, scratching and nest box areas. Free range systems allow chickens access to outdoors.

The bills also require egg farmers to be-

Continued on page 10

USDA draft rule brands home breeders

Continued from page 4

cense based on the number of undefined “breeding females” they own or whether they deliver even a single puppy to someone who does not visit their premises.

Fewer breeders also means fewer donations to canine health research that benefits all dogs, fewer training clubs to help pet owners teach their dogs good manners, and fewer opportunities to get involved in dog related activities.

Among the comments submitted to APHIS in opposition to the draft rule change is from the buyer of a pet Collie.(9) After describing the breeder of her dog as one with 35 years experience who has carefully researched breed health and selects males and females that complement each other, she stated:

“My Linde is an extraordinary addition to my life and well being. Because of her careful and diverse breeding, she is healthy, smart, sensitive, beautiful, and wise. She loves men (although there are no men in our household) because of the wonderful grandsons of the breeder who saw to it that she was played with and loved in their grandmother’s home where she spent the first weeks of her life. When she came to me, Linde was already partially potty trained and knew some basic obedience commands.”

Rescue

Although rescue groups are not specifically mentioned in the draft rule, those that operate like wholesale businesses or animal exhibitors could be required to apply for a license and follow federal standards for housing, transport, and care.(10)



The concept of dog rescue has changed over the past 15 years. Until the mid 1990s, public and private shelters helped place local dogs that needed new homes and purebred rescue groups found new owners for dogs of their breeds through a system of foster homes and breed club committees. Purebred

rescues associated with local, regional, and national breed clubs continue to operate this way, but new types of mixed breed and any-breed rescue businesses have been established. These include ...

- regional shelters that fill their facilities by importing dogs from states with a surplus population;
- individuals who incorporate as IRS nonprofit organizations and often take more dogs than they can humanely accommodate;
- groups that incorporate as IRS nonprofit entities to import dogs from offshore islands and foreign countries for placement in US homes;
- businesses that allow rescue groups to use their facilities to display animals to the public; and
- national organizations that relocate dogs from natural disasters.

Many of these organizations transfer animals in parking lots and other locations and charge fees of several hundred dollars for each dog. Many advertise their dogs on Petfinder.com and other Internet sites and do not require that new owners see the dog before the purchase. Some of these dogs carry parasites and diseases or are transported or kept in

Continued on page 8

NAIA supports hobby breeders

NAIA understands that the USDA proposal to narrow the definition of retail store is intended to target large-scale commercial breeders but we believe that it will also ensnare thousands of hobby breeders in its net and thereby reduce the number of well-bred puppies available to the general public.

A large majority of US breeders do not and never have operated in the wholesale marketplace and have been exempted as retail pet stores. Unlike wholesale breeders, they are a very diverse group, and their mode of operation is shaped by different goals. While some are motivated by profit, many are motivated by a desire to preserve and improve a given breed. This large and diverse group of breeders does not function as businesses trying to make a profit, a fact underscored by IRS guidance and rulings regarding hobby breeders. Depending on their goal, retail breeders of different types keep vastly different numbers of dogs, and they keep them in different kinds of facilities depending on the number kept. They do not breed their dogs with the same frequency or use the same methods to advertise or sell them.

Our bottom line is this: Unlike wholesale breeders, retail breeders are not a homogenous group and regulations that attempt to treat them as a uniform group are doomed to failure.



Judge allows circus racketeering suit to proceed against ASPCA, HSUS

On July 9, US District Judge Emmet Sullivan ruled that Feld Entertainment Inc.'s racketeering lawsuit against animal rights groups could proceed.

Although radical groups have sued many corporations and others that sell animals or use them in entertainment or research and some of those accused have won in court, Feld stands alone in its long quest to seek redress after earning a court victory.

Feld filed the Racketeer Influenced and Corrupt Organizations Act(1) lawsuit in 2007 during litigation of a suit brought against the company and its Ringling Bros. and Barnum & Bailey Circus by several animal rights groups and a paid informant. Judge Sullivan dismissed the activists' suit in 2009, and the dismissal was upheld by an appeals court in October 2011.

The saga began in 12 years ago when the American Society for Prevention of Cruelty to Animals; the Fund for Animals, an affiliate of the Humane Society of the US(2); the Animal Protection Institute; the Animal Welfare Institute; and a former circus employee sued Feld for alleged violations of the Endangered Species Act. The accusation: Feld was cruel to the Asian elephants – a species covered under the ESA — that performed in the Ringling circus. The informant and chief witness against Ringling was Tom Rider, a barn man who worked with the elephants for 29 months from 1997-1999. Rider claimed he was emotionally and aesthetically harmed by the use of guides and chains on the elephants.

Judge Sullivan determined that Rider was paid a substantial amount of money to testify.(3) In that decision, the court denied the former employee the standing to sue, writing that "... the Court does not find Mr. Rider's testimony to be credible. ... Mr. Rider was repeatedly impeached, and indeed was



'pulverized' on cross-examination. The Court finds that Mr. Rider is essentially a paid plaintiff and fact witness who is not credible, ..."

Records showed that Rider received at least \$190,000 directly from the organizational plaintiffs in the suit or from the attorneys representing the plaintiffs or from a non-profit organization set up by attorneys in the plaintiffs' law firm.

Those payments included \$13,000 raised in a 2005 fundraising event in California billed as a "benefit to rescue Asian elephants from abuse by Ringling Bros. Barnum & Bailey, ..."

Feld has also asked for recovery of more than \$20 million in attorney fees amassed in its fight against the invented allegations that they violated the ESA. The company's court filing states that the original case was allowed only because Rider concocted his standing to sue and that his co-plaintiffs deliberately hid the fact that they paid him to remain a plaintiff in the case.

No court schedule has been set for the RICO suit.

Notes

1. The federal Racketeer Influenced and Corrupt Organizations Act (RICO) allows lawsuits by victims of crimes committed by an organized gang or association. Passed as part of the 1970 Organized Crime Control Act, the statute originally used against the Mafia and similar organizations has been more broadly used in recent decades.

2. HSUS absorbed the Fund for Animals in 2005

3. "Judge finds witness not credible, tosses anti-circus suit," *NAIA Animal Policy Review*, Winter 2009-2010, <http://www.naiaonline.org/uploads/NewsletterFiles/2009-10.pdf>

NAIA cheers Feld Entertainment

In January 2009, NAIA congratulated Feld Entertainment and Ringling Bros. and Barnum and Bailey for their gigantic victory in the long fought lawsuit waged against them by the American Society for the Prevention of Cruelty to Animals (ASPCA), Fund for Animals, (a part of the Humane Society of the United States) and several other high profile animal fundraising groups.

At that time, we noted: "In their quest for donors, it is a sad irony that many of the nation's so-called animal protection organizations target the very businesses that are doing most to protect animals. ... while Feld was spending millions to assure the health, well-being and preservation of the world's threatened elephants, the animal fundraising groups were busy paying plaintiffs, and pushing policies and litigation that could lead to their extinction."

That message is as true today as it was then.

USDA draft rule brands home breeders

Continued from page 6

sub-standard conditions, yet they escape the scrutiny demanded of commercial breeders.

Comments

More than 10,000 public comments were posted on the USDA docket interface by July 30. A large percentage wrote in opposition, and many of these opponents said they believe that the lack of a definition of “breeding female,” a prohibition on selling dogs not produced on the breeder’s premises, and a mandate that buyers visit the premises before accepting the puppy will lead to problems for home breeders of purebred dogs and reduce the availability of rare and uncommon breeds.

Many commenters said that the agency’s reliance on the definition of “breeding female” as an “unsprayed female more than four months of age” in the PUPS bill(11) is faulty because most dog fanciers do not breed females until they are at least two years old and have passed all of their genetic screening tests. Some noted that the estimate of the number of litters produced by breeders with four “breeding females” is flawed because show and performance dog breeders do not breed every female they have every time she comes into season.

Breeders and owners of rare breeds also noted that buyers often live in different regions of the country and that shipping a puppy is often necessary. Others wrote that breeders might be pushed beyond the four female limit if they take a puppy back or may need to sell a dog they purchased or received in lieu of a stud fee.

Notes

1. “Animal Welfare; Retail Pet Stores and Licensing Exemptions,” Document APHIS-2011-003-001; <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003-0001>

2. “Questions and Answers: Proposed Rule – Retail Pet Sales,” July 2012, http://www.aphis.usda.gov/​publications/animal_welfare/​2012/retail_pets_faq.pdf

3. Department Of Agriculture Animal and Plant Health Inspection Service, 9 CFR Parts 1, 2, and 3, [Docket No. 97–018–4], RIN 0579–AA95: <http://www.gpo.gov/fdsys/pkg/FR-1999-07-19/pdf/99-18319.pdf>; Licensing Requirements for Dogs and Cats, <http://www.gpo.gov/fdsys/pkg/FR-1999-07-19/pdf/99-18319.pdf>

4. Definition of a “breeding female” varies between species and among breeders within a species. For example, show and performance dog breeders choose the females that best represent their breed standard and pass breed-spe-

cific health screenings, and often breed only those dogs that also prove themselves in performance activities, a selection process that usually takes at least two years and can take longer.

5. The agency based its estimate of breeders added to the regulations on the ratio of retail to wholesale breeders in three states and assumed that all owners of “breeding females” would produce at least one litter per year per dog. However, show and performance dog breeders often have more than four intact female dogs but may breed none or only one or two in a particular year.

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. No. 01-5351. Argued Nov. 4, 2002. — January 14, 2003; Before: Randolph and Rogers, Circuit Judges, and Williams, Senior Circuit Judge. The court sided with the agency.

7. Federal Register July 19, 1999: Department Of Agriculture, Animal and Plant Health Inspection Service, 9 CFR Parts 1, 2, and 3, [Docket No. 97–018–4] RIN 0579–AA95], Licensing Requirements for Dogs and Cats; Action: Decision and policy statement.

8. “Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers,” 2010 audit report, pp 36-38.

9. Comment at <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003-5554>.

10. The July fact sheet from USDA/APHIS contradicts this interpretation of the proposal but there is no exemption for rescue groups in the draft.

11. PUPS, or Puppy Uniform Protection and Safety Act, was introduced 2011 and is stalled in Congress. PUPS is two bills, HR 835 and S707, available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:./temp/~bdreGu:./home/LegislativeData.php> and <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN00707:./home/LegislativeData.php>.



For more information on this issue and others facing animal owners, visit the NAIA website at www.naiaonline.com and NAIA Trust at www.naiatrust.org

Brave New World: The 2012 NAIA conference is November 10-11

NAIA's conference "Brave New World: Caring for Animals in an Age of Mass Media and Misinformation" will take place November 10-11 in Redondo Beach, California.

This year's conference focuses on the myths and stereotypes that cloud the public's perception of animal issues, and the campaigns of misinformation and half-truths used by activists to perpetuate those false characterizations. More importantly, we will cover the many opportunities available in today's climate that can help us re-anchor the perception and understanding of animal issues in common sense, science, and sound law.

Topics that will be covered include:

- ★ The language that shapes debate: 4 legs good, 2 legs bad
- ★ The challenges facing US agriculture
- ★ Perception and reality: the health and welfare of pure bred dogs
- ★ The animal law movement in America, from property rights to guardianship

Speakers include:

Dr. Temple Grandin: The world's foremost animal welfare expert gives this year's keynote speech;

Gary Taubes: The multiple award-winning science writer presents *Why We Get Fat: Adiposity 101 and the Alternative Hypothesis of Obesity*;

Margaret Poindexter, JD: Important news below the fold; AKC's kennel inspection program and advancement in canine welfare since the 1990s;

Dr. Terry Warren, JD, CEO AKC Canine Health Foundation: Research and advancements in canine health the public needs to know about;

Dr. Betsy Greene: The Mustang Roundup;

Greg Satrum, Willamette Egg Farms: An egg producer's dilemma.

Dr. Lance Baumgard, NAIA Board Member: A rational evaluation of dietary fat and disease;

Andy Vance, Agriculture Journalist of Feedstuffs: YouTube-Proofing Agriculture;

Karen Budd-Falen, JD, Property Rights and ESA Authority: Separating Truth from Myth in the Western Ranching Debate;

Phil Goldberg, JD: An overview of the growing animal law movement in the United States;

Patti Strand, NAIA Founder and Chair: The Big Shrink: the dwindling number of dogs available to American pet lovers in coming years; and

Drs. Sharon Vanderlip, John Hamil, Marty Greer, and others: Hot button issues facing the veterinary profession.

There will also be a panel and workshop with media consultants, prominent news reporters, and more!

Download the full brochure with registration form at http://www.naiaonline.org/uploads/Main_Upload_Directory/NAIA2012Conference.pdf

The trendiest pet? An NAIA blog entry, July 30, 2012

A recent *Arizona Republic* opinion piece suggests that we should view rescued pets as the new "high-end option," that taking one home gives you bragging rights in addition to a friend for life. And it's trendy.

It's amazing how fast trends change nowadays. A few short years ago, everyone had to get a doodle mix so they could be just as unique as the rest of their Generation Y friends. Then along came the dog-as-purse-accessory. Remember that? But we're so over it — the next big push for trendiness is, apparently, rescue pets.

It should go without saying that getting a pet because it is the "cool thing to do" is a pretty awful idea. Whether doodle, purse dog, that purebred you just saw in a movie, or even a rescue pet, becoming a pet owner at the urging of an emotional twinge or desire for status decreases the chance of a positive outcome for all parties. Let's say it

again together for good measure: bad idea.

A realistic assessment of your ability to properly care for a pet over a lifetime and the pet's suitability to your lifestyle should be the first, and most important considerations. If you're seeking out a furry (or scaled or feathered) friend for life because you want something to brag about, something to win you points with your friends — sorry, but you're doing it wrong.

If there absolutely must be a "trendiest pet" to brag about, why can't it be that joyous companion — friend, clown, jogging partner, bacon-beggar, protector — who is chosen with careful research and foresight, who is properly and lovingly cared for his entire life? Now that kind of lifelong commitment and bond is something to be proud of.

Visit the NAIA Blog at <http://naiaonline.org>.

Egg farmers are trapped

Continued from page 5

gin phasing in the enriched confinement systems in all new housing constructed after nine years from the date of enactment. UEP certified producers are ahead of the curve: According to UEP, about 80 percent of new housing built in 2011 was “enrichable.”(3)

UEP already has guidelines

In 1999, UEP asked Dr. Jeffrey Armstrong of Michigan State University to convene a committee of scientists to review research of hen housing systems and establish a set of guidelines for the 95 percent of egg farmers who housed their hens in traditional cages. The resulting document became the UEP Animal Husbandry Guidelines(4), a plan addressing cage size, ventilation, beak trimming, vaccinations, and euthanasia.

The guidelines for caged hens were phased in from 2002-2008 and in 2006, UEP asked the scientific committee for a set of guidelines for cage-free production.(5) In 2010, more than 80 percent of all eggs produced in the United States came from farms using the voluntary guidelines.

Who blinked?

HSUS campaigns over the past several years have made it clear that the organization supported only cage-free housing for egg-laying hens.

HSUS won in California in 2008 and successfully lobbied Michigan lawmakers in 2009, but egg producers in Oregon and Washington State brought the organization’s victories to a halt. Both states passed bills that use enriched confinement, and HSUS threatened initiative petitions to mandate cage-free housing. The petition drives were suspended with the 2011 agreement to seek a federal bill.

In Oregon, HSUS backed SB 805, a bill that mandated cage-free housing for egg laying hens. Egg farmers said the bill’s seven-year phase-in and \$100-130 million cost would bankrupt them and raise the cost of eggs. Lawmakers listened; science and sound animal husbandry practices won out and the bill was amended to allow enriched colony housing and a 15-year phase-in period.

In Washington State, it was *déjà vu* all over again as HSUS paid signature gatherers for a ballot initiative to ban all cage confinement systems. The organization also suspended this effort as a condition of the agreement with UEP.

The upshot is that UEP agreed to seek a federal law that would endorse the egg-producers’ plans to phase in enriched colony housing over the next 15 years in a way that is cost-effective for farmers and healthy for hens. In exchange, HSUS agreed to drop the Oregon and Washington ballot initiative drives and said it would no longer attack egg producers for their husbandry practices.

However, HSUS continues to hedge its bets. Even though

the organization hails the UEP agreement as a landmark, it continues promoting cage-free environments and urges people to eat fewer eggs or switch to eggless recipes. The HSUS website also lists companies that have switched to cage-free sources for their eggs.

Opposition to federal egg bills

Several farm organizations and some radical activist groups oppose the bills for polar opposite reasons. Livestock farmers want lawmakers and HSUS to stay out of their business and the extremists oppose any measure that fails to ban cage confinement for hens.

American Farm Bureau Federation president Bob Stallman said the bills ignore science and are “an attempt by a radical animal rights group to legitimize a policy package that will undoubtedly be used to bully other livestock producers.”(6)

The National Pork Producers Council tagged the bills as a “one-size-fits-all farm takeover bill,”(7) and

National Cattlemen’s Beef Association president Bill Donald said the legislation is ill-conceived and “could set a dangerous precedent.”(8)

Other farm groups have expressed opposition on similar grounds, but UEP stands firm.

“Eggs are a national commodity, and egg producers should have a level playing field — not have different, costly rules in all 50 states,” UEP president and CEO Gene Gregory told *Food Safety News*. “That’s where we are heading if we don’t pass this federal legislation. We need this legislation for our customers and consumers and the survival of egg farmers.”(9)

Notes

1. Representative Steve King added an amendment to the 2012 Farm Bill that would prevent a state from denying trade in agricultural products from another state based on the means of production.

2. Egg Products Inspection Act Amendments of 2012, <http://www.govtrack.us/congress/bills/112/s3239>

3. David Latham, UEP chairman, “Why Egg Farmers Support this Legislation” (<http://www.eggbill.com/videos.html>) about the industry and the UEP/HSUS agreement.

4. UEP Animal Husbandry Guidelines, 2010 update, http://www.unitedegg.org/information/pdf/UEP_2010_Animal_Welfare_Guidelines.pdf

5. Fewer than six percent of eggs come from hens in a cage-free environment to satisfy a niche market.

6. “Egg legislation replaces science with politics,” OFB press release, January 24, 2012

7. “Bill introduced to improve welfare standard for egg-laying hens,” by Helena Bottemiller, *Food Safety News*, Jan 24, 2012.

8. “Livestock groups equate HSUS/UEP bill to government takeover of farms, by Sara Wyant, *AgriPulse Communications, Inc.*, http://www.agri-pulse.com/HSUS_UEP_legislation_012312.asp

9. “Bill introduced to improve welfare standard for egg-laying hens” by Helena Bottemiller, *Food Safety News*, January 24, 2012.

Windmills kill America's eagles, hawks and songbirds, but no one pays

It's a federal crime to kill or harm an eagle, but "green-energy" wind farms slay hundreds of the birds every year without the consequences that face fossil fuel producers and electricity generators.

The federal Golden and Bald Eagle Protection Act prohibits killing, harming, harassing, or disturbing the birds, and penalties can include fines up to \$200,000 and jail time. A second offense is a felony. (1)

Golden eagles are more likely than bald eagles to die in the lethal blades, but the American Bird Conservancy estimates that bald eagle deaths will increase substantially as wind farms proliferate in and near their territories.

The Migratory Bird Treaty Act also protects eagles and the dozens of other species, including owls, hawks, songbirds, ducks, geese, shorebirds, sea birds, and the endangered California condor that are killed in the whirling blades. Penalties for illegal harm to these species also carry stiff fines and the potential for jail time.

The federal government issues permits(2) under both statutes that authorize individuals, companies, government agencies, and other organizations a limited, incidental take of covered species in the course of conducting lawful activities such as operating utilities and airports. US Fish & Wildlife Service has fined power companies and oil producers under these laws, but no wind power companies have yet been charged with violations.

Wind turbine towers can reach 400 feet tall and blades can turn at 160 miles per hour. The US FWS estimated that up to 440,000 birds were killed by windmills in 2009, a number that is likely to increase substantially as the number of wind farms grow.

Ironically, organizations such as the National Audubon Society, the National Wildlife Federation, and the Sierra Club, groups that are considered champions of wildlife and are quick to sue the federal government if they believe an environmental law has been broken, have not drawn attention to the bird kills. ABC, however, has chastised the Obama Administration for its failure to prosecute wind power companies while holding fossil fuel companies responsible for bird deaths. For example, ABC notes that several oil companies in North Dakota were prosecuted for the



Windmills are favored by green energy groups but there's a downside: the blades kill thousands of birds each year and no one pays in spite of federal laws prohibiting killing, harassing, or disturbing the birds.

deaths of 28 birds in oil pits in 2011 but California wind farms have not been charged in the deaths of more than 2000 golden eagles and countless other birds.(3)

The ABC filed a petition requesting rulemaking to require wind farm companies to take bird habitat into consideration when planning their turbine locations.(4) US FWS released its voluntary *Land-based Wind Energy Guidelines* in March 2012.

According to the agency's Fact Sheet, "Adherence to the Guidelines is voluntary and does not relieve any individual, company, or agency of the responsibility to comply with laws and regulations. However, if a violation occurs the Service can consider a developer's documented efforts to communicate with the Service and adhere to the Guidelines."

Notes

1. Golden and Bald Eagle protection Act, <http://www.fws.gov/midwest/eagle/guidelines/bgpepa.html>

2. Eagle permit information, <http://www.fws.gov/midwest/eagle/guidelines/bgpepa.html>

3. "Oil companies prosecuted for avian deaths but wind companies kill birds with impunity," American Bird Conservancy press release, September 11, 2011.

4. Rulemaking Petition to the U.S. Fish & Wildlife Service for Regulating the Impacts of Wind Energy Projects on Migratory Birds, www.abcbirds.org/abcprograms/policy/collisions/pdf/wind_rulemaking_petition.pdf

