

**United States Department of Agriculture
Marketing and Regulatory Programs
Animal and Plant Health Inspection Service**

Petition for Rulemaking of

THE HUMANE SOCIETY OF THE UNITED STATES,
HUMANE SOCIETY VETERINARY MEDICAL ASSOCIATION, and
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

Petitioners,

to

THE HONORABLE TOM VILSACK, SECRETARY
UNITED STATES DEPARTMENT OF AGRICULTURE and
EDWARD M. AVALOS, UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS

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Petition to the United States Department of Agriculture for Rulemaking under the Animal Welfare Act to Increase Minimum Standards at Commercial Dog Breeding Facilities

I. INTRODUCTION AND NECESSITY OF REGULATION UNDER AWA

This Petition is submitted to the United States Department of Agriculture (“USDA,” “Department,” or “Agency”) and its Animal and Plant Health Inspection Service (“APHIS”) on behalf of the Humane Society of the United States (“HSUS”), the Humane Society Veterinary Medical Association (“HSVMA”), and the American Society for the Prevention of Cruelty to Animals (“ASPCA”) (collectively, “Petitioners”) to request necessary enhancements to existing regulatory restrictions on the inhumane treatment of dogs living in dealer¹ housing facilities.²

The Animal Welfare Act, 7 U.S.C. §§ 2131 et seq., (“AWA” or “Act”) requires that minimum standards of care and treatment be provided for dogs bred for commercial sale. The Act requires the USDA to promulgate and enforce regulations to ensure the humane treatment of these animals. To satisfy the Department’s obligations under the AWA, additional and amended regulations are necessary at this time. In particular, new regulations are needed with regard to (1) the physical conditions at commercial breeding facilities, including the size, stacking, and flooring of primary enclosures³ (pens and cages) and temperatures inside; and (2) canine health

¹ A “dealer” is defined as:

any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: . . . any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store . . .; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

9 C.F.R. § 1.1 (2015).

² A “housing facility” is defined as “any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.” *Id.*

³ A “primary enclosure” is defined as “any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch.” *Id.*

and welfare in commercial breeding facilities, including access to exercise areas, socialization, breeding practices, preventive care, grooming, access to potable water, and treatment of retired dogs. Proposed regulations to address these issues are attached hereto as Exhibit A and discussed in detail below. A survey commissioned by the ASPCA, attached hereto as Exhibit K, shows that a large majority of Americans believe that stronger standards of care, such as the ones proposed in this Petition, are necessary to ensure the humane treatment of dogs in commercial breeding facilities.

The current USDA regulations do not adequately protect dogs from harmful breeding practices. Approximately 100,000 dogs are kept solely for breeding purposes in large USDA-licensed dealer facilities, referred to in this Petition as commercial breeding facilities.⁴ Many of these dogs spend their years living in filthy and crowded primary enclosures (cages or other structures used to restrict the dogs to a limited amount of space) with little thought given to their physical health and psychological well-being. Specifically, dogs in commercial breeding facilities often must live in objectively harmful conditions that nonetheless comply with current regulations:

- Wire flooring in their primary enclosures. Many commercial breeding facilities house their dogs in primary enclosures with wire or gridded flooring. This type of flooring can cause severe physical and emotional distress for dogs who spend the vast majority of the day—often their entire day—locked in their cages, as the majority of dogs at commercial breeding facilities are forced to do. We propose a requirement that the dogs' primary enclosures have solid or slatted floors, and that they may have plastic-coated wire flooring (e.g., Tenderfoot) only if that type of flooring covers space that *exceeds* the minimum mandatory space allotment for each dog in the enclosure.

⁴

See ASPCA, Economic Impact of Enhanced Veterinary Care Requirements for Commercial Dog Breeders Regulated under the Animal Welfare Act (2015) (Exhibit J) [hereinafter ASPCA, Economic Impact Analysis (Exhibit J)]; Humane Soc'y, *Puppy Mills: Facts and Figures* (2014), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy-mills-facts-figures.pdf. The recently passed Retail Pet Store Rule expanded the reach of the breeding regulations, making reform of those regulations even more necessary and potentially even more effective. See also Animal Welfare; Retail Pet Stores and Licensing Exemptions, 78 Fed. Reg. 57,227 (Sept. 18, 2013) (amending 9 C.F.R. §§ 1.1, 2.1).

- Primary enclosure size. Currently, dogs can be kept in small cages for their entire lives, or are packed in enclosures with other dogs. Scientific understanding of dogs' needs has grown, and it is clear they need larger enclosures to stay healthy mentally and physically. We propose a requirement that the dogs' primary enclosures be at least two times the currently mandated enclosure size.
- Stacked primary enclosures. Many dealers stack their primary enclosures to maximize the number of breeding dogs they can contain in a facility. However, stacking can prevent proper air flow, block light, make cages difficult to clean, hinder or eliminate access to exercise areas, and limit operators' ability to monitor and access the dogs. Moreover, stacking encourages overcrowding, which can lead to the rapid transmission of disease especially in poorly ventilated facilities. In some cases, stacking allows feces, urine, and other filth from higher cages to fall onto the dogs in the lower enclosures. We propose a prohibition on the stacking of primary enclosures.
- Temperature regulation. Under current regulations, dogs kept inside or in sheltered facilities only need to be protected from extreme temperatures, and actually allow temperatures to fall below 45 or rise over 85 °F for up to four hours at a time. These regulations allow for dogs to be kept under extreme temperatures for prolonged periods of time, to the detriment of their health. We propose that the four-hour rule be eliminated and that temperatures be required to simply be kept between 45 or 50 °F (depending on the dog breed) and 85 °F.
- Inhumane breeding practices and unlicensed practice of veterinary medicine. Dealers often breed their female dogs as early and often as possible to maximize their number of puppies and consequently their profits. This almost constant breeding, especially starting at young ages, can be detrimental to the dogs' health. Dealers frequently fail to screen their dogs for hereditary disorders, resulting in generations of dogs with unchecked hereditary defects that can cause painful lives and early death. Some inhumane, commercial breeding facilities allow personnel without veterinary training to perform surgical births, despite existing prohibitions under some state laws. Such surgeries can lead to severe pain, infections, and death. To address these harmful breeding practices, we propose: (1) a limitation on how often a female dog may be bred; (2) a minimum breeding age specific to the breed or size of the dog; (3) a reasonable screening program for known inheritable defects and a prohibition on breeding dogs that are known to have significant inheritable or other potentially disabling health defects; (4) a requirement that surgical births and other surgical procedures be performed by licensed veterinarians; and

(5) a requirement that female dogs are examined on a regular basis for conditions that could be exacerbated by breeding.⁵

- A lack of preventive care. Dogs are susceptible to a multitude of highly infectious deadly diseases, many of which can be easily prevented by vaccines and other preventive measures.⁶ Because current law does not require all advisable vaccinations, many dealers elect not to vaccinate. We propose a requirement for adequate health and preventive care for dogs in commercial breeding facilities. This should include an annual, hands-on examination for each breeding dog, all vaccinations recommended by the most current version of the AAHA Canine Vaccination Guidelines, as well as preventive medication for heartworm disease, intestinal parasites, and flea and tick control.
- A lack of grooming. Dogs in some high-volume commercial breeding facilities are rarely – if ever – bathed or groomed. Without proper grooming, certain breeds of dog can face overheating and serious risks to the health of their skin, fur, and feet.⁷ The lack of grooming can even limit their ability to see and move. We propose a requirement that all dogs receive grooming, including nail trimming and dental care, at least twice a year.
- A lack of exercise and socialization. Dogs spending their lives in commercial breeding facilities are often deprived of any time outside of their primary enclosures for opportunities to exercise, play, or interact with humans or other compatible dogs. Yet studies prove that a lack of exercise and positive socialization can cause significant physical, emotional, and behavioral problems. We propose requirements that dogs have unfettered access to exercise areas and meaningful daily socialization with humans and compatible dogs, subject to limited exceptions.
- Inhumane treatment of retired dogs. Commercial breeding facilities often inhumanely euthanize or abandon their dogs that are no longer able to reproduce and thus bring them revenue, even though those dogs may not be close to the end of their natural lifespan. Some breeders often do the same with puppies that they deem too old to sell or that have disabilities or other issues leading breeders to deem such dogs unsellable. We propose a requirement for humane treatment of retired breeding dogs and unsold

⁵ In this Petition, the term “veterinarian” means a person who is trained and/or licensed to practice veterinary medicine or such person’s trained employee working under the supervision or subject to the review and approval of such person.

⁶ Link V. Welborn et al., *2011 AAHA Canine Vaccination Guidelines*, 47 J. Am. Animal Hosp. Ass’n 1, 3-9 (2011); *see also* World Small Animal Veterinary Ass’n, *WSAVA Vaccination Guidelines Group*, http://www.wsava.org/sites/default/files/WSAVA_OwnerGuidelines_September2010.pdf.

⁷ Erin Bacon, *Rescued Puppy Mill Dogs Treated in Charlotte*, Charlotte Observer, June 13, 2014, <http://www.charlotteobserver.com/2014/06/13/4975932/rescued-puppy-mill-dogs-treated.html>.

puppies through efforts to have the dogs adopted or placed with rescue organizations.

- A lack of continuous access to potable water. Current regulations do not require that dogs have constant access to water, and also do not specify that the water may not be frozen. However, it is clear that such access is necessary to meet the dogs' basic health and comfort requirements. We propose a requirement that all dogs be provided with continuous access to liquid, potable water.

Petitioners are not the only ones working to implement the above humane standards, which are supported by scientific research. The regulations proposed in this Petition are consistent with standards agreed upon as appropriate to meet the basic needs of dogs in large-scale commercial breeding facilities by pet industry representatives during recent discussions with HSUS and ASPCA. Given the wave of ordinances at the local level banning or greatly restricting the retail sale of puppies,⁸ the pet industry—including retail stores that have traditionally purchased puppies from large commercial breeding facilities to resell—has come to realize that consumers care greatly about how their dogs are bred and raised. Some of these pet store chains therefore came to the table to negotiate with HSUS and ASPCA regarding upgraded breeding standards. These negotiations led to an agreed-to set of minimum standards of care appropriate for dogs in breeding facilities.⁹ The proposed regulations discussed in this Petition closely track those standards.

⁸ See Examples of Localities in the United States and Canada with Ordinances Restricting the Retail Sales of Puppies (Exhibit B); see also Best Friends Animal Society, Jurisdictions with Retail Pet Sale Bans, <http://bestfriends.org/Resources/Jurisdictions-With-Retail-Pet-Sale-Bans> (last visited Feb. 5, 2015) (providing links to all local ordinances). For example, Palm Beach County, Florida prohibits pet stores from displaying, selling, trading, delivering, bartering, leasing, renting, auctioning, giving away, transferring, offering for sale or transfer, or otherwise disposing of dogs. The Chicago, Illinois ordinance limits resale to dogs obtained from animal control centers; animal care facilities; kennels; pound or training facilities operated by any subdivision of the local, state, or federal government; humane societies; and rescue organizations. And the Albuquerque, New Mexico ordinance prohibits the sale of puppies to pet stores, animal brokers, and other animal dealers.

⁹ Press Release, Safe Healthy Dogs, *Pet Industry and Animal Welfare Organizations Join Forces to Address Puppy Mill Abuse*, http://safehealthydogs.com/?page_id=11 (last visited Aug. 17, 2015).

The thousands and thousands of dogs living in inhumane, commercial breeding facilities are not the only ones hurt by the excessively lenient minimum standards in the USDA's existing regulations. Responsible breeders, individuals who purchase puppies from large commercial breeders, animal shelters, and animal rescue groups are all negatively impacted.

Individuals and families who choose to purchase puppies from commercial breeding facilities (directly or via pet stores) are harmed by the low minimum requirements in the existing regulations. These buyers often take home puppies who are ill, injured, emotionally distressed, unmanageable, or otherwise not able to function as healthy pets. HSUS receives hundreds of calls and emails each year from pet owners suffering from emotional distress themselves and being financially injured because they unwittingly purchased sick or behaviorally unmanageable puppies from irresponsible—but licensed—breeders, or from pet stores who source their dogs from licensed inhumane commercial breeding facilities.¹⁰

Public comments to the recently-adopted Retail Pet Store Rule¹¹ show that responsible breeders desire additional regulation of commercial breeding facilities. These breeders are at a commercial disadvantage to irresponsible breeders because they choose to provide their dogs with more humane—and thus sometimes somewhat more expensive—housing, medical care, and grooming. They also tend to breed their dogs at later ages and less frequently. The proposed rules in this Petition incorporate many practices already adopted by responsible breeders, and therefore should help alleviate their competitive disadvantage by ensuring that all breeders treat their dogs humanely.

¹⁰ Press Release, Humane Soc'y, *The HSUS Releases Five-Year Study of Nearly 2,500 Puppy Buyer Complaints* (Sept. 14, 2012), http://www.humanesociety.org/news/press_releases/2012/09/five-year-puppy-mill-study-091212.html; see also Humane Soc'y, *Sample Complaints Regarding USDA Licensed Breeders* (Sept. 2, 2014) (Exhibit C).

¹¹ Animal Welfare, 78 Fed. Reg. 57,227.

The psychological and health issues that plague dogs from inhumane, commercial breeding facilities—including infectious diseases, joint conditions, behavioral problems, and a host of congenital and hereditary diseases—are a direct result of the irresponsible breeding practices, filthy and overcrowded conditions, and lack of socialization and care endemic to these facilities. A 2013 study published in the *Journal of American Veterinary Medicine* concluded that obtaining dogs from pet stores, which mostly buy their puppies from USDA-licensed commercial breeding facilities, versus noncommercial breeders represented a significant risk factor for the development of a wide range of undesirable behavioral characteristics, especially aggressive behavior.¹² Similarly, a 2011 study that analyzed behavioral characteristics of 1,100 breeding dogs rescued from “commercial breeding establishments”¹³ found that the dogs had significantly elevated levels of fears and phobias, compulsive and repetitive behaviors, and heightened sensitivity to being touched, even after living in their new homes an average of two years.¹⁴

With the rise of large-scale commercial breeding facilities, the negative impacts on puppies and their owners have become so problematic that many states have passed “puppy lemon laws.”¹⁵ A handful of states have also enacted laws that restrict the sale of commercially-

¹² Franklin D. McMillan et al., *Differences in Behavioral Characteristics Between Dogs Obtained as Puppies from Pet Stores and Those Obtained from Noncommercial Breeders*, 242 J. Am. Vet. Med. Ass’n 1359 (2013) [hereinafter McMillan JAVMA Article]. The authors concluded, based on their findings, that they could not recommend that puppies be obtained from pet stores. *Id.* at 1363.

¹³ *See id.* at 1360, stating that “Most puppies sold by pet stores in the United States are purchased from brokers, who may themselves be breeders but overwhelmingly acquire their puppies from high-volume breeding facilities, or [Commercial Breeding Establishments], located throughout the United States. Conditions in the CBEs, which supply tens of thousands of puppies to retail pet stores each year, vary widely. Conditions in CBEs range from modern, clean, and well-kept to squalid, noxious, and gravely detrimental to animal health and welfare.”

¹⁴ Franklin D. McMillan et al., *Mental Health of Dogs Formerly Used as “Breeding Stock” in Commercial Breeding Establishments*, 135 Applied Animal Behav. Sci. 86 (2011).

¹⁵ *See* McMillan JAVMA Article, *supra* note 12; Am. Vet. Med. Ass’n, *Pet Purchase Protection Laws*, <https://www.avma.org/Advocacy/StateAndLocal/Pages/pet-lemon-laws.aspx> (last updated June 2014).

bred puppies by pet stores,¹⁶ and more than seventy local ordinances have been passed to ban or restrict the sale of commercially-bred puppies because of known harms to dogs and consumers.¹⁷

Animal shelters, humane societies, and larger communities are also negatively impacted because conditions and practices of commercial breeding facilities are currently under-regulated. Individuals who buy puppies directly or indirectly from these breeders may abandon or relinquish to shelters puppies that become sick or exhibit significant behavioral problems. Approximately 3.9 million dogs enter animal shelters nationwide every year, and each year approximately 1.2 million dogs are euthanized.¹⁸ In addition, shelters and humane societies often shoulder the cost of rescuing and treating animals from inhumane breeding facilities, even though the costs of improved care do little to affect breeders' bottom lines.¹⁹

Given the harm to dogs, responsible breeders, buyers, and the larger community caused by permissible yet harmful practices at many commercial breeding facilities, the Petitioners respectfully request that the USDA promulgate the regulatory enhancements recommended in this Petition.

¹⁶ See Examples of Localities in the United States and Canada with Ordinances Restricting the Retail Sales of Puppies (Exhibit B).

¹⁷ See *id.*

¹⁸ Am. Soc'y for the Prevention of Cruelty to Animals ("ASPCA"), *Pet Statistics*, <https://www.asPCA.org/about-us/faq/pet-statistics> (last visited Dec. 11, 2014).

¹⁹ A 2011 HSUS study found that animal shelters and rescue groups with which the HSUS worked to help treat and place dogs rescued from inhumane, commercial breeding facilities spent an average of \$259 per dog for veterinary expenses as part of the rescue. Humane Soc'y, *Veterinary Problems in Puppy Mill Dogs* (2012), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/veterinary_problems_puppy_mills.pdf. ASPCA has found that rescues and shelters spend an average of \$25.00–\$39.00 for cost of care per dog per day when dogs are held pending the outcome of criminal proceedings. To calculate the cost of care, ASPCA looked at its involvement in two recent puppy mill rescues. For each rescue it calculated the amount it had spent on shelter supplies, veterinary care, staffing, and travel, and divided that by the total number of animals involved. See ASPCA, *Economic Impact Analysis* (Exhibit J), *supra* note 4 (discussing effect on bottom line) & Table 3 (calculating rescue cost).

II. INTERESTS OF PETITIONERS

A. Identity of Petitioners

Petitioner HSUS, headquartered in the District of Columbia, is the largest animal protection organization in the United States, with millions of members and supporters. Since its establishment in 1954, this non-profit organization has worked to combat animal abuse and exploitation and promote animal welfare. As one of its core campaigns, HSUS actively strives to improve the lives and end the suffering of the hundreds of thousands of adult dogs and puppies confined in inhumane, substandard breeding facilities commonly referred to as “puppy mills.” To accomplish these goals, HSUS engages in education and advocacy to expose the cruelty involved in these breeding operations, and to encourage consumers not to purchase puppies born in such facilities. HSUS also works to achieve legislative and regulatory reforms that establish basic animal care standards for dogs kept in commercial breeding facilities, and to provide recourse for consumers who are sold sick or injured puppies. HSUS also regularly partners with local and state law enforcement in the investigation of breeding facilities that are operating in violation of cruelty codes or standards of care by assisting law enforcement with raids of these facilities and providing medical and other care for seized animals.

HSUS’s strong interest in reducing the suffering of animals in inhumane, commercial breeding facilities reflects the general public’s concern about these facilities. HSUS receives hundreds of telephone and email communications annually from consumers who have unwittingly purchased sick puppies who were bred in inhumane, commercial facilities, many of which concern USDA-licensed breeders. Accordingly, HSUS’s staff works to dispel the commonly held misconception that if a facility is USDA-licensed, it must be a humane facility. If the Agency implements the reforms called for in this Petition, AWA licensing would hold considerably more meaning and offer much more protection for dogs than it does right now.

Petitioner HSVMA is a national organization of veterinary professionals, headquartered in the District of Columbia, that educates the public and others in the veterinary profession about animal welfare issues. HSVMA provides direct care programs for animals in need and is actively involved in advocating for better public policies for animals. One of HSVMA's focus areas addresses the inhumane conditions endured by adult dogs and puppies confined in inhumane, commercial breeding facilities. HSVMA works with its team of veterinary advocates for stronger oversight of these facilities and provides veterinary medical expertise to analyze the conditions at inhumane, commercial breeding facilities and their impact on dogs' health and welfare. In addition, HSVMA representatives frequently speak on this issue to veterinary audiences to increase awareness in the profession and advocate for change.

Petitioner ASPCA was the first humane society to be established in North America and is, today, one of the largest in the world. ASPCA is headquartered in New York City and was founded in 1866 on the belief that animals are entitled to kind and respectful treatment at the hands of humans, and must be protected under the law. ASPCA maintains a strong local presence, and with programs that extend its anti-cruelty mission across the country, the organization is recognized as a national animal welfare organization. Petitioner ASPCA is a privately funded 501(c)(3) not-for-profit corporation, and boasts more than 2.5 million supporters across the country.

ASPCA invests significant resources in and dedicates considerable programmatic focus to reforming the practices of the puppy mill industry and improving the lives of dogs used for commercial breeding.²⁰ To effectuate change, ASPCA engages in education and advocacy to expose the cruelty involved in these breeding operations under current law and regulation and to

²⁰ ASPCA defines "puppy mill" as a large-scale, commercial breeding establishment that prioritizes profit over the well-being of the dogs.

encourage consumers not to purchase puppies born in such facilities. In 2011, ASPCA launched its national No Pet Store Puppies campaign, which aims to reduce the demand for puppy mill puppies by urging consumers to pledge not to buy any items—including pet supplies—from pet stores or on websites that sell puppies. As part of its No Pet Store Puppies campaign, ASPCA has compiled a database of over 17,000 photographs of USDA-licensed facilities taken by USDA during routine inspections. The photos document conditions that violate the law, and in some cases, conditions that are legal, but that ASPCA considers inhumane.

ASPCA works to achieve legislative and regulatory reforms that establish basic animal care standards for dogs kept in commercial breeding facilities, and to provide recourse for consumers who are sold sick or injured puppies. ASPCA also partners with local and state law enforcement in the investigation of breeding facilities that are operating in violation of cruelty codes or standards of care by assisting law enforcement with raids of these facilities and providing forensic services, placement assistance, and medical and other care for seized animals.

B. Legal Basis for the Petition

Petitioners submit this Petition for rulemaking pursuant to the Right to Petition Government Clause in the First Amendment to the United States Constitution; the Administrative Procedure Act, 5 U.S.C. § 553(e); and USDA’s implementing regulations, 7 C.F.R. § 1.28.²¹ Petitioners request that the Secretary take action consistent with Congress’ statement of policy in the AWA, 7 U.S.C. § 2131, and USDA’s obligations under that statute, to effectively regulate to ensure the humane treatment of animals. Specifically, Petitioners request that USDA enhance restrictions on the inhumane treatment of dogs in dealer housing facilities by

²¹ Petitions by interested persons in accordance with 5 U.S.C. § 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.

7 C.F.R. § 1.28 (2015).

adopting the regulations recommended herein pursuant to 7 U.S.C. § 2151, and which are attached hereto as Exhibit A.

The proposed regulations are not only permissible under USDA's authority, given that AWA Section 21, 7 U.S.C. § 2151, authorizes the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter," but are also necessary under USDA's statutory *obligation* to create minimum standards for the humane care and treatment for dogs in commercial breeding facilities. AWA Section 13, 7 U.S.C. § 2143, requires the Secretary to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers."²² These standards must include minimum requirements for the housing, sanitation, ventilation, and exercise of dogs, among others.²³ USDA therefore has an affirmative obligation to update its regulations when research shows that current regulations do not sufficiently provide for the humane treatment and care of dogs.

This is the case today. Many of the regulations promulgated under the AWA were adopted in the 1990s and early 2000s, and some of USDA's historical positions are based on outdated research. For example, USDA stated in the late 1990s that there was no scientific evidence suggesting that wire floors were harmful to dogs.²⁴ USDA therefore did not ban wire flooring. However, scientific evidence, along with evidence from USDA's own inspections, now conclusively shows that wire floors cause significant physical and emotional harm to dogs in inhumane, commercial breeding facilities, as discussed in Section III.A of this Petition. USDA

²² 7 U.S.C. § 2143(a)(1).

²³ 7 U.S.C. § 2143(a)(2)(A), (B).

²⁴ Humane Treatment of Dogs and Cats, 63 Fed. Reg. 3017, 3019 (Jan. 21, 1998); Animal Welfare Standards, 64 Fed. Reg. 19,251, 19,251-52 (Apr. 20, 1999).

must update its regulations to ensure that the minimum standards imposed by its regulations are consistent with existing scientific findings.

Amending federal law and regulations to increase the protection of dogs in commercial breeding facilities is nothing new. Congress discussed the “abuses committed by puppy mills” when passing amendments to the AWA nearly forty years ago.²⁵ USDA has also recognized that amendments to the AWA in the 1980s were intended to provide for the “enhanced well-being of animals.”²⁶ Further, enhanced regulations to protect breeding dogs align with USDA’s recent improvements to the enforcement of its regulations at commercial breeding facilities,²⁷ as well as efforts to regulate large-scale commercial breeders selling directly to consumers over the internet.²⁸ Petitioners therefore respectfully request that USDA continue to improve the protection of dogs at commercial breeding facilities and ensure that the Agency is carrying out its obligations under the AWA, by promulgating new regulations regarding wire flooring, stacked cages, enclosure size and temperature, access to exercise areas and potable water, socialization, breeding practices, veterinary care and grooming, and treatment of retired dogs and unsold puppies. As demonstrated in the sections below, the current regulations do not adequately protect dogs from proven harms to their well-being.

²⁵ H.R. Rep. No. 94-801, at 12 (1976), *reprinted in* 1976 U.S.C.C.A.N. 758, 764 (discussing Animal Welfare Act Amendments of 1976).

²⁶ Animal Welfare Standards, 56 Fed. Reg. 6426, 6428 (Feb. 15, 1991).

²⁷ See USDA, Office of Inspector Gen., Audit Report 33002-4-SF, *Animal and Plant Health Inspection Service, Animal Care Program, Inspections of Problematic Dealers 1* (May 14, 2010). The report found that enforcement against commercial breeding facilities was ineffective. HSUS in this Petition also wants to ensure the underlying regulations are sufficient to protect animal welfare.

²⁸ See Animal Welfare, 78 Fed. Reg. 57,227.

III. PHYSICAL CONDITIONS IN COMMERCIAL BREEDING FACILITIES

A. Wire Flooring in Primary Enclosures

USDA's current regulations permit the use of wire flooring in primary enclosures, subject to some restrictions. But despite these restrictions, dogs in commercial breeding facilities still suffer serious physical and emotional harm due to wire or gridded flooring.

1. Wire Flooring Is Currently Permissible Under the USDA's Regulations

Prior to 1998, federal regulations required generally that primary enclosures have floors that were constructed in a manner that protected the dogs' feet and legs from injury. If floors were of mesh or slatted construction—or wire—then the only requirement was that the floors not allow dogs' feet to pass through any openings therein.²⁹

In 1998, APHIS published new standards specifically defining acceptable wire flooring. Under these standards, all primary enclosures with suspended floors constructed of metal strands are required to have strands either greater than 1/8th of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass, and must be strong enough so that the floor cannot sag or bend between the structural supports.³⁰

Although the 1998 regulations were a step in the right direction, they remain inadequate to ensure the humane treatment of dogs in commercial dealer facilities.

2. Current Flooring Regulations Do Not Protect Against Known Harms

Scientific evidence and USDA's own data show that the existing minimum requirements regarding flooring in primary enclosures are insufficient to protect the physical and psychological well-being of dogs in commercial breeding facilities. Dogs in these facilities frequently experience leg injuries and paw swellings. These are among the most common

²⁹ 9 C.F.R. § 3.6(a)(2)(x) (1997) (originally added in 1991).

³⁰ 9 C.F.R. § 3.6(a)(2)(xii) (2014); *see also* Humane Treatment of Dogs and Cats, 63 Fed. Reg. at 3017-18.

veterinary problems noted by USDA inspectors.³¹ These injuries and the related harms described below are preventable and should be addressed by USDA now in a rulemaking.

Dogs and related species prefer solid flooring, and if given the choice will expend effort to move from a wire mesh floor to a solid floor.³² This demonstrated preference for solid flooring is not surprising given the well-documented physical harms wire flooring can cause. These include:

- Damage to paw pads due to long-term contact with wire under the pressure of the dogs' body weight. This damage can include chronic painful sores, cuts, cracks, or bruising to the paw pads, which put the dogs at risk of pain and infection.³³
- Splaying of the paws in order to maintain balance on wire flooring.³⁴ Such splaying can cause painful inter-digital cysts, swellings, lesions,

³¹ See Photographs of Wire Floors and Injured Paws (Exhibit D-1); see also Excerpts from USDA Inspection Reports Regarding Paw Injuries (Exhibit E).

³² Mark J. Prescott et al., *Eighth Report of the BVA/WF/FRAME/RSPCA/UFAW Joint Working Group on Refinement: Refining Dog Husbandry and Care*, 38 Lab Animal Supp. 1, 28 (2004) (“[T]he majority of the Working Group members . . . agree that dogs prefer solid flooring. . . . Wire mesh flooring systems are not recommended.”); Tarja Koistinen & Jaakko Mononen, *Blue Foxes’ Motivation to Gain Access to Solid Floors and the Effect of the Floor Material on Their Behaviour*, 113 Applied Animal Behav. Sci. 326 (2008) (demonstrating that foxes on wire mesh floors are willing to work to gain access to solid floors; on the solid floor, the foxes performed a greater variety and a higher frequency of normal species-specific behaviors such as play, rooting or exploring with their muzzles, and jumping); Graham Moore, *Assessment of Animal Housing Needs in the Research Setting Using a Peer-Reviewed Literature Approach: Dogs and Cats*, Dev. of Science-Based Guidelines for Lab. Animal Care 70 (2004), <http://www.ncbi.nlm.nih.gov/books/NBK25397/pdf/TOC.pdf>. (explaining a Council of Europe Expert Group's view that preferred flooring for dogs was solid and continuous, with a smooth but nonslip finish, and that open flooring systems such as grids or mesh should be avoided, and that all dogs should be provided with a comfortable solid resting area; pups and bitches with litters should not be held on an open floor system); see also Humane Soc’y Vet. Med. Ass’n (“HSVMA”), *Veterinary Report on Puppy Mills*, 6 (2013), http://www.hsvma.org/assets/pdfs/hsvma_veterinary_report_puppy_mills.pdf [hereinafter HSVMA Report]; Hearing on HB 2525 (“Dog Law”) Before the H. Agric. & Rural Affairs Comm., Reg. Sess. 2007-2008 (Pa. 2008) (statement of Dennis Wolff, Sec’y, Pa. Dep’t of Agric.), <http://media.philly.com/documents/House+Bill+2525+testimony.pdf>; Lila Miller, Vice President of Shelter Medicine, ASPCA, Comment on Pennsylvania Wire Floor Regulations (May 25, 2010) (Exhibit F).

³³ Humane Soc’y, *Problems with Grid Flooring in Dog Kennels* (2010), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/wire_grid_floor_pm_fact_sheet.pdf [hereinafter Humane Society Fact Sheet]; Humane Soc’y, *A Horrible Hundred: Problem Puppy Mills in the United States*, HSUS Puppy Mill Investigations and Exposés, Paper 8 (2013), http://animalstudiesrepository.org/hsus_pmc_iae/8 [hereinafter *A Horrible Hundred*] (including many examples of problems with dogs housed on wire flooring).

³⁴ See Humane Society Fact Sheet, *supra* note 33.

masses, and sores, which can cause pain and infection and disrupt the dogs' normal gait. This in turn can cause skeletal problems.³⁵

- Overgrown nails due to limited contact with solid surfaces that normally wear down nails. Because a dog's nails grow in a curved manner, they can become painfully embedded in the dog's paw pads.³⁶ This can lead to infection, causing pain and potentially life-threatening medical conditions.³⁷ Long nails also contribute to abnormal gait. For example, during a 2012 inspection of an inhumane, commercial breeding facility in Guide Rock, Nebraska, USDA inspectors found a Basset Hound with nails so long that they caused "rotation of the feet" when the dog was standing.³⁸ Moreover, long nails can become caught in or around the wire flooring. If a dog's nails get caught in the flooring, she can become trapped in place. Or, in an effort to free herself, a dog may accidentally tear off her caught nails, causing bleeding, great discomfort, and risk of infection.³⁹ Long nails can also cause foot ulcerations and arthritis.⁴⁰
- Caught or torn-out fur. Many dogs in large commercial breeding facilities are not regularly, or ever, groomed, as addressed in this Petition below. As a result, non-shedding dogs in commercial breeding facilities often have overly long and/or matted fur. This fur can get caught in, or even grow around, wire flooring. When this happens, a dog can get pinned in one spot, preventing movement and access to food and water.⁴¹ If she fights to free herself, some of her fur and skin can be ripped off.⁴²
- Avoidance of normal behaviors. Wire flooring is uncomfortable to lie down on. Dogs kept on wire flooring avoid normal behaviors such as reclining to avoid the discomfort associated with lying down on this material.⁴³ As a result, the dogs spend an unnatural amount of time standing, which can cause joint and muscle stress.⁴⁴ Dogs may also restrict

³⁵

Id.

³⁶

HSVMA Report, *supra* note 32, at 6.

³⁷

Animal Rescue Corps, *End Puppy Mills*, <http://animalrescuecorps.org/learn/puppy-mills/> (last visited Nov. 13, 2014) [hereinafter Animal Rescue Corps].

³⁸

See A Horrible Hundred, *supra* note 33.

³⁹

HSVMA Report, *supra* note 32, at 6.

⁴⁰

Peter Ward et al., Inst. For Lab. Animal Research, Nat'l Research Council, *Recognition and Alleviation of Distress in Laboratory Animals* 66 (2008), http://grants.nih.gov/grants/olaw/NAS_distress_report.pdf.

⁴¹

See Animal Rescue Corps, *supra* note 37.

⁴²

See, e.g., Nat'l Puppy Mill Project, *America's Dirty Little Secret*, <http://www.nationalpupmillproject.org/> (last visited Nov. 20, 2014) (citing Janice Brown & Brendan Quealy, *Saving Animals One Pet Store at a Time*, *Tails Pet Magazine*, May 2012)).

⁴³

HSVMA Report, *supra* note 32, at 6.

⁴⁴

See, e.g., Paul D. McGreevy et al., *A Note on the Effect of Changes in Flooring on the Behavior of Housed Rams*, 107 *Applied Animal Behav. Sci.*, 355-60 (2007).

their activity level to avoid discomfort to their paws from the wire flooring. This can lead to obesity and other health problems.⁴⁵

- Injuries from paws slipping through holes in the wire flooring. Despite current regulations requiring mesh to be small enough that paws cannot slip through, in practice slipping through remains a significant problem.⁴⁶ In some commercial breeding facilities, primary enclosures have holes in the wire flooring that may be small enough to protect larger dogs, but not small enough to protect smaller dogs and puppies. These smaller dogs and puppies risk their paws and even entire legs slipping through the openings. If these dogs struggle to pull their paws or limbs back through the holes, they can cause severe lacerations or even amputation.⁴⁷ For example, a USDA inspector found puppies at an inhumane, commercial breeding facility that sold puppies to a Danbury, Connecticut, pet store with paws so damaged from slipping through the holes in the wire flooring that the puppies' bones protruded through their skin, with exposed muscle and flesh.⁴⁸
- Difficulty regulating body temperatures. Wire flooring exposes dogs to increased drafts, making it more difficult for the dogs to regulate their body temperatures.⁴⁹

Wire or gridded flooring also causes significant psychological harm to dogs. A study of laboratory animals found that “[l]ong-term housing in cages with wire mesh floors where adequate bedding or nesting materials cannot be provided can also result in stress [and] distress . . .”⁵⁰ The stresses of uncomfortable confinement can foster anxiety, frustration, and depression, making dogs difficult to handle and hard to socialize in the future.⁵¹ These in turn can also cause

⁴⁵ HSVMA Report, *supra* note 32, at 7.

⁴⁶ See USDA, Animal & Plant Health Inspection Serv. [APHIS], Inspection of Jay & Doris Kragt, Certif. 42-A-1302 (cancelled) (Oct. 29, 2012), https://acissearch.aphis.usda.gov/acis_request/faces/DataRequest.jspx?output_type=1&request_type=0&request_id=304120942490381 [hereinafter Kragt Inspection Report] (observing large gap in floor to accommodate PVC pipe, but also allowing legs to slip through) (Exhibit I-3).

⁴⁷ E.g., APHIS, Inspection of Jacob Yoder, Certif. 31-A-0265 (Oct. 2, 2007).

⁴⁸ APHIS, Inspection of Joseph & Rhoda Graber., Certif. 32-A-0350 (Aug. 12, 2012), https://acissearch.aphis.usda.gov/acis_request/faces/DataRequest.jspx?output_type=1&request_type=0&request_id=170120948011917 (Exhibit I-4).

⁴⁹ HSVMA Report, *supra* note 32, at 6-7; see also Ward et al., *supra* note 40, at 66 (noting that “[f]or experimental and comfort reasons it is best to maintain animals in their thermoneutral zone”).

⁵⁰ Ward et al., *supra* note 40, at 66.

⁵¹ HSVMA Report, *supra* note 32, at 7.

dogs to withdraw, self-mutilate, bark frequently, or develop inappropriate repetitive behaviors.⁵² Even if a dog is eventually taken off the wire flooring, such behaviors can persist.

For example, in December, 2013, a USDA inspector found a gravely injured dog entrapped in wire flooring at a commercial breeding facility in Iowa. In the report, attached as Exhibit I-1, the inspector noted that the dog “had a pad caught in the wire flooring, and she had aborted her puppies.” The inspector also stated the dog had shallow breathing, pale gums and was lethargic. The dog’s poor condition may have been caused by struggling to free herself to the point of exhaustion. And in May, 2014, an inspection of a commercial breeding facility in Missouri, attached as Exhibit I-2, found a Maltese who was unable to put weight on his right front leg due to a swollen, red paw, and a French Bulldog was found with nails so long that “some of the toenails were wrapping around the wire flooring and turning the toe digits in an abnormal manner.” Both swollen feet and abnormally long nails are common problems at inhumane commercial breeding facilities where dogs are forced to stand on wire flooring continually.

The arguments advanced in favor of wire or gridded flooring cannot justify these physical and psychological harms. In theory, such flooring is designed to allow urine and feces to pass through, allowing for easier sanitation. However, mesh that is small enough to prevent paws from passing through is also too small to allow feces to pass through easily. As a result, fecal matter generally only passes through the wire flooring if it is mashed through by the dogs’ feet or bodies. Feces then sticks to the dogs, and also sticks to the mesh matter, becoming caked onto the wire.⁵³ Once this fecal matter dries, it is very difficult to remove. Over time, the caked-on fecal matter may become the only solid surface on which the dogs can stand or rest, and dogs

⁵²

Id.

⁵³

Humane Society Fact Sheet, *supra* note 33.

will do so. This is not only unsanitary, but it also conflicts with the natural instinct of dogs to live separately from their excrement. However, the dogs' overwhelming desire to feel the security of solid ground beneath their feet overrides this instinct for many dogs, and they make their home and resting place on their own old waste.⁵⁴

Fecal matter that does manage to pass through the wire or gridded flooring accumulates in a pan, on the floor, or on the ground below the cage. This attracts flies and other insects. Such insects are not only a nuisance to the dogs, but they can also pose a serious health risk. Fly strike can result in open wounds, and insect bites increase the likelihood of disease transmission.⁵⁵

All of the harms described in this Section can occur even if the wire flooring at a commercial breeding facility is in perfect condition. However, in practice flooring does not long remain in such condition. Vinyl or other coating wears off quickly.⁵⁶ Dogs also chew on the wiring, especially if they do not get adequate psychological stimulation, which is usually the case at large commercial dealer facilities. When dogs chew on the wiring, they can damage their teeth and ingest pieces of plastic coating, causing gastric upset.⁵⁷ Without coating, the wire is more uncomfortable and more dangerous.⁵⁸

⁵⁴ Animal Rescue Corps, *supra* note 37; *see also* APHIS, Inspection of Debra Pratt, Certif. 42-A-1399 (Oct. 2, 2012), https://acissearch.aphis.usda.gov/acis_request/faces/DataRequest.jspx?output_type=1&request_type=0&request_id=277121002020412 [hereinafter Pratt Inspection Report] (observing feces hanging from the wire floors and fly infection) (Exhibit I-5); APHIS, Inspection of Kenneth & Leatrice McGuire, Certif. 42-A-0830 (cancelled) (Mar. 12, 2013), https://acissearch.aphis.usda.gov/acis_request/faces/DataRequest.jspx?output_type=1&request_type=0&request_id=71131347492862 [hereinafter McGuire Inspection Report] (similar) (Exhibit I-6); Kragt Inspection Report, *supra* note 47 (Exhibit I-3) (similar); APHIS, Inspection of Lavern Troyer, Certif. 33-A-0488 (Aug. 9, 2011) [hereinafter Troyer Inspection Report] (Exhibit I-7).

⁵⁵ HSVMA Report, *supra* note 32, at 7.

⁵⁶ *Id.* at 6-7; *see also* APHIS, McGuire Inspection Report, *supra* note 54 (Exhibit I-6) (observing whelping dog on broken wire flooring with sharp points).

⁵⁷ *See* Miller, *supra* note 32 (Exhibit F).

⁵⁸ HSVMA Report, *supra* note 32, at 6-7; *see also* McGuire Inspection Report, *supra* note 54 (Exhibit I-6) (observing whelping dog on broken wire flooring with sharp points).

3. The Regulations Need to Be Amended to Prevent Harm to Dogs from Wire Flooring

Given the physical and psychological harms caused by wire or gridded flooring discussed above, USDA should amend 9 C.F.R. § 3.6(a)(2) to require that the mandatory minimum space required for primary enclosures in commercial breeding facilities have solid floors, or flooring that is slatted if the slats are at least 3.5 inches in width with no more than half-inch gaps between slats.⁵⁹

Notably, APHIS's own comments from an earlier rulemaking suggest that this proposed regulation is required under the AWA on the basis of discomfort alone. In 1998, in response to a public comment that the then-current regulations (which did not require coated wire and also did not specify that the flooring must not sag) were sufficient, the Agency wrote:

While the current regulations regarding primary enclosures for dogs and cats require that the floors be constructed in a manner that protects the dogs' and cats' feet and legs from injury, the *regulations do not address the issue of basic comfort* for the animals. In enforcing the AWA, APHIS is charged with, among other things, promulgating standards to govern the humane care and treatment of animals covered by the law. Therefore, in carrying out the AWA, we believe that *we are responsible for establishing minimum levels of comfort* for regulated animals. We have come to believe that, while wire flooring may not actually cause injury to all dogs and cats housing on it, *such flooring is generally uncomfortable for these animals*.⁶⁰

Now, sixteen years later, scientific research and USDA's inspection experience make absolutely clear not only that wire or gridded flooring in general causes great discomfort, but that it also causes significant injuries to animals housed on them, regardless of the coating and

⁵⁹ This requirement mirrors some state law requirements, *e.g.*, Pennsylvania's. See 3 Pa. Stat. § 459-207(i)(3)(ii); *see also* Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

⁶⁰ Humane Treatment of Dogs and Cats, 63 Fed. Reg. at 3018 (emphasis added).

regardless of whether the flooring sags. Thus, based on its own rationale, the Agency should revise its regulations to prohibit wire flooring entirely, at least in the minimum mandated space.

The case for federal regulation prohibiting wire flooring in a dog's primary living space is amply supported by experts in the field. For instance, in the lab animal context, "the majority of the experts recommended solid or at least only partly gridded floors and agreed that dogs prefer solid flooring. Whatever the flooring type, a safe solid area of sufficient size for all dogs to comfortably and simultaneously lie down should be provided."⁶¹

Many organizations oppose the use of wire flooring, including for example the Association of Shelter Veterinarians ("ASV").⁶² An ASV task force charged with drafting guidelines for the humane care of animals in shelters concluded after almost two years of research that "[w]ire-mesh bottom floors in cages are not acceptable for cats and dogs."⁶³ The American Kennel Club ("AKC") also states its preference for solid flooring, and allows wire flooring only if a solid rest area is provided.⁶⁴ Similarly, the American Veterinary Medical Association ("AVMA") in its model breeding regulations states that dogs need at least some solid flooring in their cages.⁶⁵ And the Council of Europe⁶⁶ Expert Group, a group of experts

⁶¹ Robert Hubrecht, *Comfortable Quarters for Dogs in Research Institutions*, Comfortable Quarters for Lab. Animals (9th ed. 2002).

⁶² See Miller, *supra* note 32 (Exhibit F).

⁶³ See *id.* This research was performed with shelters in mind, but is even more relevant for commercial breeding facilities because animals are generally in shelters for only a short period of time, while thousands of animals in commercial breeding facilities spend the vast majority of their lives in their primary enclosures. *Id.*

⁶⁴ American Kennel Club, *AKC's Care and Conditions of Dogs Policy*, https://images.akc.org/governmentrelations/documents/pdf/Safe_Housing.pdf (last visited Nov. 13, 2014) [hereinafter AKC Policy].

⁶⁵ Am. Vet. Med. Ass'n (AVMA), *Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets* (Apr. 9, 2010) ("Dogs should be provided with an area of solid flooring. A dog's welfare needs for comfortable housing are better met by a kennel with solid flooring.") [hereinafter AVMA Model Bill].

⁶⁶ The Council of Europe is an international political institution with 45 member states, formed in 1949 to protect human rights and seek solutions to social problems facing European society, among other goals. See Wim deLeeuw, *The Council of Europe: What Is It?*, Dev. of Science-Based Guidelines for Lab. Animal Care, *supra*, at 32.

largely drawn from nongovernmental organizations, has stated that all dogs should at the very least be provided with a comfortable solid resting area within their enclosures.⁶⁷

A federal regulation prohibiting wire flooring, at least in the minimum space required for primary enclosures, would find company with laws from six states which already require completely solid flooring.⁶⁸ Moreover, many more states require at least solid resting places in primary enclosures.⁶⁹

Finally, enforcement of such a regulation would not be difficult. Violations would be easily detected through visual inspection.

B. Size of Primary Enclosures

1. The Minimum Required Size of Primary Enclosures Is Currently Too Small

A primary enclosure of the minimum size allowed under current regulations is far too small for a dog to live in for most of her life. Essentially, a dog may be kept in a small square wire box with sides a mere six inches longer than her body length, and a height only six inches higher than her body height.⁷⁰ This space is barely sufficient for most dogs to allow them to comfortably turn around and lie down in a clean spot, or move around if they so desire. Furthermore, these rules apply uniformly to all dogs, even though six inches is a much less meaningful amount of space for a larger dog.

Current science shows that these minimum primary enclosure sizes are too small to properly allow dogs to develop and behave normally. Simply put, “dogs . . . require sufficient

⁶⁷ Moore, *supra* note 32. Furthermore, the experts stated that pre-weaned pups and periparturient and suckling bitches should not be housed on an open floor system.

⁶⁸ See Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

⁶⁹ See *id.* However, Petitioners note that a solid resting area is inadequate to address their concerns regarding wire flooring. Providing only a small area of solid flooring in practice simply reduces the dogs’ overall living space, as they will simply remain on the solid area and avoid the wire portions of the enclosure. See *supra* note 32 (citing sources noting that animals avoid wire flooring if solid flooring is available).

⁷⁰ 9 C.F.R. § 3.6(c)(1)(i), (iii).

space and exercise geared to promote their mental and physical health.”⁷¹ For instance, young puppies require more space since they are active and need extra space for play, and all dogs require a space that is large enough to allow them to retreat from distressing events.⁷² Sufficiently large enclosures also allow for structures and enrichment to be added, and allow a dog to separate its sleeping, defecating, and exercise areas.⁷³ As many inspections have shown, under current regulations dogs have insufficient space to sit, stand, or lie down in a clean spot.⁷⁴ Dogs should also not be limited in vertical space; they should be able to stand on their hind legs without touching the roof of the enclosure.⁷⁵

Small enclosures can lead to physical and behavioral problems that will ultimately affect buyers of puppies. For instance, confinement in cramped enclosures is associated with a higher prevalence of circling and other stereotyped behavior.⁷⁶ Additionally, enclosures that are too small—in combination with inadequate exercise regulations—lead to a lack of physical exercise for dogs, which results in a variety of physical problems.⁷⁷ Larger enclosures would ensure that dogs get a minimal amount of exercise if, for some reason, they cannot access the exercise area proposed in this Petition, such as during bad weather or very low temperatures.⁷⁸

Various states already require a larger enclosure space that is better tailored to the needs of the dog. For example, Missouri regulations require that dogs be provided with enclosure space

⁷¹ Moriah Hurt et al., *Promoting the Welfare of Kennelled Dogs: Space Allocations and Exercise*, Purdue Extension (Feb. 2015), <https://extension.purdue.edu/extmedia/VA/VA-2-W.pdf>.

⁷² Hubrecht, *supra* note 61; *see also* Kevin J. Stafford, *The Welfare of Dogs* 169-70 (2007).

⁷³ Hubrecht, *supra* note 61.

⁷⁴ Photographs of Dogs Who Have No Clean Spots Available to Lie Down (Exhibit D-2).

⁷⁵ Hubrecht, *supra* note 61; *see also* New South Wales Agriculture Animal Research Rev. Panel, *Guidelines for the Care and Housing of Dogs in Scientific Institutions* 8 (Mar. 1, 1999).

⁷⁶ Hubrecht, *supra* note 61; *see also* Michael B. Hennessy et al., *Exploring Human Interaction and Diet Effects on the Behavior of Dogs in a Public Animal Shelter*, 5 J. Applied Animal Welfare Sci. 253 (2002).

⁷⁷ *See, e.g.*, Suzanne Hetts et al., *Influence of Housing Conditions on Beagle Behaviour*, 34 Applied Animal Behav. Sci. 138 (1992) (“Inactivity associated with caging for 8 weeks led to generalized subperiosteal bone resorption with the bone being replaced by fibrous tissue.”). The effects of a lack of exercise are discussed in more detail in Section IV.D, *infra*.

⁷⁸ *See* AVMA Model Bill, *supra* note 65 (noting that adequate space encourages spontaneous activity and enrichment necessary for a dog’s normal development).

that is up to six times the current USDA requirements.⁷⁹ Others require, at the very least, “adequate space” for the dog to fully turn around, lie down, and fully extend without touching the sides of the enclosure.⁸⁰

2. The Regulations Need to Be Amended to Require Larger Enclosures

It is clear that there is an “insufficient scientific basis to support” the current regulations.⁸¹ Although older research is more conflicted, newer research shows that a sufficiently large kennel size allows dogs to display “a greater diversity of natural behaviors.”⁸² Clearly, there are “distinct advantages in having larger cages for dogs.”⁸³ The Agency should amend the current regulations in 9 C.F.R. § 3.6 to require larger enclosures that properly scale up with the size of the dog housed in the enclosures to ensure the dog has sufficient space to exhibit natural behaviors. At the very least, the minimum floor space should be double the current requirement, allowing the dog to turn and stretch fully without touching the sides of the enclosure, with a height sufficient to allow the dog to stand on his or her hind legs without touching the roof of the enclosure.

C. Stacking of Primary Enclosures

Current USDA regulations fail to address the common problems associated with the stacking of primary enclosures.⁸⁴ Because stacking has proven to have serious negative impacts on dogs housed in such cages, new regulations are needed.

⁷⁹ Mo. Code Regs. Ann. tit. 2, § 30-9.030(1)(F)3.C.(II) (requiring six times amount of federally required floor space for all singly housed dogs as of January 1, 2016); *see also* Compilation of State Laws and Regulations Regarding the Topics Addressed in This Petition (Exhibit G).

⁸⁰ *See* Mich. State Univ. Animal Legal & Historical Center, Table of State Commercial Pet Breeders Laws, <https://www.animallaw.info/topic/table-state-commercial-pet-breeders-laws> (last visited Aug. 30, 2015); Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

⁸¹ Hurt et al., *supra* note 71.

⁸² *Id.* (referencing data from S. Normando et al., *Effects of Space Allowance on the Behaviour of Long-Term Housed Shelter Dogs*, 103 Behavioural Processes 306-14 (2014)).

⁸³ Stafford, *supra* note 72, at 169.

⁸⁴ *See* Photographs of Stacked Cages (Exhibit D-3).

1. Stacking Primary Enclosures Is Harmful to Dogs

Directly or indirectly stacking primary enclosures through the use of multiple tiers reduces airflow, which can be particularly problematic for dogs housed in indoor facilities. Stacking can also limit the light that reaches the dogs. Some dogs housed in stacked cages in commercial breeding facilities live in almost complete darkness,⁸⁵ which can lead to psychological harm.

Stacking primary enclosures is also harmful because it creates major sanitary problems. Stacked cages are generally difficult or even impossible to adequately clean without the use of special equipment.⁸⁶ Moreover, feces, urine, wastewater, hair, and other filth from higher cages can fall onto the dogs in the lower cages if there is no adequate barrier between the different levels or when the cages are being sprayed down for cleaning.⁸⁷

Stacking also impedes access to the dogs, which can make removal of dogs from stacked cages extremely difficult. This may lead operators to leave dogs in their cages for long periods, depriving the dogs of exercise, socialization, or even medical examinations and treatment. Dogs being removed from high cages sometimes fall or are dropped, leading to major injury.⁸⁸ Moreover, stacking impedes visibility of the dogs. This makes it difficult for operators and USDA inspectors to check on the dogs' health and well-being,⁸⁹ as well as the sanitation and safety of the primary enclosure.

Stacked cages encourage overcrowding of dogs in facilities because many dogs are placed in cages close together, contributing to high ammonia levels, fly infestations, and rapid transmission of diseases. Across dealer housing facilities, the worst conditions that inspectors

⁸⁵ Humane Society Fact Sheet, *supra* note 33.

⁸⁶ *Id.*; HSVMA Report, *supra* note 32, at 7 (“In stacked-cage scenarios, wire mesh flooring amplifies the health risks [related to excreta] for the dogs housed below.”).

⁸⁷ See McGuire Inspection Report, *supra* note 54 (Exhibit I-6) (observing waste running down from above).

⁸⁸ Humane Society Fact Sheet, *supra* note 33.

⁸⁹ *Id.*

and rescue organizations such as HSUS encounter tend to be in facilities with stacked primary enclosures. These dealers tend to use stacked primary enclosures because they are generally focused on maximizing the number of dogs they can fit in their limited spaces to maximize profits. They also tend to understaff their facilities to reduce their costs, exacerbating an already inhumane situation, and leading to the further neglect of the dogs locked in the stacked cages. The ammonia levels can get so bad in such facilities—where dogs can spend their entire lives—that rescue workers on relatively short visits must wear respirators.⁹⁰

Stacked cages pose an additional threat to dogs when they have wire flooring and the barriers between cages are inadequately maintained. As discussed above, there is a risk with wire flooring that dogs' paws and legs may slip through holes in the flooring. If the primary enclosures are stacked, dogs may injure, or be injured by, dogs on other tiers.⁹¹ The dogs below can get kicked or scratched, and the dogs above can be bitten.

So-called Sundowners and Hunte kennel trailers, which aim to maximize the amount of dogs by stacking cages, are no less problematic than other stacked systems, despite assertions by some breeders to the contrary. Inspectors have found rusted doors, gaps in treated-wire floors big enough for paws to fall through, feces build-up on doggie doors, high amounts of ammonia, and other problems in such trailers. The problems with these kennels are well-documented in USDA inspection reports.⁹²

⁹⁰

Id.

⁹¹

HSVMA, *Veterinary Report on Puppy Mills*, *supra* note 29.

⁹²

See Pratt Inspection Report, *supra* note 54 (Exhibit I-5) (holes in the elevated flooring); McGuire Inspection Report, *supra* note 54 (Exhibit I-6) (feces caught on flooring, waste running down the bottom cage); Kragt Inspection Report, *supra* note 47 (Exhibit I-3) (large gaps in floor); APHIS, Inspection of Pat Crabtree, Certif. 48-A-1641 (Apr. 2, 2013) (Exhibit I-7); Troyer Inspection Report, *supra* note 54; *see also* Photographs of Stacked Cages (Exhibit D-3) (including pictures of stacked cages in trailers).

2. New Regulations Are Necessary to Prevent Stacking from Harming Dogs

In light of these harms, USDA should amend 9 C.F.R. § 3.6(c)(4) to prohibit the stacking of primary enclosures in commercial breeding facilities to allow for easier viewing of and access to the dogs, more effective cleaning, and increased access to exercise areas and socialization opportunities. Such action will dramatically improve the well-being of dogs and create safer and more sanitary conditions in commercial breeding facilities.

USDA would not be alone if it promulgates this regulation. Several states already prohibit stacking outright, while others limit the number of levels cages can be stacked.⁹³ Moreover, enforcing this regulation would not be challenging or time-consuming, because visual inspections can readily determine whether cages are stacked.

D. Temperature Regulation

1. The Current Regulations Allow for Dogs to Be Kept in Harmful Conditions for Extended Periods of Time

The current regulations set insufficient bounds on ambient temperatures in housing facilities. For indoor and sheltered housing facilities, temperatures cannot fall below 45 °F (or 50 °F for some species) and cannot go above 85 °F for more than four consecutive hours.⁹⁴ Only dogs that are acclimated to prevalent temperatures can be kept outdoors. For dogs whose acclimation status is unknown, they cannot be kept outdoors if temperatures fall below 50 °F. There is no upper temperature limit for outdoor housing.⁹⁵ Auxiliary ventilation such as fans or air conditioning must be provided when temperatures are at or above 85 °F.⁹⁶ When temperatures drop below 50 °F, means of preserving body heat must be provided.⁹⁷

⁹³ Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

⁹⁴ 9 C.F.R. §§ 3.2(a), 3.3(a).

⁹⁵ 9 C.F.R. § 3.4(a).

⁹⁶ 9 C.F.R. §§ 3.2(b), 3.3(b).

⁹⁷ 9 C.F.R. §§ 3.2(a), 3.3(a).

These regulations are clearly insufficient to prevent harm to dogs. Under these standards, breeders can let dogs live in extremely uncomfortable conditions for 3 hours and 59 minutes at a time indoors, and for even longer periods of time outdoors. “Maintenance of body temperature within normal circadian variation is necessary for animal well-being. Animals should be housed within temperature and humidity ranges appropriate for the species, to which they can adapt with minimal stress and physiologic alteration.”⁹⁸ While varying somewhat by breed, the recommended ambient temperature for most dogs is 64-84 °F.⁹⁹

One major problem with the current regulations is that they allow for temperatures well outside of a dogs comfortable range to persist for a very significant portion of time. Most dogs can be housed at 45 °F indefinitely, which is already a cold temperature for many dogs, especially for prolonged periods of time. Theoretically, dogs can be kept in freezing temperatures for up to 4 hours if some bedding is provided. Conversely, heavily coated dogs that do not deal well with higher temperatures can be kept in temperatures of 84 °F without any additional measures, and even at higher temperature for hours with only fans required to cool them down; when they are outside, fans are not required at all. Large-scale breeders have shown time and again that the temperature regulations are insufficient, as inspectors have found dogs nearly frozen in cold temperatures or dehydrated in hot temperatures.¹⁰⁰

⁹⁸ U.S. Dep’t of Health & Hum. Servs., Pub. Health Serv., Nat’l Inst. of Health, Guide for the Care and Use of Laboratory Animals 43 (8th ed. 2011), <http://grants.nih.gov/grants/olaw/guide-for-the-care-and-use-of-laboratory-animals.pdf>.

⁹⁹ *Id.*; see also K. Männer, *Energy Requirement for Maintenance of Adult Dogs*, 121 J. Nutrition S37 (1991) (noting that the upper critical temperature, depending on the dog, can be as low as 60-78 °F).

¹⁰⁰ For a collection of inspection reports that show the most egregious circumstances, including dogs kept in frigid or very hot conditions, see Humane Society of the U.S., *The Horrible Hundred 2015: A Sampling of Problem Puppy Mills in the United States* 7, 9, 12-16, 20-21, 23-29 (2015), <http://www.humanesociety.org/news/news/2015/04/horrible-hundred-2015.pdf> [hereinafter *Horrible Hundred 2015*].

Wire flooring exacerbates these problems, particularly for cold temperatures. As discussed above,¹⁰¹ dogs housed in wire flooring enclosures do not have shelter from drafts, and without solid flooring have a much more difficult time staying warm in colder temperatures.

2. The Regulations Need to Be Amended to Prevent Harm to Dogs from Extreme Temperatures

To prevent harm to dogs, the agency must at the very least eliminate the four-hour rule from 9 C.F.R. §§ 3.2 and 3.3, which is a loophole that allows inhumane, commercial breeders to save money by letting the dogs suffer through hours of bad conditions and severe discomfort. At a minimum, temperatures should be required to simply be kept between 45 or 50 °F (depending on the dog breed) and 85 °F.¹⁰² Similarly, dogs whose acclimation status is unknown should also only be kept outside when temperature are within this range. Such a regulation would have the additional advantage of being easily measureable and enforceable: currently, an inspector would not necessarily be able to easily enforce the four-hour period, as the inspector might not know how long a dog has already been subjected to the temperature extremes at any given point in time.

IV. CANINE HEALTH AND WELFARE IN COMMERCIAL BREEDING FACILITIES

A. Inhumane Breeding Practices

There are currently no rules in the USDA's regulations that restrict breeding practices for commercial breeding facilities other than the vague and unenforceable requirement that the dogs be generally healthy and supervised by a veterinarian.¹⁰³ The current regulations do not

¹⁰¹ See *supra* note 49 and Section III.A.

¹⁰² See, e.g., Mo. Code Regs. Ann. tit. 2, § 30-9.030(2)(B)4.B.(I)(b) (requiring temperatures to be maintained between 45 and 85 °F if a dog is not provided an outside exercise area); Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

¹⁰³ 9 C.F.R. § 2.40 (2015).

adequately address (A) breeding frequency, (B) age for initial breeding, (C) breeding practices concerning inheritable health defects, (D) the specific veterinary needs of breeding dogs, or (E) cesarean sections and other invasive surgeries.

1. Overbreeding

a. Overbreeding Is Detrimental to the Dogs' Health

To maximize profits, many large, inhumane, commercial breeding facilities breed their female dogs every time the dogs are in heat, often regardless of the dogs' health.¹⁰⁴ This constant breeding is exhausting for the females and has negative impacts on their health; for instance, anecdotally, HSUS has observed during rescues and raids of breeding facilities that mother dogs frequently have dental disease or missing teeth, potentially due to calcium deficiency from continual nursing and pregnancy.¹⁰⁵ Multiple organizations have consequently issued guidelines recommending against the constant breeding of females. For example:

- The American College of Theriogenologists ("ACT") and the Society for Theriogenology ("SFT") recommend that breeding females not be bred on consecutive estrous cycles unless they have regained appropriate body condition and "are deemed healthy on the basis of veterinarian examination prior to the onset of the next proestrus."¹⁰⁶
- The American Humane Association ("AHA") has recommended that dogs not be bred more than five times in a lifetime.¹⁰⁷
- Guide Dogs UK's Breeding Code of Ethics states that a female can only have consecutive litters in the middle of her breeding career, and only if a

¹⁰⁴ HSVMA Report, *supra* note 32, at 1.

¹⁰⁵ Cf. NIH Osteoporosis & Related Bone Diseases Nat'l Res. Ctr., *Pregnancy, Breastfeeding, and Bone Health* (Jan. 2012), http://www.niams.nih.gov/Health_Info/Bone/Bone_Health/Pregnancy/default.asp#a (noting that in humans, pregnant mothers must take in sufficient calcium or the baby will draw on the calcium from the mother's bones).

¹⁰⁶ Soc'y for Theriogenology, *SFT/ACT Position Statements: Welfare of Breeding Dogs*, <http://www.therio.org/?page=PositionStatement#Welfare> (last visited Dec. 5, 2014) [hereinafter SFT Position Statement].

¹⁰⁷ Email and attachment from Patricia N. Olson, Chief Veterinary Advisor, Am. Humane Ass'n, to various recipients including Melanie Kahn, Humane Soc'y (July 2012) (on file with Petitioner the HSUS) [hereinafter Am. Humane Ass'n Breeding Protocol].

“satisfactory veterinary check” has been conducted.¹⁰⁸ The Breeding Code of Ethics further imposes a maximum amount of litters in a dog’s lifetime (four to five).

- The Chartered Institute of Environmental health (CIEH) limits the number of litters during each female’s lifetime to six and requires a rest period of at least 12 months between litters.¹⁰⁹
- The AKC has stated that it is customary to avoid breeding a female on consecutive heats, which it described as necessary to allow the dog to recuperate.¹¹⁰
- A similar organization in Sweden, the Svenska Kennelklubben (“Swedish Kennel Club”), provides the following guidelines in its Code of Ethics to protect dogs against the harms from overbreeding:
 - If the female has two litters within 12 months, then she must have 12 months of rest.
 - If the female is over seven years old, then she must have at least 12 months rest between litters and must be examined before breeding. Females over ten years old may not be bred.
 - A female should not give birth to more than five litters in a lifetime.¹¹¹

The majority of the top ten breed clubs representing the most popular breeds in the United States, as well as many other breed clubs, similarly advise against overbreeding female dogs. For example:

- The National Labrador Retriever Club instructs that a female “should not be allowed to produce an excessive number of litters. Sufficient time should be allowed between litters for the bitch to recuperate.”¹¹²

¹⁰⁸ Guide Dogs (UK), *A Breeding Code of Ethics* (June 27, 2014), <https://m.guidedogs.org.uk/aboutus/national-breeding-centre/nbc-revealed/breeding-code-of-ethics/> (last visited Aug. 18, 2015).

¹⁰⁹ CIEH Model License Conditions and Guidance for Dog Breeding Establishments 20 (2014), [hereinafter CIEH Model License]. CIEH is a registered charity and the professional voice for environmental health based in London. See CIEH, *About the CIEH*, http://www.cieh.org/about_us.html (last visited Aug. 19, 2015).

¹¹⁰ AKC, *A Guide to Breeding Your Dog* 9 (2007), https://images.akc.org/pdf/breeders/resources/guide_to_breeding_your_dog.pdf. It further states that “One month before breeding, the bitch should have a thorough pre-breeding physical examination by a veterinarian.”

¹¹¹ Svenska Kennelklubben, *Code of Ethics, Breeding Policy, Ethical Guidelines* §§ 3:4-3:5 (2015), <http://www.skk.se/Global/Dokument/Om-SKK/S7-SKK-Code-of-ethics-2015.pdf>.

- The German Shepherd Dog Club of America requires that its members pledge to never permit their females to produce three consecutive litters unless advised otherwise by a veterinarian.¹¹³
- The National Beagle Club recommends that no female have an excessive number of litters nor be mated in successive seasons without regard to her health.¹¹⁴
- The American Boxer Club, Inc.’s Code of Ethics states that females “should not whelp more than twice in any three consecutive estrus cycles.”¹¹⁵

A variety of states have also passed laws restricting continuous breeding.¹¹⁶

b. New Regulations Are Necessary to Prevent Constant Breeding of Females and to Ensure the Health and Safety of Breeding for Both Males and Females

USDA should add language under 9 C.F.R. Part 3, Subpart A and 9 C.F.R. § 2.40(b), to require that breeding females receive adequate rest between litters to allow for physical recovery and to require examinations to ensure the health of breeding dogs. Specifically, the regulations should restrict breeding to a maximum of two litters per 18-month period, and no more than six litters per each female’s lifetime. And, regardless of whether it decides to adopt this rule, USDA should also add an independent regulation requiring a veterinarian to document that each breeding dog is healthy, including a body condition score of at least 3, and free of communicable diseases and hereditary or congenital disorders or other conditions that may be exacerbated by breeding, pregnancy, or whelping at least at each annual physical exam, but ideally prior to each attempt to breed if that occurs more often than annually. For male dogs, such an exam should

¹¹² Nat’l Labrador Retriever Club, *Code of Ethics* (Feb. 20, 2005),

<http://s87153149.onlinehome.us/NLRCethics2.html> (last visited Aug. 18, 2015).

¹¹³ German Shepherd Dog Club, *Breeder’s Code*, <http://www.gsdca.org/join-the-gsdca/breeders-code> (last updated Aug. 7, 2015).

¹¹⁴ Beagle Club, *Code of Ethics*, http://www.thebeagleclub.org/?THE_BEAGLE_CLUB:Code_of_Ethics (last visited Aug. 30, 2015).

¹¹⁵ Am. Boxer Club, *Code of Ethics* (Sept. 16, 2005), <http://americanboxerclub.org/ethics.html> (last visited Aug. 18, 2015).

¹¹⁶ Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

include an evaluation for prostate and testicular disease. For female dogs, such an exam should include an evaluation for pyometra and mammary neoplasia.

This regulation would not add any burden on inspectors. Breeding facilities are already required to keep veterinary records and logs about litters. USDA inspectors could easily review these documents and records of sales to determine compliance.

2. Breeding Ages

a. It Is Harmful to Breed Females at Young Ages

Current USDA regulations do not regulate the age at which commercial breeding facilities may start breeding female dogs. As a result, many commercial breeding facilities begin breeding their females as young as possible to maximize their profits. However, breeding dogs at young ages can be detrimental to their health.

Breeding young female dogs, who are still skeletally immature and/or very small, can predispose them to health risks such as dystocia caused by fetopelvic disproportion.¹¹⁷ This occurs when the fetus is too large for the pelvic opening, and can cause difficult delivery or even make vaginal delivery impossible. It is therefore best to delay breeding a female until she is skeletally mature, which occurs around 18 months of age.¹¹⁸

Of the 115 breed-specific clubs in the United States reviewed for purposes of drafting this Petition, almost all specify a minimum age for breeding females, and many also specify maximum breeding ages to ensure the health of the breeding dogs.¹¹⁹ Notably, more than 80 of these clubs require the female dogs to be at least 18 months old before they are first bred. Of

¹¹⁷ Peter G. G. Jackson, *Handbook of Veterinary Obstetrics* 141 (2nd ed. 2004).

¹¹⁸ *Id.*

¹¹⁹ See Table of Breed Clubs' Rules Regarding Breeding Ages and Frequency (Exhibit H). Maximum breeding ages differ somewhat by breed, but most organizations agree that dogs should not be bred at old age. See, e.g., Am. Kennel Club, *Responsible Breeding: Guide to Breeding*, Step Seven, <http://www.akc.org/dog-breeders/responsible-breeding/> (last visited Sept. 16, 2015) (not allowing registration of litters of which either parent was over 12 years of age at the time of mating).

these clubs, a majority impose an even stricter requirement, setting the minimum breeding age at two years. For example:

- The Yorkshire Terrier Club of America prohibits breeding females before their second heat or before they are at least 18 months of age, whichever comes first.¹²⁰
- The American Boxer Club's Code of Ethics states that females should not be bred before the age of 18 months.¹²¹
- The American Rottweiler Club's Code of Mandatory Practices requires that females be bred only after reaching two years of age or older.¹²²

Similarly, the UK Advisory Council on the Welfare of Dog Breeding has issued standards stating that all dogs must be at least two years old before they are used for breeding.¹²³ In addition, multiple states have laws requiring that dogs be at least a minimum age before being bred.¹²⁴

b. New Regulations Are Necessary to Prevent Harm to Breeding Dogs Who Are Too Young or Too Old

USDA should add a section under 9 C.F.R. Part 3, Subpart A, to require that females be at least 18 months old before they are first bred. USDA should also consider setting a higher minimum age, such as two years, for larger breeds.

To monitor compliance, USDA inspectors could review the logs and veterinary records dealers are already required to keep to determine if a commercial breeding facility is compliant with the age restrictions.

¹²⁰ Yorkshire Terrier Club, *Code of Ethics*, http://www.theyorkshireterrierclubofamerica.org/sharedobjects/docs/COE_COC.pdf (last visited Aug. 30, 2015).

¹²¹ Am. Boxer Club, *supra* note 115.

¹²² Am. Rottweiler Club, *Membership Application & Mandatory Practices*, <http://www.esmondrott.com/arcmem.pdf> (last visited Aug. 30, 2015).

¹²³ Advisory Council on Welfare Issues of Dog Breeding, *Standard for Breeding Dogs 7*, <http://www.dogadvisorycouncil.com/resources/breeding-standard-final.pdf> (last visited Aug. 30, 2015) [hereinafter Advisory Council Standards].

¹²⁴ Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

3. Inheritable Health Defects

a. Current Regulations Do Not Protect Against Breeding Dogs With Common Inheritable Health Defects

USDA's current regulations do not impose any requirements for screening for inheritable health defects, and commercial breeding facilities frequently do not screen for such disorders before breeding their dogs. It should therefore come as no surprise that approximately one-third of all reported problems from puppy buyers indicate that their dogs suffer from at least one significant congenital or inheritable condition. More importantly, the cost to consumers of treating inheritable disorders can climb into the thousands of dollars. For example, surgery to correct hip dysplasia, common in Labradors, Golden Retrievers, English Bulldogs, and Rottweilers, can cost between \$4,400 and \$4,700.¹²⁵

There are at least 334 known congenital and inheritable disorders affecting more than 180 different dog breeds.¹²⁶ These include diseases that cause severe symptoms affecting the blood; skin; or cardiovascular, endocrine, immune, gastrointestinal, musculoskeletal, nervous, respiratory, urinary, or reproductive systems.¹²⁷

Many animal protection and breeding organizations worldwide recommend or require screening and restrictions on breeding to avoid hereditary disease. For example:

- The Federation Cynologique Internationale ("FCI") International Breeding Rules, effective in 89 countries, state that breeding can only be carried out with dogs who are healthy in functional and hereditary terms.¹²⁸
- The SFT explains that dogs should be evaluated for hereditary disorders and other diseases before breeding.¹²⁹

¹²⁵ Humane Soc'y, *Puppy Buyer Complaints, A Five Year Summary. 2007-2011*, 2 (2012), http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy_mill_buyer_complaints.pdf (listing complaints); ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4 (calculating cost to consumers).

¹²⁶ HSVMA, *Guide to Congenital and Heritable Disorders in Dogs* 4-40 (rev. May 2011), <http://www.hsvma.org/assets/pdfs/guide-to-congenital-and-heritable-disorders.pdf>.

¹²⁷ Advisory Council Standards, *supra* note 123, at 1.

¹²⁸ Fed'n Cynologique Int'l, *International Breeding Rules of the F.C.I.* (2013), <http://www.fci.be/medias/ELE-REG-en-448.pdf>.

- The UK Advisory Council on the Welfare of Dog Breeding issued standards for breeding dogs which state that breeding stock must be selected based on the dogs' "physical and genetic health." The standards further state that breeding dogs must be examined prior to mating and certified to be free of any inherited defect apparent on physical examination. Where tests for inherited disease are available, the standards require that the dogs be tested and re-tested as appropriate.¹³⁰
- The Animal Welfare Code of Practice Guidelines for dogs and cats issued by the Australian state of New South Wales states that, where an inheritable disease is recognized, the person in charge should try to ensure that the genetic make-up of the female and males will not result in an increase in the frequency or severity of known inherited disorders.¹³¹
- The American Rottweiler Club's Code of Mandatory Practices requires that members breed only females who have been certified as free of communicable diseases, having normal hips, and in good health.¹³²

b. New Regulations Are Necessary to Require Screening for Inheritable Diseases and to Prevent the Breeding of Affected Dogs

USDA should amend 9 C.F.R. § 2.40(b) and add a section under 9 C.F.R. Part 3, Subpart A, requiring the development of a reasonable screening program to test for known prevalent inheritable diseases for the breed at issue, and prohibiting the breeding of any dogs known to have inheritable or potentially disabling health defects that are likely to significantly affect the lifespan or quality of life of the offspring or cause suffering to the breeding dog. Breeders would be required to include records of all testing for genetic conditions within each dogs' veterinary records, through which USDA inspectors would be able to ascertain compliance.

¹²⁹ SFT Position Statement, *supra* note 106.

¹³⁰ Advisory Council Standards, *supra* note 123, at 5-6.

¹³¹ Ross Burton, Animal Welfare Branch, State of New S. Wales (Austl.), *Animal Welfare Code of Practice – Breeding Dogs and Cats* (Aug. 2009), http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/299803/Breeding-dogs-and-cats-code-of-practice.pdf (specifically, Guideline 10.1.2, Breeding and Rearing).

¹³² Am. Rottweiler Club, *supra* note 122.

4. Veterinary Screenings for Breeding Dogs

a. Current Regulations Do Not Provide for the Specific Veterinary Needs of Breeding Dogs

Currently, regulations do not require hands-on veterinary examinations for breeding animals, do not specify the frequency with which veterinary examinations should occur, and do not take into account the unique needs of intensively bred animals. Dogs bred intensively are under great physical stress and face serious health conditions that require frequent, hands-on veterinary care. Commercial facilities typically breed dogs beginning with their first heat cycle and continue, usually at every heat cycle regardless of health until the dog can no longer reproduce. Frequent pregnancy without regular veterinary care jeopardizes maternal and fetal health.

USDA inspectors regularly inspect commercial breeding facilities and often photograph the violations they see. Their inspection reports and photographs depict breeding dogs suffering from cruelty and neglect as a result of lack of veterinary care.¹³³ These dogs are painfully emaciated, malnourished, and suffering from the telltale signs of neglect—dental disease, eye infections, skin infections, and matted coats. Regulations must ensure that breeding animals receive basic veterinary care to maintain good health during pregnancy. Exhibit J provides additional detail concerning the need for regular, hands-on veterinary care for breeding dogs to ensure the health of these animals.

b. New Regulations Are Necessary to Provide for the Specific Veterinary Needs of Breeding Dogs

The Agency should add a section under 9 C.F.R. Part 3, Subpart A, providing that no dog may be bred unless a licensed veterinarian has certified that the dog is free from health conditions that may be disabling or likely to significantly affect the lifespan or quality of life of

¹³³ Photographs of Dogs Found in Poor Condition (Exhibit D-4).

the offspring. USDA should also amend 9 C.F.R. § 2.40 to require that all breeding female dogs must be examined at least at each annual exam for any communicable disease or other condition that would be exacerbated by breeding, pregnancy, or whelping, including pyometra and mammary neoplasia.¹³⁴ Such females should also be determined by a veterinarian to have a body condition score of at least 3 to ensure a healthy pregnancy and whelping. Male breeding dogs should be evaluated for prostate and testicular disease.¹³⁵ The attending veterinarian should certify at each exam that the breeding dog has been examined according to the above criteria. To allow inspectors to track the breeding dog's health over time, and ensure enforceability of the regulations, reports of veterinary exams should be retained for at least three years.

B. Unlicensed Practice of Veterinary Medicine, Including Canine Cesarean Sections

1. Cesarean Sections and Other Surgeries Are Very Risky When Performed Without Proper Skill or Supervision

There is currently no federal regulation affirmatively requiring that canine cesarean sections, or for that matter any surgeries, be performed by or under the supervision of a veterinarian or other trained professional.¹³⁶ The canine cesarean section is a particularly complex procedure, often requiring pre-operative correction of electrolyte abnormalities, fluid resuscitation, and evaluation for hypovolemic shock. Proper treatment generally requires two highly trained teams, able to work with speed and precision.¹³⁷

¹³⁴ SFT Position Statement, *supra* note 106.

¹³⁵ *Id.*

¹³⁶ Although most state laws prohibit the practice of veterinary medicine without a license, and as such this practice would be prohibited in most states, there is no federal law specifically addressing this issue. See AVMA, *State Summary Report: Sanctions for Unauthorized Practice of Veterinary Medicine* (Sept. 2011), <https://www.avma.org/Advocacy/StateAndLocal/Pages/scope-unauthorized-practice.aspx>.

¹³⁷ Anthony Kahn & Jill Sammarco, *Cesarean Section in Dogs: Indications, Techniques*, DVM360 Magazine (May 1, 2007), <http://veterinarynews.dvm360.com/dvm/Medicine/Cesarean-section-in-dogs-indications-techniques/ArticleStandard/Article/detail/430422>.

Canine cesarean sections are also extremely challenging and risky because their anesthesia protocols cannot be standardized across all breeds and sizes of dogs. They must therefore be performed by a licensed veterinarian who is qualified to make the call about anesthesia and who has access to the anesthesia drugs.¹³⁸

Improper care before, during, or after a canine cesarean section can lead to severe infection of the mother and even the death of the puppies.¹³⁹ At least one national breed club has recognized these major risks and therefore requires that canine cesarean sections only be performed with the concurrence of a veterinarian.¹⁴⁰

Despite the significant risks to the females and the puppies, staff at some inhumane, commercial breeding facilities attempt to practice veterinary medicine without a license, including performing surgical births. Although canine cesarean sections are the primary problem, Petitioners are aware of circumstances where breeders have performed other invasive surgeries without a license. For instance, a Missouri breeder admitted to a USDA inspector that she has performed surgeries such as “ear crops, umbilical hernia repairs, inguinal hernia repairs, ‘nares snipped’, neuters, dew claw removals, ovariohysterectomies, and Caesarian sections.” These procedures were performed in unsanitary rooms.¹⁴¹ This breeder continues to hold a state license, showing that state law is clearly insufficient to deter these practices.

¹³⁸ See G.J. Benson & J.C. Thurmon, *Anesthesia for Cesarean Section in the Dog and Cat*, 65 Modern Vet. Prac. 29, 29-32 (1984).

¹³⁹ See *Activists and Officials Target Puppy Mills*, USA Today, Jan. 1, 2010, http://usatoday30.usatoday.com/news/nation/2010-01-11-puppy-mills_N.htm; see also HSVMA Report, *supra* note 32, at 2.

¹⁴⁰ Yorkshire Terrier Club, *supra* note 120.

¹⁴¹ U.S. Dep’t of Agric., APHIS, Inspection of John & Sharlette Tidwell, Certif. 43-B-0441 (Dec. 2009) (cancelled), <http://michiganpuppymills.com/tfpinspectiondetails.php> (Exhibit I-8 (excerpts)).

2. New Regulations Are Necessary to Ensure Only Veterinarians Perform Cesarean Sections and Other Surgeries

USDA should add a section under 9 C.F.R. Part 3, Subpart A, to affirmatively require that canine cesarean sections and other surgeries be performed only by licensed veterinarians. Federal regulation is necessary to create uniformity on the unlicensed practice of veterinary medicine, and to allow for more consistent inspection and prevention of such dangerous practices.

C. Preventive Care: Vaccinations, Physical Examinations, Grooming, and Dental Care

There are currently no USDA regulations specifically addressing vaccination or other preventive care for dogs in commercial breeding facilities. The existing regulations only require “appropriate methods to prevent” diseases and injuries as part of “adequate veterinary care.”¹⁴² This vague and unenforceable requirement is insufficient to protect the health of the dogs and to adequately prevent disease transmission to other dogs. Veterinary care violations are the number one reason USDA-regulated dog breeders receive citations. Thirty-four percent of all licensed dog breeders have received one or more veterinary care citations and fifteen percent of all dog breeders have received multiple violations.¹⁴³

1. Vaccines and Other Preventive Medical Treatment

a. Existing Regulations Are Insufficient to Protect Animal Welfare

It is well-known that a set of core vaccines and other preventive treatments almost entirely prevent dangerous and frequently fatal diseases in dogs. For instance:

¹⁴² 9 C.F.R. § 2.40(b)(2).

¹⁴³ ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4. Petitioners emphasize the potentially wide-ranging danger of a lack of proper vaccination; in one case, 1,200 dogs had to be put down after canine distemper spread when dogs originating at a Kansas breeder ended up in Wyoming pet stores. Amy Worden, *1,200 Dogs in Kansas Kennel Euthanized in Distemper Outbreak*, *The Inquirer*, (Oct. 17, 2013), http://www.philly.com/philly/blogs/pets/1200_dogs_euthanized_in_distemper_outbreak.html.

- Rabies' mortality rate is as high as 93% in unvaccinated puppies.¹⁴⁴ Vaccination entirely eliminates the risk of contracting and dying from this disease.¹⁴⁵
- Canine distemper virus ("CDV") infection leads to death in up to 50% of infected animals and can spread easily to dogs in pet stores outside the community where the breeding facility is located. Yet a single dose of the vaccination creates complete immunity in more than 99% of animals, with a duration between three years and a lifetime. CDV has been almost completely eradicated in areas where vaccination is common, but easily spreads when unvaccinated, infected dogs get transported across state lines.¹⁴⁶
- Canine parvovirus is one of the most common causes of diarrhea in puppies under six months of age, such as those in inhumane, commercial breeding facilities before sale.¹⁴⁷ Without intensive veterinary intervention, infections are almost always fatal.¹⁴⁸ Even with the best post-infection treatment, parvovirus still has a 10-15% mortality rate.¹⁴⁹ Vaccination, however, prevents infection entirely.¹⁵⁰
- Canine adenovirus has a mortality rate of 10-30% generally, and an even higher mortality rate in young puppies.¹⁵¹ Vaccines entirely prevent the disease and create immunity for three years or longer.¹⁵²

Clearly, preventive care saves dogs' lives and prevents pain and suffering due to infection. Moreover, preventive care is cost effective: it is less expensive to vaccinate a dog than

¹⁴⁴ Ernest S. Tierkel, *Canine Rabies*, 1 *The Natural History of Rabies* 123, 124 (1975).
¹⁴⁵ S. Cleaveland et al., *A Dog Rabies Vaccination Campaign in Rural Africa: Impact on the Incidence of Dog Rabies and Human Dog-Bite Injuries*, 21 *Vaccine* 1965 (2003).
¹⁴⁶ Sandra Newbury et al., *Canine Distemper Virus*, in *Infectious Disease Management in Animal Shelters* 161, 161-67 (Lila Miller & Kate Hurley eds., 2009); *see also* Worden, *supra* note 143 (reporting on large distemper outbreak across states); Press Release, Humane Soc'y, *Puppies Infected With Distemper Linked to Two Pet Stores in Illinois* (Jan. 19, 2012), http://www.humanesociety.org/news/press_releases/2012/01/puppies_infected_with_1192012.html (same).
¹⁴⁷ Lila Miller, Vice President Veterinary Outreach, ASPCA, *Canine Parvovirus*, <http://www.aspcapro.org/parvo> (last visited Nov. 18, 2014).
¹⁴⁸ Colo. State Univ. Coll. of Vet. Med. & Biomed. Scis., *New Protocol Gives Parvo Puppies a Fighting Chance When Owners Can't Afford Hospitalization*, <http://csu-cvmb.colostate.edu/pages/parvo-puppies-new-protocol.aspx> (last visited Nov. 5, 2014).
¹⁴⁹ *Id.*
¹⁵⁰ *See, e.g.*, Jose Angel Lopez de Turiso et al., *Recombinant Vaccine for Canine Parvovirus in Dogs*, 66 *J. Virology* 2748, 2748-53 (1992).
¹⁵¹ Kate E. Creevy, *Overview of Infectious Canine Hepatitis*, *The Merck Veterinary Manual* (Cynthia M. Kahn & Scott Line eds. 10th ed., 2010), http://www.merckmanuals.com/vet/generalized_conditions/infectious_canine_hepatitis/overview_of_infectious_canine_hepatitis.html.
¹⁵² *Id.*

to provide medical treatment post-infection. For example, the prevention of heartworm through a once-a-month medication is much cheaper and more effective than treating this disease post-infection.¹⁵³ The standard treatment for a dog that is not given preventive care and becomes sick is a series of costly injections, lab work, hospitalization, and pain medication.¹⁵⁴

Not only does preventive care save dog lives in a cost-effective manner; it also saves human lives. Worldwide, dogs are the source of 99% of human rabies infections.¹⁵⁵ Reducing rabies in the canine population reduces the number of potential human rabies deaths, making vaccination of animals the most cost-effective method of preventing rabies in humans:¹⁵⁶ vaccinating dogs is up to 55 times less expensive than vaccinating or treating humans for rabies.¹⁵⁷ Vaccinating dogs for rabies and other diseases is thus more than merely a way to help ensure that consumers receive healthy dogs. It is also a “comparatively inexpensive and ethical way” to control rabies in both dogs and in humans.¹⁵⁸

Despite the known effectiveness of preventive care, commercial breeding facilities are not currently required to have veterinarians inspect or vaccinate their dogs on a regular basis. It is all too common for preventable and deadly diseases to sweep through breeding facilities

¹⁵³ Am. Heartworm Soc’y, *Heartworm Basics*, <https://www.heartwormsociety.org/pet-owner-resources/heartworm-basics> (last visited Sept. 1, 2015); *see also* ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4.

¹⁵⁴ Am. Heartworm Soc’y, *Heartworm Basics*, <https://www.heartwormsociety.org/pet-owner-resources/heartworm-basics> (last visited Sept. 1, 2015).

¹⁵⁵ *Rabies Vaccines: WHO Position Paper*, 32 Wkly. Epidemiological Rec. 309, 310 (Aug. 6, 2010).

¹⁵⁶ Jacob Zinsstag et al., *Human Benefits of Animal Interventions for Zoonosis Control*, 13 Emerging Infectious Diseases 527 (2007); K. Bögel & F.X. Meslin, *Economics of Human and Canine Rabies Elimination: Guidelines for Programme Orientation*, 68 Bull. WHO 281, 282 (1990).

¹⁵⁷ Michael Greenwood, *Canine Vaccinations Effective Deterrent to Rabies in Africa*, YaleNews (Jan. 21, 2014), <http://news.yale.edu/2014/01/21/canine-vaccinations-effective-deterrent-rabies-africa> (last visited Aug. 18, 2015).

¹⁵⁸ *See* Zinsstag, *supra* note 156.

unchecked because inhumane, commercial breeders do not provide their dogs with adequate preventive care.¹⁵⁹

b. The Regulations Need to Be Amended to Require Vaccinations and Other Preventive Care

The Agency should amend 9 C.F.R. § 2.40(b) to require specific preventive care by veterinarians to ensure that dogs in commercial breeding facilities receive the necessary care routinely prescribed to companion animals. For every dog at a commercial breeding facility, the regulation should require: (1) a hands-on examination by a veterinarian, including a comprehensive physical examination, dental assessment, body condition scoring, and pain assessment, at least once a year to ensure health problems are identified and treated;¹⁶⁰ (2) core vaccinations recommended by the then-current version of the AAHA Canine Vaccination Guidelines to prevent diseases; and (3) medication to prevent infestation by intestinal parasites, heartworm, fleas, and ticks. All examinations must be documented by the veterinarian. Documentation must be maintained by the breeder for a period of three years and made available to APHIS inspectors upon request.

Various animal protection and breeding organizations already recommend preventive treatment as the best practice to maintain dogs' health. For instance, the American Animal Hospital Association, AVMA, and the World Small Animal Veterinary Association all recommend that every dog receive the four core vaccines: rabies, distemper, parvovirus, and adenovirus.¹⁶¹ ASPCA similarly recommends vaccinating dogs with the core vaccinations plus the hepatitis vaccination and others, depending on exposure risk. It also recommends heartworm

¹⁵⁹ See HSVMA Report, *supra* note 32, at 5 (“Overcrowded conditions can cause one sick dog to infect many other dogs relatively quickly and easily.”); Worden, *supra* note 143; Humane Soc’y, *supra* note 146.

¹⁶⁰ Am. Animal Hosp. Ass’n & Am. Vet. Med. Ass’n, *AAHA-AVMA Canine Preventive Healthcare Guidelines* (2011), https://www.aahanet.org/PublicDocuments/CaninePreventiveGuidelines_PPPH.pdf.

¹⁶¹ *Id.*; Susan Dawson, *Guidelines for the Vaccination of Dogs and Cats*, 48 J. Small Animal Prac. 528, 529-532 (2007); see also Welborn et al., *supra* note 6, at 4-7.

treatment, among other preventive care.¹⁶² In addition, as of 2010, 38 states had laws requiring rabies vaccinations for dogs.¹⁶³

A regulation requiring preventive care including vaccinations would be easily enforceable if individual health records for every dog were maintained. Vaccination records are easy to keep; almost all individual dog owners already do so.

2. Grooming of Fur and Nails

The current regulations do not specifically require grooming, nail trimming, and other routine non-medical care, that is essential for dogs' well-being. Breeders are only required to "maintain programs of adequate veterinary care," including "daily observation."¹⁶⁴ And while USDA inspectors do cite facilities for inadequate grooming,¹⁶⁵ a regulation that specifically requires grooming would leave no room for dispute or ambiguity as to this mandate.

a. Proper Grooming Is Necessary to Protect Animal Welfare

Most organizations, including Petitioners, agree that proper grooming is "essential to the health and comfort" of dogs and that a lack of grooming can cause significant health issues.¹⁶⁶ For instance, without proper nail trimming,¹⁶⁷ a dog's nails can grow too long and break, causing pain and possibly infection. If they do not break, they will curl and can become painfully

¹⁶² ASPCA, *Pet Care: Vaccinations*, <http://www.aspc.org/pet-care/dog-care/vaccinations> (last visited Nov. 18, 2014); see also Soc'y for the Prevention of Cruelty to Animals Fla., *Vaccinations*, <http://www.spcflorida.org/vaccinations/> (last visited Nov. 18, 2014); ASPCA, *Pet Care: Heartworm*, <https://www.aspc.org/pet-care/dog-care/heartworm> (last visited Nov. 18, 2014).

¹⁶³ Ctrs. for Disease Control & Prevention, *Map of Vaccination Laws by State in the United States and Puerto Rico*, <http://www.cdc.gov/rabies/resources/publications/2009-surveillance/vaccination-laws.html> (last updated Nov. 29, 2010).

¹⁶⁴ 9 C.F.R. § 2.40(b).

¹⁶⁵ For examples of the most egregious violations, see Horrible Hundred 2015, *supra* note 100, at 9, 11, 28-29, 31-34.

¹⁶⁶ E.g., ASPCA, *Pet Care: Grooming Your Dog*, <http://www.aspc.org/pet-care/virtual-pet-behaviorist/dog-behavior/grooming-your-dog> (last visited Aug. 30, 2015).

¹⁶⁷ All dogs need at least their dewclaws trimmed, and many dogs need all of their nails trimmed, especially if they spend most of their time on surfaces which will not naturally wear down their nails, such as wire flooring. ASPCA, *Pet Care: Fear of Nail Trimming*, <http://www.aspc.org/pet-care/virtual-pet-behaviorist/dog-behavior/fear-nail-trimming> (last visited Aug. 30, 2015).

embedded in the dog's paw pads, leading to infection, or get caught in wire flooring and possibly ripped out when the dog tries to free herself. Overly long nails can also cause an irregular gait and skeletal damage.¹⁶⁸ Eleven percent of USDA veterinary care citations of dog breeders are for injured or over-grown nails.¹⁶⁹ Basic dental care, such as tooth brushing, should also be part of the grooming routine. As described in the next section, failure to do so could lead to serious dental disease.

A dog's hair can become so overgrown and matted without proper grooming that she may be unable to see, walk properly, or wag her tail.¹⁷⁰ There are many examples of dogs in inhumane, commercial breeding facilities that have hair matted with feces or matting that causes discomfort or skin conditions.¹⁷¹ Twenty-eight percent of USDA veterinary care citations of dog breeders are for matting and hair loss.¹⁷² Matted fur can also hide injuries from visual inspection.¹⁷³

Proper grooming provides other key benefits. The physical contact during grooming can result in reduced heart rate and reduced stress, thereby positively influencing the emotional state and well-being of the dog (and, incidentally, the dog's groomer).¹⁷⁴ Grooming also serves as a way for the breeder to closely observe the dog and notice potential issues requiring veterinary attention that mere daily observation may not uncover.¹⁷⁵

¹⁶⁸

Id.

¹⁶⁹

ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4.

¹⁷⁰

See Bacon, *supra* note 7; Wayne Pacelle, *A Veterinarian's Prognosis for Stopping Puppy Mill Cruelty*, Huffington Post (Oct. 13, 2010, updated May 25, 2011), http://www.huffingtonpost.com/wayne-pacelle/a-veterinarians-prognosis_b_762155.html.

¹⁷¹

A Horrible Hundred, *supra* note 34, at 7-9 (various breeders).

¹⁷²

ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4.

¹⁷³

A Horrible Hundred, *supra* note 34, at 38 (when an inspector removed matted fur over an eye, he found an eye that was "completely closed, covered with a crusty brownish yellow material").

¹⁷⁴

See Hannah E. Salvin et al., *Growing Old Gracefully – Behavioral Changes Associated with "Successful Aging" in the Dog*, *Canis Familiaris*, 6 J. Vet. Behav. 313, 318 (2011); Paul D. McGreevy et al., *The Reinforcing Value of Physical Contact and the Effect on Canine Heart Rate of Grooming in Different Anatomical Areas*, 18 *Anthrozoos* 236, 236-44 (2012).

¹⁷⁵

ASPCA, *Pet Care: Grooming Your Dog*, *supra* note 166.

Despite proof that fur and nail grooming is necessary for the well-being of dogs, many large, inhumane, commercial breeding facilities fail to groom their dogs at adequate intervals, if ever.¹⁷⁶ Dogs rescued from some such facilities were never bathed, had knotted fur, and had feet stained by feces and urine.¹⁷⁷ A specific grooming requirement would leave no room for doubt that dealers are expected to groom their dogs' fur to prevent all matting and tangling (unless the breeds are short-coated and do not require fur grooming), and are expected to trim nails to prevent discomfort and injury.

b. New Regulations Are Necessary to Require Proper Grooming

USDA should add a section under 9 C.F.R. Part 3, Subpart A, to require regular fur grooming and nail trimming as needed for the safety and comfort of the dog based on that dog's breed or at least twice a year, whichever is more frequent.¹⁷⁸ A variety of states and localities already have similar rules requiring basic grooming.¹⁷⁹ For example, Los Angeles County requires that animals be "groomed and kept in a manner which is not injurious to their health."¹⁸⁰ And many organizations, such as the AKC, recommend that dogs be groomed regularly for their health and comfort.¹⁸¹

A regulation requiring grooming would be easily enforceable and would reinforce existing obligations. Breeders are already required to provide "adequate veterinary care." Given

¹⁷⁶ Bacon, *supra* note 7; HSVMA Report, *supra* note 32, at 2.

¹⁷⁷ Kelly House, *After Rescue, Grooming and Medical Checkups, 41 Puppy Mill Rescue Dogs Are Ready for a New Home*, OregonLive (Dec. 12, 2010),

http://www.oregonlive.com/portland/index.ssf/2010/12/after_rescue_grooming_and_medi.html. APHIS inspectors do cite for matted fur and overgrown nails, especially in combination with other more severe problems, but that does not substitute for requiring adequate grooming to prevent dogs from developing such problems in the first place. *See A Horrible Hundred*, *supra* note 34 (giving examples of a variety of breeders cited for matted fur, including fur that was so matted that it was "a solid mass down to the skin").

¹⁷⁸ *See, e.g.*, Am. Humane Ass'n, *Grooming Your Pet*, <http://www.americanhumane.org/animals/adoption-pet-care/caring-for-your-pet/grooming-your-pet.html> (last visited Aug. 30, 2015) ("The frequency of professional grooming and haircuts varies depending on your dog's breed.").

¹⁷⁹ Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

¹⁸⁰ L.A. Cty., Cal., Code of Ordinances § 10.40.010(C) (2011).

¹⁸¹ AKC Policy, *supra* note 64.

the skin infections, visual impairment, foot injuries, severe skeletal problems, fecal impaction, and other injuries that can result from a lack of grooming, proper grooming practices are arguably already required for adequate care. A stronger, more specific regulation on grooming would provide concrete guidance to commercial breeding facilities on what they are expected to do, and would allow USDA inspectors to spot and cite problems earlier in the process to prevent later significant health issues and discomfort.

3. Dental Care

a. Dental Care Is Necessary to Protect Animal Welfare

Periodontal disease is one of the most common physical examination findings in all age categories of dogs seen in private practice¹⁸² and one of the most common veterinary care citations received by USDA-regulated dog breeders. Twenty-two percent of veterinary care citations received by dog breeders are for dental issues.¹⁸³

Periodontal disease is a dynamic pathological condition which, in some cases, progresses to tooth loss. The associated gingivitis represents the dog's active-inflammation burden at the time of examination. Not only does this condition cause pain, sometimes severe, when allowed to go untreated, it also presents major health risks, including jaw fractures due to bone destruction and damage to organs, especially the kidneys, caused by chronic bacterial infection in the mouth.¹⁸⁴

b. New Regulations Are Necessary to Ensure Dogs Receive Proper Dental Care

The Agency should add a new rule under 9 C.F.R. Part 3, Subpart A, to ensure proper dental care is provided to dogs. At a minimum, Petitioners recommend an explicit requirement

¹⁸² Elizabeth M. Lund, *Health Status and Population Characteristics of Dogs and Cats Examined in Private Veterinary Practices in the United States*, 214 J. Am. Vet. Med. Ass'n 1336 (1999).

¹⁸³ ASPCA, Economic Impact Analysis (Exhibit J), *supra* note 4.

¹⁸⁴ J.E. Rawlinson et al., *Association of Periodontal Disease with Systemic Health Indices in Dogs and the Systemic Response to Treatment of Periodontal Disease*, 328 J. Am. Vet. Med. Ass'n 601 (2011).

that each annual hands-on veterinary exam include a thorough oral examination with subsequent treatment of identified problems and that teeth be cleaned or brushed when the dog is being groomed. Breeders should also perform frequent, reasonable preventive dental care. Tooth brushing is considered the best preventive measure for periodontal disease, but Petitioners recognize that circumstances may vary between breeders, so providing dental chews or other abrasive chewing materials may be adequate, depending on the dog breed.

D. Exercise

A new regulation requiring regular opportunity for exercise is necessary for the physical and emotional well-being of dogs in commercial breeding facilities, and to ensure that they are treated humanely. Despite strong scientific support for such a regulation and supportive statements in the AWA's legislative history, USDA has not yet promulgated a regulation requiring a minimum amount of exercise time for these dogs.

1. The Existing Regulation Regarding Exercise Is Ineffective

USDA's current regulations do not require commercial breeding facilities to provide adequate exercise for dogs. Section 3.8 of the regulations requires only that commercial breeding facilities have and follow a written plan created in consultation with their veterinarian providing "the opportunity for exercise."¹⁸⁵ This regulation provides for no minimum requirements at all and allows the breeder and veterinarian to be completely in charge of that decision. Presumably, a veterinarian could authorize a once a week exercise routine for the dogs, or even less frequently, as long as it takes place "regularly." Even if the written plan calls for routine opportunity for exercise, however, enforcement is essentially impossible. There is no way a USDA inspector can verify whether a dealer is in fact allowing the dogs to engage in the exercise called for in the plan. Moreover, the regulations state that dogs housed in groups need not be

¹⁸⁵ 9 C.F.R. § 3.8 (2014).

provided *any* other opportunity for exercise under certain circumstances depending on the size of their cages. In other words, if the commercial breeding facility provides a minimum amount of space in its cages—which currently may include wire flooring, may be stacked, and may be kept in darkness or harsh weather—then the facility is free to leave its dogs in their cages indefinitely, 24 hours a day, seven days a week. These dogs may never have the opportunity to run, roll around, sniff nature, or feel the sensation of solid ground under their feet.

This existing regulation, which allows a breeder’s veterinarian to have complete discretion over the minimum exercise requirements, and trades a minimum amount of space in a cage for an opportunity for real exercise, is completely insufficient to properly implement the AWA, including amendments intended in part “to provide for the exercise needs for dogs” and their “enhanced well-being,”¹⁸⁶ as discussed below.

2. Research Shows That Dogs Require a Consistent Opportunity for Exercise to Maintain Physical and Behavioral Health

The lack of a consistent opportunity for exercise causes physical injury. A lack of adequate exercise can lead to obesity, which in turn can lead or contribute to a host of other health problems. These can include orthopedic disease, type II diabetes mellitus, abnormalities in circulating lipid profiles, cardiorespiratory disease, urinary disorders, reproductive disorders, neoplasia (mammary tumors, transitional cell carcinoma), dermatological diseases, hypothyroidism, hyperadrenocorticism, insulinoma, and anesthetic complications.¹⁸⁷ Studies show that regular exercise for dogs, as with humans, is vital to maintain cardiovascular health.¹⁸⁸ Further, as discussed above in Section III.A, dog nails become overgrown if they do not have sufficient contact with solid surfaces, including through regular exercise.

¹⁸⁶ See Animal Welfare Standards, 56 Fed. Reg. at 6428.

¹⁸⁷ Alexander J. German, *The Growing Problem of Obesity in Dogs and Cats*, 136 J. Nutrition 1940S (2006).

¹⁸⁸ Georg Kojda & Rainer Hambrecht, *Molecular Mechanisms of Vascular Adaptations to Exercise. Physical Activity as an Effective Antioxidant Therapy?*, 67 Cardiovascular Res. 187, 188 & n.21 (2005).

In addition to physical harms, study after study shows that the sort of continuous spatial restriction and confinement allowed under the current regulations in commercial breeding facilities is associated with serious physical and psychological stress in dogs.¹⁸⁹ Specifically, continuous confinement causes many animals to suffer from chronic anxiety, social isolation, inadequate stimulation,¹⁹⁰ and the development of abnormal behaviors.¹⁹¹

3. The AWA's Legislative History Supports Stronger Regulations

The history of the AWA and the current regulations evince an intent from both Congress and USDA to provide much more opportunity for exercise than is currently required for dogs in commercial breeding facilities.

When it amended the AWA in 1985, Congress clearly wanted to provide for meaningful exercise for dogs in commercial breeding facilities. Section 13 of the AWA, as amended, requires the Secretary to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers and others, including standards “for exercise for dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the

¹⁸⁹ McMillan JAVMA Article, *supra* note 12, at 1362 (citing Bonne Beerda et al., *Chronic Stress in Dogs Subjected to Social and Spatial Restriction, I. Behavioral Responses & II. Hormonal and Immunological Response*, 66 *Physiol. Behav.* 232, 243 (1999); Deborah L. Wells et al., *The Influence of Length of Time in a Rescue Shelter on the Behaviour of Kennelled Dogs*, 11 *Animal Welfare* 317 (2002)).

¹⁹⁰ HSVMA Report, *supra* note 32, at 1, 6 (citing Michael B. Hennessy et al., *Plasma Cortisol Levels of Dogs at a County Animal Shelter*, 62 *Physiol. Behav.* 485 (1997); Brenda Griffin, *Wellness, Infectious Disease Management in Animal Shelters* 17 (Lila Miller & Kate Hurley eds., 2009); Brenda Griffin & K.R. Hume, *Recognition and Mgmt. of Stress in Housed Cats*, 5 *Consultations in Feline Internal Med.* 717 (John R. August ed., 5th ed., 2006); G.J. Patronek & E. Sperry, *Quality of Life in Long Term Confinement*, 4 *Consultations in Feline Internal Med.*, 621 (John R. August ed., 4th rev. ed., 2001); Jacqueline M. Stephen & Rebecca A. Ledger, *An Audit of Behavioral Indicators of Poor Welfare in Kennelled Dogs in the UK*, 8 *J. Applied Animal Welfare Sci.* 79 (2005); David S. Tuber et al., *Dogs in Animal Shelters: Problems, Suggestions, and Needed Expertise*, 10 *Psych. Sci.* 379 (1999); Francoise Wemelsfelder, *Animal Boredom: Understanding the Tedium of Confined Lives*, *Mental Health & Well-being in Animals* 79 (F.D. McMillan ed., 2005)).

¹⁹¹ Sandra Newbury et al., Ass'n of Shelter Veterinarians, *Guidelines for Standards of Care in Animal Shelters* 26 (2010), <http://xa.yimg.com/kq/groups/20241575/778874386/name/Shelter%20Standards%20Oct2011%20wForward.pdf>.

Secretary.”¹⁹² When this provision was adopted by the Conference Committee, the Committee stated that it was adopting “an amendment to provide that an attending veterinarian would be responsible for ensuring that dogs receive a reasonable amount of exercise according to general standards promulgated by the Secretary of Agriculture,” and that the conferees intended “the standard for exercise for dogs to offer a variety of possibilities to allow the animal motion. It could consist of regularly letting the dog out of its cage for a period of time, the use of dog runs, or allowing ample room in animal housing.”¹⁹³

The current regulations, however, have proved entirely inadequate “for ensuring that dogs receive a reasonable amount of exercise.”¹⁹⁴ Allowing total veterinary discretion over the exercise plan, along with the fact that meaningful enforcement is impossible, as well as the provision for a waiver from the exercise requirement if certain extremely minimal space requirements are met, means that many dogs are simply not being provided with a regular opportunity for exercise. Indeed, in reality, many dogs confined to breeding facilities for life are essentially never released from their cages. This is undoubtedly *not* what Congress intended.

It seems the Agency has historically understood Congress’s intent to require a meaningful opportunity for exercise. In 1989, USDA originally proposed regulations that would have required much larger primary enclosures or minimum opportunities for exercise outside of the primary enclosures. Specifically, the regulations required (with some exceptions) that the dogs either be:

- Kept individually in primary enclosures that provided *at least four times the space* required for that dog and that allowed visual and/or physical contact with other dogs;

¹⁹² 7 U.S.C. § 2143 (1985) (added by later amendment, as noted in 131 Cong. Rec. 29261, 29271 (Oct. 28, 1985) (adding S. Amend. 904 to H.R. 2100)).

¹⁹³ Food Security Act of 1985, H.R. Rep. No. 99-447, at 594 (1985) (Conf. Rep.).

¹⁹⁴ *Id.*

- Housed, held, or maintained together and provided with the greater of (a) 80 square feet of space or (b) *150 percent of the minimum space* required for all dogs in the group; or
- Released at least once a day, for a total of at least 30 minutes each day, for exercise.¹⁹⁵ Acceptable forms of exercise or release would be walking on a leash, release into a room, release into a run or pen with more than 80 square feet of floor space, or some other similar type of arrangement.¹⁹⁶

These proposed minimum standards, which would have required larger primary enclosures to substitute for time outside of the cages than the current regulations require, were based on expert opinion. The consensus of APHIS veterinarians in 1989 with training and experience regarding the welfare of dogs was that 30 minutes of daily exercise was a reasonable minimum for maintenance of a dog's health and well-being.

USDA reiterated the importance of an exercise requirement when it published revised rule proposals in 1990, placing the welfare of dogs above the cost to commercial breeding facility operators. It wrote, in response to public comments that the proposed exercise requirements were excessive, that:

while we are acutely aware that the economic impact of regulatory changes is of great importance to regulated entities, we do not consider dismissal of exercise requirements a viable option. We believe that such requirements are necessary, both for the well-being of the animals and to meet our statutory obligations.¹⁹⁷

However, when the Department adopted the final regulations in 1991, it changed course, declining to impose specific exercise requirements. It stated that "Congressional intent with

¹⁹⁵ Animal Welfare Standards, 54 Fed. Reg. 10,897, 10,904-05 (Mar. 15, 1989). Dogs were required to be let out of their primary enclosures at least once a day if they were: (1) kept individually in primary enclosures that provided less than four times the space required for that dog and that did not allow visual or physical contact with other dogs, or (2) housed, held, or maintained together and not provided with the greater of (i) 80 square feet of space or (ii) 150 percent of the minimum space required for all dogs in the group. For example, six beagles housed together, each 28-inches in length, would require a primary enclosure of 8 square feet. Six times this requirement is 48 square feet, and 150 percent of this is 72 square feet. Because this is less than 80 square feet, the larger space would have been required. *Id.*

¹⁹⁶ *Id.* (proposed section 3.7(c)).

¹⁹⁷ Animal Welfare Standards, Proposed Rule, 55 Fed. Reg. 33,448, 33,450 (Aug. 15, 1990).

regard to the Act was to give dogs an opportunity for exercise, not to force them to exercise,” and that “the regulations as proposed, calling for a plan for meeting the exercise needs of dogs at each facility, will allow each facility to meet the requirements of the regulations in the manner most appropriate to the facility and to the animals housed there.”¹⁹⁸ Unfortunately, many inhumane, commercial breeding facilities have subsequently taken advantage of this flexibility—or nearly complete discretion—and have reduced the requirement for an opportunity for exercise to a nullity. Moreover, as noted, even where an exercise plan does call for daily exercise, there is simply no method through which the Agency can ensure that the plan is being adhered to. This has resulted in thousands of dogs spending their whole days in small primary enclosures, often on wire or gridded flooring, with no opportunities for exercise and no meaningful time spent outside of those cages during their entire lives.

4. The Regulations Need to Be Amended to Ensure That Dogs Receive a Consistent, Meaningful Opportunity For Exercise

It cannot be disputed that a daily opportunity for exercise is critical to the well-being of dogs or that Congress required the USDA to adopt regulations that would ensure dogs are afforded regular and meaningful opportunities for exercise. However, well over twenty-five years after the USDA adopted its exercise regulations, many dogs in large commercial breeding facilities are still being deprived of such opportunities because the discretionary plans are inadequate, enforcement is impossible, and because breeders can avoid any exercise requirement by moderately increasing the size of the primary enclosures. Indeed, the permissible alternative to an exercise plan, the use of larger primary enclosures,¹⁹⁹ has proven not to make “much

¹⁹⁸ Animal Welfare Standards, Final Rule, 56 Fed. Reg. 6426 (Feb. 15, 1991).

¹⁹⁹ 9 C.F.R. § 3.8(c)(3)(ii).

difference in terms of the dog's physical fitness, aggression, or play" as compared to small enclosures.²⁰⁰

The Agency should amend the relevant parts of 9 C.F.R. § 3.8 to require that all adult dogs in commercial breeding facilities have constant unfettered access, at least during daylight hours, to an exercise area of sufficient size to ensure proper physical development and health. This requirement has the additional advantage of actually being enforceable, because the inspector would be able to ascertain compliance by simply looking at the construction of the facility itself. The exercise area should, at a minimum, be at ground level and be at least twice the amount of space required in the primary enclosures. Over two decades of research and experience have proven that the best and simplest solution to ensure that dogs obtain proper exercise, and the easiest requirement for USDA inspectors to observe, is allowing dogs to have constant unfettered access to an exercise area. Dealers should be encouraged to use areas in which dogs can interact with natural substances.

Petitioners understand that, although the vast majority of dogs in commercial breeding facilities would benefit from unfettered access to exercise areas, a few dogs may be exceptions to the rule. Accordingly, Petitioners recommend that USDA tailor this proposed regulation by including a limited exception to the access requirement for individual dogs who have received a certification from a veterinarian that is specific to each dog and gives reasons on why the dog's health or other issues preclude unfettered access to the exercise area for that particular dog.

Amending the regulations to provide for unfettered access to exercise, with limited exceptions, would be consistent with Congressional intent and scientific research, and would make a world of difference in the lives of thousands of dogs currently confined to breeding facilities. Three states already require that state-licensed breeders, with limited exceptions,

²⁰⁰ Hubrecht, *supra* note 61.

provide their dogs with unfettered access to exercise, and many states require at least a set minimum amount of exercise.²⁰¹ The USDA should show its leadership in the realm of animal welfare and adopt Petitioners' recommendations on exercise.

E. Socialization

New regulations are also necessary to ensure adequate and safe socialization for dogs in commercial breeding facilities with humans and with other dogs.

1. Current Regulations Regarding Socialization Are Vague and Insufficient

Socialization, both with humans and with other dogs, is important for the emotional health of dogs, which are highly social animals. For instance, studies have shown the following:

- Concentrations of beta-endorphin, oxytocin, prolactin, beta-phenylethylamine, and dopamine increase in dogs, like humans, after positive interactions between the dogs and humans.²⁰² Generally, these hormones produce a sense of well-being and relaxation, reduce pain, ease emotional distress, and may bolster the immune system.
- Human interaction including petting, play, and grooming can decrease stress and cortisol levels in dogs. High levels of cortisol – the hormone produced during the body's "fight or flight" response to stress – have negative effects including suppressed thyroid function, blood sugar imbalances, decreased bone density, decrease in muscle tissue, higher blood pressure, lowered immunity and inflammatory responses, slowed wound healing, and impaired cognitive performance.²⁰³
- Dogs allowed to interact socially with other compatible dogs show fewer signs of stress and greater activity levels.²⁰⁴
- Socially isolating dogs is detrimental to their well-being and typically results in the onset of behavioral problems such as withdrawal, inactivity,

²⁰¹ Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G) (in particular, Missouri, Nebraska, and Pennsylvania).

²⁰² J.S.J. Odendaal & R.A. Meintjes, *Neuropsychological Correlates of Affiliative Behaviour between Humans and Dogs*, 165 Vet. J. 296 (2003).

²⁰³ Camille Belpedio, *Understanding Kennel Stress in Canines (Canis Lupus Familiaris)—A Review of the Literature*, 4 J. Applied Companion Animal Behav. 7, 10 (2010); see also Crista L. Coppola, *Human Interaction and Cortisol: Can Human Contact Reduce Stress for Shelter Dogs?*, 87 Physiol. & Behav. 537 (2006); Michael B. Hennessy et al., *Influence of Male and Female Petters on Plasma Cortisol and Behaviour: Can Human Interaction Reduce the Stress of Dogs in a Public Animal Shelter?*, 61 Applied Animal Behav. Sci. 63 (1998).

²⁰⁴ Belpedio, *supra* note 203, at 10.

stereotypy, and barking, as well as greater physiological stress responses including increased salivary and urinary cortisol concentrations. Conversely, permitting dogs to interact with other compatible dogs can greatly increase the complexity of and sense of control over a captive environment, thereby allowing the dogs to thrive better within the pressures of confinement.²⁰⁵

Existing USDA regulations do not require sufficient socialization for dogs in commercial breeding facilities. These facilities are only required to provide physical contact with humans for dogs who are housed, held, or maintained without sensory contact with another dog.²⁰⁶ For every other dog—including dogs that can merely see but not interact with other dogs – commercial breeding facilities need only “consider providing positive physical contact with humans.”²⁰⁷ Putting aside the empty mandate to “consider” positive contact with humans, the regulations do not even specify how much human contact is necessary for dogs that have “sensory contact” with other dogs, which is almost every dog in commercial breeding facilities.

The regulations also do not provide for sufficient positive socialization among dogs. Only 9 C.F.R. § 3.7 touches upon the issue of conspecific interactions, and addresses “compatible grouping.” This regulation merely explains compatibility on the basis of females in heat, vicious or overly aggressive dogs, young puppies, and interspecies housing. But housing just any dogs together will not provide the benefits of socialization discussed above. The issue of compatibility has been described as “highly important when housing dogs together,” because indiscriminate group housing can be counter-productive, leading to outbreaks of aggression and possible injuries to the dogs.²⁰⁸

²⁰⁵ Deborah L. Wells, *A Review of Environmental Enrichment for Kennelled Dogs*, *Canis Familiaris*, 85 *Applied Animal Behav. Sci.* 307, 308 (2004).

²⁰⁶ 9 C.F.R. § 3.8(c)(2).

²⁰⁷ *Id.*

²⁰⁸ Wells, *supra* note 205, at 308.

2. The Regulations Need to Be Amended to Ensure Adequate Socialization

To ensure adequate socialization for dogs in commercial breeding facilities, the USDA should amend 9 C.F.R. §§ 3.7 and 3.8 to affirmatively require meaningful daily socialization with humans and with compatible dogs. Petitioners recommend a total of at least 30 minutes of positive interaction with at least one human each day. Further, as specified in the attached proposed regulations, the regulation should define “positive interaction with a human” as “petting, stroking, grooming, feeding, playing with, exercising, or other touching of the dog that is beneficial to the well-being of the dog.”

These proposed revisions to the regulations are not novel. In its proposed regulations in 1989, USDA explained that:

Because of the social nature of dogs, [subject to certain exceptions], all dogs [must] be able to see and hear other dogs. If a dog is unable to see and hear other dogs simply because it is the only dog in the facility, we would require that it receive positive physical contact with humans at least once a day. “Positive physical contact” is defined in Part 1 as “petting, stroking, or other touching, which is beneficial to the well-being of the animal.” . . . This contact would have to total at least 60 minutes each day and could be given in one or more periods.²⁰⁹

After receiving comments, the Agency noted that “socialization, including sensory contact, is the single most effective means of providing the opportunity for adequate exercise,” but it changed its position and stated it did not “believe that it is essential for the health and well-being of dogs that they have sensory contact with other dogs,” and proposed a standard requiring positive physical contact at least daily only for isolated dogs.²¹⁰ In its final rule, the Agency noted that it did not adopt a 60-minute time requirement because there was no data to support

²⁰⁹ Animal Welfare—Standards, Proposed Rule, 54 Fed. Reg. 10,897, 10,904 (Mar. 15, 1989).

²¹⁰ Animal Welfare; Standards, Revised Proposed Rule, 55 Fed. Reg. 33,448, 33,468 (Aug. 15, 1990).

that time limit and it saw “no need for contact of that duration.”²¹¹ However, recent research and data now support implementation of more robust socialization and physical contact regulations.

Several states have imposed socialization requirements, including minimum amounts of socialization and cages large enough to properly allow dogs to socialize with their cage mates.²¹² In addition, multiple animal welfare groups support socialization requirements. For example, the AVMA recommends that dogs have positive human contact and be able to have full-body contact with compatible dogs.²¹³ The CIEH has explained that socialization is “very important” for dogs, and provides guidance to ensure that dogs used for breeding are allowed adequate social contact both with other dogs and with humans.²¹⁴ And the ACT and the SFT require interaction between dogs and handlers.²¹⁵

This requirement will not add any inspection burdens. Breeders are already required to provide exercise plans upon request. It would be no harder to have socialization plans available for inspection by APHIS.

F. Retirement

1. The Lack of Regulation Allows Non-Profitable Dogs to be Treated Callously or Inhumanely

No regulation currently exists to govern how commercial breeding facilities treat their adult dogs who are no longer producing puppies or the puppies they cannot sell. Breeders are only directed to keep records showing whether and how they disposed of their dogs.²¹⁶ As a result, commercial breeding facilities are free to have their non-producing dogs and “unsellable” puppies euthanized so long as they provide “adequate guidance” to personnel involved in the

²¹¹ Animal Welfare; Standards, Final Rule, 56 Fed. Reg. 6426, 6447 (Feb. 15, 1991).

²¹² Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

²¹³ AVMA Model Bill, *supra* note 65.

²¹⁴ CIEH Model License, *supra* note 109.

²¹⁵ SFT Position Statement, *supra* note 106.

²¹⁶ See 9 C.F.R. § 2.75(a)(1)(ix) (2014).

euthanasia. Because euthanasia is a veterinary practice, under most state laws the person performing euthanasia must be a veterinarian or euthanasia technician, but the regulations do not specify that a veterinarian has to be involved.²¹⁷

Inhumane, commercial breeding facilities often leave retired breeding dogs in poor conditions or euthanize the dogs.²¹⁸ Similarly, many commercial breeders discard puppies when the puppies become too old—in the eyes of the commercial breeder—to sell, or when they have a physical irregularity or appearance that makes them difficult to sell.²¹⁹ Yet many of these adult dogs and “unsellable” puppies are still young and healthy enough to enjoy at least several more years of life. There is no medical need to euthanize these dogs. These dogs are killed merely because they are no longer profitable.

2. New Regulations Are Necessary to Protect Retired Dogs and “Unsellable” Puppies

USDA should add sections under 9 C.F.R. Part 3, Subpart A, to protect the welfare of retired breeding dogs and puppies the breeders will not sell. If the breeder chooses not to keep the dog, the breeder must make all reasonable efforts to find placement with an adoptive family, rescue organization, or other appropriate owner for that dog. Euthanasia should only be permitted as a last resort. In addition, the regulations should prohibit sale at auction or otherwise placing a retired breeding dog with another breeder for breeding purposes.²²⁰

²¹⁷ See 9 C.F.R. § 2.40(b)(4).

²¹⁸ E.g., *Colorado Animal Rescue Saves Discarded Dogs, Finds Homes for Them*, Fox 31 Denver (Nov. 21, 2012), <http://kdvr.com/2012/11/21/colorado-animal-rescue-saves-discarded-dogs-from-horrible-lives-or-worse/> (writing that over 7,000 dogs had been rescued from puppy mills in five years, with most adult dogs discarded because they “may not be able to produce puppies any longer, they may be old or sick, or the breeder might be going out of business,” and puppies discarded because “they are too old to sell to pet stores”); see also Alex Mayyasi, *How We Treat Pets in America*, PriceOnomics Blog (Feb. 28, 2013), <http://blog.priceonomics.com/post/44230885813/how-we-treat-pets-in-america> (“Oftentimes, after the breeder dog has reached the age of 4 years, it is no longer needed and killed.”).

²¹⁹ See *id.*

²²⁰ Auctions can be the site of bad conditions, and have the potential to move dogs out of the eye of APHIS inspectors. See AnimalFolksMN, *Issue: Auctions*, <http://www.animalfolksmn.org/auctions2.html> (last visited Nov. 18, 2014).

USDA inspectors can ascertain compliance by looking at a dog's records, which should detail whether she has been rehomed, retained, or euthanized.

G. Access to Potable Water

1. The Current Regulations Do Not Ensure Dogs Have Continuous Access to Potable Water

Under current regulations, breeders are only required to offer water “as often as necessary to ensure [the dog's] health and well-being, but not less than twice daily for at least 1 hour each time.”²²¹ The regulations do not establish that the water must not be frozen.

In practice, Petitioners frequently see dogs without access to potable water, or with access to frozen water only. It is well established that in captivity, “[a]nimals should have access to fresh, potable, uncontaminated drinking water according to their particular requirements. . . . In cold weather, steps should be taken to prevent freezing of outdoor water sources.”²²² This is a basic question of comfort for dogs. Several states already require dogs to have continuous, or “easy and convenient,” access to potable water that is not frozen.²²³ Under the current federal standard, however, inspections have discovered dogs who only had access to water that was frozen solid, which in some instances was met merely with a warning.²²⁴

2. The Regulations Need to Be Amended to Make Potable Water Available At All Times

The Agency should amend the regulations to require continuous access to potable, uncontaminated water that is not frozen. This regulation has the additional advantage of being

²²¹ 9 C.F.R. § 3.10.

²²² Guide for the Care and Use of Laboratory Animals, *supra* note 98, at 67-68.

²²³ See Mich. State Univ. Animal Legal & Historical Ctr., Table of State Commercial Pet Breeders Laws, <https://www.animallaw.info/topic/table-state-commercial-pet-breeders-laws> (last visited Aug. 30, 2015) (listing, e.g., Mo. Rev. Stat. § 273.345(4)(8); Neb. Stat. § 54-640(5); Or. Rev. Stat. § 167.310(9)(b)); see also Compilation of State Laws and Regulations Regarding the Topics Addressed in this Petition (Exhibit G).

²²⁴ Horrible Hundred 2015, *supra* note 100, at 15-16, 27.

more easily enforceable: currently, it is difficult, if not impossible, for inspectors to know whether a dog has actually received water that day.

V. CONCLUSION

The new regulations discussed in this Petition are sorely needed to update the current inadequate standards for commercial breeding facilities, some of which were promulgated more than two decades ago and are based on outdated research. Many inhumane, commercial breeding facilities comply only with the absolute minimum standards required, leading to squalid conditions. These conditions are severely harmful to the physical and emotional health of the many dogs housed in such facilities across the country.

Stronger, more concrete, and enforceable minimum standards are needed to protect the well-being of dogs in commercial breeding facilities, as required by the AWA. Responsible, humane breeders are likely already in compliance with all or most of these proposed requirements. These regulations therefore are narrowly targeted at those facilities that provide only (and too often not even) the absolute minimum of care. The regulations proposed by this Petition, which are attached hereto as Exhibit A, are within USDA's authority to promulgate—in fact, amending the regulations to ensure humane standards of care is the agency's *obligation* under the statute. A majority of Americans support regulations like the ones proposed here, as shown by the survey attached hereto as Exhibit K. By adopting the Petitioners' recommendations, the Agency will dramatically improve the lives of the tens of thousands of dogs forced to spend their lives in large commercial breeding facilities, the puppies born there, and the consumers obtaining their dogs from these facilities. We urge the Agency to comply with its obligations under the AWA and promulgate these reasonable, commonsense, and scientifically supported regulations.

Respectfully submitted,



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Exhibit A

Proposed Regulations

Proposed New and Revised Regulations to Increase Minimum Standards at Commercial Breeding Facilities¹

Proposed Revisions to Improve Temperature Regulation

9 C.F.R. § 3.2 Indoor housing facilities & § 3.3 Sheltered housing facilities.

(a) *Heating, cooling, and temperature.* [Indoor/sheltered] housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. The ambient temperature must not fall below 45 °F (7.2 °C), or rise above 85 °F (29.5 °C) when dogs are present.

(1) The ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian.

Proposed Revisions to Prohibit Wire Flooring

9 C.F.R. § 3.6 Primary enclosures.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) General requirements . . .

(2) Primary enclosures must be constructed and maintained so that they: . . .

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that do not allow the dogs' and cats' feet to pass through, or become wedged or entrapped in, any openings in the floor;

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner; and

(xii) Contain flooring made only of the following materials: grass, gravel, cement, solid plastic or vinyl, or slatted flooring.

(A) If a primary enclosure has slatted flooring, the slats must meet the following criteria: be flat; have spaces

¹ For existing sections, this Exhibit contains proposed revisions to the cited sections and subsections. This Exhibit also proposes to add new sections, as indicated by the use of section numbers that do not exist yet.

between them that are no more than 0.5 inch in width; have spaces between them that run the length or the width of the floor, but not both; be no less than 3.5 inches in width; be level with the slat next to it within a single primary enclosure.

(B) A primary enclosure may also in part contain flooring that is made of non–abrasive, stamped, coated metal made specifically for dog kennels (e.g. Tenderfoot), but only for such parts of the flooring that are provided in excess of the minimum space allotments required by 9 C.F.R. § 3.6(c)(1).

(C) If a primary enclosure has a suspended floor, such floor must be made of a solid material and must be strong enough so that the floor does not sag or bend between the structural supports.

(xiii). Primary enclosures constructed on or after _____, 2015 and floors replaced on or after that date, must comply with the requirements in paragraph (a)(2)(x)-(xii) of this section. On or after _____, 2016, all primary enclosures must be in compliance with the requirements in paragraph (a)(2) of this section.

Proposed Revisions to Increase the Space Requirements

9 C.F.R. § 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 double that result to find the required floor space in inches. Then divide the product by 144 to find the required floor space in square feet. The calculation is: (length of the dog in inches + 6) x (length of the dog in inches + 6) x 2 = required floor space in inches. Required floor space in inches / 144 = required floor space in square feet.

(ii) The interior height of a primary enclosure must be sufficient to allow the tallest dog in the enclosure to stand on his or her hind legs without touching the roof of the enclosure.

Proposed Revisions to Prohibit Stacking of Primary Enclosures

9 C.F.R. § 3.6 Primary enclosures.

(c) Additional requirements for dogs. – . . .

(4) Prohibited means of primary enclosure.

(i) Tethering. Permanent tethering of dogs is prohibited for use as primary enclosure. Temporary tethering of dogs is prohibited for use as primary enclosure unless approval is obtained from APHIS.

(ii) Stacking. Primary enclosures may not be stacked or otherwise placed above or below any other primary enclosure.

Proposed Revisions to Ensure Adequate Exercise and Socialization with Humans

Replace 9 C.F.R. § 3.8 with the following:

9 C.F.R. § 3.8a Exercise for dogs—Exhibitors and research facilities.

Exhibitors and research facilities must develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise. In addition, the plan must be approved by the attending veterinarian. The plan must include written standard procedures to be followed in providing the opportunity for exercise. The plan must be made available to APHIS upon request, and, in the case of research facilities, to officials of any pertinent funding Federal agency. The plan, at a minimum, must comply with each of the following:

(a) Dogs housed individually. Dogs over 12 weeks of age, except bitches with litters, housed, held, or maintained by any exhibitor or research facility, including Federal research facilities, must be provided the opportunity for exercise regularly if they are kept individually in cages, pens, or runs that provide less than two times the required floor space for that dog, as indicated by § 3.6(c)(1) of this subpart.

(b) Dogs housed in groups. Dogs over 12 weeks of age housed, held, or maintained in groups by any exhibitor or research facility, including Federal research facilities, do not require additional opportunity for exercise regularly if they are maintained in cages, pens, or runs that provide in total at least 100 percent of the required space for each dog if maintained separately. Such animals may be maintained in compatible groups, unless:

(1) Housing in compatible groups is not in accordance with a research proposal and the proposal has been approved by the research facility Committee;

(2) In the opinion of the attending veterinarian, such housing would adversely affect the health or well-being of the dog(s); or

(3) Any dog exhibits aggressive or vicious behavior.

(c) Methods and period of providing exercise opportunity.

(1) The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian and, at research facilities, in consultation with and approval by the Committee.

(2) Exhibitors and research facilities, in developing their plan, should consider providing positive physical contact with humans that encourages exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily.

(3) The opportunity for exercise may be provided in a number of ways, such as:

(i) Group housing in cages, pens or runs that provide at least 100 percent of the required space for each dog if maintained separately under the minimum floor space requirements of § 3.6(c)(1) of this subpart;

(ii) Maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum floor space required by § 3.6(c)(1) of this subpart;

(iii) Providing access to a run or open area at the frequency and duration prescribed by the attending veterinarian; or

(iv) Other similar activities.

(4) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(d) Exemptions.

(1) If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the exhibitor or research facility may be exempted from meeting the requirements of this section for those dogs. Such exemption must be documented by the attending veterinarian and, unless the basis for exemption is a permanent condition, must be reviewed at least every 30 days by the attending veterinarian.

(2) A research facility may be exempted from the requirements of this section if the principal investigator determines for scientific reasons set forth in the research proposal that it is inappropriate for certain dogs to exercise. Such exemption must be documented in the Committee-approved proposal and must be reviewed at appropriate intervals as determined by the Committee, but not less than annually.

(3) Records of any exemptions must be maintained and made available to USDA officials or any pertinent funding Federal agency upon request.

9 C.F.R. § 3.8b Exercise for dogs—Dealers.

(a) Dealers must maintain their facilities such that all dogs over the age of 12 weeks have unfettered access to an exercise area from their primary enclosures during daylight hours. Such exercise area shall be at ground-level, made of solid flooring, enclosed, properly controlled for the dogs' safety, and be at least two times the primary enclosure space required by 9 C.F.R. § 3.6(c)(1).

(b) A dealer does not have to satisfy the requirement in paragraph (a) for an individual dog, if the dealer obtains a certification from the attending veterinarian stating that that the dog should not have unfettered access to an exercise area. The attending veterinarian must instead prescribe an alternative and appropriate exercise plan for the individual dog that meets the requirements in 9 C.F.R. § 3.8a.

9 C.F.R. § 3.8c Socialization for dogs—Dealers.

Dealers must provide positive physical interaction for every dog over the age of six weeks for a total of at least 30 minutes per day with at least one human. For adult dogs, the interaction may involve multiple dogs at a time, as long as those dogs are compatible with one another. For dogs younger than six months of age, the interaction may not involve multiple dogs at a time. Positive physical interactions include, but are not limited to, petting, stroking, grooming, feeding, playing with, exercising, or other touching which is beneficial to the well-being of the dog. Positive physical interaction does not include veterinary care or other activities that may be stressful for the dog.

Proposed Revisions to Ensure Adequate Access to Potable Water

9 C.F.R. § 3.10 Watering.

Potable liquid water should continuously be available to the dogs and cats. Water receptacles must be kept clean and sanitized in accordance with §3.11(b) of this subpart, and before being used to water a different dog or cat or social grouping of dogs or cats.

Proposed New Regulation to Ensure Safe Breeding Practices

9 C.F.R. § 3.20 Breeding standards.

(a) Dealers must give female dogs adequate rest between breeding cycles. Dealers may not breed a female dog to produce more than two litters in any 18 month period nor more than six litters during that dog's lifetime.

(b) Dealers may not breed female dogs of small breeds (weighing less than 40 pounds when fully mature) before they reach the age of 18 months, or after they reach the age of 9 years. Nor may dealers breed female dogs of large breeds (weighing 40 pounds or more when fully mature) before they reach the age of two years, or after they reach the age of 7 years.

(c) Dealers may not breed a dog prior to having such dog screened, pursuant to a reasonable screening program approved by the attending veterinarian, for known prevalent inheritable diseases that may be disabling or likely to significantly affect the lifespan or quality of life of the offspring. No dog shall be bred unless the dog is free from health conditions that may be disabling or likely to significantly affect the lifespan or quality of life of the offspring, as documented by a licensed veterinarian at each examination.

(d) Any canine caesarian section must be performed by a licensed veterinarian.

Proposed Revisions to Ensure Adequate Veterinary and Preventative Care

Subpart D – Attending Veterinarian and Adequate Veterinary Care

9 C.F.R. § 2.40 - Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include: . . .

(6) For dealers only, veterinary and preventive care must meet the following minimum requirements:

(i) *Preventive care.* Each dog must receive adequate preventive care, including at a minimum:

(A) Core vaccinations recommended by the current version of the American Animal Hospital Association Canine Vaccination guidelines [currently including the distemper virus, parvovirus, and adenovirus], as well as all other vaccinations recommended by the attending veterinarian;

(B) Rabies vaccinations for all dogs over the age of four months to be administered by a veterinarian; and

(C) Regular administration of medications to prevent intestinal parasites, heartworm disease, fleas, and ticks.

(ii) *Annual examination.* Each dog must receive at least one hands-on veterinary examination by the attending veterinarian during each 12-month period. The examination must include:

(A) A comprehensive physical examination, dental assessment, pain assessment, and body condition scoring; and

(B) For intact male dogs, an evaluation for prostate and testicular disease.

(iii) *Breeding dogs.* All breeding dogs must be examined by the attending veterinarian in the following manner:

(A) Female dogs, at least at each annual examination required by this section, should be examined for any communicable diseases or conditions that would be exacerbated by breeding, pregnancy, or whelping; for pyometra and mammary neoplasia; and should have a body condition score of at least 3 to ensure a healthy pregnancy and whelping.

(B) Both male and female dogs, prior to the first breeding, should be examined for hereditary disorders that may disable or significantly affect the lifespan or quality of life of the offspring, in accordance with 9 C.F.R. § 3.20(c).

(C) The attending veterinarian must document, at least at each annual examination required by this section, that breeding dogs are healthy and free of any communicable diseases or conditions that would be exacerbated by breeding, pregnancy, or whelping.

(iv) *Surgical Procedures.* Dealers who do not have a license to practice veterinary medicine in the state where they reside shall not perform any surgical procedures on dogs.

(v) *Euthanasia.* When needed, euthanasia must be performed by a licensed veterinarian using lawful, humane techniques accepted by veterinary organizations, including the American Veterinary Medical Association Euthanasia Guidelines.

(7) All veterinary examinations must be documented by the veterinarian, and such documentation must be maintained by the breeder for a period of three (3) years and made available to APHIS inspectors upon request.

Proposed New Regulation to Ensure Proper Grooming

9 C.F.R. § 3.21 Grooming.

Each dealer shall establish and maintain programs of adequate grooming that include regular grooming of the fur, nail trimming, and dental care as needed for the safety and comfort of each dog based on that dog's breed, or at least twice a year, whichever is more frequent.

Proposed New Regulations Regarding Treatment of Non-breeding and Unsold Dogs

9 C.F.R. § 3.22 Treatment of non-breeding adult dogs.

Dealers must establish and maintain programs for the treatment of adult dogs that are unable to breed but that are otherwise in good health. The programs, at a minimum, must comply with each of the following:

- (a) Dealers may not sell to or place such dogs with an auction or with another dealer for breeding purposes; and
- (b) Dealers who choose not to keep such dogs must make all reasonable efforts to find placement with adoptive families, rescue organizations, or other owners who are not dealers or auctions.

9 C.F.R. § 3.23 Treatment of unsold puppies.

Dealers must establish and maintain programs for the treatment of puppies that they are unable to sell but that are otherwise in good health. The programs, at a minimum, must comply with each of the following:

- (a) Dealers may not sell to or place such dogs with an auction; and
- (b) Dealers who choose not to keep such dogs must make all reasonable efforts to find placement with other dealers, adoptive families, rescue organizations, or other owners who are not auctions.

Exhibit B

Examples of Localities with Ordinances Restricting Retail Sales

Examples of Localities in the United States and Canada with Ordinances Restricting the Retail Sale of Puppies¹

United States:

City/State	Enacted	Description
Albuquerque, NM	2006, effective 2007	Albuquerque Code of Ordinances § 9-2-3-7(H)(9), available at http://www.amlegal.com/albuquerque_nm/ “Puppies and kittens shall not be sold to a Pet Store, Animal Broker or other animal dealer.”
South Lake Tahoe, CA	2009, effective 2011	South Lake Tahoe City Code § 6.55.350, available at http://www.codepublishing.com/CA/SouthLakeTahoe/#!/SouthLakeTahoe06/SouthLakeTahoe0655.html “No pet store operator or pet store shall display, sell, deliver, offer for sale or adoption, barter, auction, give away, or otherwise dispose of cats or dogs in the city of South Lake Tahoe.”
Austin, TX	2010	Austin Code of Ordinances §§ 3-1-1 & 3-2-3, available at https://www.municode.com/library/tx/austin/codes/code_of_ordinances “A pet trader commits an offense if the pet trader conducts an off-site retail sale [i.e., at a location other than where the cat or dog was bred].”
Lake Worth, FL	2011	Lake Worth Code of Ordinances § 6.8, available at http://library.municode.com/index.aspx?clientId=10091 “No pet store shall display, sell, trade, deliver, barter, lease, rent, auction, give away, transfer, offer for sale or transfer, or otherwise dispose of dogs or cats in the city on or after the effective date of this chapter.”
Glendale, CA	2011	Glendale Code of Ordinances § 6.10, available at https://www.municode.com/library/ca/glendale/codes/code_of_ordinances “No pet store shall display, sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of dogs or cats in the city of Glendale on or after the effective date of this chapter.”

¹ This list is for illustrative purposes only. A more complete list of the more than 70 local laws restricting retail pet sales can be found at <http://bestfriends.org/Resources/Jurisdictions-With-Retail-Pet-Sale-Bans>.

City/State	Enacted	Description
Point Pleasant Beach, NJ	2012	Borough of Point Pleasant Beach Municipal Code § 5-23.2, available at http://clerkshq.com/default.ashx?clientsite=pointpleasantbeach-nj “No pet store operator or pet store shall sell, deliver, offer for sale, barter, auction or otherwise improperly dispose of cats, dogs or other mammals”
Los Angeles, CA	2012	Los Angeles Municipal Code § 53.73, available at http://www.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates\$fn=default.htm\$3.0\$vid=amlegal:losangeles_ca_mc “It shall be unlawful for any person to sell any live dog, cat or rabbit in any pet store, retail business or other commercial establishment located in the City of Los Angeles”
Burbank, CA	2012	Burbank Municipal Code § 5-1-1439, available at http://www.codepublishing.com/ca/burbank/ “No pet shop shall display, sell, deliver, offer for sale, barter, auction, give away, broker or otherwise transfer or dispose of dogs or cats in the City of Burbank”
Hoboken, NJ	2013	Hoboken Municipal Code § 93-15, available at http://www.ecode360.com/HO0741 “No pet shop or pet shop operator shall sell, offer for sale, barter, auction, breed or otherwise improperly dispose of cats or dogs, or both, in the City of Hoboken.”
San Diego, CA	2013	San Diego Municipal Code § 42.0706, available at http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/muni.shtml “It is unlawful for any person to display, offer for sale . . . or sell any live dog, cat, or rabbit an any pet shop, retail business, or other commercial establishment located in the City of San Diego”
Palmetto Bay, FL	2013	Palmetto Bay Code of Ordinances § 30-60.31, available at https://www.municode.com/library/fl/palmetto_bay “[P]et stores, shops or care centers shall be precluded from displaying, selling . . . or otherwise dispose of dogs or cats in the Village of Palmetto Bay”
Ventura County, CA	2013	Ventura County Code of Ordinances § 4428, available at https://www.municode.com/library/ca/ventura_county/codes/code_of_or_dinances “It shall be unlawful for any person to sell any dog, cat or rabbit in any pet store, retail business or other commercial establishment located in the unincorporated areas of the County”

City/State	Enacted	Description
Toledo, OH	2013	Toledo Municipal Code § 1705.10, available at http://www.amlegal.com/library/oh/toledo.shtml “[I]t shall be unlawful for any person to display, offer for sale . . . or sell any live dog or cat in any pet shop, retail business or other commercial establishment”
Phoenix, AZ	2014	Phoenix City Code § 8-3.06, available at http://www.codepublishing.com/az/phoenix/ “No pet shop or pet dealer shall display, sell . . . or dispose of a dog or cat”
Chicago, IL	2014, effective 2015	Chicago Ordinance (Adding Municipal Code § 4-384-015), available at http://docs.chicityclerk.com/press/2014/20140205-pr-companion-animal-ordinance.pdf “A retailer may offer for sale only those dogs, cats or rabbits that the retailer has obtained from [a government-operated facility, humane society, or rescue organization].”
Cook County, IL	2014	Cook County Code of Ordinances § 10-13, available at https://www.municode.com/library/il/cook_county/codes/code_of_ordinances “A pet shop operator may offer for sale only those dogs, cats or rabbits obtained from [a government-operated facility, humane society, rescue organization, or USDA licensed breeder with five or fewer breeding females].”
Miami Beach, FL	2014, effective 2015	Miami Beach Code of Ordinances § 10-18, available at http://www.municode.com/library/fl/miami_beach/codes/code_of_ordinances “[P]et dealers and pet shops shall not display, sell . . . or otherwise dispose of dogs or cats in the City”
East Providence, RI	2014	East Providence Ordinance No. 607 (Ord. Book No. 20, at 72) (adding East Providence Revised Ordinances § 3-68), available at http://clerkshq.com/default.ashx?clientsite=eastprovidence-ri “It is unlawful for any person to display, offer for sale . . . or sell any live dog or cat in any pet store, retail business or other commercial establishment located in the City of East Providence.”

City/State	Enacted	Description
Palm Beach, FL	2015	<p>Palm Beach Ordinance No. 19-2014 (adding Palm Beach Code of Ordinances § 10-46), available at http://bestfriends.org/uploadedFiles/Content/Resources/Resources_for_Rescuers(1)/Help_for_Individuals/Palm-Beach-Jan-2015.pdf</p> <p>“Sale or Transfer of Dogs and/or Cats prohibited. No pet store shall display, sell, . . . or otherwise dispose of dogs or cats in the Town of Palm Beach”</p>

Canada:

City/State	Enacted	Description
Richmond, B.C.	2010	<p>Richmond Bylaw No. 7538 § 12.8 & Schedule B(8) (Prohibited Animals), available at http://www.richmond.ca/_shared/assets/Bylaw7538_10271439979.pdf</p> <p>“A pet store operator must not . . . sell, offer to sell, or display to the public . . . any prohibited animal [including puppies and dogs].”</p>
Toronto, Ont.	2011	<p>Toronto Municipal Code § 545-260.1 & 260.2, available at http://www.toronto.ca/legdocs/bylaws/lawmcode.htm</p> <p>“Every retailer, including any person or business that sells more than 10 dogs per year, must obtain animals from one of the following sources only: (A) municipal animal shelters; (B) registered humane societies; (C) registered shelters or rescue groups; or (D) from people who have surrendered their pets to them at no charge.”</p> <p>“Every keeper of a pet shop must obtain cats and dogs from only the following sources: [shelters, humane societies, or rescue groups].”</p>
Mississauga, Ont.	2012	<p>Mississauga Business Licensing By-Law 1-06, Schedule 20, available at http://www7.mississauga.ca/documents/bylaws/Business_Licensing_2014.pdf</p> <p>“Every Person licensed under this By-law and Schedule shall . . . if such person sells more than 10 cats or dogs per year, obtain these animals from one of the following sources only: municipal animal shelters; registered humane societies; registered shelters; or rescue groups.”</p>
New Westminster, B.C.	2012	<p>New Westminster Pet Store Bylaw No. 7398, 2010 and Amendment Bylaw 7546, 2012, available at http://www.newwestcity.ca/database/rte/files/7398PetStore.pdf</p> <p>“No person shall sell or offer for sale to the public any dog, cat, . . . in a pet store or other type of retail premises, with the exception of those animals offered for adoption from a recognized animal rescue society or shelter organization.”</p>

City/State	Enacted	Description
Kingston, Ont.	2013	Kingston Business By-Law, No. 2006-213, Schedule P-2, available at https://www.cityofkingston.ca/city-hall/bylaws “No dog, cat, or rabbit shall be purchased or taken in for free for sale by a pet store”

Exhibit C

Sample of Complaints to HSUS Regarding
Puppies from USDA Licensed Breeders

Sample of Complaints to the Humane Society of the United States Regarding Puppies from USDA Licensed Breeders¹

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
5/18/2010	Fuchshofer, Carole of PA	Hazel Coleman -- Dog N Ass Farm, License No. 43-A-2640	Lebanon, MO	Complainant purchased wheaten terrier on May 7, 2006 at Petland in Robinson Towne Center, Pittsburgh, PA. She dealt with the manager, Rick, who assured her they did not deal with puppy mills, that her puppy would be healthy, etc., and was adamant that Petland gave a fabulous one-year health guarantee and that if any problems developed, Petland would pay the vet bills. Within ten days. Complainant's vet told her that the puppy had already been on meds for a bacterial infection that she still had in her intestinal tract. When the puppy was almost one year old, she developed food allergies, bladder infections, and was diagnosed with PLE/PLN, a protein losing genetic disease found in some wheaten terrier. She was hospitalized for a few days and the emergency vet told her that she would die within a few months. The disease is usually fatal but she was able to survive through a special diet.
4/5/2009	Harris, Mike and Diana of PA	Hazel Coleman -- Dog N Ass Farm, License No. 43-A-2640	Lebanon, MO	Complainant purchased Chihuahua from Petland on Aug. 6, 2008. She was diagnosed 8 days later with parvo, and died on Aug. 19th. Petland's vet signed a clean health record on July 29, 2008. He is the same vet who hospitalized the puppy on Petland's insistence, treated her for parvo, and euthanized her. She has documentation.
3/19/2009	[Redacted] of MI	Hazel Coleman -- Dog N Ass Farm, License No. 43-A-2640	Lebanon, MO	Buyer purchased a male Soft Coated Wheaten Terrier. The puppy had frequent ear infections and likely hip dysplasia, as well as a painful dental issue requiring surgery. The vet who did his surgery wrote: "His lower jaw was longer than his upper and was too narrow to contain a full complement of incisor teeth. This resulted in overcrowding of the

¹ These complaints were all received by the HSUS and are on file with the HSUS. Names are used where complainants gave explicit permission to do so. Otherwise, names have been redacted.

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
				lower incisors and the 2 lower canine teeth hit the roof of his mouth causing injury and trauma to the palate. To alleviate pain and discomfort I amputated a portion of the crowns of the lower canine teeth and performed a pulp (nerve) treatment and sealing. An amalgam filling was placed into each tooth. Jaw length could possibly be related to heredity or genetics influences and environmental issues may play a role.”
10/5/2011	[Redacted]	Jeff Fortin & Lizann Miller, License No. 47-A-0564	Oberlin, KS	Buyer purchased St. Bernard and buyer's mother purchased chidachshund mix from same breeder. The St. Bernard arrived almost dead, and the chi-mix also needed vet care. Buyer willing to provide any information that would be helpful.
12/30/2010	Doerges, Heather of SD	Jeff Fortin & Lizann Miller, License No. 47-A-0564	Oberlin, KS	Buyer's dog is a 7 month old German Shorthair Pointer. She had diarrhea since she arrived. She had a rough battle with conjunctivitis, kennel cough, giardia and coccidia. It took 6 rounds of Metro and 3 rounds of Panacur (one round lasted an uncommon 10 days) to get a negative fecal result. Yet the diarrhea persisted, along with a lot of blood. Was advised to euthanize but refused. Buyer tried many things over a period of months. Still no change. Buyer has been told she probably won't live long. Dog has IBD, Lymphactasia, allergies, and is probably going to end up with protein losing entropathy and possibly EPI. They have spent over \$2000 trying to help her get better.
9/16/2011	[Redacted] of NY	Jeff Fortin & Lizann Miller, License No. 47-A-0564	Oberlin, KS	Complainant purchased the puppy from a pet store, Shake a Paw in Long Island, when she saw that it was sick. Puppy was wheezing and possibly had pneumonia. The dog is now 20 months old and has been diagnosed with hip dysplasia in both hips. Buyer is very passionate and willing to do anything to help.
12/29/2010	[Redacted]	Jeff Fortin & Lizann Miller, License No. 47-A-0564	Oberlin, KS	Buyer purchased a Siberian Husky from North Washington Kennels on 8/31/10. Dog was immediately diagnosed with giardia, and it took almost a month to clear up. Buyer is willing to provide any help

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
				needed.
1/30/2012	Arellano, Michele of IL	Kristi Rath, License No. 42-A-1408	Lacona, IA	Several days after purchase, puppy exhibited and was aggressively treated for kennel cough over weeks with many antibiotics. Puppy also had discharge from nose and eyes. In January, she started having a jaw tic, and then a day later had seizures. She was treated at VMA Specialty Hospital in Aurora under a neurologist care. An MRI was done and a spinal tap. The puppy never recovered from anesthesia w/o seizures and buyer had to have the puppy put to sleep on 1/12/12. End result was Distemper diagnosis.
4/2/2009	Clarke, Anne of NC	Kathie & William Blomberg -- Locust Creek Farm, License No. 43-A-1116	Versailles, MO	Several months after purchase, puppy became ill with a fever of 105. The vet did a blood test, an exam, and an x-ray. Puppy had pain in her hindquarters -- vet suspected discospondylitis but could make no definitive diagnosis. Puppy's pain intensified and buyer took the puppy to a neurologist, who diagnosed the puppy with polyarthritis and prescribed doxycycline, Clindamycin, and prednisone. She remained on prednisone for a long time. Some time later, the puppy had a very high fever, and another flare-up of the polyarthritis. Two years after purchase, dog began acting strange, and buyer came home to see the kitchen floor covered urine, dog was limping and her eyes were not visible. Her blood glucose and urine glucose levels were very off. She was diagnosed with diabetes, probably as a result of being on prednisone long-term. Since then, she has been taking insulin twice a day. In sum, dog has polyarthritis, diabetes, and an immune deficiency disease, and continues to have health issues.
12/7/2011	[Redacted]	Kathie & William Blomberg -- Locust Creek Farm, License No. 43-A-1116	Versailles, MO	Buyer's puppy was in terrible condition from the start -- intestinal worms, ear mites, etc., which took extensive efforts to cure.
5/18/2010	[Redacted] of	Kathie &	Versailles, MO	Buyer bought puppy from Petland. Within a week and a half, she was

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
	TX	William Blomberg -- Locust Creek Farm, License No. 43-A-1116		deathly ill. She was dehydrated, running a high fever and had to be put on an IV. She remained in the hospital for several days, but ultimately recovered.
8/29/2009	[Redacted] of IL	Michelle Sonnenberg, License No. 41-A-0021	Detroit Lakes, MN	Buyer purchased Shetland Sheepdog from Park Pet. He was only 7 weeks and 6 days old and only 1.1 pounds. At 8 months old he was diagnosed with moderate hip dysplasia, and must be on medication for the rest of his life.
3/19/2009	[Redacted] of PA	Michelle Sonnenberg, License No. 41-A-0021	Detroit Lakes, MN	Buyer purchased Cairn Terrier from Petland - puppy had a lower respiratory infection. When administered antibiotics she vomited immediately. Vet discovered that the puppy had a severe bronchial issue; puppy also has major separation anxiety and vision issues.
2/1/2012	Michnick, Brittany of IL	Monroe Hochstetle, License No. 43-A-5801 (previously 43-A-5312)	Princeton, MO	A couple of months after purchase, buyer noticed significant amount of discharge coming from her puppy's eyes and ears. The vet put her on antibiotics and multiple ointments and told buyer to call if she wasn't getting better after a week. The puppy's eye discharge persisted, and vet advised another round of antibiotics. Shortly thereafter, puppy began seizing foaming at the mouth. Vet said puppy likely had distemper.
5/22/2012	Dreyer, Kristine of IL	Monroe Hochstetler, License No. 43-A-5801 (previously 43-A-5312)	Princeton, MO	Buyer's boyfriend purchased puppy from store, and the puppy was sick from the start. The vet treated him for a respiratory infection and gave him antibiotics. He started to get better but then got worse, and he was placed on an IV antibiotic, and stayed in the hospital for 3 or 4 days. He recovered, but then within months he developed tremor in his legs. The vets said the puppy would grow out of it, but this continued for months. Also, his teeth never developed. The vet later determined from all these symptoms that the puppy had contracted distemper prior to purchase.

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
2/8/2013	Powell, Brittany of OH	Elam Fisher -- Morgan Creek Kennel, License No. 32-A-0298	Williamsburg, IN	Within a day of purchase, the puppy began to have diarrhea and blood in his stool. Vet diagnosed him with giardia, as well as an upper respiratory infection. Later it became clear the puppy was also deaf.
10/14/2012	Sheahan, K.	Elam Fisher -- Morgan Creek Kennel 32-A-0298	Williamsburg, IN	Two days after purchasers brought the puppy home from the pet store, he began to have a dry honking cough. The vet diagnosed him with kennel cough. Eight days and a round of antibiotics later, the puppy's cough not only became worse but he began to struggle to breathe. The cough had turned into pneumonia. The puppy also had giardia. He remained lethargic, refused to eat, and had trouble breathing. Outcome unknown.
11/30/2008	Mullen, Sharon of IN	Playful Paw Kennel, License No. 32-A-0403	Williamsburg, IN	Puppy began coughing within one week of purchase. She continued to get worse, and began vomiting, which caused dehydration. The vet placed her on IV medication and administered oxygen. They also took x-rays, which revealed that one of her lungs had collapsed and the other was infected. She was ultimately euthanized.
2/8/2010	Fisher, Sarah of OH	Playful Paw Kennel, License No. 32-A-0403	Williamsburg, IN	Buyer's Saint Bernard began having seizures about one year after purchase, and was diagnosed with epilepsy. His seizures have gotten progressively worse and more frequent, even with daily medication. With his type of seizures it is likely that his mother or father also had the condition.
8/5/2009	Kooy, Kim of IN	Playful Paw Kennel, License No. 32-A-0403	Williamsburg, IN	Complainant purchased a Cavalier King Charles. The puppy had medical issues immediately, and ultimately had to be euthanized.
2/22/2012	Wehrs, Sharon of IL	Prairie Lane Kennel, License No. 42-A-0331	New Sharon, IA	Complainant purchased a mini Dachshund puppy after the pet store assured her that she was healthy and did not come from a puppy mill. The vets discovered that she had mites, kennel cough, and a URI that could possibly turn in to pneumonia.

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
6/28/2013	Wickham, Bethany of CA	Ray and Steve Kruse, License No. 42-A-0575	Ogden, IA	Complainant purchased a bulldog puppy and within a month he has already had 2 different types of parasites, an upper respiratory infection, and bladder problems. Complainant is eager to help however possible.
4/1/2013	Segura, Maria of FL	Running River Kennels, License No. 71-A-0727	Altus, AR	Complainant purchased Yorkshire Terrier puppy from Petland in Sarasota, Florida. Puppy had kennel cough at first, but later through x-rays it became evident that the puppy had an enlarged heart, a genetic condition.
6/7/2013	Hammer, Rachel of NY	Brandi Cheney -- S & S Family Puppies / Circle B Farms, License No. 43-B-3698 (previously 43-B-0435)	Huntsville, MO	Complainant's puppy refused to eat almost immediately and was diagnosed with liver disease.
2/12/2012	Wyman, Chris of FL	Brandi Cheney -- S & S Family Puppies / Circle B Farms, License No. 43-B-3698 (previously 43-B-0435)	Huntsville, MO	Within the first week of purchasing a Shiba Inu puppy from Pampered Paws in Jacksonville, FL, buyer noticed three odd looking stitches on the puppy's belly. The puppy likely had had hernia surgery and the stitches looked "homemade."
1/25/2012	Sallee, Natalie of IL	Terry Glover, License No. 42-A-1358	Milton, IA	Complainant and her boyfriend adopted the puppy in 2012 from the original buyers via Craigslist. The puppy (Lucy) was diagnosed with distemper and a neurological issue and was euthanized on 1/24/2012. Original buyers did not disclose that she was sick when they gave her to the complainant and her boyfriend.
10/11/2009	Dorweiler, Tracie of IL	Barbara Neubert -- The	Vienna, MO	Buyer bought Italian Greyhound from Petland on 04/11/2009 in

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
		Neubert Kennels and Farms, License No. 43-A-5777		Crystal Lake, IL. Vet believes her indicated age was fabricated. Puppy had an umbilical hernia a few weeks prior to purchase.
3/29/2009	Grammer, Phoenix of WI	Barbara Neubert -- The Neubert Kennels and Farms, License No. 43-A-5777	Vienna, MO	Buyer purchased Siberian Husky puppy from Petland for \$1,100 and she has been on medication since then. Puppy initially had a cough but then began to vomit and developed high fever. After a week of medication, the puppy still had a high fever. Puppy has continued to have health issues.
10/5/2012	[Redacted] of MO	Barbara Neubert -- The Neubert Kennels and Farms, License No. 43-A-5777	Vienna, MO	Buyer actually went to the facility and observed cages/kennels stacked on top of each other, dogs exposed to the elements, and other unsanitary conditions. Purchased a puppy anyway, and she ended up having a genetic issue -- an "incomplete ossification of the humeral condyles," leaving her prone to fractures in her elbow. She did suffer a fracture in her right elbow after purchase, and underwent surgery. It was also discovered at the University of Missouri Vet Clinic that the puppy had a pre-existing fracture on the left elbow that was not disclosed to the buyer prior to purchase on her left elbow. The fracture was not properly treated, causing the puppy's left leg to curve, which will cause her to suffer from arthritis.
8/16/2012	Rode, Kristin	Tornado Alley Kennel, License No. 43-A-4748	Freeburg, MO	Complainant purchased a long haired dachshund, and the following day the puppy (Barley) seemed very lethargic, refused eat anything, and began having bloody stool. After an examination, the vet gave her liquids to get her rehydrated and medication. After showing no change, she was hospitalized and remained there for 5 days. Outcome unknown.
10/1/2011	Staudinger, Justen of CO	Waterman Farms, License No. 48-A-1742	Atwood, KS	Buyer purchased puppy on Sept. 8th and she died on the 23rd. She arrived very dirty and smelled of urine, and several weeks later she became very lethargic and her gums became white. She was rushed to the vet, where she was diagnosed with parvo. She died shortly

<u>Complaint Date</u>	<u>Complainant</u>	<u>Breeder</u>	<u>Breeder Location</u>	<u>Complaint</u>
				thereafter. The store offered buyer another puppy, which he agreed to. Second puppy had loose stool and worms, as well as a wheezing cough. She was placed on antibiotics. Outcome unknown.

Exhibit D-1

Photographs of Wire Floors and Injured Paws

Photographs of Wire Floors and Injured Paws¹

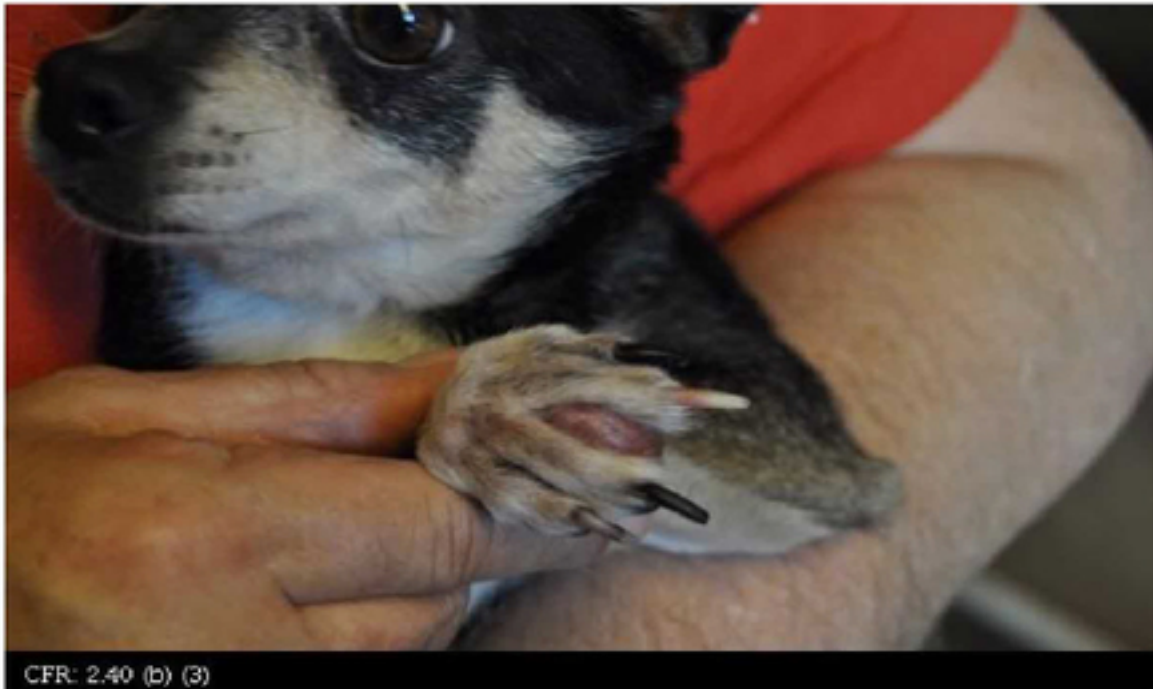


Left: male Maltese with bleeding lesion between the toes on the left front paw. From inspection of Cathy Griesbauer & Mary Foster, License # 43-A-1843, 12/4/13

Below: Dachshund straddling widely-spaced wire flooring. From inspection of Cathy Griesbauer & Mary Foster, License # 43-A-1843.



¹ These pictures were obtained by the Petitioners from USDA through FOIA requests.



Photographer:	Sandra Meek, ACI	Legal Name:	71-B-0123
Photo Taken:	Thu, Apr 10, '14 11:30am	ANITA GUSTIN	
Inspection:	59141219358510		
Description:	Adult female Chihuahua, #4949196A4A, has an enlarged red area between the two middle digits of the left front paw. The animal needs to be evaluated by the attending veterinarian.		

Above: adult female Chihuahua found by USDA with swollen area between toes, probably due to wire flooring.



Inspection discovered puppies unable to move due to feet falling through the openings in the wire flooring. (July 20, 2011)

Exhibit D-2

Photographs of Dogs Without Clean Spots

Photographs of Dogs Who Have No Clean Spots Available to Lie Down¹



Taken at certificate holder Angela Fields' facilities (report no longer available online)

¹ These pictures were obtained by the Petitioners from USDA through FOIA requests.



Taken at certificate holder Anita Baker's facilities (report no longer available online)



Taken at certificate holder Corrinna Keezer's facilities (report no longer available online)



Both taken at certificate holder Daryl Kendrick's facilities (report no longer available online)



Taken at certificate holder Nick and Tiffany Menne's facilities (report no longer available online)

Exhibit D-3

Photographs of Stacked Cages

Photographs of Stacked Cages

Photos from nopetstorepuppies.com

Debra Pratt

10/4/12



Moses and Barbara Lantz

5/22/12



Moses and Barbara Lantz

5/22/12



"Enterprise kennels": MC Daniel, Mark & Glenda

4/5/11



“Circle B Kennel”: Susie Black

6/22/11



Ruth Hargrove

10/3/12



Ruth Hargrove

10/3/12



Clarence Anderson

11/1/12



Danny & Vickie Ubben

6/12/13



Danny & Vickie Ubben

6/12/13



Robert Beachy

9/5/13



“Brownlee’s Furry Friends”: Robert Brownlee

8/10/10



Barbara & Dale Lanning

9/4/13



Wayne Miller

11/14/12



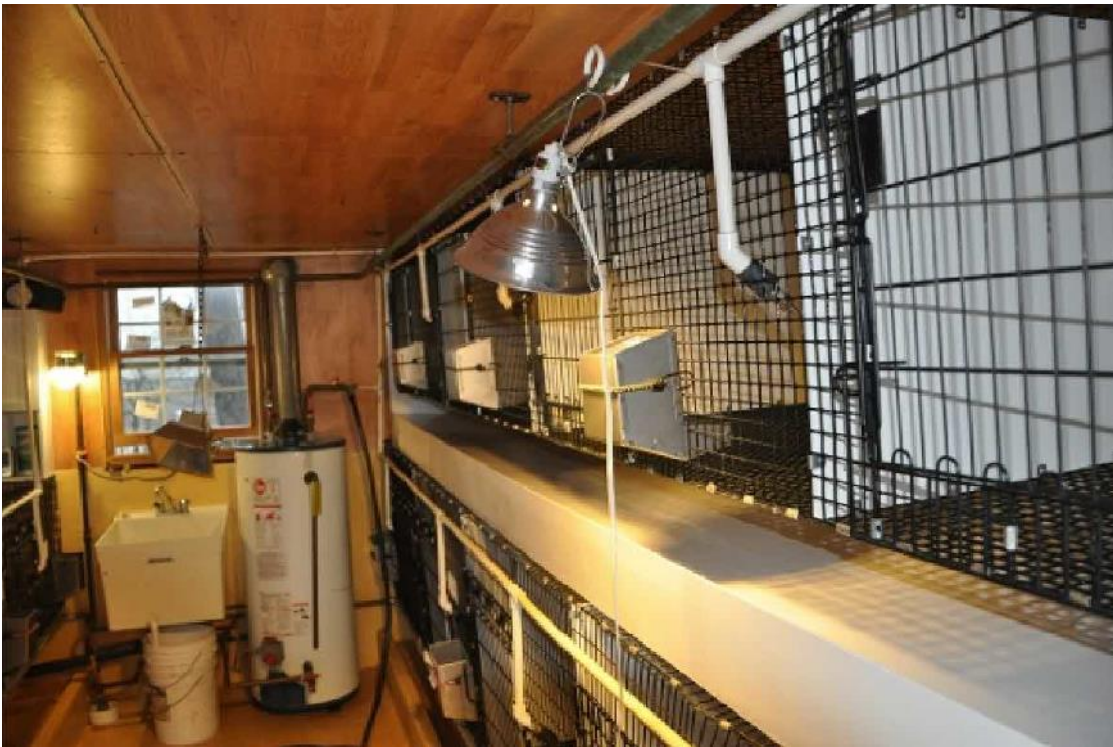
Wayne Miller

11/14/12



Ryan & Hannah Raber

12/10/12



Brenda Rauber

4/20/11



Harvey Miller

12/1/10



Roy Yoder

12/3/12



Jacob Yoder

10/23/12



Sandra Parson

7/1/10



Sandra & Tom Espey

6/22/11



Partee, Terrie & Harris, Robert & Sandra

7/7/11



Leroy Esh

11/19/12



Eli Yoder

4/17/13



“Gadient Kennels Gadient”: Marty & Keelee

8/24/10



Chad Wulf

7/23/14



Peggy Morris

8/24/11



David Chupp

11/7/11



Ronald Nickell Jr & Stephanie Nickell

6/3/13



Elsie Hatfield

4/27/11



Betty R. Bratcher

5/2/11



Earl Light

10/25/10



Charlene & Darlene Koster

6/28/11



James & Kathy Sanborn

3/15/11



Edna Hanegan

4/5/11



Edna Hanegan

4/5/11



10/3/12



6/8/11



Loren Miller

12/17/12



Diana Cossairt

12/20/10

