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Docket No. APHIS-2017-0062  
Regulatory Analysis and Development  
PPD, APHIS, Station 3A-03.8  
4700 River Road Unit 118  
Riverdale, MD 20737-1238

American Kennel Club Comments on Advance Notice of Proposed  
Rulemaking  
US Department of Agriculture, Animal and Plant Health Inspection Service  
9 CFR Parts 1 and 2  
RIN 0579-AE35  
Animal Welfare; Procedures for Applying for Licenses and Renewals

## **Preface**

The American Kennel Club (AKC) is America's only not-for-profit all-breed dog registry devoted to the study, breeding, exhibiting, and advancement of purebred dogs.

Founded in 1884, the AKC demonstrates its commitment to responsible dog ownership and breeding through a variety of educational programs, humane programs, a multi-million-dollar commitment to canine health research through the AKC Canine Health Foundation, and by conducting thousands of kennel inspections each year. As the only national purebred dog registry with a kennel inspections program—which includes a flexible, comprehensive, performance-based care and conditions policy for the welfare of all dogs—AKC has conducted more than 70,000 inspections since 2000.

The American Kennel Club appreciates recent outreach by the United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) to impacted stakeholders in the form of the Advanced Notice of Proposed Rulemaking and Request for Comments.

We appreciate the agency's recognition of the value of stakeholder expertise in shaping reasonable, efficient and appropriate rules for implementing the Animal Welfare Act (AWA). We also appreciate the agency's recognition of the value in working together to ensure that quality oversight for the purpose of ensuring the wellbeing of licensees' animals takes into

account accurate data and reflects scientific principles and effective real-world experience in animal husbandry.

We applaud the agency's goal of promoting sustained compliance with the AWA, reducing licensing fees and burdens, and strengthening existing safeguards to prevent those who have a history of negligent animal care or cruelty to animals from obtaining a license.

The American public relies on the Animal Welfare Act and the USDA to ensure a reputable and consistent source of quality purpose-bred pets for American pet owners. In turn, professional breeders rely on public confidence in USDA APHIS's implementation of AWA regulations and inspections to substantiate their kennels' operational standards. The American Kennel Club supports strong enforcement of the AWA. A strong USDA licensing and inspections program that fully enforces the Animal Welfare Act and that has the confidence of the American public is good for the wellbeing of dogs and for dog lovers who rely on knowing that puppies from USDA licensed kennels come from quality kennels.

In addition to insights garnered from our operational experience, the AKC has included feedback from AKC-affiliated dog clubs and individual registrants in the preparation of these comments.

### **Establishing a Firm Expiration Date for Licenses**

AKC recognizes the value in requiring individuals to affirmatively demonstrate compliance with AWA requirements. We agree that requiring affirmative demonstrations of compliance, rather than simple self-certification, is likely to be more effective in ensuring sustained licensee compliance with AWA requirements. Regular, affirmative demonstrations not only encourage sustained compliance, but also may improve efficiencies for licensees.

While we expect that the primary benefit of firm expiration dates and re-licensing (rather than license renewal) would be sustained compliance and wellbeing for licensees' animals, the same objective may also be achieved without implementing new administrative re-licensing processes by using teachable moments during demonstrations of compliance. We encourage USDA to consider this alternative.

Another area of concern for licensees involves the impact that future changes in rules or specifications could have on licensees who are compliant under current rules and standards. Would licensees who are compliant with current requirements and have no health or welfare violations be grandfathered in for new licenses under old requirements, or would they be compelled to regularly alter otherwise appropriate kennels to meet new standards? Again, we urge USDA to consider this issue, and provide flexibility for high-quality performance-based outcomes.

### **Eliminating Fees/Assessing Fees Only for Licenses Issued**

On behalf of our constituents who are subject to USDA licensing, AKC appreciates the concept of reduced licensing fees. However, if the proposal is implemented and inspections of kennels are increased both in terms of quantity and thoroughness (e.g. unannounced inspections with teachable moments are continued at the current level, plus new pre-licensing inspections are implemented for re-licensing) it suggests a higher administrative workload for USDA, and a concomitant increase (rather than decrease) in licensing fees.

AKC supports changes such as the reduction in fees that enable the regulated class to instead spend those dollars in ensuring the health and wellbeing of their animals. AKC recommends that a combined fee for multiple years be no greater than the average annual fee currently assessed to that licensee.

### **Licensees Must Be Afforded Ample Time to Apply for Licenses**

Given the anticipated potential increase in workload for inspectors, AKC agrees that it is very important to provide procedures to ensure that licensees are not in jeopardy of an inadvertent lapse in licensure due to a backlog of inspections or other USDA APHIS administrative processes. AKC recommends that no licensee who has a history of compliance and who has applied for re-licensing 45 days prior to the expiration of a current license, should be placed in jeopardy of a lapse of license. Current licenses should be automatically extended, as long as licensees remain substantially compliant with the requirements under their existing license, until such time as the new license is in effect. At no time should the licenses of compliant licensees lapse due to agency administrative delays.

### **Substantial Changes Should Require Affirmative Demonstration of Compliance**

AKC recognizes the value of affirmatively demonstrating compliance due to changes that substantially alter the nature of the licensees' business. Examples of noteworthy changes may include a significant percentage increase in number of animals kept or bred; a change in the purpose for keeping or selling the animals (for example, a person who continues to sell pets sight unseen but now changes the source or percentage of pets, from pets bred by the licensee to those bred elsewhere); a change in location or type of facilities; a change in the type or breed of animal that impacts facilities requirements (e.g. a breeder of Chihuahuas will have different requirements than a breeder of Alaskan Malamutes); or a change in species.

## **Reducing Pre-Licensing Inspections from Three to Two Will Have Little Impact**

According to USDA APHIS, approximately one percent of all new licensees require a 3<sup>rd</sup> inspection to correct deficiencies and take corrective measures before obtaining a new license. Under the proposal to require re-licensing every 3-5 years and an assumed increase in new license applications, it is likely that this number will continue to decline. Therefore, eliminating the option for a 3<sup>rd</sup> inspection is unlikely to impact welfare or efficiency. However, maintaining this option may be helpful to some licensees, particularly first-time applicants.

## **Disclosure of Cruelty Convictions**

In general, convictions of animal cruelty at the federal, state or local level should be disclosed. APHIS should accept and take into consideration documentation explaining circumstances. It is imperative that APHIS recognize that there is a broad variation in the definition of “cruelty” and in cruelty laws throughout the country. Unfortunately, a number of jurisdictions have arbitrarily defined certain recognized animal husbandry practices as “cruelty”, including those designed to improve the welfare of dogs and their owners. Examples include, but are not limited to, the veterinary practices of debarking, ear cropping, tail docking, and tethering. Violations should be judged on a case-by-case basis with full information. Additionally, other minor violations involving owned animals that do not impact health or welfare (i.e., leash violations, local tags, paperwork, etc.) should not require disclosure.

## **Expressly Restrict Individuals with Suspended/Revoked Licenses, or with Substantiated Histories of Noncompliance with AWA Standards from Working for Other Regulated Entities**

The American Kennel Club believes that licensees found responsible for finally-adjudicated direct animal care violations should be prohibited from AWA-regulated activity as employees of other licensed entities during applicable suspension periods or after permanent license revocation.

Current USDA regulations, however, do not explicitly prohibit those with suspended or revoked licenses from working for other regulated entities. Instead, they provide that an individual whose license is suspended for any reason shall not be licensed in his/her own name or in any other manner within the period during which the order of suspension is in effect. Additionally, no partnership, firm, corporation, or other legal entity in which any such suspended person has a substantial interest, financial or otherwise, will be licensed during the period of suspension.<sup>1</sup> Similar permanent prohibitions apply to those whose licenses have been revoked.<sup>2</sup>

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<sup>1</sup> 9 CFR § 2.10(a).

<sup>2</sup> 9 CFR § 2.10(b).

We believe that allowing individuals with suspended or revoked licenses to work for other regulated entities would present an increased chance of harm to the animals maintained and would run counter to the spirit of the restriction, and therefore should be explicitly restricted from working for other licensees.

Additionally, AKC believes that those individuals with substantiated histories of non-compliance with AWA animal care standards, as evidenced by animal cruelty convictions or license revocations based on direct violations, should be prohibited from applying for AWA licensure through different individuals or business names. Attempts to intentionally evade such prohibition should be subject to criminal action under Title 18 of the United States Code or other applicable sanctions.

### **Improved Enforcement of Imports Needed**

AKC appreciates the interest in streamlining and improving rules that implement the Animal Welfare Act. However, we believe an area needing greater resources and attention is oversight of the importation, trafficking/transfer, and resale of pet animals from unknown and unregulated sources. Many such animals originate in high volume overseas breeding facilities that lack even rudimentary health and welfare oversight. Others originate as strays or street animals. Most are imported specifically for marketing and retail transfer in America's popular "rescue pet" industry.

In many cases health, temperament, breed, or age information cannot be verified. In a number of recent cases, irresponsible imports and a lack of oversight of rescue imports have left the U.S. public, pets and livestock open to threats from contagious and zoonotic diseases, including rabies, brucellosis, canine influenza, bartonella, screw worm and a variety of other devastating ailments.<sup>3</sup>

It is not currently known how many such animals are imported into the U.S. and/or transferred across state lines in violation of AWA transportation and pet dealer requirements. We encourage the USDA to expand efforts to address these issues and to consider developing a memorandum of understanding or other device to work more closely with the U.S. Centers for Disease Control and Prevention and U.S. Custom and Border Protection to monitor the numbers and types of animals being brought into the United States for transfer to a new owner (resale). It should also address regulatory gaps that allow for the operation of unlicensed

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<sup>3</sup> Dubovi, EJ and Njaa, B. 2008. *Canine influenza*. Vet Clin North Am Small Anim Pract 38: 827-835; Breitschwerdt, EB and Maggi RG, 2008. *Comparative medical features of canine and human bartonellosis*, Clin Microbiol Infect. 2009 Dec; 15 Supple 2:106-7; Centers for Disease Control and Prevention, *Rabies in a Dog Imported from Egypt with a False Rabies Vaccination Certificate*, December 28, 2015.

dealers and transporters whose activities undermine regulated entities and carry a serious threat to public health and safety.

### **Increasing Administrative/Inspection Workload and Third-Party Inspections**

A proposed increase in pre-licensing inspections suggests an increase in APHIS's administrative workload. AKC is concerned that APHIS will not have sufficient resources to conduct the needed inspections and enforcement actions. We are particularly concerned that APHIS could seek to contract with third-party inspectors to fulfill expanded requirements.

We believe all USDA inspections should be conducted by individuals trained and employed by USDA. Third-party inspectors are less likely to have the animal husbandry training and hands-on pet breeding experience important for working effectively with regulated pet breeders. They are also more likely to be sourced from groups that have an anti-breeder bias or agenda.

The AKC believes that the use of inspectors that are not USDA employees could lead to a significant risk of such individuals implementing their personal cause under the color of federal government administrative enforcement. Damaging outcomes could include unreasonable inspections of licensees' premises or inspections resulting in unfounded (non)compliance issues. This would likely diminish faith and confidence in the independence and fairness of the USDA inspections program, and may even decrease licensing compliance.

Even though such parties would be acting, in large part, pursuant to their personal beliefs prohibiting welfare-based animal uses, their "cover" as third-party inspectors under the direction of a federal agency would likely result in federal governmental immunity protecting the non-governmental character of their actions. In such cases, parties whose rights were deprived may receive little to no protection under federal law (for example, such individuals would may be able to avail themselves of a 42 USC § 1983 civil claim for deprivation of rights).

Communities and pet stores rely on accurate inspections data, which many obtain from the USDA website. Ensuring that inspections are fair and that the information they provide is accurate is crucial to ensuring public confidence in USDA's inspections process. In turn, this confidence helps ensure that families have the ability to obtain a purpose-bred pet that is an appropriate fit for their lifestyle.

### **Ongoing Concern About the Vague Definition of the Term "Breeding Female"**

In August 2012, the American Kennel Club expressed concerns about the lack of clear definition for the term "breeding female" as used in the AWA regulations and in the retail pet store rule, finalized later that year. In our comments on Docket No. APHIS-2011-0003, RIN 0579- AD57, we noted: "...the AKC is extremely concerned that it is unclear how "breeding female" would be

defined for the purposes of determining which breeders would be deemed exempt from licensing requirements.”

Currently, the USDA appears to define “breeding female” as “capacity to breed” and bases this assessment on a case-by-case visual inspection on the ground of the animals involved, determining whether they are “of breeding age” and whether there are health or other factors that would limit that. The AKC believes that this is not a practical, efficient, or clear way to establish a threshold for licensing and regulation, as it does not allow either APHIS or a breeder to assess whether a breeder would be subject to licensing, regulation, and inspection without first being inspected by APHIS, which could only be undertaken after the license application process has been undertaken.

*Unless a breeder is certain which animals will “qualify” as non-breeding animals, a breeder has no way of knowing what their regulatory requirements would be under this rule.* An individual with several intact females of various species who owns only one dog and whelps only one litter, but sells one puppy sight unseen might still have to be licensed as a commercial breeder.

Visual or arbitrary definitions of “breeding females” are also problematic as many breeders “grow out” promising females to at least 24 months of age before determining whether they will have a show career or be worthy of breeding. Maintaining an intact female that physically could be bred does not indicate the intention to breed. Additionally:

- Dog show hobbyists may keep a number of females intact because this is a requisite to show in AKC conformation dog shows or compete in certain performance events. These events are intended to identify the best breeding stock to ensure that future animals are healthy and capable of performing the tasks for which the breed was intended.
- Responsible breeders often must wait until an intact female is a minimum of 1-2 years old before determining whether she would qualify to be breeding stock. In many cases, key health tests for breeding stock cannot be accurately conducted until the animal is two years old.
- Recent studies demonstrate that intact females may have better health; likewise, premature spaying may cause a variety of health, longevity and/or house-training issues.<sup>4</sup>

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<sup>4</sup> Kustritz, Margaret V. Root. *Determining the optimal age for gonadectomy of dogs and cats*. Journal of the American Veterinary Medical Association, Vol. 231, No. 11, Dec. 1, 2007. Belanger, Janelle M, Bellumori, TP, Bannasch, DL, Famula TR, Oberbauer, AM, (2017), *Correlation of Neuter Status and Expression of Heritable Disorders*, Canine Genetics and Epidemiology Journal. Zink, Christine M, Farhood, P. Elser, SA, Ruffini, LD, Gibbons, TA, Rieger, RH, (2014) *Evaluation of the risk and age of onset of cancer and behavioral disorders in gonadectomized Vizslas*, Journal of the American Veterinary Medical Association, Vol. 244, No. 3. Hart, B. L., Hart, L. A., Thigpen, A. P. and Willits, N. H. (2016), *Neutering of German Shepherd Dogs: associated joint disorders, cancers and urinary incontinence*. Vet Med Sci, 2: 191–199. doi:10.1002/vms3.34. Cooley, Dawn M., Beranek, BC, Schlittler, DL,

Although a ‘breeding female’ is not specifically defined, it may be assumed that a breeding female would be broadly defined as an intact adult female. However, as argued above, the keeping of intact females is not in fact equivalent to breeding and should in no way be treated as proof of breeding or selling puppies. Likewise, when a hobbyist does breed an intact female, it may be the only breeding this dog will ever have despite being kept intact for the majority of her life.”

The manager’s letter accompanying the conference report to HR 2642/ PL113-79 (the Agricultural Act of 2014) also took up this issue, directing APHIS to clarify that only those female animals capable of reproduction and actively being used in a breeding program should qualify as breeding females.<sup>5</sup>

AKC once again urges USDA APHIS to clarify the definition of breeding female. Specifically, we propose that a breeding female is one that is in whelp, or has delivered a live offspring in the last 3 years. We believe this change will promote regulatory efficiency and flexibility.

### **Maintaining License Number**

Current licensees have expressed concerns that their long-held USDA license numbers could change due to the implementation of license terms. Many are proud of a long history of compliance with USDA requirements and prefer to keep their current license numbers as a way of preserving their paper records as a kennel in long-standing compliance with USDA requirements. They have also noted that such a change would result in increased compliance costs for them. For example, some state and/or local administrative agencies overseeing the activities of certain breeders require disclosure of USDA license numbers in applications and reports, as well as in any ads or other online and printed materials that help market, manage,

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Glickman, NW, Glickman, LT, and Waters, DJ (2002) *Endogenous Gonadal Hormone Exposure and Bone Sarcoma Risk*. *Cancer Epidemiol Biomarkers Prev* 2002; 11:1434-1440.

Hart BL, Hart LA, Thigpen AP, Willits NH (2014) *Long-Term Health Effects of Neutering Dogs: Comparison of Labrador Retrievers with Golden Retrievers*. *PLoS ONE* 9(7): e102241. doi: 10.1371/journal.pone.0102241.

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[http://c.ymcdn.com/sites/www.therio.org/resource/resmgr/docs/spay-neuter\\_basis.pdf](http://c.ymcdn.com/sites/www.therio.org/resource/resmgr/docs/spay-neuter_basis.pdf). Sandborn, Laura J, M.S. (May 14, 2007), *Long-Term Health Risks and Benefits Associated with Spay/Neuter in Dogs*,

<http://www.naiaonline.org/pdfs/LongTermHealthEffectsOfSpayNeuterInDogs.pdf>. Torres de la Riva G, Hart BL,

Farver TB, Oberbauer AM, Messam LLM, et al. (2013) *Neutering Dogs: Effects on Joint Disorders and Cancers in Golden Retrievers*. *PLoS ONE* 8(2): e55937. doi: 10.1371/journal.pone.0055937. Waters, D. J., Kengeri, S. S., Clever,

B., Booth, J. A., Maras, A. H., Schlittler, D. L. and Hayek, M. G. (2009), *Exploring mechanisms of sex differences in longevity: lifetime ovary exposure and exceptional longevity in dogs*. *Aging Cell*, 8: 752–755. doi: 10.1111/j.1474-

9726.2009.00513.x. Zink, Chris, DVM, PhD, DACVP, DACVSMR (updated 2013), *Early Spay-Neuter Considerations for the Canine Athlete: One Veterinarian’s Opinion*. Canine Sports Productions,

<http://www.caninesports.com/uploads/1/5/3/1/15319800/earllyspayconsiderations.pdf>.

<sup>5</sup> Joint Explanatory Statement of the Committee of Conference, H.R. 2642, Agricultural Act of 2014 --

<http://docs.house.gov/billsthisweek/20140127/CRPT-113hrpt-HR2642-SOM.pdf>.



or administer their businesses. Changes in USDA license numbers would require such individuals to update required information with state agencies and all printed materials, including forms, business cards, stationery, etc. Changes in license numbers could also create confusion and impose further costs and effort downstream for entities such as pet stores who maintain records on the compliance of USDA licensees' whose pets they sell; and for local jurisdictions that check the compliance status of licensees whose pets are sold at pet shops within their city, county or state.

To ease any potential burden of increased compliance costs, the AKC recommends that USDA default to allowing licensees to keep the same license number over the entire course of their regulated activity, including over multiple, contiguous license terms. USDA should also allow those who wish to obtain a new number during relicensing to do so.

**Thank you for your consideration of these comments. Questions may be addressed to:**

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