

Legislation - What's Hot

By George Eigenhauser, CFA Legislative Coordinator
February 2014

Agricultural Act of 2014 (the "Farm Bill") and Changes to USDA/APHIS Hobby Breeder Regulation

Thanks in large measure to efforts by the American Kennel Club (AKC) the Agricultural Act of 2014 (aka the Farm Bill) speaks to some concerns regarding recent regulatory changes to the Animal Welfare Act (AWA) by the USDA/APHIS. Previously, on September 18, 2013 the USDA/APHIS had announced changes to their rules implementing the AWA, ostensibly to deal with the issue of large scale breeders selling over the Internet (so-called "sight unseen" transactions). The agency seemingly interpreted "sight unseen" as any retail pet sales which were not hands on, in person, and face to face between the buyer and seller. The new rule, effective November 18, 2013, also increased the number of small, hobby breeders who may now be subject to federal licensing and regulation.

The Farm Bill amends the AWA by providing that a dealer or exhibitor selling pets at retail shall not be required to obtain a federal license the AWA if the size of business is determined by the Secretary to be *de minimis*. The USDA/APHIS had previously determined that no license should be required for small-scale breeders of certain animals (i.e., those that maintain four or fewer breeding cats and dogs and sell at retail only the offspring of those animals born and raised on the premises for pets or exhibition). The Conference Report suggested this had been done without clear statutory authority. The Farm Bill codifies this exemption, allowing USDA/APHIS to determine that certain small-scale animal breeders selling pets at retail do not need to obtain a federal license if their activities are so minor as to merit disregard.

There are a number of provisions in the Agricultural Act of 2014 that mandate the Secretary of the Department of Agriculture do specific things by dates certain. These have the force of law since they become part of statutes. These use wording, "the Secretary shall..."

However, the Conference Report has a number of instances of what can only be "precatory" language. ["Precatory" adj, referring to a wish or advisory suggestion which does not have the force of a demand or a request which under the law must be obeyed.] Thus "precatory words" in a will or trust would express a "hope that my daughter will keep the house in the family," but do not absolutely prevent her from selling it. Instances of precatory language in the Conference Report include: "allowing" USDA to determine; "allows" to determine; "expect" to determine; "request" clarification; "urge" APHIS to clarify; and "recommend" clarifying.

The Conference Report notes the confusion created by the failure of the USDA/APHIS to define the term "breeding female" which does not appear in statute. They "urge" that the agency clarify that only those female animals capable of reproduction and actively being used in a breeding program qualify as breeding females. They also "recommend" clarifying that USDA/APHIS oversight of such sales pertains to those transactions in interstate commerce as provided for under the Commerce Clause. The Conference Report notes that these changes will allow the

agency to focus resources on the matters congress intended to regulate and “requests” USDA/APHIS finalize a new rule within one year.

A one year time frame to complete this type of rulemaking is inconsistent with USDA/APHIS history in this area. Notice and Comment would be required, and a large number of comments from different perspectives are possible. The rule that became effective on November 18, 2013 had been published for comment in May 2012. However, it is unknown how many months work went into drafting the rule before the May 2012 publication. When USDA/APHIS might or does pursue rulemaking, it still has its own existing rules and policies and will have to consider the range of comments that would be submitted by stakeholders and the public. These groups might seek to exploit any proposed rule to suit their own interests and policies.

Fanciers are reminded that until/unless a new rule is adopted at some future date, *the USDA/APHIS rules currently in effect still apply*. CFA Legislative Group will continue to monitor the situation and advise when opportunities arise to submit comment and provide information about any new rule. Please watch the CFA legislative alerts page for information as it develops.

For more information about the Agricultural Act of 2014:

AGRICULTURAL ACT OF 2014
<http://agriculture.house.gov/farmbill>

PAGE 911 – AMENDMENTS TO AWA
<http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/legislation/AgriculturalAct2014.pdf>

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

Brief one page summary of Agricultural Act of 2014
<http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/legislation/AgriculturalActSummary.pdf>