



Office of Policy, Research and Regulatory Reform

2013 Sunset Review: Pet Animal Care and Facilities Act

October 15, 2013





Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2013

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Pet Animal Care and Facilities Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2014 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 80 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Commissioner of Agriculture and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director





John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

2013 Sunset Review: Pet Animal Care and Facilities Act

Summary

What Is Regulated?

Under the Pet Animal Care and Facilities Act (PACFA), any place that is used for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading or otherwise transferring such animals must obtain a license from the Commissioner of Agriculture (Commissioner), unless exempted. Pet animals include dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians and invertebrates.

Why Is It Regulated?

Regulation of pet animal facilities helps to protect the public health and welfare. Pet animals can carry diseases that are transmissible and harmful to humans, such as chlamydia in birds, salmonella in reptiles and amphibians, and rabies in mammals. Thus, regulating the facilities in which pet animals are bred and housed serves to protect the public health. Further, for many people, pet animals are members of the family. Regulation serves to protect the public welfare by helping to ensure that the pet animals the public buys are reasonably healthy and that those from whom the public purchases services, such as grooming and boarding facilities, do not abuse or neglect these members of the family.

Who Is Regulated?

In 2012, the Commissioner licensed 167 retail/wholesale facilities, 84 retail aquarium only facilities, 498 boarding and training facilities, 903 grooming facilities, 45 pet handlers, 163 dog breeders, 5 cat breeders, 14 bird breeders, 9 small animal breeders, 152 animal shelters and 118 animal rescues.

How Is It Regulated?

Under PACFA, the Commissioner has promulgated rules pertaining to, among other things, minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care and medical treatment. To ensure compliance with these requirements, Colorado Department of Agriculture, Division of Animal Industry (CDA) staff conducts four distinct types of inspections: pre-license inspections; routine inspections; complaint-based inspections and follow-up inspections. When violations are witnessed, they are noted on inspection reports and licensees are expected to correct them. If a licensee commits enough violations, disciplinary action can be taken.

What Does It Cost?

In fiscal year 11-12, the Commissioner spent \$572,395 on PACFA-related activities and employed 6.5 full-time equivalent employees.

What Disciplinary Activity Is There?

In fiscal year 11-12, the Commissioner revoked 1 license, issued 10 cease and desist orders and entered into 61 stipulations.

Key Recommendations

Continue PACFA for seven years, until 2021.

PACFA creates the framework within which the Commissioner, through the staff of CDA, regulates those who breed, groom, train, board, rescue, shelter and sell pet animals. Thus, when Colorado's pets are housed in a licensed facility, they are assured of a clean, safe and healthy environment. Additionally, animals can carry diseases that are transmissible and harmful to humans. PACFA protects the public health by imposing minimal animal husbandry standards on the pet industry. Animals that are well taken care of are less likely to contract and thus transmit disease to humans and other animals.

Authorize the Commissioner to deny, refuse to renew or revoke the license of any licensee or applicant when any principal, major shareholder, member, officer, director or anyone else in a position to control such licensee or applicant has been convicted of animal cruelty.

Colorado's animal cruelty law prohibits a wide range of conduct. Given that one of the underlying tenets of PACFA is to protect animals from abuse or neglect, the Commissioner may or must, depending on the circumstances, deny, refuse to renew or revoke any license issued under PACFA if the applicant or licensee has been convicted of animal cruelty. However, these disqualifiers apply to individuals, making it possible for convicted individuals to form business entities that may then obtain licenses, or to remain in control of facilities.

Require all cats and dogs adopted from animal shelters or pet animal rescues to be vaccinated against rabies prior to adoption, or within 30 days of adoption.

Since Colorado's first reported case of skunk rabies in 2007, there have been 288 confirmed cases. One of the best ways to protect humans from rabies is to vaccinate pets. Pet animal shelters and pet animal rescues sometimes take in animals as strays, meaning there is no vaccination record available. These facilities are in a unique position to ensure that those cats and dogs for which there is no history, are vaccinated. For those facilities unable to administer the vaccination themselves, a deposit system should be created whereby the new owner pays a deposit to the shelter or rescue, has the animal vaccinated within 30 days of adoption, and then reclaims the deposit.

Major Contacts Made During This Review

All Breed Rescue Network
American Society for the Prevention of Cruelty to Animals
Animal Assistance Foundation
Animal Legal Defense Fund
Cat Fanciers Association
Colorado Association of Dog Daycares
Colorado Association of Local Public Health Officials
Colorado Attorney General's Office
Colorado Citizens for Canine Welfare
Colorado Cross-Disability Coalition
Colorado Department of Agriculture, Division of Animal Industry
Colorado Department of Public Health and Environment
Colorado Division of Civil Rights
Colorado Division of Parks and Wildlife

Colorado Division of Racing Events
Colorado Federation of Animal Welfare Agencies
Colorado Federation of Dog Clubs, Inc.
Colorado Greyhound Breeders Association
Colorado Pet Association
Colorado Reptile Humane Society
Colorado Veterinary Medical Association
Dumb Friends League
Pet Animal Advisory Committee members
Rocky Mountain Pet Dealer's Association
Rocky Mountain Society of Aviculture
The Humane Society of the United States
The International Cat Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The regulatory functions of the Colorado Commissioner of Agriculture (Commissioner), pertaining to the Pet Animal Care and Facilities Act (PACFA), as enumerated in Article 80 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2014, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of PACFA by the Commissioner pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of pet animal facilities should be continued for the protection of the public and to evaluate the performance of the Commissioner. During this review, the Commissioner must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended meetings of the Pet Animal Advisory Committee and the Pet Overpopulation Authority's board of directors; interviewed Colorado Department of Agriculture, Division of Animal Industry staff; reviewed Commissioner records, including complaint and disciplinary files and minutes of the Pet Animal Advisory Committee; interviewed licensees and officials with state and national professional and industry associations; and reviewed Colorado and federal statutes and rules.

Profile of the Industry

Pet ownership in the U.S. is pervasive, with approximately 72.9 million households owning approximately 377.4 million birds, cats, dogs, fish, horses, reptiles and small animals.²

Not surprisingly, the U.S. pet industry has steadily grown from \$17 billion in total pet expenditures in 1994, to an estimated \$55.5 billion in 2013.³

The pet industry can be broken down into two primary areas. The for-profit side of the industry includes individuals and organizations seeking to profit from the sale and care of pet animals. Examples include retail pet stores, breeders, boarding facilities (i.e., kennels and day care facilities), trainers, handlers and groomers. It is estimated that in 2013, Americans will spend approximately \$41.32 billion to purchase and care for their pets, excluding veterinary care.⁴

The not-for-profit side of the industry includes individuals and organizations that seek to care for, or find permanent homes for, pet animals. Examples include rescues, shelters and sanctuaries.

People are passionate about their own pets in particular, and pet animals in general. Since the for-profit side of the industry and the not-for-profit side of the industry often have competing agendas, it is more common than not for discussions between the two to become heated and antagonistic. Both fall under the regulatory rubric of the Pet Animal Care and Facilities Act, which is the subject of this sunset review.

² American Pet Products Association. *Pet Industry Market Size & Ownership Statistics*. Retrieved July 15, 2013, from www.americanpetproducts.org/press_industrytrends.asp

³ American Pet Products Association. *Pet Industry Market Size & Ownership Statistics*. Retrieved July 15, 2013, from www.americanpetproducts.org/press_industrytrends.asp

⁴ American Pet Products Association. *Pet Industry Market Size & Ownership Statistics*. Retrieved July 15, 2013, from www.americanpetproducts.org/press_industrytrends.asp

Legal Framework

History of Regulation

Colorado regulation of pet animal and psittacine⁵ bird dealerships was originally enacted to protect humans from disease. The Department of Health (DOH), which is now the Department of Public Health and Environment (CDPHE), was initially given the responsibility for regulation.

In 1983, regulatory scope expanded and included boarding kennels, animal impound facilities and shelters. The DOH established rules and regulations for the physical facility, sanitation, humane care, and method of operations. Under this program, enforcement actions were limited and the DOH discontinued program operations in November 1991 as part of cuts in state government operations. Because legal authority for the program remained in statute after the disbanding, the 1993 sunset review recommended that the licensing and inspection functions of the DOH sunset until a better mechanism could be devised.

Regulation of pet animal facilities was continued through Senate Bill 94-023 (SB 23). Although SB 23 created an entirely new program under the Colorado Commissioner of Agriculture (Commissioner), DOH retained some rulemaking authority to allow its inspectors to enter licensed pet animal facilities in the event of disease outbreak.

Senate Bill 23 created the modern Pet Animal Care and Facilities Act (PACFA) by, among other things, requiring the licensure of pet animal facilities; defining key terms; establishing recordkeeping requirements, unlawful acts and grounds for discipline; and creating the 16-member Pet Animal Advisory Committee.

PACFA has been amended several times since 1994. Senate Bill 98-153 refined some definitions, and Senate Bill 99-137 defined animal shelters and established requirements surrounding the disposition of unclaimed animals in animal shelters.

The 1999 sunset review spawned House Bill 00-1267, which, among other things, refined some definitions surrounding dog breeders, granted the Commissioner explicit authority to enter premises that had had a license denied to ensure a cessation of operations, and provided the Commissioner both mandatory and discretionary authority to deny licenses based on convictions for animal cruelty.

⁵ Dictionary.com, Of or pertaining to parrots. Retrieved January 8, 2008, from <http://dictionary.reference.com/browse/psittacine>

House Bill 01-1337 created the Pet Overpopulation Fund, which was funded through a voluntary check-off mechanism on state income tax returns. The bill also created the Pet Overpopulation Authority. A seven-member board of directors, appointed by the Commissioner, oversees the disbursement of Pet Overpopulation Fund dollars to those areas of the state that have an insufficient number of pet animal veterinary resources to adequately meet local needs.

The Commissioner was authorized to establish the minimum weight for kittens that can be sold, and PACFA license fees were capped at \$350 in Senate Bill 03-065.

House Bill 1185 revisited the issue of pet overpopulation in 2008 by requiring all dogs and cats adopted from animal shelters and pet animal rescues to be spayed or neutered. Alternatively, animal shelters and pet animal rescues could require prospective owners to pay a refundable deposit to ensure that the dog or cat is subsequently spayed or neutered. Any unclaimed deposits must be forwarded to the Pet Overpopulation Fund or a local spay and neuter fund.

The 2008 sunset review of PACFA prompted Senate Bill 09-118, which, among other things, added a representative of the dog day care industry to the Pet Animal Advisory Committee, clarified that individuals may possess, but not sell or otherwise transfer, turtles with carapaces less than four inches in length, and added rats and gerbils to the list of pet animals falling within the jurisdiction of PACFA.

Pet overpopulation was addressed yet again in 2010. House Bill 10-1214 created the Adopt-a-Shelter-Pet license plate, the fees from which are deposited in the Pet Overpopulation Fund.

Finally, in 2012, the Commissioner, through Department of Agriculture, Division of Animal Industry (CDA) staff, began the lengthy, and as yet unfinished, process of completely rewriting the rules promulgated under PACFA.

Federal Regulation

Congress enacted the Animal Welfare Act of 1970 (Federal Act) to ensure, among other things, that animals intended for use as pets are provided humane care and treatment.⁶

The Federal Act, in pertinent part, defines an animal as:

any . . . dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal [that] is being used, or intended for use . . . as a pet.⁷

⁶ 7 U.S.C. § 2131(1).

⁷ 7 U.S.C. § 2132(g).

Specifically excluded from this definition are birds, certain types of rats and mice, horses and farm animals.⁸

A dealer is:

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, (1) any dog or other animal . . . for . . . use as a pet, or (2) any dog for hunting, security, or breeding purposes.⁹

In general, retail pet stores and those who derive no more than \$500 annual gross income from the sale of animals are not considered dealers.¹⁰

A breeder is a dealer whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.¹¹

Specifically exempted from the Federal Act's licensing requirements are retail pet stores¹² and anyone who breeds and raises pet animals for direct retail sale for the buyer's own use and who buys no animals for resale and who sells no animals to a dealer or pet store.¹³ Thus, a breeder who sells directly to the public, as opposed to selling to a pet store, is exempt from the Federal Act.

Dealers must obtain a license from the U.S. Secretary of Agriculture.¹⁴ Rules promulgated under the Federal Act address the humane handling, care, treatment and transportation of animals by dealers.¹⁵ To ensure compliance, dealers must submit to annual inspection and reporting requirements.¹⁶

State Regulation

PACFA defines pet animals as,

Dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet.¹⁷

⁸ 7 U.S.C. § 2132(g).

⁹ 7 U.S.C. § 2132(f).

¹⁰ 7 U.S.C. § 2132(f).

¹¹ 9 C.F.R. Sec 1.1.

¹² 9 C.F.R. Sec 2.1(a)(3)(i).

¹³ 9 C.F.R. Sec. 2.1(a)(3)(vii).

¹⁴ 7 U.S.C. § 2133.

¹⁵ 7 U.S.C. § 2143(a).

¹⁶ 7 U.S.C. §§ 2143(a)(7) and 2147.

¹⁷ § 35-80-102(10), C.R.S.

Specifically excluded from this definition are working animals used on farms and ranches,¹⁸ and livestock, which includes:¹⁹

- Cattle;
- Horses;
- Mules;
- Burros;
- Sheep;
- Poultry;
- Swine;
- Llamas;
- Goats; and
- Any other animal raised for food or fiber production.

A pet animal facility is:

[A]ny place or premise used . . . for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals.²⁰

Any person who operates a pet animal facility in Colorado must possess a license issued by the Commissioner.²¹ There are nine different license types:²²

- Retail and Wholesale Pet Animal Dealership;
- Dog Breeder Facility;
- Bird Breeder Facility;
- Cat Breeder Facility;
- Pet Grooming Facility;
- Pet Animal Boarding and/or Training Facility;
- Animal Rescue Facility;
- Animal Shelter; and
- Small Animal Breeder Facility.

Included in the Retail and Wholesale Pet Animal Dealership license category is the subcategory of Retail Aquarium Only Pet Animal Dealerships. These facilities buy, sell, trade or otherwise transfer only fish or other aquatic pet animals.²³

¹⁸ § 35-80-102(10), C.R.S.

¹⁹ §§ 35-80-102(10) and -102(9), C.R.S.

²⁰ § 35-80-102(11), C.R.S.

²¹ § 35-80-104, C.R.S.

²² 8 C.C.R. § 1201-11-3.00(B).

²³ 8 C.C.R. § 1201-11-11.00(A)(1)(a).

The dog breeding facility category is subdivided into small scale operations and large scale operations.²⁴ A small scale operation dog breeding facility is one that transfers at least 25 but no more than 99 dogs per year.²⁵ A large scale operation dog breeding facility is one that transfers at least 100 dogs per year.²⁶

The bird breeding facility category is subdivided into common bird breeding facilities and uncommon bird breeding facilities.²⁷ A common bird breeding facility is one that breeds common psittacine birds, such as budgerigars, cockatiels and love birds. An uncommon bird breeding facility is one that breeds all other types of psittacine birds.²⁸

A pet animal boarding and/or training facility is one that cares for or houses pet animals in the absence of the owner or one that cares for pet animals in training in the absence of the owner and receives compensation for the training services. Training services can be for the purposes of, among others, exhibition, behavior modification, field trial or lure course training, and guard dog training.²⁹

This license category includes pet handlers and network pet boarding facilities. A pet handler is one that does not maintain a central permanent facility for the purpose of training or housing dogs, but maintains a mobile or temporary facility for the purpose of transporting or training a pet in the absence of the owner. A network pet boarding facility is one that offers pet animal boarding services for the purposes of boarding a pet or a family's pet within a residence that is part of a group of residence facilities operating under a single management.³⁰

A shelter is a public or private facility that houses animals for impoundment purposes or a centralized private facility that accepts or houses more than 15 dogs or cats, or for other species, more than the limits on transfers for hobby breeders, for any disposition, including harboring. Foster home sites and mobile adoption sites may be utilized in the operation of an animal shelter.³¹

A rescue is:

[A]ny person who accepts pet animals for the purpose of finding permanent adoptive homes for animals and does not maintain a central facility for keeping animals, but rather uses a system of fostering in private homes or boarding or keeping pets in licensed pet animal facilities.³²

²⁴ 8 C.C.R. § 1201-11-4.00(D).

²⁵ § 35-80-102(6.7), C.R.S.

²⁶ § 35-80-102(6.6), C.R.S.

²⁷ 8 C.C.R. § 1201-11-4.00(D).

²⁸ 8 C.C.R. § 1201-11-13.00(A)(2).

²⁹ 8 C.C.R. § 1201-11-16.00(A)(1).

³⁰ 8 C.C.R. § 1201-11-16.00(A)(2)(a) and (b).

³¹ 8 C.C.R. § 1201-11-18.00(A)(1).

³² § 35-80-102(11.2), C.R.S.

There are three subcategories of small animal breeding facilities, though only one type of license is actually issued, each dependent upon the types of animals that are bred.³³

- Rat, mouse, gerbil and hamster breeding facilities;
- Rabbit and guinea pig breeding facilities; and
- Hedgehog, chinchilla, ferret and sugar glider breeding facilities.

The licensing requirements of PACFA do not apply to:³⁴

- Veterinary hospitals that board pet animals for the purpose of veterinary care;
- Any research facility, circus, or publicly or privately owned zoological park or petting zoo licensed under the Federal Act;
- Any hobby breeder facility;
- Any pet animal training facility where the pet animal owner is present during the duration of the animal's stay;
- Any kennel operated for the breeding, sale or racing of greyhounds that are not intended to be companion pets;
- Any facility licensed for the racing of greyhounds;
- Any wildlife regulated by the Colorado Department of Natural Resources;
- Livestock; and
- Any owner, breeder, handler or trainer while transporting a pet animal to or from or exhibiting or competing at any event licensed, regulated or sanctioned by the American Kennel Club, United Kennel Club, or any other nationally recognized registering organization.

A hobby breeder facility is one that:

- For birds, transfers no more than 30 birds per year;³⁵
- For cats, produces or transfers no more than 24 cats per year or breeds no more than three litters per year;³⁶
- For dogs, transfers no more than 24 dogs per year or breeds no more than two litters per year, whichever is greater;³⁷
- For rats, mice, gerbils and hamsters, transfers no more than 200 of these animals per year;³⁸
- For rabbits and guinea pigs, transfers no more than 65 of these animals per year;³⁹ and
- For hedgehogs, chinchillas, ferrets and sugar gliders, transfers no more than 24 of these animals per year.⁴⁰

³³ 8 C.C.R. § 1201-11-19.00(A)(1)(b).

³⁴ § 35-80-103(2), C.R.S.

³⁵ § 35-80-102(1.5), C.R.S.

³⁶ § 35-80-102(8), C.R.S.

³⁷ § 35-80-102(2), C.R.S.

³⁸ 8 C.C.R. § 1201-11-19.00(A)(1)(b)(1).

³⁹ 8 C.C.R. § 1201-11-19.00(A)(1)(b)(2).

⁴⁰ 8 C.C.R. § 1201-11-19.00(A)(1)(b)(3).

Each location of a pet animal facility must be separately licensed,⁴¹ but two or more pet animal facilities that have the same or similar purpose and operate from one place are considered a single pet animal facility.⁴² Thus, for example, a single facility that houses and breeds dogs owned by multiple parties cannot escape the licensing requirement by claiming that each party's breeding activity falls below the licensing threshold.

License fees are established by the Commissioner, by rule, but cannot exceed \$350 per license.⁴³ Licenses expire annually on the first working day of March.⁴⁴

The Commissioner has promulgated rules pertaining to:⁴⁵

- Minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care, medical treatment, sterilization of dogs and cats released from shelters and rescues and minimum holding periods;
- The minimum weight requirement for the transfer of cats;
- Maintenance of records concerning health care, euthanasia and transactions involving pet animals;
- The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under PACFA, including the establishment of classifications and sub-classifications for any license authorized under PACFA;
- The issuance of any license authorized under PACFA and the grounds for any disciplinary actions, including letters of admonition or the denial, restriction, suspension or revocation of any license; and
- The amount of any license fee for a license based on the actual cost of administering and enforcing PACFA and the rules promulgated thereunder.

Many of these rules are specific to individual license types.

The Commissioner may issue letters of admonition or deny, suspend, refuse to renew, restrict or revoke any license if the applicant or licensee has:⁴⁶

- Refused or failed to comply with any provision of PACFA or the rules promulgated thereunder;
- Been convicted of cruelty to animals;
- Had an equivalent license denied, revoked or suspended by any authority;
- Refused to provide the Commissioner with reasonable, complete and accurate information regarding the care of animals when requested by the Commissioner; or
- Falsified any information requested by the Commissioner.

⁴¹ § 35-80-105(2), C.R.S.

⁴² § 35-80-102(11), C.R.S.

⁴³ § 35-80-105(4), C.R.S.

⁴⁴ 8 C.C.R. § 1201-11-3.00(H).

⁴⁵ § 35-80-109(2), C.R.S., and *Generally*, 8 C.C.R. § 1201-11.

⁴⁶ § 35-80-112(1), C.R.S.

Furthermore, the Commissioner must deny, refuse to renew or revoke any license if the applicant or licensee has been convicted, at any time, of cruelty to animals and the underlying factual basis was found by the court to include the knowing or intentional torture or torment of an animal which needlessly injured, mutilated or killed an animal.⁴⁷

All facilities may be inspected upon application for licensure, and routinely once licensed.⁴⁸

The Commissioner may, either upon the Commissioner's own motion or upon the complaint of any person, conduct investigations to ensure compliance with PACFA.⁴⁹ At any reasonable time during regular business hours, the Commissioner has free and unimpeded access, upon consent or upon obtaining an administrative search warrant, to all areas where pet animals are kept, handled or transported and to all required records.⁵⁰

While not subject to the routine inspection provisions of PACFA, pet animal facilities licensed by the U.S. Department of Agriculture as of December 31, 1993, are nevertheless subject to those PACFA requirements pertaining to licensure and investigations of reported violations.⁵¹

It is unlawful and a violation of PACFA for any person or entity to:⁵²

- Solicit, advertise, offer to perform or perform any of the acts of a pet animal facility for which licensure is required without possessing a license;
- Refuse to comply with an order to cease and desist;
- Refuse or fail to comply with the provisions of PACFA, or any rules promulgated thereunder;
- Make a material misstatement in a license application or to CDA staff during an official investigation;
- Impersonate any state, county, city and county, or municipal official or inspector;
- Aid or abet another in any violation of PACFA or any rule promulgated thereunder;
- Alter or falsify any certificate of veterinary inspection or any other certificate of veterinary health;
- Import or possess for the purpose of selling, trading, giving, or otherwise transferring any psittacine birds that have not been legally banded with a leg band;⁵³
- Sell, transfer or adopt dogs or cats under the age of eight weeks, or guinea pigs, hamsters or rabbits under the age of four weeks;
- Transfer cats that weigh less than two pounds;⁵⁴ or

⁴⁷ § 35-80-112.5(2), C.R.S.

⁴⁸ 8 C.C.R. § 1201-11-10.00(A).

⁴⁹ § 35-80-110(1), C.R.S.

⁵⁰ § 35-80-110(3), C.R.S.

⁵¹ § 35-80-103(1), C.R.S.

⁵² § 35-80-108(1), C.R.S.

⁵³ 8 C.C.R. § 1201-11-13.00(E)(1).

⁵⁴ 8 C.C.R. § 1201-11-14.00(I)(3).

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- Sell, barter, exchange or otherwise transfer, possess, import or cause to be imported into the state:
 - Any turtle with a carapace length of less than four inches, except a person may possess such a turtle that the person has bred; or
 - Any nonhuman primate.

The prohibition related to nonhuman primates does not apply to:⁵⁵

- Research facilities or exhibitors licensed or registered under the Federal Act;
- Any person who kept a nonhuman primate as a household pet on or before July 1, 1973; or
- A disabled person who keeps a nonhuman primate that is specially trained to assist such person.

Furthermore, it is unlawful and a violation of PACFA for any licensee to:⁵⁶

- Refuse to permit entry or inspection pursuant to PACFA;
- Sell, offer for sale, barter, exchange or otherwise transfer immature domestic fowl in lots of less than 25 as pets, or raccoons or other species of wildlife that are prohibited to be kept as pets by the Colorado Division of Parks and Wildlife;
- Import any pet animal for the purpose of sale, resale, trade or barter by a pet animal facility unless such facility is properly licensed;
- Allow a license issued under PACFA to be used by an unlicensed person;
- Make any misrepresentation or false promise through advertisements, employees, agents or otherwise in connection with the business operations licensed pursuant to PACFA; or
- Fail to take reasonable care to release for sale, trade, or adoption only those pet animals that are free of undisclosed disease, injury or abnormality.

The Commissioner may issue a cease and desist order whenever the Commissioner has reasonable cause to believe that a violation of PACFA or the rules promulgated thereunder has occurred and immediate enforcement is deemed necessary. If a person fails to comply with a cease and desist order within 24 hours of its issuance, the Commissioner may seek a temporary restraining order and an injunction.⁵⁷

Any person who violates any provision of PACFA or the rules promulgated thereunder is subject to a civil penalty not to exceed \$1,000 per violation, following notice and an opportunity for a hearing.⁵⁸

All fees and fines are deposited in the Pet Animal Care and Facility Fund.⁵⁹

⁵⁵ § 35-80-108(1)(j)(II)(B), C.R.S.

⁵⁶ § 35-80-108(2), C.R.S.

⁵⁷ § 35-80-111(2), C.R.S.

⁵⁸ § 35-80-113(1) and (2), C.R.S.

⁵⁹ § 35-80-116, C.R.S.

PACFA also contains provisions specific to certain types of facilities and certain types of pet animals.

In general, a shelter must hold an animal in its custody for five days before that animal can be offered for adoption or disposed of, so as to afford the owner of the animal an opportunity to reclaim the animal. However, a shelter may dispose of an animal after only three days if the animal has no identification and the shelter either lacks the resources to house the animal or the animal is dangerous.⁶⁰

With certain exceptions, shelters and rescues are prohibited from releasing dogs or cats to prospective owners unless the animal has been sterilized⁶¹ or the prospective owner agrees to have the animal sterilized within 90 days and pays a deposit of \$50.⁶²

The shelter or rescue must return the deposit to the owner upon receiving a written statement from the veterinarian who performed the sterilization procedure.⁶³ If the owner fails to have the animal sterilized, the shelter or rescue must forward the deposit to either the Pet Overpopulation Fund, which is discussed below, or a local dedicated spay and neuter fund. Additionally, the shelter or rescue may reclaim the animal.⁶⁴

Psittacine birds are issued bird leg bands bearing numbers. These bands must be renewed annually.⁶⁵ To obtain a leg band, a person must submit, to the Commissioner, all purchase, transfer, or breeding records; health certificates; or quarantine information.⁶⁶

Although those who breed, shelter or rescue fish, reptiles or amphibians do not fall within the regulatory scheme of PACFA, the care of these animals is addressed in the Commissioner's rules addressing retail and wholesale pet animal dealership facilities.⁶⁷

The purpose of the 17-member Pet Animal Advisory Committee (Advisory Committee) is to advise the Commissioner in establishing rules and to provide ongoing review of PACFA. Advisory Committee members, who receive no compensation or reimbursements, are appointed by the Commissioner as follows:⁶⁸

- One to represent animal rescues;
- One to represent bird breeders;
- One to represent small scale dog breeders;
- One to represent large scale dog breeders;
- One to represent cat breeders;
- One to represent small animal breeders;

⁶⁰ § 35-80-106.3(1), C.R.S.

⁶¹ §§ 35-80-106.4(1)(a) and 35-80-106.4(3), C.R.S.

⁶² § 35-80-106.4(1)(b)(I), C.R.S., and 8 C.C.R. § 1201-11-18.00(G)(4)(a).

⁶³ § 35-80-106.4(1)(b)(II), C.R.S.

⁶⁴ § 35-80-106.4(1)(b)(III), C.R.S.

⁶⁵ § 35-80-106.5, C.R.S.

⁶⁶ 8 C.C.R. § 1201-11-13.00(E)(3).

⁶⁷ 8 C.C.R. §§ 1201-11-11.00(B)(3)(d), (3)(e) and (3)(f).

⁶⁸ § 35-80-115(1), C.R.S.

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- One to represent boarding kennels;
 - One to represent the dog day care industry;
 - One to represent pet groomers;
 - One to represent pet animal retailers;
 - One to represent pet animal wholesalers;
 - One to represent animal control officers;
 - One to represent animal shelters;
 - One Colorado-licensed veterinarian; and
 - Three members of the general public, none of whom shall represent or have a financial interest in any of the groups listed above.

PACFA also contains provisions that address pet overpopulation in the state.

The Colorado Pet Overpopulation Authority (Authority) is created as a political subdivision of the State.⁶⁹ The Authority's board of directors (Board) is appointed by the Commissioner and consists of:⁷⁰

- One representative of the Animal Assistance Foundation, or its successor organization;
- One representative of the Colorado Federation of Animal Welfare Agencies, or its successor organization;
- One representative of a state veterinary medical association;
- One representative of an association organized for Colorado animal control officers;
- One representative from CDA;
- One member of the general public with an interest in animal welfare; and
- One representative of western Colorado.

The Board is authorized to:⁷¹

- Adopt an education program concerning pet overpopulation with emphasis on the importance of spaying and neutering to control pet overpopulation;
- Develop, adopt and implement a process to fund and expend moneys for the activities and responsibilities of the Board;
- Accept gifts, grants and donations, including personal services, for the activities and responsibilities of the Board; and
- Develop, adopt and implement a cooperative process to work with local veterinarians, animal shelters and local communities concerning animal sheltering and pet overpopulation control in the state.

⁶⁹ § 35-80-116.5(1), C.R.S.

⁷⁰ § 35-80-116.5(2), C.R.S.

⁷¹ § 35-80-116.5(4), C.R.S.

In addition to any gifts, grants and donations the Board receives, the Pet Overpopulation Fund (CPOF) receives money from two primary sources. For income tax years 2010 through 2019, Colorado income tax filers may make voluntary contributions by so indicating on their Colorado income tax returns. Such funds are deposited in the CPOF.⁷²

Additionally, Coloradans may purchase special Adopt-a-Shelter-Pet license plates for their cars, with the extra monies going into CPOF's Adopt-a-Shelter-Pet Account.⁷³

The Board is tasked with spending the money in the CPOF to support spay and neuter efforts in those areas of the state that have an insufficient number of pet animal veterinary resources to meet local needs.⁷⁴ Money in the CPOF Adopt-a-Shelter-Pet Account may additionally be used to support other medical costs in pet animal shelters and rescues or to support pet animal overpopulation education programs.⁷⁵

⁷² §§ 35-80-116.5(5)(a) and 39-22-2201, C.R.S.

⁷³ §§ 35-80-116.5 (5)(d) and 42-3-234, C.R.S.

⁷⁴ § 35-80-116.5(5)(c), C.R.S.

⁷⁵ § 35-80-116.5(5)(e), C.R.S.

Program Description and Administration

The Pet Animal Care and Facilities Act (PACFA) is administered by the Colorado Commissioner of Agriculture (Commissioner) through the Department of Agriculture's Division of Animal Industry (CDA).

Table 1 illustrates, for the five fiscal years indicated, the Commissioner's expenditures and the number of full-time equivalent (FTE) employees dedicated to administering PACFA.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditure	FTE
07-08	\$497,603	5.0
08-09	\$496,696	5.5
09-10	\$563,907	6.5
10-11	\$640,459	6.5
11-12	\$572,395	6.5

Program expenditures increased in fiscal years 09-10 and 10-11 due to an increase in staff (and the accompanying acquisition of supplies and equipment), as well as an increase in legal expenditures.

The FTE described in Table 1 consist of:

1.0 FTE Veterinarian II: The PACFA Administrator administers the program and the budget, monitors legislation and updates regulations, and interacts with relevant federal agencies and similar agencies in other states.

1.0 FTE General Professional IV: The PACFA Lead Inspector trains inspectors, conducts inspections, investigates complaints, prepares reports, and recommends disciplinary actions when appropriate.

3.0 FTE General Professional III: PACFA Inspectors conduct inspections, investigate complaints, prepare and file reports, and recommend disciplinary actions when appropriate.

1.5 FTE Administrative Assistant III: These two individuals provide basic administrative support, including answering phones, taking complaints, maintaining records and processing license applications.

Licensing

In general, all pet animal facilities must obtain a license from the Commissioner in order to operate.

Table 2 illustrates, for the five fiscal years indicated, the licensing activity under PACFA.

Table 2
Licensing Information

Fiscal Year	Number of Licenses			
	Closed	New	Renewal	Total
07-08	259	45	1,522	1,826
08-09	206	107	1,517	1,830
09-10	253	100	1,493	1,846
10-11	241	148	1,483	1,872
11-12	224	242	1,467	1,933

Licenses issued under PACFA are valid from March 1 through the last day of February each year. The column titled “Closed” in Table 2 reflects those licenses that were active for part of the indicated fiscal year and which failed to renew during that fiscal year.

The Commissioner issues 14 distinct license types, commonly referred to as “license categories,” under PACFA. Table 3 illustrates the number of licenses issued by category, for the five license years indicated. A license year begins on March 1 each year.

Table 3
Licenses by Category
License Years 2008-2012

License Category	2008	2009	2010	2011	2012
Retail/Wholesale	209	208	165	161	167
Retail Aquarium Only	92	89	96	87	84
Boarding/Training	555	570	488	498	491
Network Boarding	11	11	9	9	7
Grooming	816	897	840	901	903
Pet Handler	48	59	45	46	45
Dog Breeder, Small Scale	196	207	159	153	141
Dog Breeder, Large Scale	35	31	28	25	22
Cat Breeder	16	11	6	8	5
Bird Breeder, Common	28	22	11	9	9
Bird Breeder, Uncommon	15	14	7	9	6
Small Animal Breeder	18	15	9	9	9
Animal Shelter	161	162	157	159	152
Animal Rescue	168	161	114	113	118
Total Licensed Facilities ⁷⁶	1,830	1,846	1,872	1,933	1,925

⁷⁶ A single facility may hold licenses in more than one category, making the total business activity greater than the “Total Licensed Facilities.”

Except for the grooming license category, the number of licenses issued within each category has steadily trended downward. Undoubtedly, some of the decline can be attributed to the recent recession.

In terms of dog breeders, it is reasonable to assume that some of the fluctuations can be attributed to individual breeders moving between license categories, or falling below the threshold for dog breeder, small scale entirely. Recall that hobby breeders are not licensed, but those selling 25 or more puppies or more than two litters, whichever is greater, within a year, must be licensed as dog breeders, small scale. Those selling 100 or more puppies must be licensed as dog breeders, large scale.

Prior to applying for a license, an applicant is encouraged to submit to CDA staff the building plans for the proposed facility. This is to help ensure that the facility satisfies the requirements of PACFA and the rules promulgated thereunder prior to the commencement of construction, thereby obviating the need for modifications later. CDA staff attempts to respond to such submissions within 10 days of receiving the plans.

To obtain a pet animal facility license, an applicant must submit a completed application and the license fee and pass a pre-license inspection.

Table 4 illustrates, for the license year ending February 28, 2014, the fees assessed for each license category.

Table 4
License Fees

License Category	License Fee
Retail/Wholesale	\$350
Retail Aquarium Only	\$320
Boarding/Training	\$350
Network Boarding	\$275
Grooming	\$320
Pet Handler	\$175
Dog Breeder, Small Scale	\$345
Dog Breeder, Large Scale	\$350
Cat Breeder	\$320
Bird Breeder, Common	\$175
Bird Breeder, Uncommon	\$275
Small Animal Breeder	\$345
Animal Shelter	\$350
Animal Rescue	\$175

Licenses expire on the last day of February each year, and the fee to renew is the same as for initial licensure. If a facility holds licenses in more than one category, it pays only the fee for the most expensive license category.

Pre-license inspections are generally conducted within 30 days of the Commissioner receiving an otherwise complete license application, and the goal is to issue the license within 90 days of receiving a completed application. Applicants may fail a pre-license inspection a total of three times before the application is denied. That is, the third failed inspection results in a denial of the license.

CDA staff estimates that approximately half of applicants allow sufficient time for the pre-license inspection to occur. This helps to prevent having to delay opening an otherwise completed facility.

In general, a facility must pass a pre-license inspection prior to opening for business. A notable exception to this occurs when an existing facility changes hands. CDA staff is already familiar with the facility and may allow the new owners to commence operations prior to passing the pre-license inspection.

Inspections

Once licensed, pet animal facilities are subject to routine inspections and complaint-based inspections. Each of CDA's four inspectors holds primary responsibility for an assigned geographic territory, with each territory comprising approximately 500 licensed facilities.

In scheduling routine inspections, the Commissioner utilizes a risk-based approach. Each facility is assigned a base risk dependent on the business model and license category. Table 5 illustrates the base facility risk for each license category.

Table 5
Base Facility Risk

License Category	Base Facility Risk
Retail/Wholesale	Medium-High
Retail Aquarium Only	Low
Boarding/Training	Medium-High
Network Boarding	Medium
Grooming	Medium
Pet Handler	Low
Dog Breeder, Small Scale	Medium-High
Dog Breeder, Large Scale	Medium-High
Cat Breeder	Medium
Bird Breeder, Common	Medium
Bird Breeder, Uncommon	Medium-High
Small Animal Breeder	Medium
Animal Shelter	Medium-High
Animal Rescue	Low

In assigning these base facility risks, the Commissioner considered several factors, including:

- Whether animals are housed in the facility on a full-time basis;
- The size and complexity of the facility (e.g., a large shelter has more elements to inspect than does a simple grooming salon); and
- Whether the public has access to the facility (e.g., an owner can see the conditions of a grooming salon, but many breeding facilities are completely closed to the public).

Routine inspections are performed based on the risk factor of the particular facility, ranging from every six months for a high-risk facility to every two years for a low-risk facility. An individual facility's risk factor may be increased, depending on the number and nature of any violations found during any routine or complaint-based inspections. When violations are corrected, the facility's risk factor may be lowered again, but never below the base facility risk outlined in Table 5.

Table 6 illustrates, for the five fiscal years indicated, the number of each type of inspection.

Table 6
Inspections

Fiscal Year	Attempted Inspections	Pre-License Inspections	Complaint-Based Inspections	Routine Inspections	Re-Inspections	Other (this category was removed after 2009)	Number of Inspections
07-08	0	115	91	665	29	60	960
08-09	5	180	85	199	19	0	488
09-10	9	181	83	563	39	4	879
10-11	14	243	80	686	58	N/A	1,081
11-12	61	309	72	788	24	N/A	1,254
Total	89	1,028	411	2,901	169	64	4,662

CDA staff attributes the significant decline in overall inspections in fiscal year 08-09 to a staffing shortage. The number of inspections increased as fully trained staff began work.

The number of re-inspections relates only to routine or complaint-based inspections and not to pre-license inspections.

CDA staff attributes the increase in attempted inspections to the fact that, over time, greater emphasis has been placed on more fully accounting for all work that is completed. Therefore, the number of inspections may not have increased, but the number being reported has increased.

The number of pre-license inspections, as reflected in Table 6, is significantly higher than the number of new licenses issued, as reflected in Table 2, because each license applicant is afforded three opportunities to pass the pre-license inspection. The figures provided in Table 6 illustrate the total number of such inspections, not just those that were passed.

The number of complaint-based inspections, as reflected in Table 6, is significantly lower than the number of complaints, as reflected in Table 7, on page 24, because the number of complaint-based inspections reflects the number of complaint-based inspections that resulted in an inspection report—meaning that a violation was found. Those complaint-based inspections that were conducted and during which no violations were found, did not result in inspection reports and therefore are not reflected in Table 6. The complaints that generated the inspections, however, are reflected in Table 7.

During pre-license and routine inspections, CDA inspectors seek to ensure that the facility meets the requirements established by PACFA and the rules promulgated thereunder. On a routine inspection, this generally includes an inspection of the physical facility as well as an inspection of relevant recordkeeping requirements.

During a complaint-based inspection, CDA inspectors pay particular attention to the grounds giving rise to the complaint, but will also, generally, treat the situation as an opportunity to conduct a routine inspection as well.

At the conclusion of any inspection, the inspector conducts an “exit interview” with the facility manager or owner, as the case may be, to review what the inspector saw at the facility and to give the licensee an opportunity to comment.

Within seven days, the inspector will mail an inspection report to the licensee. If any violations are noted, the licensee is required to submit a correction plan. As time and resources allow, a follow-up inspection is conducted to ensure the violations have been corrected.

Complaints/Disciplinary Actions

The Commissioner receives complaints regarding both licensed and unlicensed pet animal facilities from a variety of sources, including the public, customers of facilities, current and former employees of facilities, licensees, and animal control officers and other law enforcement officials. Complaints may be made anonymously.

Most complaints are made by telephone, though some arrive by email. If by phone, staff enters the relevant information into the computer system which then emails the appropriate inspector alerting him or her to the fact that one of the facilities for which that inspector is responsible, has had a complaint filed against it.

Although the Commissioner does not track the nature of the complaints received, many complaints relate to unsanitary conditions; inadequate supervision of animals; injured, sick or deceased animals; inadequate access to food or water; and inadequate enclosure sizes.

Table 7 illustrates, for the five fiscal years indicated, the number of complaints received for each license category.

Table 7
Complaint Information

License Category	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Dog Breeder	44	58	47	23	12
Animal Shelter	132	58	49	43	23
Animal Rescue	41	47	61	26	12
Retail/Wholesale	276	245	162	128	95
Boarding/Training	85	69	67	59	39
Groomer	88	72	82	43	18
Cat Breeder	3	2	0	0	0
Bird Breeder	21	17	17	5	2
Small Animal Breeder	85	16	6	2	0
Total	775	584	491	329	201

CDA staff attributes the steady decline in the number of complaints to improved routine inspections. Better routine inspections mean that problem areas that may have led to complaints in the past, are now addressed before an actual problem arises.

If the complaint alleges that animal health and welfare are at risk, the inspector makes every effort to inspect the facility within 24 hours. If this is not the case, then the inspector attempts to either call or inspect the facility within five days.

Inspectors attempt to close all complaints within six weeks, but several factors can cause delays. For example, if veterinary records are needed or if the facility is in a remote area of the state, it may take longer to conduct inspections or obtain the information necessary to determine whether a violation occurred or to close the case.

Regardless of the type of inspection during which they are discovered, violations are characterized as either critical or non-critical. Critical violations are those that directly affect the health and welfare of animals at the facility. They might include improper supervision of animals, failure to seek veterinary care and inadequate primary enclosures.

Non-critical violations are those that involve aspects of the facility or its operation which do not have a direct impact on animal wellbeing, such as recordkeeping. A non-critical violation can become critical when it is noted on subsequent inspection reports and no corrective action is taken.

A failed inspection occurs when:

- There are repeat critical violations;
- During a pre-license inspection, it is found that the facility does not satisfy the requirements for operation;
- There is evidence of multiple critical violations; or
- The facility fails to allow reasonable access to CDA staff to conduct a routine or complaint-based inspection.

A failed inspection results in a follow-up inspection within 30 days for pre-license inspections, and within 60 days for all others. Failure on three follow-up inspections for the same violation within a single license year may result in disciplinary action.

Table 8 illustrates, for the five fiscal years indicated, the total number of failed inspections.

Table 8
Failed Inspections

FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Not Available	21	74	68	40

The number of failed inspections was not tracked prior to fiscal year 08-09, so such figures are unavailable for fiscal year 07-08.

CDA staff attributes the spike in failed inspections during fiscal years 09-10 and 10-11 to two primary factors. First, in March 2008, the Commissioner developed a written policy outlining when an inspection will be considered a failed inspection. This increased consistency among CDA's inspectors.

Second, the written policy stipulated, for the first time, that failure to allow access for an inspection would result in a failed inspection. Thus, the decline in failed inspections in fiscal year 11-12 can be attributed to licensees understanding that failure to allow an inspection results in a failed inspection, which motivated increased access and compliance.

Table 9 illustrates, for the fiscal years indicated, the number and nature of disciplinary actions taken.

Table 9
Final Agency Actions

Type of Action	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Revocation/Surrender/Voluntary Relinquishment	1	0	0	2	1
Cease and Desist Order	0	14	20	40	10
Temporary Restraining Order	0	1	1	1	1
Letter of Admonition	0	0	0	0	0
License Denied	1	0	4	5	2
Fine/Final Agency Order ⁷⁷	34	94	104	128	61
Search Warrant	0	5	0	0	0
Total Disciplinary Actions	36	114	129	176	75

The Commissioner does not track the number of complaints that result in a dismissal.

Senate Bill 13-123 requires the Department of Regulatory Agencies to report whether an agency under review has denied, revoked or suspended any licenses based on an applicant's or licensee's past criminal history. The Commissioner has done so three times during the five years illustrated in Table 9:

- In fiscal year 09-10, the Commissioner denied a license to a dog breeder facility applicant because the applicant had been convicted on five counts of animal cruelty in 2006.
- In fiscal year 10-11, a cat breeder surrendered its license after receiving a deferred judgment for an animal cruelty charge in 2009. The facility subsequently reapplied for licensure in 2012 and the license was granted.
- In fiscal year 11-12, the Commissioner revoked the licenses of a facility that held licenses in multiple categories when its owner was charged with animal cruelty while operating under a stipulation stemming from a previous animal cruelty conviction.

According to CDA staff, most cease and desist orders are issued when a facility fails to renew a license and continues to operate. In the end, most of these facilities paid a penalty and eventually renewed their licenses. CDA staff focused on these facilities in fiscal year 09-10 and 10-11, which explains the increased numbers for those years.

⁷⁷ Figures for fiscal years 07-08 and 08-09 represent partial data only, due to CDA staff concerns regarding its reliability.

A “final agency order” is a stipulation where both the Commissioner and the licensee agree that PACFA was violated and the licensee typically agrees to pay a fine, in return for a reduced penalty. The Commissioner did not begin tracking the number of final agency orders until fiscal year 09-10, so the figures for prior years are not available.

In 2009, the Commissioner began using stipulations, along with the imposition of a fine, with licensees that failed to renew in a timely manner. As licensees became accustomed to renewing on time, in order to avoid the associated fine, the number of stipulations decreased. This is evidenced in the drastic reduction in final agency orders reported for fiscal year 11-12 in Table 9.

Table 10 illustrates, for the fiscal years indicated, the number and value of fines imposed.

Table 10
Fines

Fiscal Year	Number of Fines Imposed	Total Value of Fines Imposed
07-08	34	\$15,151
08-09	94	\$22,453
09-10	111	\$17,818
10-11	78	\$13,060
11-12	44	\$16,323

The sharp increase in fines in fiscal year 08-09 can be attributed to the fact that the Commissioner began consistently imposing fines on facilities that renew their licenses late.

The amount of a fine is determined, in large part, on whether the violation is critical or non-critical, whether the licensee has been fined for similar incidents in the past, and the type of facility.

The first incident of a repeat non-critical violation may receive a fine up to one-half of the facility's license fee. The second such incident may receive a fine of up to twice the first fine. Subsequent, repeat non-critical violations may receive fines of up to twice the second fine, up to \$1,000 per violation.

The first incident of a critical violation, as well as the first incident of a repeat critical violation, can receive a fine of \$250 or more, depending on the severity of the circumstances. Subsequent, repeat critical violations may receive fines of between \$500 and \$1,000 per violation.

All disciplinary actions, including the imposition of fines, are subject to the Administrative Procedure Act.

Pet Animal Advisory Committee

The 17-member, Commissioner-appointed Pet Animal Advisory Committee (Advisory Committee) meets twice each year: once in the spring and once in the autumn. Advisory Committee meetings are generally well attended, by both its members and the public.

The Advisory Committee members, generally, represent the various license categories authorized under PACFA and the Commissioner's rules. There is one member each representing:

- Animal rescues;
- Animal shelters;
- Bird breeders;
- Cat breeders;
- Dog breeders, large scale;
- Dog breeders, small scale;
- Boarding kennels;
- Dog day care providers;
- Groomers;
- Retailers;
- Small animal breeders; and
- Wholesalers.

Additionally, animal control officers are represented by one member, and one additional member must be a licensed veterinarian.

Finally, the Advisory Committee also has three members of the general public, none of whom may represent or have a financial interest in any of the other groups represented on the Advisory Committee.

Recently, Advisory Committee meetings have focused on revising the Commissioner's rules promulgated under PACFA. CDA staff determined this to be necessary in order to comply with an administrative recommendation in the 2008 sunset report pertaining to the creation of inspection checklists.

Pet Overpopulation Authority

Although not directly part of the PACFA program administered by the Commissioner, the Pet Overpopulation Authority (Authority) is created in PACFA and merits discussion here. It was created to oversee the spending of Colorado's Pet Overpopulation Fund (CPOF) dollars.

The Authority is governed by an eight-member, Commissioner-appointed board of directors (Board), with one member from each of the following:

- The Animal Assistance Foundation (AAF);
- The Colorado Federation of Animal Welfare Agencies;
- A state veterinary medical association;
- An association organized for Colorado animal control officers;
- CDA;
- An animal rescue;
- Western Colorado; and
- The general public.

Board members serve three-year terms, receive no compensation for their services and do not receive reimbursement for any of their expenses.

The Board meets, on average, seven times each year with all members attending most meetings.

Although the Commissioner appoints the Board members, and the PACFA Administrator is the CDA representative on the Board, there is no additional connection to CDA. Rather, the Authority and the Board receive administrative support from AAF, a non-profit dedicated to supporting and enhancing what it terms “the five freedoms”⁷⁸ for companion animals in Colorado through various grant-making efforts.⁷⁹

CPOF receives money through two mechanisms: a tax check-off and the Adopt-a-Shelter-Pet license plate program. The Board distributes CPOF money by awarding grants to applicants around the state.

Through the tax check-off program, Colorado tax filers can opt to have a portion of their income tax refund deposited into CPOF. The grants awarded through this avenue primarily focus on spay and neuter programs in underserved areas.

Through the Adopt-a-Shelter-Pet license plate program, Colorado car owners can pay a one-time fee of \$25 for the issuance of the specialty license plate. This fee is credited to the Highway Users Tax Fund. An additional one-time donation of \$30 is collected at the time of issuance, which is deposited in CPOF. Each year thereafter, a \$25 license plate renewal donation is collected and deposited in CPOF.

⁷⁸ The five freedoms are: 1) freedom from hunger and thirst; 2) freedom from discomfort; 3) freedom from pain, injury and disease; 4) freedom to express normal behavior; and 5) freedom from fear and distress.

⁷⁹ Animal Assistance Foundation. *About Us*. Retrieved July 15, 2013, from www.aaf-fd.org/content/about-us

The grants awarded through this avenue primarily fund spay and neuter efforts, as well as the provision of medical care, to pets in the custody of animal care and control agencies. Medical care grants may be used to:

- Increase the adoptability or transferability of pets by providing basic medical care;
- Mitigate pain and suffering of pets by providing stabilizing care in emergency circumstances; or
- Increase the likelihood of pets being returned to their owners through microchip implantation.

CPOF tax check-off grants are awarded once per year, but funds are distributed in the form of reimbursements as spay and neuter procedures are actually performed throughout the year. As a result, grant recipients must submit periodic reports in order to obtain the funds.

CPOF license plate grants are awarded twice per year and are fully funded from the beginning. Grant recipients must submit a report at the end of the year to demonstrate that the funds were spent appropriately.

Table 11 illustrates, for the five fiscal years indicated, the number of grants made under each program, as well as the value of those grants.

Table 11
CPOF Grants Awarded

Fiscal Year	Check-Off Grants Awarded (Number of Grants/Value of Grants)	License Plate Grants Awarded (Number of Grants/Value of Grants)	Number of Animals Served
07-08	19 / \$213,500	Not Applicable	5,030
08-09	21 / \$230,000	Not Applicable	5,163
09-10	23 / \$180,000	Not Applicable	4,399
10-11	26 / \$152,000	14 / \$36,000	3,552
11-12	23 / \$129,874	12 / \$41,000	2,858
Total	112 / \$905,374	26 / \$77,000	21,002

The decline in the value of grants awarded under the check-off program between fiscal years 09-10 and 11-12, can be attributed to the economic recession during that same time frame.

Similarly, as available funding decreased, so too did the number of animals served. Importantly, the “Number of Animals Served” data do not include animals served through license plate grants. Those numbers are not available due to the manner in which the two grant programs are administered, i.e., reimbursement versus lump sum methods.

The Adopt-a-Shelter Pet license plates were not available for purchase until January 2011, so no funds were available for grants until fiscal year 10-11.

The total number of grants awarded could be misleading. Although 112 check-off grants were awarded over the five-year period indicated, many of the same organizations receive grants year after year. Of the 23 grants awarded in fiscal year 11-12, only two were awarded to first-time recipients. Ten of the check-off grants awarded that year went to organizations for which that was their fifth consecutive year of receiving grants.

Additionally, some organizations apply for grants under both programs. Although the license plate program is relatively new, in its first year, four of the grant recipients received grant dollars under both programs. In fiscal year 11-12, none did.

Analysis and Recommendations

Recommendation 1 – Continue the Pet Animal Care and Facilities Act for seven years, until 2021.

The first sunset criterion asks whether regulation serves to protect the public health, safety and welfare. The Pet Animal Care and Facilities Act (PACFA) creates the framework within which the Colorado Commissioner of Agriculture (Commissioner), through the staff of the Colorado Department of Agriculture's Division of Animal Industry (CDA) regulates those who breed, groom, train, board, rescue, shelter and sell pet animals.

This regulation imposes a wide spectrum of requirements, including minimum enclosure sizes, regular exercise, commingling of animals of different types and from different households, sanitation, feeding, and environmental controls. Importantly, PACFA and the rules promulgated thereunder, establish minimum standards only.

To ensure compliance with these requirements, CDA staff conducts four distinct types of inspections: pre-license inspections; routine inspections; complaint-based inspections and follow-up inspections. When violations are witnessed, they are noted on inspection reports and licensees are expected to correct them. If a licensee commits enough violations, disciplinary action can be taken.

Thus, the benefits of PACFA that accrue to Colorado's pet animals are clear: when they are housed in a licensed facility, they are assured of a clean, safe and healthy environment.

With respect to protection of the public, pet animals can carry diseases that are transmissible and harmful to humans. These include diseases such as chlamydia in birds, salmonella in reptiles and amphibians and rabies in mammals. Further, unsanitary facilities can create breeding grounds for other diseases such as Hantavirus and West Nile virus. All can cause severe illness, and if left untreated, even death in humans.

PACFA, therefore, protects the public health by imposing minimal animal husbandry standards on the pet industry. Animals that are well taken care of are less likely to contract and thus transmit disease to humans and other animals.

Additionally, for many people, pet animals are more than mere property; they are members of the family. This is evidenced by the fact that nearly 377.4 million pets live in 62 percent of U.S. households,⁸⁰ and between 2007 and 2011, while overall household spending decreased by 7.7 percent, spending on pets increased 7.4 percent.⁸¹

⁸⁰ American Pet Products Association. *Pet Industry Market Size & Ownership Statistics*. Retrieved July 15, 2013, from www.americanpetproducts.org/press_industrytrends.asp

⁸¹ Kathy Antonietti, "Pet spending proves recession-proof," *The Denver Post*, June 22, 2013, p. 2C.

PACFA, therefore, protects the public welfare by helping to ensure that the pet animals the public buys are reasonably healthy and that those from whom the public purchases services, such as grooming or boarding facilities, do not abuse or neglect these members of the family.

Without PACFA, protection of the state's pet animals would fall to animal control officers and law enforcement agencies, which enforce animal cruelty laws. This may serve to reactively capture some of the worst offenders, but it would do little to proactively prevent cruelty to or neglect of pet animals, and it would do nothing to address the breeding, sale, grooming, training or boarding of pet animals, since animal control and law enforcement agencies generally lack the authority to inspect facilities without probable cause.

Thus, PACFA's minimum standards serve to protect the public health, safety and welfare in a manner that is not overly restrictive. That is not to say that all is perfect. This report makes several recommendations to the General Assembly and to the Commissioner in the hopes of improving the efficiency and effectiveness of the program.

In continuing PACFA, the General Assembly will also continue the Pet Animal Advisory Committee and the Pet Overpopulation Authority.

For all of these reasons, the General Assembly should continue PACFA for seven years, until 2021.

Recommendation 2 – Authorize the Commissioner to deny, refuse to renew or revoke the license of any licensee or applicant when any principal, major shareholder, member, officer, director or anyone else in a position to control such licensee or applicant has been convicted of animal cruelty.

Colorado's animal cruelty law prohibits a wide range of conduct, including knowingly, recklessly or with criminal negligence:⁸²

- Overdriving, overloading or overworking an animal;
- Depriving an animal of necessary sustenance;
- Unnecessarily or cruelly beating an animal;
- Allowing an animal to be housed in a manner that results in chronic or repeated serious physical harm;
- Carrying or confining in or upon any vehicle, an animal in a cruel or reckless manner;
- Engaging in a sexual act with an animal, or otherwise mistreating or neglecting an animal or causing it to be done; or
- Having charge or custody of an animal, and failing to provide it with proper food, drink or protection from the weather.

⁸² § 18-9-202(1)(a), C.R.S.

One of the underlying tenets of PACFA is to protect animals from abuse and neglect. This is evidenced by the fact that the Commissioner may deny, refuse to renew or revoke any license issued under PACFA if the applicant or licensee has been convicted of cruelty to animals under Colorado's animal cruelty law, or any similar laws of another state.⁸³

Moreover, the Commissioner must deny, refuse to renew or revoke any license issued under PACFA if the applicant or licensee has been convicted of one or more violations of the animal cruelty law, the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal which needlessly injures, mutilates or kills an animal.⁸⁴

Clearly, then, in enacting the animal cruelty law, the General Assembly established that certain actions, or inactions, when involving animals, will not be tolerated and the perpetrators should be held criminally liable.

Given PACFA licensees' daily interactions with animals, the Commissioner's ability, and in some cases obligation, to refuse a license to those convicted of animal cruelty is logical.

However, a problem arises when an individual who has been convicted of animal cruelty forms a corporation or some other business entity, and seeks a license under PACFA. Since the entity has not been convicted of animal cruelty, the Commissioner has no grounds to deny, or revoke, as the case may be, the license.

A similar problem arises when a close family member of the convicted individual applies for a license, or assumes legal ownership, but perhaps not actual control over, the licensed facility.

Two recent cases help to illuminate just how real this problem is.

In 2009, the Commissioner refused to issue a license to a dog breeding facility because the applicant, who was an individual, had been convicted of five counts of animal cruelty in 2006. When the convicted individual's spouse subsequently formed a corporation and applied for a license, the Commissioner had no choice but to issue the license.

In 2011, the Commissioner revoked the licenses of a facility that held multiple licenses, which were held by an individual, when the owner was convicted, for the second time since 2000, of animal cruelty. The convicted individual's daughter subsequently applied for a license and the Commissioner had no choice but to issue the license.

⁸³ § 35-80-112.5(1), C.R.S.

⁸⁴ § 35-80-112.5(2), C.R.S.

These are but two specific examples. Throughout the course of this sunset review, stakeholders regaled staff of the Department of Regulatory Agencies with stories of individuals who had been convicted of animal cruelty, but were allowed to continue to operate their facilities.

To be sure, some of these individuals may have continued to operate because they fell within the Commissioner's discretionary authority. But it is reasonable to assume that some of them transferred ownership of their facilities to controlled business entities or family members. To the outside world, there would be no obvious difference.

Therefore, the General Assembly should authorize the Commissioner to deny, refuse to renew or revoke the license of any licensee or applicant when any principal, major shareholder, member, officer, director or anyone else in a position to control such licensee or applicant has been convicted of animal cruelty. Given the broad scope of individuals involved, this authority should be permissive, rather than mandatory, so as to afford the Commissioner the ability to consider the totality of the circumstances of a particular situation.

Recommendation 3 – Require all cats and dogs adopted from animal shelters or pet animal rescues to be vaccinated against rabies prior to adoption, or within 30 days of adoption.

Rabies is a viral infection of the central nervous system that, in humans, begins with symptoms such as fever, cough or sore throat, and progresses to symptoms that can include restlessness, hallucinations, and seizures that ultimately end in coma and death.⁸⁵

Although no human has died from rabies in Colorado since 1931,⁸⁶ the U.S. Centers for Disease Control and Prevention has declared rabies to be a serious public health problem.⁸⁷

Colorado has, historically, been relatively lucky in that most cases of rabies in the state have been attributed to contact between domestic animals and bats only. This is likely to change as more skunks, raccoons and foxes in the state contract the disease.

⁸⁵ WebMD. *Rabies: Topic Overview*. Retrieved August 8, 2013, from www.webmd.com/a-to-z-guides/rabies-topic-overview

⁸⁶ Kiki Turner, "Spike in rabies cases spurs call for vaccinations," *The Denver Post*, July 29, 2013, p. 4A.

⁸⁷ National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2011," *Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report*, November 4, 2011, p. 1.

Between 2003 and 2006, there were no cases of skunk rabies in the state, but since the first reported case in 2007, representatives of the Colorado Department of Public Health and Environment report that there have been 288 confirmed cases. By May 2013, Mesa County and nearly every county in the eastern half of the state, notably excluding Boulder, Denver and Jefferson counties, had reported at least one case of non-bat related rabies.

Raccoons, skunks and foxes are the terrestrial carnivores most often infected with rabies in the U.S.⁸⁸ These are, in general, nocturnal animals, as are cats. Thus, more cats are reported rabid than dogs.⁸⁹

Most cases of human rabies are attributable to exposure from domestic animals, such as cats or dogs.⁹⁰ Indeed, in July 2013, three adults and five children in Larimer County were bitten or scratched by a rabid kitten.⁹¹

As the number of rabid raccoons, skunks and foxes grows, the greater the likelihood that they will interact with and infect domestic animals. As the case in Larimer County demonstrates, a single pet animal can easily infect multiple people within a very short time.

Thus, there is a growing consensus that since rabies is now being found in terrestrial animals in Colorado, as opposed to just bats, there is a legitimate public health concern.

One of the best ways to protect humans from rabies is to vaccinate pets.⁹² While Colorado lacks a state-wide mandate to vaccinate pets against rabies, all but eight counties mandate that either cats, dogs or both be vaccinated.

The nexus between rabies and PACFA lies in animal shelters and pet animal rescues. These facilities take in unwanted pets, sometimes when owners surrender them, and sometimes as strays. Particularly in the case of strays, there is no way for the facility to determine whether the animal has been vaccinated against rabies, and since the animal roamed freely for at least some period of time, there is a chance that it was infected. These facilities are, therefore, in the unique position to vaccinate those cats and dogs for which there is no history, at the time of adoption.

The rabies vaccine must be administered by a licensed veterinarian. Most shelters and rescues do not have licensed veterinarians on staff and hiring one to vaccinate every cat and dog could be prohibitively expensive.

⁸⁸ "Human Rabies Prevention – United States, 2008: Recommendations of the Advisory Committee on Immunization Practices," *Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report*, May 7, 2008, p. 14.

⁸⁹ "Human Rabies Prevention – United States, 2008: Recommendations of the Advisory Committee on Immunization Practices," *Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report*, May 7, 2008, p. 14.

⁹⁰ Centers for Disease Control and Prevention. *The Burden of Rabies*. Retrieved May 28, 2013, from www.cdc.gov/Features/dsRabies/index.html

⁹¹ Kirk Mitchell, "Eight exposed to kitten with rabies," *The Denver Post*, July 7, 2013, p. 2B.

⁹² Centers for Disease Control and Prevention. *The Burden of Rabies*. Retrieved May 28, 2013, from www.cdc.gov/Features/dsRabies/index.html

Some argue that by not vaccinating adopted animals at the shelter or rescue, the new owners are more likely to visit, and thereby establish a relationship with a veterinarian. This relationship is crucial, some contend, for the long-term health of the animal and to ensure that future vaccinations, including rabies, are kept up to date.

Therefore, a deposit system similar to the one utilized by animal shelters and pet animal rescues for spay and neuter efforts should be adopted. At some point prior to adoption, the shelter or rescue should vaccinate the animal, unless the animal's history is known and its rabies vaccination is current. If the shelter or rescue is unable to vaccinate the animal itself, it should collect a deposit in an amount determined by the Commissioner. If the new owner vaccinates the animal within 30 days, the deposit will be returned. If not, then the deposit should be forwarded to the local county health department, since that agency will be faced with responding to any cases of rabies.

For all these reasons, the General Assembly should require all cats and dogs adopted from animal shelters and pet animal rescues to be vaccinated against rabies, and it should create a deposit system to help facilitate this endeavor.

Recommendation 4 – Harmonize conflicts in the definitions of the terms “canine hobby breeder facility” and “dog breeder, small scale operation.”

As it relates to dog breeding, PACFA was intentionally designed to apply to those who breed dogs as a business. This is evidenced by the fact that hobby breeders, in general, and hobby dog breeders in particular, are exempt from the requirements of PACFA.⁹³

However, the line between a hobby dog breeder and a dog breeder, small scale operation is less than clear.

A hobby dog breeder is one that “transfers no more than 24 dogs per year or breeds no more than two litters per year, whichever is greater.”⁹⁴

A dog breeder, small scale operation is one that “transfers at least 25 but no more than 99 dogs per year.”⁹⁵

Thus, a breeder that produces 25 dogs from two litters, which is possible with some breeds of dogs, is no longer a hobby breeder, but a dog breeder, small scale operation. What is less clear is the status of a breeder that produces 24 dogs from three litters. With only 24 dogs, this breeder does not meet the threshold to be considered a dog breeder, small scale operation, but with three litters, the breeder is also no longer a hobby breeder.

⁹³ § 35-80-103(2)(c), C.R.S.

⁹⁴ § 35-80-102(2), C.R.S.

⁹⁵ § 35-80-102(6.7), C.R.S.

This has caused angst for many in the dog breeding community, particularly among those who may find themselves going back and forth, from one year to the next, from needing a license to being exempt.

To clarify this, the General Assembly should amend the definition of dog breeder, small scale operation to more closely track with the definition of hobby dog breeder. A dog breeder, small scale operation should be defined as one that transfers at least 25 dogs per year or breeds more than two litters per year, whichever is less, and transfers no more than 99 dogs per year.

Recommendation 5 – Repeal certain exemptions for nonhuman primates.

PACFA regulates Colorado’s pet animal industry. The definition of pet animals provides a comprehensive list of those animals that the General Assembly has deemed to be pet animals. Notably missing from this list are nonhuman primates, or monkeys.

Indeed, PACFA generally prohibits the sale, transfer and possession of nonhuman primates, unless the nonhuman primate was kept as a pet prior to July 1, 1973, or is specially trained to assist a disabled person,⁹⁶ i.e., service animals.

This general prohibition, and the exemptions, is echoed in the Colorado Parks and Wildlife Commission’s rules. Those same rules exempt anyone who possessed a nonhuman primate prior to September 1, 1990, so long as they notified the Colorado Division of Parks and Wildlife in writing.⁹⁷ No such notifications have been received.

Therefore, it is reasonable to conclude that there are no nonhuman primates being kept as pets or being used to assist the disabled in Colorado.

Indeed, in 2011, the U.S. Justice Department limited the types of animals that can be considered as service animals under the Americans with Disabilities Act (ADA) by stating, “[s]ervice animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.”⁹⁸ Thus, only dogs can be service animals. They are deemed to be working animals, not pets.⁹⁹

Thus, nonhuman primates are not, for purposes of the ADA, service animals. Therefore, there is no need for them to be exempted from PACFA. Indeed, the mere existence of the exemption may cause confusion.

Since there are no nonhuman primates in Colorado being kept as pets or as service animals, these two exemptions should be repealed.

⁹⁶ § 35-80-108(1)(j)(II), C.R.S.

⁹⁷ 2 CCR 406-0 #008(B).

⁹⁸ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “ADA 2010 Revised Requirements: Service Animals, July 2011, p. 1.

⁹⁹ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “ADA 2010 Revised Requirements: Service Animals, July 2011, p. 1.

Recommendation 6 – Repeal the cap on license fees and direct the Commissioner to provide discounts for multiple licenses.

PACFA stipulates that license fees may not exceed \$350.¹⁰⁰ All such fees, along with funds raised by the imposition of fines, are deposited in the Pet Animal Care and Facility Fund, from which the General Assembly appropriates money to CDA for the direct and indirect costs of administering the program.¹⁰¹ Thus, PACFA is a cash-funded program.

As such, license fees should reflect the costs of running the program. Since various types of licenses are issued under PACFA, ideally, the fees for each license type should reflect the cost of administering that particular license type. For example, a routine inspection of a grooming salon takes, on average, 30 minutes, whereas a routine inspection of a boarding facility may take two hours. It would be reasonable to expect the license fee for a grooming facility to be dramatically lower than that of a boarding facility. This is not the case.

Table 4 on page 20, and reproduced here, shows that the grooming facility pays \$320 for both an initial and renewed license, and a boarding facility pays \$350.

Table 4
License Fees

License Category	License Fee
Retail/Wholesale	\$350
Retail Aquarium Only	\$320
Boarding/Training	\$350
Network Boarding	\$275
Grooming	\$320
Pet Handler	\$175
Dog Breeder, Small Scale	\$345
Dog Breeder, Large Scale	\$350
Cat Breeder	\$320
Bird Breeder, Common	\$175
Bird Breeder, Uncommon	\$275
Small Animal Breeder	\$345
Animal Shelter	\$350
Animal Rescue	\$175

As Table 4 further shows, 4 of the 14 license types issued by the Commissioner are already being charged the statutory maximum. As the costs to administer the program increase, it is reasonable to conclude that the annual license fees for more license types, regardless of the actual cost of administering them, will increase. This is because those that already cost \$350 cannot be increased any further.

¹⁰⁰ § 35-80-105(4), C.R.S.

¹⁰¹ § 35-80-116, C.R.S.

Compounding this problem is the Commissioner's policy of charging only one fee, albeit the highest, for those facilities that hold multiple licenses. For example, a dog breeder, small scale operation that also operates a boarding kennel and grooming facility pays one fee of \$350.

While there is some economy of scale realized in inspecting such a facility—an inspector can complete three inspections with one stop—the one-fee policy, combined with the statutory fee cap, result in the artificial inflation of license fees for some license types.

At some point, all license fees will reach the \$350 maximum, which will force the Commissioner to either abandon the one-fee policy or to impose more fines. Neither of these options is necessarily desirable.

One way to address this is to raise the fee cap. Doing so will alleviate the immediate pressure, but the same situation will only arise again in the future.

A better way to address this is to repeal the fee cap entirely, thus allowing the Commissioner to establish fees at a level that can adequately fund the program. Since the General Assembly must still approve the program's budget and appropriate the funds, safeguards against rampant spending exist.

Recognizing that some savings can be realized when an inspector can conduct multiple inspections at a single facility, the Commissioner should be directed to offer a discount on additional licenses, but not an absolute waiver.

Therefore, the General Assembly should repeal the fee cap and direct the Commissioner to discount the fees of multiple license holders.

Administrative Recommendation 1 – Reform the Pet Animal Advisory Committee.

PACFA directs the Commissioner to appoint a 17-member Pet Animal Advisory Committee (Advisory Committee). It has two basic tasks:¹⁰²

- To advise the Commissioner on the rules promulgated under PACFA; and
- To provide ongoing review of PACFA.

Aside from addressing Advisory Committee composition, vacancies and lengths of terms, as well as stipulating that Advisory Committee members are not entitled to compensation or reimbursement for their expenses, PACFA is silent on the Advisory Committee. PACFA makes no mention of how many terms members may serve, how often the Advisory Committee should meet, how Advisory Committee meetings should be run, or the duties or expectations of Advisory Committee members.

¹⁰² § 35-80-115(1), C.R.S.

This is fairly typical of a statutory provision creating an advisory committee. Depending on the particular advisory committee in question, it is not unusual to see some that are rigidly formal and some that are very informal.

However, recall that PACFA regulates both the for-profit and not-for-profit sides of the pet animal industry. Not surprisingly, Advisory Committee meetings can become heated and antagonistic. As a result, some have questioned the need for the Advisory Committee, or at the very least, its current structure.

Given the high level of angst associated with the Commissioner's ongoing rules revision process, measures as drastic as repealing the Advisory Committee or reducing its membership are not advisable.

Other measures can be taken, administratively, to improve the functioning of the Advisory Committee to assist it in assisting the Commissioner as the General Assembly intended.

First, the Commissioner should attempt to recruit new members to serve on the Advisory Committee. PACFA stipulates that members serve three-year terms,¹⁰³ but places no limit on the number of terms that may be served. Since the various license types are each represented on the Advisory Committee, and since there are a small number of licensees in some categories, the lack of term limits is justifiable.

However, as of February 2013, four members had served 11 years, one for 12 years, one for 13 years and two for 15 years. While having the long-term, institutional memory that such long-serving members naturally bring can be advantageous, fresh minds with fresh ideas can also be helpful. Therefore, when making appointments to the Advisory Committee, the Commissioner should consider recruiting new members.

Three of the Advisory Committee members are to be from the general public and none of them shall represent or have a financial interest in any of the other groups represented on the Advisory Committee.¹⁰⁴ Notwithstanding this statutory directive, one is a cat hobby breeder and one used to be heavily involved in a greyhound rescue.

On the one hand, it may be difficult to find individuals willing to serve on the Advisory Committee who have no interests in pet animals, but these two members appear to come uncomfortably close to satisfying the two disqualifying provisions. Therefore, the Commissioner should attempt to recruit public members who clearly represent the general public.

Advisory Committee meetings are run by CDA staff. CDA staff creates the agendas, calls the meetings to order and facilitates discussion. For most advisory committees, this system would probably work fine. For the Advisory Committee, however, this system serves to enhance the general sense that the input of its members is not desired.

¹⁰³ § 35-80-115(4), C.R.S.

¹⁰⁴ § 35-80-115(1)(m), C.R.S.

To help address this, the Advisory Committee should elect a chair from among its members, on an annual basis. In addition to running meetings, the chair could serve as a liaison between the Commissioner and CDA staff on the one hand, and the Advisory Committee and licensees on the other. It may help mitigate the perception that the input of the regulated community is not desired.

Finally, throughout this sunset review, members of the Advisory Committee, as well as licensees in general, expressed confusion over the purpose of the Advisory Committee and the role of its members.

This could be easily addressed by creating a member training or orientation. Such trainings could include the Commissioner's expectations of members and relevant provisions of the Colorado Sunshine Act.

Additionally, it may be helpful for Advisory Committee members to occasionally ride along with CDA inspectors to observe inspections. Advisory Committee members often hear from other licensees in their respective license categories about many of the issues raised throughout this sunset review. Accompanying the CDA inspectors would provide them with the regulator's perspective and would likely lead to greater understanding of the overall nature of the regulatory program created by PACFA.

Therefore, the Commissioner should:

- Recruit new members to the Advisory Committee;
- Recruit public members who more clearly represent the general public;
- Create the position of Advisory Committee chair, to be elected from the membership of the Advisory Committee; and
- Provide training to Advisory Committee members.