University of Arkansas School of Law
NatAgLaw@uark.edu $ (479) 575-7646

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The Pet Theft Act: Congressional Intent Plowed Under by the United States Department of Agriculture

by

Nancy Goldberg Wilks

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THE PET THEFT ACT: CONGRESSIONAL INTENT PLOWED UNDER BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

By
Nancy Goldberg Wilks*

The author argues that, in promulgating regulations under the Pet Theft Act, the United States Department of Agriculture erred in its interpretation of the law and a misapplied basic rules of statutory construction. The article examines some of the confusions that have arisen in the pound seizure dispute due to the new amendments and regulations.

I. Introduction

In November, 1990, Congress enacted amendments to the Animal Welfare Act (Act).[1] Part of the purpose of the Act[2] and its amendments[3] is to prevent the theft and sale of pets and to provide pets with an opportunity to be reunited with their former companions or to be adopted by new companions. The amendments, commonly referred to as the Pet Theft Act,[4] pertain to circumstances where allegedly unwanted dogs and cats are sold to dealers.[5] One section of the amendments addresses holding periods, certification requirements, enforcement provisions, and a mandate for regulations,[6] while the other section sets forth provisions for injunctions.[7]

The Pet Theft Act affects the practice of pound seizure, the practice by which unwanted animals are sold from pounds or shelters to research facilities for experimentation, research, or teaching.[8] The question arising

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* Nancy Goldberg Wilks lives in Houston, Texas. The author would like to thank Professor Ursula Weigold for her many valuable comments and suggestions on earlier drafts of this paper.

1 Animal Welfare Act, 7 U.S.C. § 2131 (1988 & Supp. 1994).

2 7 U.S.C. § 2131(3).

3 7 U.S.C. § 2158(a)(1).

4 *See, e.g.*, S. Rep. No. 357, 101st Cong., 2d Sess. 276 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4656-5285.

5 In this paper, the amendments to the Act are referred to as the Pet Theft Act, the pet theft amendments, or the 1990 amendments.

6 7 U.S.C. § 2158.

7 7 U.S.C. § 2159.

8 For the definition of "pound seizure" and a history of the practice of pound seizure, *see, e.g.*, Andrew N. Rowan, *Of Mice, Models, and Men: A Critical Evaluation of Animal Research* chpt. 10 (1984). For a history of the practice of pound seizure, *see id.*; *see also* Rebecca Dresser, *Research on Animals: Values, Politics, and Regulatory Reform*, 58 S. Cal.

from the practice of pound seizure, namely whether former pets should be supplied from pounds or shelters to research facilities, differs from the question of whether research ought to involve the use of any animals at all. The pound seizure issue is simply a source issue. If the supply of pound animals to research facilities were to stop completely, researchers would nonetheless have alternative sources of animals available. It is the source issue which is addressed in this article.[9]

Proponents and opponents of pound seizure[10] have argued about the proper interpretation of the amendments.[11] Particularly in issue are the effective date of the amendments, the specific animals covered by the mandatory holding period, and the definition of "dealer" mentioned in the holding period provision. Proponents of pound seizure argue that the amendments were not in effect until the required regulations were finalized, that the holding period only applies to the specific animals being sold, and that "dealer" does not include public pounds and shelters, entities under the amendments, and public research institutions. Pound seizure opponents, on the other hand, contend that the amendments were effective immediately, that the holding period applies to all animals if the entity sells even one animal, and that "dealer" includes all research facili-

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L. REV. 1147 (1985); Karen L. Whitney, Note, *Solving the Pound Animal Controversy: A Proposed Amendment to the Animal Welfare Act*, 15 VT. L. REV. 369 (1991).

[9] For a detailed discussion about the use of animals in research and the laws governing that use, *see* Dresser, *supra* note 8.

[10] Opponents of pound seizure are usually individuals who are concerned with animal welfare, while proponents of the practice are frequently medical researchers who prefer pets to other animal sources since pets usually sit when they are told and generally are docile, anxious to please humans, more trusting, and, thus, easier to handle during intrusive animal experimentation. This paper does not directly address the pound seizure issue itself, and the Act and its regulations do not foreclose the practice of pound seizure; nonetheless, the Act and regulations affect the practice of pound seizure, and the proponents and opponents of the practice have asserted the various interpretations of the Act raised in this paper. Thus, these interpretations will be referred to as the positions of the proponents or opponents of pound seizure.

[11] For example, the Houston Animal Rights Team argued for the opponents' position, while Harris County, Texas, and to some extent the City of Houston, Texas, took the proponents' position. Though the City of Houston stopped pound seizure on August 23, 1993, Harris County continues the practice and requested interpretive opinions from the United States Department of Agriculture (USDA) and the Texas Attorney General. Others who have requested or rendered opinions on the interpretation of the amendments include the University of Texas Medical School, the City of Dallas, the City of San Bernardino, and the Massachusetts Society for the Prevention of Cruelty to Animals. In response to Harris County's request, the Texas Attorney General's Office rendered its opinion on April 26, 1994. It relied on the USDA's regulations, as well as the letter from USDA veterinarian Richard L. Crawford, (*see* note 70, *infra*), when it concluded that the five day holding period only applies to dogs and cats actually sold to dealers, that the five day holding period excluded the date of acquisition and transit time but included at least one Saturday, and that "dealer" does not include public research facilities or public and private research facilities which use animals for their own purposes. One can question the propriety of a state Attorney General issuing an opinion on a federal law which may be challenged only in a federal court. The Texas opinion appears to be unauthorized under Texas law. TEX. GOV'T CODE ANN. § 402.042 and § 402.043. (West 1990).

ties which buy animals, as well as public pounds and shelters and entities under the amendments.

In compliance with the mandate of Congress,[12] the United States Department of Agriculture (USDA) has promulgated regulations purportedly to carry out the amendments to the Act.[13] The USDA's delay in promulgating the final regulations,[14] as well as the specific content of the regulations, appear to have settled the dispute between the proponents and opponents of pound seizure over the proper interpretation of the Pet Theft Act. However, it is the position of the writer that the USDA improperly interpreted the amendments. The USDA's position results from an erroneous interpretation of the law and a misapplication of basic rules of statutory construction.[15]

This article examines some of the confusions that have arisen in the pound seizure dispute due to the new amendments and regulations. The first part of the article examines the pet theft amendments themselves,[16] while the second part considers the USDA's final regulations. The third section of the article addresses the major issues which are in dispute between the proponents and opponents of pound seizure. The article concludes that the amendments were in effect prior to the enactment of the final regulations, the USDA misinterpreted the amendments and congressional intent, and the USDA overstepped its regulatory authority in promulgating the final regulations. The USDA appears to be kowtowing to the interests of those who support pound seizure rather than following the congressional mandate and carrying out its regulatory responsibility in a neutral, detached manner. The USDA needs to re-examine the law, as set forth by Congress, and revise its regulations to carry out the obvious purpose of the amendments. The new regulations should be impartial and should take into account basic rules of proper statutory interpretation.

II. The Pet Theft Act Amendments

In November 1990, Congress amended the Animal Welfare Act with the addition of the Pet Theft Act amendments.[17] In addition to establishing holding period requirements governing an entity's sale of dogs and cats to a dealer, the amendments set forth certification requirements which mandate that a dealer provide an animal recipient with a valid certification,

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12 7 U.S.C. § 2158(d).

13 9 C.F.R. §§ 1.1-2.133 (1994).

14 The proposed regulations were published on November 15, 1991, 56 Fed. Reg. 57,991 (November 15, 1991), and the final regulations took effect on August 23, 1993, despite Congress' mandate that "[n]ot later than 180 days after November 28, 1990, the Secretary shall promulgate regulations to carry out [7 U.S.C. § 2158]." 7 U.S.C. § 2158(d).

15 "Interpretation" and "construction," though sometimes distinguished, are frequently used interchangeably. Norman J. Singer, Sutherland Statutory Construction § 45.04 (5th ed. 1992). This paper follows this practice.

16 Since the dispute between the proponents and opponents of pound seizure stems primarily from the holding period provision, the focus in this paper will be on this portion of the amendments.

17 7 U.S.C. § 2158 (Supp. 1992) (amended November 28, 1990).

containing dealer identification and a description of the animal, prior to selling or making available a random source dog or cat.[18] Enforcement provisions, which expressly incorporate the penalties provision of the original Act and provide for subsequent violations and license revocations,[19] are detailed. The amendments also include a mandate for the Sec-

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[18] 7 U.S.C. § 2158(b). Specifically, this section provides:
(b) Certification
(1) In general
A dealer may not sell, provide, or make available to any individual or entity a random source dog or cat unless such dealer provides the recipient with a valid certification that meets the requirements of paragraph (2) and indicates compliance with subsection (a) of this section.
(2) Requirements
A valid certification shall contain—
(A) the name, address, and Department of Agriculture license or registration number (if such number exists) of the dealer;
(B) the name, address, Department of Agriculture license or registration number (if such number exists), and the signature of the recipient of the dog or cat;
(C) a description of the dog or cat being provided that shall include—
(i) the species and breed or type of such;
(ii) the sex of such;
(iii) the date of birth (if known) of such;
(iv) the color and any distinctive marking of such; and
(v) any other information that the Secretary by regulation shall determine to be appropriate;
(D) the name and address of the person, pound, or shelter from which the dog or cat was urchased or otherwise acquired by the dealer, and an assurance that such person, pound, or shelter was notified that such dog or cat may be used for research or educational purposes;
(E) the date of the purchase or acquisition referred to in subparagraph (D);
(F) a statement by the pound or shelter (if the dealer acquired the dog or cat from such) that it satisfied the requirements of subsection (b) of this section; and
(G) any other information that the Secretary of Agriculture by regulation shall determine appropriate.
(3) Records
The original certification required under paragraph (1) shall accompany the shipment of a dog or cat to be sold, provided, or otherwise made available by the dealer, and shall be kept and maintained by the research facility for a period of at least one year for enforcement purposes. The dealer shall retain one copy of the certification provided under this paragraph for a period of at least one year for enforcement purposes.
(4) Transfers
In instances where one research facility transfers animals to another research facility a copy of the certificate must accompany such transfer.
(5) Modification
Certification requirements may be modified to reflect technological advances in identification techniques, such as microchip technology, if the Secretary determines that adequate information such as described in this section, will be collected, transferred, and maintained through such technology.

[19] 7 U.S.C. § 2158(c). Specifically, the section provides:
(c) Enforcement
(1) In general
Dealers who fail to act according to the requirements of this section or who include false information in the certification required under subsection (b) of this section, shall be subject to the penalties provided for under section 2149 of this title.
(2) Subsequent violations

retary to promulgate implementing regulations[20] and injunction provisions against dealing in stolen animals or endangering an animal's health.[21]

The section of the amendments which has the most impact, however, at least on the pound seizure controversy, is the holding period requirement. Specifically, the amendment requires that all dogs and cats be held for at least five days when the animals are acquired by publicly owned pounds or shelters which sell animals to dealers, all private entities which care for animals or contract with public pounds or shelters and which voluntarily release animals to dealers, and all research facilities licensed by the USDA.[22] The holding period requirement expressly states that the

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Any dealer who violates this section more than one time shall be subject to a fine of $5,000 per dog or cat acquired or sold in violation of this section.

(3) Permanent revocations

Any dealer who violates this section three or more times shall have such dealer's license permanently revoked.

[20] 7 U.S.C. § 2158(d). Specifically, this section provides:

(d) Regulation

Not later than 180 days after November 28, 1990, the Secretary shall promulgate regulations to carry out this section.

[21] 7 U.S.C. § 2159. Specifically, this section provides:

§ 2159. Authority to apply for injunctions

(a) Request

Whenever the Secretary has reason to believe that any dealer, carrier, exhibitor, or intermediate handler is dealing in stolen animals, or is placing the health of any animal in serious danger in violation of this chapter or the regulations or standards promulgated thereunder, the Secretary shall notify the Attorney General, who may apply to the United States district court in which such dealer, carrier, exhibitor, or intermediate handler resides or conducts business for a temporary restraining order or injunction to prevent any such person from operating in violation of this chapter or the regulations and standards prescribed under this chapter.

(b) Issuance

The court shall, upon a proper showing, issue a temporary restraining order or injunction under subsection (a) of this section without bond. Such injunction or order shall remain in effect until a complaint pursuant to section 2149 of this title is issued and dismissed by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective or is set aside on appellate review. Attorneys of the Department of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action brought under this section.

[22] 7 U.S.C. § 2158(a). Specifically, the section provides:

(a) Holding period

(1) Requirement

In the case of each dog or cat acquired by an entity described in paragraph (2), such entity shall hold and care for such dog or cat for a period of not less than five days to enable such dog or cat to be recovered by its original owner or adopted by other individuals before such entity sells such dog or cat to a dealer.

(2) Entities described

An entity subject to paragraph (1) is—

(A) each State, county, or city owned and operated pound or shelter;

(B) each private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city that operates as a pound or shelter and that releases animals on a voluntary basis; and

(C) each research facility licensed by the Department of Agriculture.

purpose of the extended[23] holding period is to provide the dog or cat ample opportunity to be reclaimed by its original companion or to be adopted by new companions.[24]

According to the language of the holding period section, only an entity must comply with the extended holding period.[25] The section also spells out precisely what constitutes an "entity."[26] What is not made expressly clear from the stated language of the holding period requirement section is, first, whether the extended five day holding period applies to all dogs and cats held by the entity, rather than just to the dogs or cats that that entity sells to dealers, and second, what specifically constitutes a "dealer" under the section. These are two of the disputes polarizing the proponents and opponents of pound seizure.[27] Also, as is shown below,[28] these are two areas answered, albeit incorrectly, by the USDA regulations.

III. The USDA Regulations to Implement the Pet Theft Act

> The 1990 amendments to the Act state that: Not later than 180 days after November 28, 1990, the Secretary shall promulgate regulations to carry out this section.[29]

Despite this statutory mandate, the USDA did not publish its proposed rules until November 15, 1991,[30] and the final regulations were not published until July 22, 1993.[31] The final regulations went into effect on August 23, 1993.[32] Though it is unclear why the regulations were delayed, the effect of the delay, like the final regulations themselves, appears to be a thwarting of Congress' intent in promulgating the amendments. Pending USDA's action, entities continued to sell animals to dealers without complying with Congress' extended holding period.

The USDA's regulations similarly disregard the congressional mandate. The regulations supply a definition of "pound or shelter"[33] and set forth rules concerning records and recordkeeping.[34] The regulations also detail certification requirements, which include the provisions that the five

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[23] Most pounds and shelters hold unwanted animals for three days prior to selling or euthanizing the animals.

[24] 7 U.S.C. § 2158(a)(1).

[25] 7 U.S.C. § 2158(a)(1).

[26] 7 U.S.C. § 2158(a)(2).

[27] *See* Section IV, *infra*.

[28] *Id.*

[29] 7 U.S.C. § 2158(d).

[30] 56 Fed. Reg. 57,991 (November 15, 1991) .

[31] 58 Fed. Reg. 39,124 (July 22, 1993), amending 9 C.F.R. Parts 1 and 2, effective August 23, 1993.

[32] *Id.* at 39,125.

[33] The section provides:

> *Pound or shelter* means a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit. 9 C.F.R. § 1.1, reproduced at 58 Fed. Reg. 39,124, 39,129 (July 22, 1993).

[34] The various provisions state:

> § 2.35 Recordkeeping requirements.

day holding period include one Saturday and exclude the date of acquisition and transit time, that only the animals which will be sold or provided to dealers are subject to the extended holding period, and that "entity," as defined by the regulations, includes, among others, only those research facilities which are licensed as dealers.[35]

(e) One copy of the record containing the information required by paragraphs (b) and (c) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility; *Provided, however*, That, except as provided in § 2.133 of this part, information that indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment.

9 C.F.R. § 2.35.

§ 2.38 Miscellaneous.

(k)(4) Each research facility shall comply with the regulations set forth in § 2.133 of subpart I of this part.

9 C.F.R. § 2.38.

§ 2.75 Records: Dealers and exhibitors.

(a)(4) . . . One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat *however*, that, except as provided in § 2.133 (b) of this part for dealers, information that indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment. 9 C.F.R. § 2.75.

[35] The section provides:

§ 2.133 Certification for random source dogs and cats.

(a) Each of the entities listed in paragraphs (a)(1) through (a)(3) of this section that acquire any live dog or cat shall, before selling or providing the live dog or cat to a dealer, hold and care for the dog or cat for a period of not less than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday. The provisions of this paragraph apply to:

(1) Each pound or shelter owned and operated by a State, county, or city;

(2) Each private pound or shelter established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis; and

(3) Each research facility licensed by USDA as a dealer.

(b) A dealer shall not sell, provide, or make available to any person a live random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that contains the following information:

(1) The name, address, USDA license number, and signature of the dealer;

(2) The name, address, USDA license or registration number, if such number exists, and signature of the recipient of the dog or cat;

(3) A description of each dog or cat being sold, provided, or made available that shall include:

(i) The species and breed or type (for mixed breeds, estimate the two dominant breeds or types);

(ii) The sex;

(iii) The date of birth or, if unknown, then the approximate age;

(iv) The color and any distinctive markings; and

(v) The Official USDA-approved identification number of the animal. However, if the certification is attached to a certificate provided by a prior dealer which contains the required description, then only the official identification numbers are required;

(4) The name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer, and an assurance that the person, pound, or shelter was notified that the dog or cat might be used for research or educational purposes;

As is established in the next section, the USDA misconstrued the amendments and overstepped its authority as a regulatory agency, which is to carry out the mandate of Congress. Its final regulations improperly interpret the language of the amendments and the congressional intent[36] and incorrectly apply the legislative history and simple, well-established rules of statutory construction.[37] Since this is not the first time that the USDA has overstepped its authority with regard to enforcement of the

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(5) The date the dealer acquired the dog or cat from the person, pound, or shelter referred to in paragraph (b)(4) of this section; and

(6) If the dealer acquired the dog or cat from a pound or shelter, a signed statement by the pound or shelter that it met the requirements of paragraph (a) of this section. This statement must at least describe the animals by their official USDA identification numbers. It may be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired from the pound or shelter or it may be made separately and attached to the certification later. If made separately, it must include the same information describing each animal as is required in the certification. A photocopy of the statement will be regarded as a duplicate original.

(c) The original certification required under paragraph (b) of this section shall accompany the shipment of a live dog or cat to be sold, provided, or otherwise made available by the dealer.

(d) A dealer who acquires a live dog or cat from another dealer must obtain from that dealer the certification required by paragraph (b) of this section and must attach that certification (including any previously attached certification) to the certification which he or she provides pursuant to paragraph (b) of this section (a photocopy of the original certification will be deemed a duplicate original if the dealer does not dispose of all of the dogs or cats in a single transaction).

(e) A dealer who completes, provides, or receives a certification required under paragraph (b) of this section shall keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year following disposition.

(f) A research facility which acquires any live random source dog or cat from a dealer must obtain the certification required under paragraph (b) of this section and shall keep, maintain, and make available for APHIS inspection the original for at least 3 years following disposition.

(g) In instances where a research facility transfers ownership of a live random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the dog or cat transferred. The research facility to which the dog or cat is transferred shall keep, maintain, and make available for APHIS inspection the copy of the certification for at least 3 years following disposition.

9 C.F.R. § 2.133.

[36] The importance of congressional intent in interpreting statutes is set forth in rules of statutory construction:

> [T]hat the legislative will governs decisions on the construction of statutes continues to be the test most often declared by courts. . . . The statute is construed as a whole with reference to the system of which it is part; or in construing the meaning of a statute the courts must consider the history of the subject matter involved, the end to be attained, the mischief to be remedied, and the purpose to be accomplished. It has also been stated to show that all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used and that language must be construed in the light of the intended purpose.

SINGER, *supra* note 15, at § 45.05 (footnotes omitted).

[37] *See* Section IV, *infra*.

Animal Welfare Act,[38] the agency should perhaps be restaffed with those willing to carry out the agency's mission, the implementation of animal welfare legislation ought to be removed from the agency's regulatory jurisdiction, or both. At the least, the USDA needs to revise the final regulations issued to carry out the pet theft amendments to the Act.[39]

IV. The USDA's Erroneous Interpretation of the 1990 Amendments

There are several issues arising from the pet theft amendments which are in dispute between the proponents and opponents of pound seizure. One concerns the effective date of the amendments themselves,[40] and a second is whether Congress intended the extended holding period to apply to all animals held by the entities or only to those animals which are to be sold to a dealer. A third issue on which the proponents and opponents disagree is on what constitutes a "dealer." This latter issue involves the question of whether all research facilities are dealers, or whether that term applies only to those research facilities licensed as dealers by the USDA, and the question of whether an entity which holds and sells animals to dealers is also a dealer. The definition becomes relevant because entities have tried to circumvent the holding period requirement by arguing that the purchasing body is not a "dealer." Since the USDA seemingly molded its regulations to answer these issues in a fashion acceptable to pound seizure proponents, with apparent disregard to longstanding rules of statutory interpretation, its interpretation is erroneous.

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[38] *See, e.g.*, Animal Legal Defense Fund v. Secretary of Agriculture, 813 F. Supp. 882 (1993) ("[USDA] violated the Administrative Procedure Act by enacting regulations that do not comply with the mandate of Congress as set forth in the Animal Welfare Act, as amended."), *rev'd on other grounds*, 29 F.3d 720 (D.C. Cir. 1994) ; *see also*, Dresser, *supra* note 8, at 1162-1164 ("Criticism [of the Act] also focuses on the USDA's poor enforcement record. The inspection system is underfunded, which contributes to the agency's failure to provide an inspection staff of sufficient size and skill. This results in inspections that are infrequent and superficial, with violations rarely triggering corrective action or penalties. Critics label the USDA's reporting system ineffective as a mechanism for determining whether investigators meet the requirement for 'appropriate use' of pain-relieving drugs. An additional complaint concerns the exclusion of several species, including rats and mice, from the statute's coverage. These deficiencies underlie the opinion that the [Act] is 'regarded by animal research interests as beneficial and by animal welfare groups as ineffective.' ") (footnotes omitted).

[39] The final regulations modify the proposed regulations in that the USDA stated that the regulations apply only to live dogs and cats, excluding deceased dogs and cats. 58 Fed. Reg. 39,124, 39,126 (Jul. 22, 1993). The amendments themselves do not make this exception; further, the definition of "dealer" included in the Act and applicable to the amendments, *see* Section IV C *infra*, specifically includes those who buy or sell "any dog or other animal whether alive or dead . . . ." 7 U.S.C. § 2132(f). Though this appears to be another example of the USDA employing unauthorized legislative authority and overruling express congressional mandates, this issue will not be addressed further in this paper.

[40] Although this point of contention may have been mooted by the USDA's finally issuing the final regulations, it is still being discussed here as it may apply to disputes concerning compliance with the Act which raged during the USDA's three year lag in promulgating the regulations.

A. The Effective Date of the Amendments

Proponents of pound seizure argue that the pet theft amendments were not in effect until August 23, 1993, the date that the final USDA regulations went into effect.[41] This erroneous conclusion, however, results from a misreading of the language of the Act.

The amendments themselves do not provide an effective date provision.[42] Absent express reference to a specific effective date, legislation becomes effective immediately upon passage.[43] Hence, the 1990 amendments went into effect when they were passed, November 28, 1990.

Proponents of pound seizure might argue, however, that the amendments were not in effect until the USDA's final regulations went into effect because of section 2154 of the Act, a section of the original Act which specifically pertains to effective dates.[44] Although amendments to an act

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[41] *See, e.g.*, correspondence from Harris County, Texas to the Houston Animal Rights Team (April 9, 1992) ("[A representative of the USDA] advised me that the proposals had not been passed into law yet. . . . He assured me he would notify our organization as soon as the proposals become law. At that time we will modify our program to continue to be in compliance with the Pet Protection Act."); (May 5, 1992) ("Upon approval of these regulations we will have several options to consider. . . ."). Representatives from the City of Houston, Texas, also indicated that they did not believe that the amendments were in effect absent the finalization of the USDA's regulations. (Personal conversation with the author.) This belief helps explain why Houston stopped pound seizure on August 23, 1993, the day that the final regulations took effect. *But see* City of San Bernardino, Interoffice Memorandum 9103-601 (March 8, 1991) ("The new law became effective on February 15, 1991. . . .").

[42] 7 U.S.C. §§ 2158-2159.

[43] SINGER, *supra* note 15 at § 33.06 ("A statute takes effect from the date of its passage unless the time is fixed by constitution or statutory provision, or is otherwise provided in the statute itself. The date of passage is the date of completion of the last act necessary to fulfill the constitutional requirements and to give a bill the force and effect of law.") (footnote omitted).

[44] This section provides:

> The regulations referred to in sections 2140 and 2143 of this title shall be prescribed by the Secretary as soon as reasonable but not later than six months from August 24, 1966. Additions and amendments thereto may be prescribed from time to time as may be necessary or advisable. Compliance by dealers with the provisions of this chapter and such regulations shall commence ninety days after the promulgation of such regulations.Compliance by research facilities with the provisions of this chapter and such regulations shall commence six months after the promulgation of such regulations, except that the Secretary may grant extensions of time to research facilities which do not comply with the standards prescribed by the Secretary pursuant to section 2143 of this title provided that the Secretary determines that there is evidence that the research facilities will meet such standards within a reasonable time. Notwithstanding the other provisions of this section, compliance by intermediate handlers, and carriers, and other persons with those provisions of this chapter, as amended by the Animal Welfare Act Amendments of 1976, and those regulations promulgated thereunder, which relate to actions of intermediate handlers and carriers, shall commence 90 days after promulgation of regulations under section 2143 of this title, as amended, with respect to intermediate handlers and carriers, and such regulations shall be promulgated no later than 9 months after April 22, 1976; and compliance by dealers, exhibitors, operators of auction sales, and research facilities with other provisions of this chapter, as so amended, and the regulations thereunder, shall commence upon the expiration of 90 days after April 22, 1976: *Provided, however,*

are incorporated into the original act itself, with the main act's provisions applying equally to the amendments,[45] an analysis of section 2154 reveals that the proponents' conclusion is nonetheless incorrect.

Though section 2154 does tie effective dates of sections to the prescribing of regulations, it refers to specific regulations arising out of certain sections, namely sections 2140 and 2143.[46] Section 2154 does not refer at all to the 1990 amendments, which did not exist at the time that section 2154 was enacted;[47] thus, that section does not tie the effective date of the amendments to the final regulations mandated by section 2158(d) of the Pet Theft Act.

An argument might be made that the language of the statute, "[c]ompliance. . .with the provisions of this chapter and such regulations shall commence. . .,"[48] suggests that compliance with the entire chapter, by the individuals mentioned and within the time period specified, is not mandated until regulations are promulgated. However, that same language, specifically the use of the conjunct "and" and reference to "such regulations," actually requires a contrary conclusion. If the language noted above ties any compliance to regulations, the use of "and such regulations" makes the tie only to regulations referred to in sections 2140 and 2143. This interpretation is further supported by the section's later switch in language from "such regulations" to "those regulations promulgated thereunder," referring in the latter phrase to regulations arising from the

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That compliance by all persons with subsections (b), (c), and (d) of section 2143 and with section 2156 of this title, as so amended, shall commence upon the expiration of said ninety-day period. In all other respects, said amendments shall become effective upon April 22, 1976.

7 U.S.C. § 2154.

[45] NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 22.34 (4th ed. 1985) ("the provisions introduced by the amendatory act should be read together with the provisions of the original section that were reenacted or left unchanged, in the amendatory act, as if they had been originally enacted as one section.") (footnote omitted); *Id.* at § 22.35 ("The general rule of statutory interpretation that a provision in an act is to be read in its context, is applicable to the interpretation of amendatory acts. The same principle is expressed with reference to whole statutes; if an amendment is regarded as a separate act rather than part of an existing act, a statute is to be read in connection with other statutes pertaining to the same subject matter. The original section as amended and the unaltered sections of the act, code, or compilation of which it is a part, relating to the same subject matter, are to be read together. . . . Provisions in the unamended sections applicable to the original section are applicable to the section as amended in so far as they are consistent. . . . Words used in the unamended sections are considered to be used in the same sense in the amendment. . . . The unchanged sections and the amendment are to be interpreted so that they do not conflict.") (footnotes omitted); *see also id.* at § 22.29 ("The criteria and principles applicable in the interpretation of other legislation in general, including original acts, apply as well in the interpretation of amendatory acts.").

[46] 7 U.S.C. § 2154. Sections 2140 and 2143 are irrelevant to the Pet Theft Act and to this issue. What is relevant, however, is that the Pet Theft amendments are not included in the sections mentioned in section 2154. That is, though section 2154 specifically refers to some sections, the Pet Theft amendments are not mentioned.

[47] *Id.* Section 2154 addresses only sections 2140 and 2143 regulations and the Animal Welfare Act of 1976 regulations. The section does not encompass other amendments to the Act or other sections in the Act which mandate regulations. *Id.*

[48] *Id.*

Animal Welfare Act Amendments of 1976. The regulations referred to in the 1990 amendments[49] are not the regulations referenced in sections 2140 and 2143 or the regulations from the Animal Welfare Act Amendments of 1976. Since these are the only regulations referenced in section 2154, the effective date of the 1990 amendments is not tied to the final USDA regulations by this section.

Section 2154 is the only effective date section included within the Animal Welfare Act. When Congress amended the Act in 1990, it did not include an effective date section to govern the implementation of sections 2158 and 2159. Since it had originally included a section setting forth specific effective dates which were tied to specific regulations, yet remained silent on the effective date of the amendments, the only conclusions which can be reached are that Congress believed that section 2154 adequately addressed the effective date issue or that it intended the 1990 amendments to be immediately effective, thereby intentionally omitting an effective date section which tied the effective date to the prescribing of regulations.[50]

If section 2154 were somehow to apply prospectively to the 1990 amendments, then the effective date of those amendments is tied to the regulations referenced in sections 2140 and 2143. This conclusion seems bizarre since the 1990 amendments would have been in effect since 1966 or 1976. Because of this anomalous consequence, rules of statutory construction lead to the conclusion that Congress intended the effective date of the amendments to be immediate and to be independent of the regulations that the Secretary was ordered to promulgate.[51] This result is buttressed by the fact that the amendments are specific enough to stand alone, without the accompanying regulations.

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[49] 7 U.S.C. § 2158(d).

[50] *See* SINGER, *supra* note 15, at § 33.06 ("A statute takes effect from the date of its passage unless the time is fixed by constitution or statutory provision, or is otherwise provided in the statute itself. The date of passage is the date of completion of the last act necessary to fulfill the constitutional requirements and to give a bill the force and effect of law.") (footnote omitted); *see also*, SINGER, *supra* note 45, at § 20.24 ("Where an act is silent concerning the time when its operation as law begins, most constitutions specify that it shall become effective either a certain number of days after enactment, or on a particular day, or when published and promulgated by the governor."); *Id.* at § 22.35 ("The legislature is presumed to know the prior construction of the original act or code and if previously construed terms in the unamended sections are used in the amendment, it is indicated that the legislature intended to adopt the prior construction of those terms. Some courts have gone further and declared that it may be presumed that the legislature intended to adopt the prior construction of the unamended sections relating to the same subject matter merely because it failed to amend those provisions.") (footnotes omitted).

[51] SINGER, *supra* note 15, at § 45.12 ("It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. It is a 'well established principle of statutory interpretation that the law favors rational and sensible construction.' . . . [A]n interpretation which emasculates a provision of a statute is not preferred. . . .A construction resulting in absurd consequences as well as unreasonableness will be avoided.") (footnotes omitted).

Thus, a proper analysis of the language of the Act, incorporating the applicable rules of statutory construction, shows that the effective date provision, set forth in section 2154, does not apply to the 1990 amendments. If it were to apply, the amendments would have been in effect since at least 1976. Since it does not apply and since no other effective date is mentioned, it appears to have been Congress' intent to have the amendments effective immediately and independent of the regulations. Hence, the 1990 amendments have been in effect since November 28, 1990, the date of enactment.

B. The Extended Holding Period Applies to All Animals

Another issue which has been disputed by proponents and opponents of pound seizure is whether the mandated five day holding period applies only to those dogs and cats which an entity makes available to a dealer or to all dogs and cats held by an entity who makes any animal available to a dealer.[52] The USDA, in its regulations, again sided with pound seizure proponents, contrary to the protective purposes of the Animal Welfare Act.

In its final regulations, the USDA has stated that the five day holding period applies only to dogs and cats which the entity makes available to a dealer.[53] Though the language of the statute itself is somewhat confusing,[54] a proper application of basic rules of statutory interpretation shows that the five day holding period applies to all dogs and cats held by an entity who makes even one animal available to a dealer.[55]

The holding period requirement, section 2158 (a) (1), provides:

> In the case of each dog or cat acquired by an entity described in paragraph (2), such entity shall hold and care for such dog or cat for a period of not less than five days to enable such dog or cat to be recovered by its original owner or adopted by individuals before such entity sells such dog or cat to a dealer.[56]

The language in the prefacing clause of this provision, "[i]n the case of *each* dog or cat acquired by an entity. . .,"[57] suggests that Congress' intent was that the entity hold all dogs or cats which it acquired. To read the section as requiring an extended holding period only for the animals actually sold renders the introductory clause superfluous. Such an interpretation would violate the "elementary rule of [statutory] construction that effect must be given, if possible, to every word, clause and sentence

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[52] For example, the Houston Animal Rights Team has recently argued that proper interpretation of the statute requires all animals held by an entity which makes any animals available to a dealer to be held for the extended five day holding period, while Harris County, Texas has claimed that the five day minimum applies only to those animals which an entity in fact makes available to a dealer.

[53] 58 Fed. Reg. 39,129-30 (Jul. 22, 1993).

[54] 7 U.S.C. § 2158(a).

[55] That is, if an entity makes one dog or cat available to a dealer, it must hold all of its dogs and cats for the mandated five day period; if it makes no animals available, the provision does not apply to it.

[56] 7 U.S.C. § 2158(a)(1).

[57] *Id.* (emphasis added).

of a statute. A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . . "[58] Hence, the USDA's conclusion is an unacceptable interpretation of the language of section 2158 (a) (1).

Furthermore, ignoring the prefacing clause and interpreting the language of the holding period provision as applying only to dogs or cats actually sold to a dealer is contrary to Congress' stated intent for this legislation. One of Congress' stated purposes in enacting the amendments was to ensure adequate opportunity for recovery of lost pets or adoption.[59] Congress specifically said:

> The Senate bill amends the Animal Welfare Act to prohibit dealers from obtaining dogs and cats at auctions in order to: prevent people from stealing animals to sell at auctions; require additional recordkeeping by dealers to ensure that animals are obtained from legal sources; extend the holding period at pounds at least five days including a Saturday *to ensure sufficient time and opportunity for adoption or recovery;* requires notification of persons that dogs and cats obtained by dealers may be used for research or educational purposes; and establish fines of $1,000 per dog or cat acquired or sold in violation of the law for first time offenders and $5,000 per animal for second time offenders; and permanent license revocation for third time offenders. . . . The Conference substitute adopts the Senate provision with an amendment that removes the restriction of sources of animals, deletes the requirement that pets be held for at least a Saturday and adds new language regarding injunctive relief.[60]

This is reaffirmed in the Senate Report, which stated:

> The intent of [the Pet Theft Act] is not to stop the use of pets in research activities but rather to prohibit the use of stolen pets in research. . . . The bill also provides *adequate opportunity for pet recovery and adoption* by requiring pounds and shelters to hold animals for at least 5 days, including a Saturday. *This will allow people who want to find a pet sufficient time to do so before that animal is sold.*[61]

Congress could not be much clearer about its intent![62]

Requiring an entity to hold only certain animals would violate legislative intent, as well as the meaning that the language would have to mem-

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[58] SINGER, *supra* note 15 at § 46.06 (footnotes omitted).

[59] H.R. CONF. REP. No. 916, 101st Cong., 2d Sess. 761 (1990), *reprinted in* 1990 U.S.C.C.A.N. 5286-5763.

[60] *Id.* (emphasis added).

[61] S. REP. No. 357, *supra* note 4, (emphasis added).

[62] Principles of statutory interpretation reflect the import of stated legislative purpose. *See* SINGER, *supra* note 15 at § 45.09 ("Considerations of what purpose legislation is supposed to accomplish are often mentioned as grounds for the interpretation given to a statute. . . .Legislative purpose may also be a valuable guide to decision in cases where the effect of a statute on the situation at hand is unclear either because the situation was unforeseen at the time when the act was passed, or the statutory articulation of the rule or policy is so incomplete that it cannot clearly be said to speak to the situation in issue.") (footnote omitted).

bers of the public.[63] The USDA's narrow interpretation is also incorrect as it would undermine the public interest which Congress intended to protect; thus, public policy dictates the more expansive definition.[64] Consequently, the USDA interpretation is an unacceptable interpretation.

Also suggesting that Congress intended the holding period requirement to apply to all dogs and cats held by an entity is the originally proposed, but not enacted, language of the section. The original language read:

> The pounds . . . shall hold and care for dogs or cats for a period of at least seven days before selling such dogs or cats to dealers, to enable such dogs and cats to be recovered by their original owners or to be adopted by other individuals.[65]

This earlier language clearly indicates an intent to have the extended holding period apply only to animals actually sold. However, Congress did not enact this language, but rather chose a prefacing clause which would be rendered meaningless by the USDA's interpretation.[66] The fact that Congress abandoned the clear and obvious language for the enacted language shows that the extended holding period was meant to apply to all dogs and cats held by an entity which makes its animals available to a dealer.[67] Applying proper elementary rules of statutory construction mandates the conclusion that the USDA erred in interpreting the law.[68]

Thus, the language of the enacted provision, along with congressional intent and the earlier, rejected language of the section, shows that the holding period is to apply to all dogs and cats held by an entity who sells at least one dog or cat to a dealer. The USDA's contrary conclusion ig-

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[63] For a discussion of choosing between "intent" and "meaning," *see* SINGER, *supra* note 15, at § 45.08.

[64] SINGER, *supra* note 15, at § 56.01 ("Where a public interest is affected, an interpretation is preferred which favors the public. A narrow construction should not be permitted to undermine the public policy sought to be served. This is especially so where a narrow construction discourages rather than encourages the specific action the legislature has sought to foster and promulgate.") (footnotes omitted).

[65] S. 2353, 100th Cong., 2d Sess., 134 CONG. REC. S. 11516-02 (daily ed. Aug. 10, 1988).

[66] *See* discussion accompanying notes 55-57, *supra*.

[67] This conclusion is reached by the mere application of simple rules of statutory interpretation. SINGER, *supra* note 15, at § 48.04 ("Legislative history can also consider part of a statute that never came into existence. For example where the language under question was rejected by the legislature and thus not contained in the statute it provides an indication that the legislature did not want the issue considered.") (footnote omitted); *Id.* at § 45.10 ("Because *defeated* legislative proposals are seldom given any attention following their defeat, the meaning of this record of negative legislative action goes almost totally unexplored and unexplained. To ignore it is as misleading as would be the rejection from our case law of all decisions for the defendant.").

[68] Proponents of pound seizure might argue that Congress did not intend for all dogs and cats to be held for the extended time because it exempted those entities which do not make animals available to dealers. *See* S. REP. No. 357, *supra* note 4, ("This legislation does not affect States or localities that prohibit pound seizure.). However, Congress was attempting to remedy the growing problem of pets being stolen and ending up in research facilities. *See id.* Those entities which do not make animals available to dealers do not contribute to the public evil which Congress was addressing.

nores this evidence, as well as basic rules of statutory construction. The agency apparently molded its opinion to suit the powerful proponents of pound seizure, incorrectly interpreting this provision and erroneously concluding that the holding period applies only to those dogs and cats actually made available to a dealer.[69]

C. The Definition of "Dealer" Under the Amendments

Another point of dispute between the proponents and opponents of pound seizure concerns what constitutes a "dealer" as that term is used in the 1990 amendments. The specific issues are whether an entity, as defined by section 2158, is a dealer and whether the term "dealer" refers to all, or only certain specified, research facilities. The USDA has once again taken the proponents' position and interpreted the term narrowly,[70] despite the fact that the language of the Act and the legislative history reveal that Congress intended a broader interpretation.

In the 1990 amendments, Congress established the extended holding period, discussed above,[71] for entities which sell dogs or cats to a dealer.[72] Although the amendments provide a definition of "entity,"[73] they are silent as to the definition of "dealer." Nonetheless, the amendments are part of the Act,[74] which itself does provide a definition. Specifically, the Act states:

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[69] The proper interpretation, that the extended holding period applies to all dogs and cats held by an entity which makes any animals available to a dealer, was also reached by some City Attorneys across the country. *See, e.g.*, City of Houston Legal Department, L.D. #38-92052 (Dec. 7, 1992); City of San Bernardino Office of the City Attorney, Opinion No. 91-22 (Jul. 1, 1991); *see also* Letter from Martha C. Armstrong, Director of Animal Welfare and Legislative Issues, Massachusetts Society for the Prevention of Cruelty to Animals to Cile Holloway (October 28, 1991); *but see*, City of Dallas Legal Opinion (February 20, 1992).

[70] Although the final regulations themselves do not specify what constitutes a dealer, the USDA's position was detailed by Richard L. Crawford, a veterinarian with the USDA, and the Acting Assistant Deputy Administrator for Animal Care, Regulatory Enforcement and Animal Care, Animal and Plant Health Inspection Service. Letter from Richard L. Crawford, USDA to Chris S. Smith, University of Texas (March 19, 1993) (on file with author).
One questions the propriety of an agency veterinarian issuing a legal opinion on behalf of a federal regulatory agency. Perhaps, then, it should come as no surprise that improper statutory construction and an incorrect analysis of the statute and its legislative history resulted. With others relying on this opinion when rendering legal advice, *see, e.g.*, *supra* note 11, one can only wonder about the liability of the USDA and its attorneys for permitting what might be considered by some to be an unauthorized practice of law.

[71] *See* Section IV B, *supra*.

[72] 7 U.S.C. § 2158(a)(1).

[73] 7 U.S.C. § 2158(a)(2):

(2) Entities described

An entity subject to paragraph (1) is—

(A) each State, county, or city owned and operated pound or shelter;

(B) each private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city that operates as a pound or shelter and that releases animals on a voluntary basis; and

(C) each research facility licensed by the Department of Agriculture.

[74] *See* note 45, *supra*.

> (f) The term "dealer" means 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 whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—
> (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or
> (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than $500 gross income from the sale of other animals during any calendar year.[75]

A person buying animals for use in research or teaching is a dealer under this broad definition. Thus, if a research facility is a person, buys animals for compensation, and uses the animals for research or teaching, it is a dealer under the broad definition set forth in the Act and used in the 1990 amendments. Though the clear language of this section implies that all entities which sell animals to facilities for use in research or teaching and all research facilities which buy animals for research or teaching are dealers, for purposes of the Act, the USDA improperly interpreted this section to reach its conclusion that many entities and research facilities are not dealers as used in the 1990 amendments.

In applying the Act's definition of "dealer," the USDA first defined "person," used in the definition of "dealer," by looking to a House of Representatives Report:

> The term "person" is limited to various private forms of business organizations. It is, however, intended to include nonprofit or charitable institutions which handle dogs and cats. It is *not* intended to include public agencies or political subdivisions of State or municipal governments or their duly authorized agents. It is the intent of the conferees that local or municipal dog pounds or animal shelters shall not be required to obtain a license since these public agencies are not a "person" within the meaning of section 2(a). . . .[76]

With this definition of "person," the USDA concluded that public pounds and shelters, entities under the amendments, and public research facilities are not dealers under the Act's definition.[77]

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[75] 7 U.S.C. § 2132(f).

[76] Statement of Managers on the Part of the House accompanying H.R. CONF. REP. No. 1848, 89th Cong., 2d Sess. 9 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2649, 2652, *quoted in* Letter from Richard L. Crawford to Chris S. Smith, *supra* note 70.

[77] Specifically, the USDA concluded:

> [L]ocal government pounds or shelters (municipal or county) are not "persons" under the AWA and are, therefore, exempt for licensing as a "dealer." . . . If a research facility purchases animals from a city pound for resale, or to provide to some other research facility, then they [sic] are acting as dealer [sic] and must be licensed as a dealer.
> *EXCEPTION*: a State University such as the University of Texas, is exempt from the definition of "person" as indicated above and is, therefore, exempt form [sic] licensing as a "dealer." A non-State university, such as a private university, would be required to be licensed as a dealer for such activity as they [sic] are not exempt from the definition of a "person." . . . A nongovernment research facility purchasing animals for

The USDA's erroneous conclusion, however, is, once again, a result of an incorrect analysis of the statute and its legislative history and an improper application of basic rules of statutory construction.[78] First, the statute itself includes a clear definition of "person":

> (a) The term "person" includes any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity;[79]

If Congress had intended to exclude the public entities singled out by the USDA, it could easily have done so. Quite the contrary, Congress settled on a clear, expansive definition of "person."[80] It is a basic rule of statutory construction that statements in the legislative history cannot abrogate the clear language in the statute itself.[81] Thus, the language of the definition provided in the statute prevails. The USDA should have employed this definition of "person;" applying this expansive definition would have avoided the erroneous conclusion that public entities and research facilities are not dealers and, hence, are exempted from the 1990 amendments.

Second, the definition of "person" quoted by the USDA represents the House of Representatives' position, not the position of the Conference committee. The Conference Report, on the other hand, reports that the committee recommendation was "[t]hat the House recede from its disagreement to the amendment of the Senate and agree to the same with an

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> resale must be licensed as a dealer. . . . A government research facility (State university) purchasing animals for resale is exempt from licensing as a dealer. . . . A registered research facility, that is not also licensed as a dealer, may obtain dogs or cats from the city pound *without* the 5 day holding period being involved (They are not dealers and the Pet Protection Act requires the pound to hold the animals for 5 days *only* if they are sold to a dealer).

Richard L. Crawford, *supra* note 70, at 1-2.

[78] Specifically, the USDA ignored simple rules of statutory construction which govern a legislative definition section within a statute: "The definition of a term in the definitional section of a statute controls the construction of that term wherever it appears throughout the statute." SINGER, *supra* note 45 at § 20.08 (footnote omitted); "When a legislature defines the language it uses, its definition is binding upon the court even though the definition does not coincide with the ordinary meaning of the words. . . . A court must follow a legislative definition unless the necessity for a different one shall 'clearly appear.' " *Id.* at § 20.08 (footnotes omitted); "[Statutory] definitions establish meaning where the terms appear in that same act. . . . As a rule a definition which declares what a term means is binding upon the court." SINGER, *supra* note 15, at § 47.07 (footnotes omitted).

[79] 7 U.S.C. § 2132(a).

[80] Congress' definition employs the word "includes." It has been held that choosing the word "includes" reflects an intention to expand, rather than to limit, the coverage of the term. SINGER, *supra* note 15 at § 47.07 ("A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means.' It has been said 'the word "includes" is usually a term of enlargement, and not of limitation. . . .It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated. . . .' ") (footnote omitted). Hence, Congress' chosen language shows that it intended a broad definition instead of the narrow interpretation substituted by the USDA.

[81] SINGER, *supra* note 15 at § 45.02 ("A basic rule of statutory construction is that the clear and express language of a statute cannot be abrogated by statements in congressional debates during a bill's enactment.") (footnote omitted).

amendment. . . ."[82] The amendment included the definition of "person" which appears in the enacted statute.[83] It is a basic rule of statutory construction that "[s]ince the conference report represents the final statement of terms agreed to by both houses of Congress, next to the statute itself, it is the most persuasive evidence of congressional intent."[84] Hence the House of Representatives' report, relied on by the USDA, becomes meaningless.

Third, even if the House of Representatives' report were to be of value, reading the quoted language in context suggests that the House was concerned with excluding public pounds and shelters from the licensing requirements for dealers. State universities are not entities which are usually considered to be public agencies or political subdivisions, and the quoted language nowhere suggests that a research institution at such an entity would be exempt. Furthermore, the definition of "dealer" in the same House of Representatives' report states that "[t]he definition of dealer is not intended to exclude from licensing or regulation those nonprofit or charitable institutions or *animal shelters* which supply animals in commerce to research facilities for compensation of their out-of-pocket expenses."[85] Thus, the USDA's selective use of legislative history not only quotes an irrelevant section, but it also ignores other relevant language in the same House report.

Finally, an interpretation such as the USDA's renders the 1990 amendments to the Act meaningless and controverts Congress' clearly stated intention in passing the amendments. The purpose behind the amendments was to prevent the use of stolen pets in research.[86] One method of achieving this goal was to require an extended holding period so that pets could be recovered or adopted.[87] Exempting entities which sell to public research facilities would prevent the effectuation of Congress' goal to have stolen pets recovered or adopted; the public research facility, like the private facilities, could easily, albeit unknowingly, purchase stolen pets.[88] Furthermore, exempting public pounds and shelters, but not private pounds and shelters, further defeats the amendments in that the enforcement provisions provided in the amendments,[89] as well as those in the Act which are referenced in the amendments,[90] refer to dealers. If the public entities, which are clearly entities under the amendments, fail to comply with the holding period and are not considered to be dealers, there is no recourse for their violation of the law. Such an interpretation cannot be

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[82] H.R. CONF. REP. No. 1848.

[83] *Id.*

[84] SINGER, *supra* note 15, at § 48.08 (footnote omitted).

[85] H.R. CONF. REP. No. 1848, *supra* note 76, at 2653. (emphasis added).

[86] S. REP. No. 357, *supra* note 4.

[87] *Id.*; H.R. CONF. REP. No. 916, *supra* note 59.

[88] The USDA's selective interpretation might also raise an interesting Constitutional challenge by the private research facilities.

[89] 7 U.S.C. § 2158(c).

[90] 7 U.S.C. § 2149.

correct, not only because it violates clear congressional intent, but also because it renders the 1990 law ineffective.[91]

Thus, through selective use of the language of the statute and through improper use of the legislative history of the Act and the amendments, not to mention an overlooking of clear congressional intent, the USDA has reached an erroneous conclusion. Application of basic rules of statutory construction would have led it to the contrary, correct conclusion that public entities and public research facilities, like their private counterparts, are dealers for purposes of the 1990 amendments.

V. Conclusion

Congress' amendments to the Animal Welfare Act, the Pet Theft Act, affect the practice of pound seizure. The primary purpose of the amendments is to prevent the theft and sale of pets. The amendments achieve this end by requiring, *inter alia*, a minimum five day holding period of animals, by entities which sell animals to dealers, to provide the animals with an opportunity to be reunited with their former human companions or to be adopted by new human companions.

The USDA issued final regulations to carry out the dictates of the 1990 amendments to the Act. In promulgating these regulations, the USDA violated the clearly stated intent of Congress in enacting these amendments, disregarded elementary rules of statutory construction, and erroneously interpreted the law itself. In doing so, the USDA entered the fray between the pound seizure opponents and proponents, clearly siding with the wealthier, more powerful medical community and against animal welfare supporters.

Contrary to the position held by pound seizure proponents, the pet theft amendments have been in effect since November 28, 1990, the date of passage of the law, despite the nearly three year lag time in the USDA's promulgation of final regulations. The amendments themselves do not include an effective date provision, and the effective date section in the original Act does not apply to the 1990 amendments. Thus, an application of simple rules of statutory construction yields the conclusion that the amendments were effective immediately.

The USDA sided with the pound seizure proponents in concluding that the extended five day holding period set forth in the amendments applies only to those dogs and cats that an entity makes available to a dealer, rather than to all dogs or cats cared for by an entity who makes any animals available to a dealer. The USDA's conclusion violates congressional intent, renders the introductory clause of the holding period provision meaningless and superfluous, and ignores previously proposed, but not enacted, language which would have supported the USDA's interpretation. Since the means used to reach this end, the erroneous USDA conclusion, ignore numerous basic rules of statutory construction and

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[91] *See, e.g.*, Singer, *supra* note 15.

since properly following these rules supports the opponents' position, the USDA's interpretation of the holding period requirement is erroneous.

The USDA again sided with pound seizure proponents when it commented on what constitutes a "dealer," as used in the 1990 amendments. Though it did not set forth its analysis in the final regulations, the USDA cut and pasted its interpretation of "dealer" to satisfy the proponents of pound seizure; it specifically ruled that a public pound or shelter, an entity under the amendments, and public research institutions are not dealers for purposes of the amendments. This conclusion is the result of a gerrymandered reasoning process which ignores very simple, commonly used rules of statutory construction. The USDA ignored definitions provided in the Act by Congress and drew incorrectly and selectively from the legislative history to reach its incorrect conclusions about "dealers."

It seems clear from the USDA's actions that it is doing all that it can to appease the proponents of pound seizure. Instead of carrying out its regulatory function in a neutral, detached manner, it is kowtowing to the vociferous outcry by these allegedly powerful proponents who oppose the law with their erroneous claims that it will jeopardize medical research or raise the costs of medical research. Instead of simply following the mandates of Congress and carrying out the regulatory responsibility with which it was reposed, the USDA has caved in to this irrelevant hysteria and has exceeded the bounds of its regulatory authority.[92]

The USDA has essentially negated the law actually enacted by Congress, by rendering the law ineffective by its interpretation, and has taken it upon itself to legislate new law. Though administrative agencies are given some interpretive authority, the USDA has far exceeded permissible bounds.[93] The USDA has violated the basic principle of separation of powers upon which our system is based.[94] It has seemed to overlook the rule

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[92] This is obviously not the first time that the USDA has ignored its neutral regulatory function. Two authors discussed "the cozy bond that has long existed between the U.S. Department of Agriculture and those it is charged with overseeing. By law, the department must promote agriculture and protect the public safety. In fact, the balance has always tilted toward the needs of industry rather than consumers, as [then Secretary of Agriculture] Espy himself confirmed last year." Richard Behar and Michael Kramer, *Something Smells Fowl*, TIME, October 17, 1994, at 42-43.

[93] *See* SINGER, *supra* note 15, at § 65.01 ("It has been held that in interpreting the meaning of a statute, great weight can be placed on an interpretation of legislation by the administrative agency to whom its enforcement is entrusted. . . . Where an agency has been charged with administering a law, it may not substitute its own policy for that of the legislature.") (footnotes omitted).

[94] It is the function of the judiciary to interpret laws enacted by the legislature; administrative agencies are not imbued with the power to determine the meaning of these laws, as this would usurp the courts' function. SINGER, *supra* note 15, at § 45.03 ("Consistent with a system of separation of powers, it is said to be the function of the legislature to make the laws but for the courts to finally and authoritatively interpret what the law says. . . . [T]he courts have repeatedly said that executive or administrative officials or agencies could not determine with finality the meaning of a statute since that is a question of law which is subject to full judicial review.") (footnote omitted).

that "[w]here an agency has been charged with administering a law, it may not substitute its own policy for that of the legislature."[95]

Something must be done about runaway administrative agencies like the USDA.[96] Either the administration should restaff the agency with those who are willing to implement the enacted laws in accordance with the agency's regulatory authority or the Animal Welfare Act should be removed from the USDA's jurisdiction to a more responsible agency. At the very least, however, the USDA must re-write and re-promulgate its final regulations to carry out the congressional dictates of the Pet Theft Act. During a time when one hears talk about governmental spending and cutbacks, it would be appropriate for the agency to take the initiative instead of engaging in more protracted litigation and bureaucratic red tape.

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[95] SINGER, *supra* note 15, at § 65.01 (footnote omitted).

[96] The USDA seems to have forgotten that "[s]ince the central legislative body is the source of an administrative agency's power, the provisions of the statute will prevail in any case of conflict between a statute and an agency regulation." SINGER, *supra* note 15, at § 31.02 (footnote omitted).