

BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

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PETITION REQUESTING THE COMMISSION UNDERTAKE A RULEMAKING TO  
REQUIRE THAT COMMERCIALY BRED DOGS PLACED INTO COMMERCE BE  
ACCOMPANIED BY WRITTEN WARNINGS OF THE RISK OF CONTRACTING  
*CAMPYLOBACTER* INFECTION FROM CONTACT WITH THE DOGS

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Submitted by the Humane Society of the United States and the Humane Society Legislative Fund

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## I. INTRODUCTION

Pursuant to Sections 7 and 9 of the Consumer Product Safety Act, 15 U.S.C. §§ 2056(a)(2) and 2058 (CPSA or the Act), the U.S. Consumer Product Safety Commission (CPSC or the Commission) regulations, 16 C.F.R. § 1051, *et seq.*, and Section 553(e) of the Administrative Procedure Act, 5 U.S.C. § 553(e), the Humane Society of the United States (HSUS) and the Humane Society Legislative Fund (HSLF) submit this petition requesting the Commission initiate rulemaking to (1) establish requirements that dogs bred commercially for distribution in commerce be accompanied by clear and adequate warnings of the risk to people of contracting *Campylobacter* infection, or campylobacteriosis, from contact with the dogs, and (2) establish requirements with respect to the form of the warnings, including the form of signage to be posted near the dogs' cages in pet stores or on the websites where dogs are being sold or advertised online.<sup>1</sup>

Campylobacteriosis is a serious infectious disease caused by a family of bacteria, one species of which--*Campylobacter jejuni*--recently sickened nearly 150 people who contracted it from infected, contagious dogs sold in pet stores in more than 20 states.<sup>2</sup> *Campylobacter* infection is characterized by diarrhea (frequently bloody), abdominal pain, fever, nausea, and sometimes vomiting.<sup>3</sup> Infection can result in long-term consequences, such as arthritis, irritable bowel syndrome (IBS), and Guillain-Barré syndrome (GBS).<sup>4</sup> Most concerning, according to the Centers for Disease Control and Prevention (CDC), “[t]he outbreak strain of *Campylobacter jejuni* is exceedingly resistant” to

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<sup>1</sup> 15 U.S.C. § 2056 (the Commission may promulgate consumer product safety standards to require that a consumer product be accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.)

<sup>2</sup> Centers for Disease Control and Prevention, *Outbreak of Multidrug-resistant Campylobacter Infections Linked to Contact with Pet Store Puppies* (Dec. 17, 2019), <https://www.cdc.gov/campylobacter/outbreaks/puppies-12-19/index.html>, attached as Ex.1; Centers for Disease Control and Prevention, *Multistate Outbreak of Multidrug-Resistant Campylobacter Infections Linked to Contact with Pet Store Puppies* (Jan. 30, 2018), <https://www.cdc.gov/campylobacter/outbreaks/puppies-9-17/index.html>, attached as Ex. 2.

<sup>3</sup> Centers for Disease Control and Prevention, *Campylobacter (Campylobacteriosis): Information for Health Professionals*, <https://www.cdc.gov/campylobacter/technical.html> (last reviewed Dec. 23, 2019), attached as Ex. 3.

<sup>4</sup> *Id.*

antibiotics.<sup>5</sup> Antibiotic resistance is a significant public health issue, and the increased resistance of *Campylobacter* bacteria is considered a serious health threat.<sup>6</sup> As described more fully below, antibiotics are used prophylactically throughout the puppy mill industry as a hedge against the dogs becoming ill from the unsanitary, overcrowded conditions in which they are kept. Antibiotics are also used indiscriminately as a substitute for veterinary care for the dogs.

When alerted to the first *Campylobacter* outbreak in August 2017, the U.S. Centers for Disease Control (CDC), the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (USDA-APHIS), and state health departments undertook a comprehensive investigation to trace the bacterial strain, with the goal of limiting future illnesses.<sup>7</sup> They traced the strain to dogs being sold in pet stores, specifically Petland pet stores,<sup>8</sup> and learned that throughout the commercial breeding and retail industry, antibiotics are given even to healthy dogs, to slow the spread of disease in the overcrowded, unsanitary environments in which the dogs live.<sup>9</sup> Dr. Robert Tauxe, Director of the Division of Foodborne, Waterborne and Environmental Diseases at CDC’s National Center for Emerging and Zoonotic Infectious Diseases, wrote at the conclusion of the first investigation: “The puppy story is not over – it is difficult to control with a whole system that lacks hygiene at many points and seems to use antibiotics instead.”<sup>10</sup> This overuse explains why the outbreak strain was exceedingly resistant to antibiotics: “Prophylaxis appears to be nearly universal with a variety of agents against agents of diarrhea and pneumonia. . . . There seems to be no concept of stewardship.”<sup>11</sup>

The rule requested in this petition is necessary because the public is unaware of the risk of

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<sup>5</sup> Email dated Nov. 1, 2017 from Dr. Robert V. Tauxe, M.D., M.P.H., Director, Division of Foodborne, Waterborne and Environmental Diseases, National Center for Emerging and Zoonotic Infectious Diseases, CDC, to colleagues, attached as Ex. 4.

<sup>6</sup> Centers for Disease Control and Prevention, ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES: 2019 at 4 (Dec. 2019), <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf>.

<sup>7</sup> *Supra* note 2, Ex. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Email dated Jan. 19, 2018, from Dr. Robert V. Tauxe, CDC, to J.A. Wagenaar, attached as Ex. 5.

<sup>10</sup> *Id.*

<sup>11</sup> Email dated Feb. 7, 2018, from Dr. Robert V. Tauxe, CDC, to colleagues in Australia, attached as Ex. 6.

contracting this serious infection (made more serious by its resistance to the antibiotics commonly used to treat it<sup>12</sup>) simply from contact with puppies in pet stores.<sup>13</sup> The transmission of infectious disease from nonhuman animals to humans is of great concern now, due to Covid-19, and the pandemic has starkly illustrated the important role of an informed public in combatting infectious disease. While campylobacteriosis is less dangerous than Covid-19, we believe this public health risk, which is closely connected to consumer behavior, deserves the Commission's attention.

Additionally, people who contracted campylobacteriosis and had to be hospitalized during the pandemic have had to cope with the added fear, and risk to their health, of contracting Covid-19 because they were in a hospital setting.<sup>14</sup> HSUS was recently contacted by a consumer whose daughter was infected with campylobacteriosis from their new Petland puppy and who had to be hospitalized for a week during the pandemic. Katrina Metzler of Arlington, Virginia contacted HSUS after her 18-year-old daughter contracted *Campylobacter* from a puppy purchased at the Petland in Athens, Ohio, while visiting family there. The young woman was sick for a month, hospitalized for a week, and required two blood transfusions in April 2020, during the first spike of community spread of the novel coronavirus. Ms. Metzler was permitted to visit her daughter daily at the hospital despite a stay-at-home order in Washington, D.C. at that time, though fear of contracting the potentially lethal virus was a concern for the entire family, especially her daughter who was weakened by the campylobacteriosis and severe anemia. The hospital was inundated with positive Covid-19 cases, and staff were stretched thin while the pandemic reached new heights in the area.

While other federal agencies work to limit the spread of disease, it is uniquely within the mission of the CPSC to warn consumers about risks posed by products in the marketplace, so they can make informed choices. CDC continues to investigate the second, ongoing *Campylobacter* outbreak from

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<sup>12</sup> *Supra* note 2, Ex. 2.

<sup>13</sup> *Id.*

<sup>14</sup> *See, e.g.*, Doctors worry the coronavirus is keeping patients away from US hospitals as ER visits drop: 'Heart attacks don't stop', CNBC, Apr. 14, 2020, <https://www.cnbc.com/2020/04/14/doctors-worry-the-coronavirus-is-keeping-patients-away-from-us-hospitals-as-er-visits-drop-heart-attacks-dont-stop.html> (discussing trend across the country of people avoiding hospitals even when they need care, out of fear they will get Covid-19), attached as Ex.7.

pet store dogs<sup>15</sup> and *Campylobacter* is still being transmitted to people through pet store puppies.<sup>16</sup> But CDC has also asserted its position that it lacks regulatory authority to regulate pet stores or their practices.<sup>17</sup>

Dogs are undeniably sentient creatures capable of feeling pain, physically and psychologically. When they are commercially bred and sold at retail, however, they meet the CPSA's definition of "consumer products." Accordingly, they are subject to the Commission's jurisdiction, as discussed in section III. Dogs bred in puppy mills and sold at retail are products under the CPSA because they are manufactured as if they were inanimate objects: widgets, rather than living, social animals with emotional lives, the ability to suffer and feel pain, and natural instincts and needs. At commercial breeding facilities puppies and breeding dogs typically live in cramped, unsanitary conditions and receive inadequate veterinary care, which directly cause the diseases they contract so frequently.<sup>18</sup>

In support of this Petition and as recommended by the Commission, Petitioners have included herein relevant factual background on the practices of the commercial dog breeding industry that encourage the spread of disease and drug-resistant bacterial strains, and CDC's traceback of the *Campylobacter* strain to puppies in pet stores, predominantly Petland stores.<sup>19</sup> See section IV.

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<sup>15</sup> *Supra* note 2, Ex. 1.

<sup>16</sup> See, e.g., letter dated April 14, 2020, from Dr. Robert V. Tauxe, CDC, to J.P. Goodwin, HSUS, ("Recent investigations led by CDC and state health departments indicate that *Campylobacter* is still being transmitted to people through pet store puppies"), attached as Ex. 8.

<sup>17</sup> *Id.* While HSUS does not agree with this position and thinks CDC may have more authority than it has stated, we recognize that it has taken this position.

<sup>18</sup> *Supra* note 9, Ex. 5 (commercial breeding industry is "a whole system that lacks hygiene at many points and seems to use antibiotics instead" to fight off infections); Humane Society Veterinary Medical Association, VETERINARY REPORT ON PUPPY MILLS 6 (2013), [http://www.hsvma.org/assets/pdfs/hsvma\\_veterinary\\_report\\_puppy\\_mills.pdf](http://www.hsvma.org/assets/pdfs/hsvma_veterinary_report_puppy_mills.pdf) (puppy mill dogs suffer from many diseases, parasites and illnesses in addition to *Campylobacter*, including parvovirus, canine brucellosis, canine distemper virus, *Bordetella bronchiseptica* (kennel cough), pneumonia and other respiratory infections, as well as *Giardia* and *Coccidia*), attached as Ex. 9.

<sup>19</sup> 16 C.F.R. § 1051.5(b) ("The Commission encourages the submission of as much information as possible related to the petition. Thus, to assist the Commission in its evaluation of a petition, to the extent the information is known and available to the petitioner, the petitioner is encouraged to supply the following information or any other information relating to the petition.").

## II. INTEREST OF THE PETITIONERS

Petitioner the HSUS, headquartered in Washington, D.C., is the largest animal protection organization in the United States, with millions of members and supporters worldwide. Since its founding in 1954, HSUS has worked to combat animal abuse and exploitation and to promote animal welfare. As one of its core campaigns, HSUS actively strives to improve the lives and end the suffering of the millions of adult dogs and puppies confined in inhumane, substandard commercial breeding factories commonly referred to as puppy mills.<sup>20</sup> Pet stores are a major outlet for puppy mill puppies, largely because they provide a readily available supply of “desirable” breeds, and as consumers in pet stores do not see the deplorable conditions the puppies are born and raised in, pet stores are able to mislead consumers about the puppies’ origins and sell the puppies at tremendous mark-ups.<sup>21</sup>

Petitioner HSLF, also based in Washington, D.C., is the separate lobbying affiliate of HSUS that works to pass animal protection laws at the state and federal levels, to educate the public about animal protection issues, and to support humane candidates for office. HSLF works to end the suffering of puppies and adult dogs in puppy mills by working directly with federal regulators and lawmakers to improve the standards of care, hold bad actors accountable, and protect consumers who fall victim to the deceptive practices commonly used in the industry.

Petitioners engage in education and advocacy to expose the cruelty involved in commercial breeding operations and to encourage consumers not to purchase puppies born in such facilities. Over the past two years HSUS conducted eight undercover investigations at Petland stores; Petland is the only national pet store chain still selling puppies. These investigations revealed widespread neglect and abuse of dogs, including the denial of veterinary care, the failure to test even

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<sup>20</sup> Humane Society of the United States, PUPPY MILLS: FACTS AND FIGURES (Jan. 2021), <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mill%20Facts%20and%20Figures%20January%202020.pdf>, attached as Ex. 10.

<sup>21</sup> *See, e.g.*, Humane Society of the United States, PETLAND CORPORATE STORE FOUND COVERING UP DISEASE OUTBREAKS – AN UNDERCOVER INVESTIGATION BY THE HUMANE SOCIETY OF THE UNITED STATES 6 (Nov. 2019), <https://www.humanesociety.org/sites/default/files/docs/FlorenceKY%20Petland%20Investigation%20Report.pdf>, attached as Ex.11.

symptomatic puppies for contagious diseases such as *Campylobacter*,<sup>22</sup> as well as rampant deceptive conduct toward consumers regarding the health of the puppies, and the sale of sick animals.<sup>23</sup>

### III. THE COMMISSION HAS JURISDICTION OVER COMMERCIALY BRED DOGS AS CONSUMER PRODUCTS.

The Commission has the power to regulate the interstate sale of commercially bred dogs because such dogs fit within the Act’s definition of “consumer product”: “any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.”<sup>24</sup> Commercially bred dogs are “produced” and “distributed” “for sale” to “consumers” for the “enjoyment” in their “household.”

A 1974 Commission opinion concluded that pet turtles are consumer products and subject to regulation by the Commission.<sup>25</sup> Pet turtles, the opinion noted, fit within the definition of consumer product: “Such turtles are more frequently raised in ponds on turtle farms rather than caught in the wild or they are imported. Thus, they are customarily produced or distributed for sale, or for personal use or enjoyment.”<sup>26</sup> The same is true for puppies bred in commercial breeding facilities.

The opinion further noted that Congress did not include pet animals in the list of specific articles that may not be called consumer products, such as tobacco and pesticides.<sup>27</sup> The Commission

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<sup>22</sup> Humane Society of the United States, UNDERCOVER INVESTIGATION OF PETLAND IN FRISCO, TEXAS, FINDS UNDERWEIGHT AND SICK PUPPIES; SICK RABBIT LEFT TO DIE, <https://www.humanesociety.org/sites/default/files/docs/Petland%20Frisco%20Report%20Final%209.10.19.pdf> (last visited Feb. 9, 2021), attached as Ex. 12.

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. § 2052.

<sup>25</sup> Opinion of the Commission dated January 29, 1974 (number 78), attached as Ex. 13.

<sup>26</sup> *Id.*

<sup>27</sup> 15 U.S.C. § 2052. *See Madar v. United States Citizenship & Immigration Servs.*, 918 F.3d 120, 123 (3d Cir. 2019) (“Under the interpretive canon *expressio unius est exclusio alterius*, we presume that “[t]he expression of one thing implies the exclusion of others.” The 1952 Act, as amended,

opinion further concluded that the Commission also has jurisdiction over pet turtles, who can transmit salmonellosis,<sup>28</sup> based on section 2(b) of the Act, which states that “one of the Act’s purposes is to promote research and investigation into the causes and prevention of product-related illnesses ... as well as product-related deaths and injuries.”<sup>29</sup> This rationale applies equally here, given that the *Campylobacter*-infected pet store puppies are diseased, and Petitioners are asking the agency to issue regulations to combat the spread of this disease from puppies, as the “product,” to the consumer.

A subsequent Commission opinion issued in 1990 re-examined the 1974 opinion, and appeared to conclude that a wolf hybrid dog, as a living animal, was not a product and thus lay outside Commission jurisdiction.<sup>30</sup> The opinion also made clear, however, that animals that were subjected to processing, or manufactured, might be consumer products under the Act.<sup>31</sup> Commercially bred dogs are indeed processed and manufactured through an essentially factory-like process, as more fully described below, and are treated as products in commerce, and thus come within the Commission’s jurisdiction based on the reasoning in this opinion.

Relatedly, several courts have found that, especially when people are injured by diseased pets that are sold to consumers, the pets are products for purposes of plaintiffs’ products liability claims because it is more fair for a breeder, distributor, or retailer, and not a consumer, to be responsible for the consequences arising from the commercial enterprise. In *Beyer v. Aquarium Supply Co.*, the plaintiff became ill after contact with a diseased hamster. A New York court stated:

The purpose for imposing this doctrine in the products liability field is to distribute fairly equitably the inevitable consequences of commercial enterprise and to promote the marketing of safe products. Accordingly, there is no reason why a breeder, distributor or vendor who places a diseased animal in the stream of commerce should be less accountable for his actions than one who markets a

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identifies just two exceptions to the physical presence requirement... “[T]he existence of these two articulated exceptions to the physical presence requirements undermines [the] argument that this Court should add a third....” *Tullius v. Albright*, 240 F.3d 1317, 1321 (11th Cir. 2001).”

<sup>28</sup> *Supra* note 25, Ex. 13.

<sup>29</sup> *Id.*

<sup>30</sup> Opinion of the Commission dated April 16, 1990 (number 311), attached as Ex. 14.

<sup>31</sup> *Id.*



defective manufactured product. The risk presented to human wellbeing by a diseased animal is as great and probably greater than that created by a defective manufactured product and in many instances, for the average consumer, a disease in an animal can be as difficult to detect as a defect in a manufactured product.<sup>32</sup>

A Connecticut court cited the *Beyer* court's reasoning when it ruled that a puppy purchased at a pet store, which was diseased and carrying a parasite when it was sold, was a product.<sup>33</sup> The plaintiff's child suffered serious eye damage and loss of sight in one eye from exposure to the diseased puppy.<sup>34</sup> The court also noted that the state legislature clearly addresses pets as products in the state's "Pet Lemon Law," and that the Uniform Commercial Code recognizes animals as "goods."<sup>35</sup> Dogs also generally are considered property as a legal matter.<sup>36</sup>

In *Sease v. Taylor's Pets*, which involved a pet skunk that turned out to be rabid, the court rejected the defendant pet store's argument that the skunk was not a product and pointed out that the Restatement (Second) of Torts makes expressly clear that a product need not be manufactured or processed to be considered a "product" that allows liability to attach.<sup>37</sup> The court found that the protection offered by the products liability statute to consumers injured by defective products was appropriate for pets, where diseased conditions might not be apparent to consumers.<sup>38</sup>

While these rulings are not binding on the Commission, their reasoning is persuasive here when considering commercially bred dogs as consumer products, and why fairness principles dictate they should be treated as such, given the proven risk they pose to consumers. Commercial breeders are

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<sup>32</sup> *Beyer v. Aquarium Supply Co.*, 94 Misc. 2d 336, 337, 404 N.Y.S.2d 778, 779 (N.Y. Sup. Ct. 1977).

<sup>33</sup> *Worrell v. Sachs*, 41 Conn. Supp. 179, 180, 563 A.2d 1387, 1387 (Conn. Super. Ct. 1989).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *See, e.g., Bennett v. Bennett*, 655 So. 2d 109, 110 (Fla. Dist. Ct. App. 1995) ("While a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property"); *Barking Hound Vill., LLC v. Monyak*, 299 Ga. 144, 147, 787 S.E.2d 191, 194 (2016) ("Georgia law clearly provides, that a pet dog has value and is considered the personal property of its owner"); *Covatch v. Cent. Ohio Sheltie Rescue, Inc.*, 2016-Ohio-1241, ¶ 18, 61 N.E.3d 859, 863 ("Ohio law considers a dog to be personal property").

<sup>37</sup> *Sease v. Taylor's Pets, Inc.*, 74 Or. App. 110, 116, 700 P.2d 1054, 1058 (1985).

<sup>38</sup> *Id.*

making the usual tradeoffs between profit and spending that every manufacturer makes. To decrease overhead and increase profits breeders generally spend very little money on care for the dogs or even providing a safe, hygienic environment.<sup>39</sup> The commercial production and retail sale of dogs is big business. An estimated 10,000 commercial dog breeding facilities operate in the United States.<sup>40</sup> These facilities churn out approximately 2.4 million puppies sold annually.<sup>41</sup> Breeders could choose to keep dogs in larger cages that provide significantly more space per puppy, or provide regular and thorough veterinary care and exercise, all of which would likely reduce the occurrence and spread of infectious diseases. Instead, large-scale commercial breeders overuse antibiotics to try to slow the spread of diseases that flourish in the cramped, unsanitary, and unnatural conditions that they chose to create. Commercial breeders thus externalize their costs, and the public is paying the true cost through exposure to increasingly antibiotic-resistant bacteria. CDC categorizes drug-resistant *Campylobacter* as a “serious threat” to public health that requires “prompt and sustained action.”<sup>42</sup> The people sickened by infected puppies pay an additional price personally when their treatment options are narrowed because the bacteria they are infected with is susceptible to so few antibiotics.<sup>43</sup>

Commercially bred dogs also should be considered products under the CPSA because the statute is a “[r]emedial safety” law that “should be broadly construed to effectuate its purpose.”<sup>44</sup> Because dogs produced in commercial breeding facilities and marketed in pet stores and online are consumer products, the Commission can and should regulate their sale with respect to consumer safety.

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<sup>39</sup> See, e.g., email dated Aug. 23, 2017, from Susan Lance, CDC, to Dr. Robert V. Tauxe, CDC (“There are a couple shelter medicine programs at vet schools (UC Davis and Florida) that are developing infectious disease guidelines that could be adapted to puppy mill situations but in my experience, the mass producers of puppies expect some ‘loss’ but they make so much money they’re willing to live with it, and since there is generally no emotional attachment to the animal, the money is all that counts. <http://www.thepupproject.org/relevant-laws/>”), attached as Ex. 15.

<sup>40</sup> *Supra* note 20, Ex. 10.

<sup>41</sup> *Id.*

<sup>42</sup> Centers for Disease Control and Prevention, ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES, 2019 at 4 (Dec. 2019), <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-antibiotic-resistance-report-508.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> *U.S. v. One Hazardous Prod. Consisting of a Refuse Bin*, 487 F. Supp. 581, 588 (D.N.J. 1980).

#### IV. FACTUAL BACKGROUND: THE PRACTICES OF THE COMMERCIAL DOG BREEDING INDUSTRY THAT CONTRIBUTED TO CREATING THE ANTIBIOTIC-RESISTANT STRAIN OF CAMPYLOBACTER TRACED TO PETLAND STORES

##### A. *The Commercial Dog Breeding Industry*

As noted above, the puppies produced by the commercial dog breeding industry for sale in pet stores and online are treated like products from start to finish, with little regard to their needs as sentient creatures. The puppies suffer in the unsanitary facilities where they are born (and where they are separated from their mother when only weeks old), during transport (by truck, often for days without meaningful rest or exercise), and at pet stores where they are often denied basic veterinary care.<sup>45</sup>

The regulations implementing the Animal Welfare Act (AWA) – the federal law that provides for licensing and oversight by the United States Department of Agriculture of commercial breeding facilities – establish minimal, essentially survival-level standards for the care of dogs in commercial facilities. For example, under the AWA regulations breeding dogs and puppies may legally be confined in small wire-bottom cages with no solid resting space, which are stacked in rows one above the other, a practice that allows the feces and urine of the dogs in one row to fall onto the dogs in the cages in the row below them.<sup>46</sup> The use of wire flooring in the dogs' cages is highly detrimental to the dogs' physical and emotional health. The dogs' paws often slip through the wire flooring, sometimes trapping the dog, and puppies rarely get to feel a solid surface beneath their paws.<sup>47</sup> The regulations authorize cages that are far too small; essentially, a dog may be kept in a small square wire box with sides a mere six inches longer than her body length, and a height only

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<sup>45</sup> *Supra* note 22, Ex. 12.

<sup>46</sup> Humane Society of the United States, FACTS ABOUT CAGE STACKING (2010), <https://www.humanesociety.org/sites/default/files/docs/cage-stacking-factsheet.pdf>, attached as Ex. 16. Some states have passed laws prohibiting wire-bottomed cages and cage stacking, given the inherent cruelty, but the overcrowding and mass production of dogs still leads to inhumane conditions for the dogs. *See* Mo. Code Regs. Tit. 2 § 30-9.030 (wire strand flooring prohibited); 3 Pa. Stat. Ann. § 459-207 (i)(3)(i) (cage stacking and metal strand flooring prohibited). Moreover, due to the infrequency of inspections it is likely that many breeders and distributors continue to use wire-bottomed cages and stack them. *See* Missouri Department of Agriculture Report of Inspection on 1/31/18 for Pleasant Valley Puppies (ten puppies kept on elevated wire strand flooring, although such flooring had been prohibited as of January 1, 2016), attached as Ex. 17.

<sup>47</sup> *Supra* note 46, Ex. 16.

six inches higher than her body height.<sup>48</sup> Further, the regulations do not require that dogs in commercial breeding facilities be let outside of their cages for exercise for any specific period of time or at regular intervals.<sup>49</sup> These inhumane conditions are legal under the AWA regulations and common practice throughout the industry.

Although the standards are minimal, violations of the federal or similar state regulations occur frequently. Dogs in commercial breeding facilities are often denied even essential veterinary care.<sup>50</sup> Basic grooming needs are neglected to the point where the fur can become matted and cause painful skin irritations and sometimes make it difficult for the dogs to defecate.<sup>51</sup> Often dogs are kept outside in inclement weather without adequate shelter, in or near mud and standing water, which subjects them to disease hazards and risks of physical injury.<sup>52</sup> Food and water bowls are

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<sup>48</sup> 9 C.F.R. § 3.6(c)(1)(i), (iii). This space is barely sufficient for most dogs to be able to comfortably turn around and lie down in a clean spot, or move around if they so desire.

<sup>49</sup> See Humane Society of the United States, PUPPY MILLS AND THE ANIMAL WELFARE ACT (2018), <https://www.humanesociety.org/sites/default/files/docs/puppy-mills-awa-booklet-lores.pdf>, attached as Ex. 18.

<sup>50</sup> See e.g., USDA Inspection Report dated June 3, 2019 for Stevie Hoover in Dundee, New York (inspector found dead puppy that had gone unnoticed by the licensee), attached as Ex. 19; Nebraska Department of Agriculture Inspection Report dated May 23, 2018 for Rocking T Kennel (noting two female dogs with open wounds and fresh blood on them), attached as Ex. 20; Missouri Department of Agriculture Inspection Report dated Dec. 27, 2018 for Debra Ritter (poodle with missing fur, squinting her right eye, who had “yellow mucoid ocular discharge”), attached as Ex. 21; USDA Inspection Report dated June 4, 2019 for John David Shirk in Penn Yan, New York (“The licensee was tube feeding the puppy for an extended period of time but stopped several days ago. The puppy appears to be declining and its condition should be communicated to the attending veterinarian in a timely manner.”), attached as Ex. 22.

<sup>51</sup> See USDA Inspection Report dated October 15, 2018 for Stevie Hoover in Dundee, New York (dog heavily matted over 90% of his body, with “heavy matted fur in the anal region ... trapping fecal matter making it difficult for the dog to continue to defecate”), attached as Ex. 23.

<sup>52</sup> See Commonwealth of Pennsylvania Kennel Inspection report dated December 3, 2018 for Stone Lion Kennel at 3 (“[D]ogs housed in areas of the kennel grounds that had puddles of standing water and was, otherwise, a mud pit. The dogs viewed were covered in mud, muck and [exposed to] potential disease hazard”), attached as Ex. 24.

infrequently cleaned<sup>53</sup> and dogs often are forced to sit in their own waste.<sup>54</sup>

Dogs in commercial breeding facilities are also subject to cruel breeding practices. To maximize profits, female breeding dogs in puppy mills are routinely kept in small cages<sup>55</sup> for their entire lives and bred at every opportunity, without sufficient (or any) recovery time between litters.<sup>56</sup> Once a breeding dog is no longer “productive,” she may be auctioned off to another breeder or killed, often through inhumane methods.<sup>57</sup> Thus, breeding dogs in puppy mills are essentially treated as machines to make puppies.

Irresponsible breeding practices, such as failing to screen parent dogs for ailments or hereditary conditions common to their breed, also contribute to commercially bred puppies having debilitating and life threatening conditions, including epilepsy, heart disease, kidney disease, musculoskeletal disorders, endocrine disorders, blood disorders, deafness, eye problems, and respiratory disorders.<sup>58</sup> And, due to the unsanitary and overcrowded conditions, many transmissible diseases and infections in addition to *Campylobacter* are prevalent in puppy mill puppies, including giardia, parvovirus,

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<sup>53</sup> See USDA Inspection Report dated April 6, 2019 for Cory Mincey, Puppy Love Kennel (water was “opaque and mud-like”; another receptacle had a small amount of water with worms in it; dogs using this water were thin and had loose stools) attached as Ex. 25; USDA Inspection Report dated July 12, 2018 for Riverside, Iowa kennel (name withheld by USDA, believed to be Loren Yoder) (“there was a thick build-up of dark black to dark brown dirt, grime, hair, etc. on the rim of many of the water buckets. Plastic puppy water receptacles had a layer of grime in the bowl and a layer of orange-ish brown film visible on the inside of the tank.”), attached as Ex. 26.

<sup>54</sup> See Missouri Department of Agriculture Inspection Report for inspection on Feb. 7, 2019 for Patchwork Kennel (“The pens still exhibited an excessive accumulation of feces, urine, and hair on the floor, and some dogs could not avoid contact with their own waste.”), attached as Ex. 27.

<sup>55</sup> *Supra* note 49, Ex.18.

<sup>56</sup> E.g., *Colorado Animal Rescue Saves Discarded Dogs, Finds Homes for Them*, Fox 31 Denver (Nov. 21, 2012), <https://kdvr.com/news/colorado-animal-rescue-saves-discarded-dogs-from-horrible-lives-or-worse/> (organization rescued over 7,000 dogs from puppy mills in five years, with many adult dogs discarded because they “may not be able to produce puppies any longer, they may be old or sick, or the breeder might be going out of business,” and puppies discarded because “they are too old to sell to pet stores”), attached as Ex. 28; see also Alex Mayyasi, *How We Treat Pets in America*, Priceonomics Blog (Feb. 28, 2013), <https://priceonomics.com/post/44230885813/how-we-treat-pets-in-america> (“Oftentimes, after the breeder dog has reached the age of 4 years, it is no longer needed and killed.”), attached as Ex. 29.

<sup>57</sup> *Supra* note 56, Ex. 28.

<sup>58</sup> *Supra* note 18, Ex. 9.

distemper, upper respiratory infections, kennel cough, pneumonia, heartworm, mange, intestinal parasites, and chronic diarrhea.<sup>59</sup> Dogs and puppies in these environments often also suffer from treatable or altogether preventable conditions such as dental problems.<sup>60</sup>

After middlemen distributors (also known as brokers) purchase puppies from a breeder, the dogs generally endure cramped, unsanitary conditions while they are being trucked, often for days, to other distributors or to pet stores.<sup>61</sup> And because distributors pack many dogs from multiple breeders into the delivery trucks, it is easy for disease to spread among the dogs.<sup>62</sup> During transport puppies often go for days without waste being removed from their cages and without sufficient water or food.<sup>63</sup>

Given the conditions and neglect these dogs endure from birth, it is not surprising that many puppies are sick by the time they arrive at pet stores. HSUS routinely receives complaints from consumers who were assured the dog in the pet store had a clean bill of health, only to be faced with high veterinary bills and the heartache that comes from caring for a sick or dying dog. A veterinarian who worked with the Petland in Kennesaw, Georgia for almost ten years wrote in an affidavit: “There was no way for me to save all the animals from death and prolonged illness because they

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<sup>59</sup> *Supra* note 18, Ex. 9.

<sup>60</sup> *Supra* note 18, Ex. 9.

<sup>61</sup> *See, e.g.*, “Dozens of puppies heading to local Petland found in filthy conditions”, <https://www.winknews.com/2018/02/23/dozens-puppies-heading-local-petland-found-filthy-conditions/>, attached as Exhibit 30. In February 2018 a truck full of dogs driven by Puppy Travelers, a Missouri-based transport company, was intercepted at the back of a Petland store in Lee County, Florida, and the dogs seized by animal control officers. According to news reports, puppies were kept in crowded cages full of feces and urine without any water. The company admitted to investigators that feces are not cleaned out of the cages until after return to Missouri.

<sup>62</sup> *See also*, Tauxe email, *supra* note 5, Ex. 4 (“It seems there are entire companies dedicated to collecting and transporting the dogs from the dog breeders, to the stores. They use specialized transport trucks, with racks of plastic cages, and gather the puppies in waypoints to spend the night in communal spaces....It does seem to be standard practice to treat/pretreat the puppies with a number of antibiotics to prevent the spread of various pathogens. It seems to be likely that each puppy has received more than one antibiotic by the time they reach the store.”)

<sup>63</sup> *Supra* note 61, Ex. 30.

were already incredibly sick when they arrived at the store.”<sup>64</sup>

Once in pet stores, dogs are often deprived of adequate veterinary care, and some die in the store. During an HSUS undercover investigation at the Petland in Kennesaw, Georgia, a store employee told the investigator that she sometimes came into work and found that a puppy had passed away, and that this had happened about three times in the four months she had been working there.<sup>65</sup> After hearing about other puppies who had died in the store, the investigator became suspicious about a black plastic bag she had seen in the freezer, and looked in it one day to find a dead puppy inside.<sup>66</sup>

Rather than provide dogs with adequate veterinary care, pet stores often instruct employees with no veterinary training to “treat” and medicate the dogs. HSUS undercover investigators observed puppies routinely being given antibiotics without first receiving a specific diagnosis or being seen by a veterinarian, and sometimes to temporarily mask symptoms of illness, such as a cough or diarrhea, so the puppies can be placed on the sales floor and sold as healthy.<sup>67</sup> For instance, HSUS’s undercover investigation of a Petland store in Frisco, Texas showed that kennel staff with no veterinary training were routinely force-feeding sick puppies and administering medications at the direction of management, instead of having the dogs seen by a licensed veterinarian.<sup>68</sup> At the Novi, Michigan Petland, HSUS undercover investigators also observed sick animals being given medications at the discretion of store employees, without any veterinary care or clinical diagnoses.<sup>69</sup> A store employee was captured on camera discussing how the puppies are routinely given

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<sup>64</sup> Humane Society of the United States, PETLAND, INC.: SICK PUPPIES, HEARTBROKEN FAMILIES 3–4 (Dec. 2018), <https://blog.humanesociety.org/wp-content/uploads/2018/12/HSUS-Petland-Report-2018-FINAL-IN-NEW-TEMPLATE.pdf>, attached as Ex. 31.

<sup>65</sup> *Id.* at 1-2.

<sup>66</sup> *Id.* at 2.

<sup>67</sup> See Humane Society of the United States, EXPANDED UNDERCOVER INVESTIGATION REVEALS MORE SICK AND DEAD PUPPIES AT PETLAND STORES 4 (May 2019), [https://www.humanesociety.org/sites/default/files/docs/PetlandReport\\_FINAL-May2019.pdf](https://www.humanesociety.org/sites/default/files/docs/PetlandReport_FINAL-May2019.pdf), attached as Ex. 32.

<sup>68</sup> *Supra* note 22, Ex. 12.

<sup>69</sup> *Supra* note 67, Ex. 32.

antibiotics as a preventative measure.<sup>70</sup>

During another HSUS investigation at a Petland store in Florence, Kentucky, an undercover buyer asked the store manager about the obvious diarrhea a puppy was having in the store.<sup>71</sup> The manager stated to the puppy buyer: “this puppy has had diarrhea [but] that’s not *Campylobacter*,” and added that the buyer would have “.002% chance of getting campylobacter from a puppy from here.”<sup>72</sup> The manager also claimed the puppy had had a fecal test with normal results, but did not provide any documentation of the test, and after purchase an independent veterinarian diagnosed the puppy with *Campylobacter*.<sup>73</sup> The store manager later told the undercover investigator that the store does not test most of the sick puppies for *Campylobacter* because most of them would test positive.<sup>74</sup>

In sum, the commercial dog breeding industry engages in practices that facilitate the spread of antibiotic-resistant infections to consumers. While pet stores, breeders and transporters could and must reform their practices to avoid creating this situation in the first place. The CPSC is uniquely positioned and authorized to protect consumers in the meantime, however. The CPSC can and should require that warnings be provided to consumers so that they may be adequately informed of the risks associated with interacting with or purchasing a commercially bred puppy. Given the continued prevalence of this bacteria in pet store puppies and the potential harm to puppy purchasers (despite multiple investigations by governmental agencies and non-governmental organizations like HSUS), we urge the CPSC to do so. Indeed, requiring pet sellers to inform the public about these risks will likely have the effect not only of warning consumers of the risks, but also of encouraging sellers, breeders and transporters to clean up their act to reduce those risks.

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<sup>70</sup> Mary Beth Sweetland, *Petland Antibiotics*, Vimeo (Mar. 25, 2020, 2:35 PM), <https://vimeo.com/400695494> (video and audio recording taken at Petland in Novi, Michigan on March 26, 2019).

<sup>71</sup> *Supra* note 21, Ex. 11.

<sup>72</sup> *Id.* at 1-2.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.*



B. *Campylobacter* Outbreaks and CDC's Traceback to Petland Puppies

*Campylobacter* infection, or campylobacteriosis, is caused by the presence of *Campylobacter* bacteria.<sup>75</sup> People with *Campylobacter* infection usually have diarrhea (often severe), fever, and stomach cramps.<sup>76</sup> Nausea and vomiting may accompany the diarrhea.<sup>77</sup> Some people experience complications, such as temporary paralysis and arthritis.<sup>78</sup> In people with compromised immune systems, such as those with a blood disorder or who are receiving chemotherapy, *Campylobacter* may spread to the bloodstream and cause a life-threatening infection.<sup>79</sup> *Campylobacter* infection can result in long-term consequences, such as arthritis, IBS, and GBS, an autoimmune disorder causing nerve damage, muscle weakness, and sometimes permanent paralysis.<sup>80</sup> Estimates indicate that as many as 40% of GBS cases in the United States might be triggered by *Campylobacter* infection.<sup>81</sup>

CDC became aware of the first *Campylobacter* outbreak in August 2017, when the Florida Department of Health notified CDC of six *Campylobacter jejuni* infections linked to Petland.<sup>82</sup> CDC examined whole-genome sequencing data and identified six isolates from Petland puppies in Florida that were highly related to an isolate from a Petland customer in Ohio.<sup>83</sup> This information prompted a multistate investigation by local and state health and agriculture departments and CDC

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<sup>75</sup> Centers for Disease Control and Prevention, *Campylobacter (Campylobacteriosis) Questions and Answers* (Dec. 23, 2019) <https://www.cdc.gov/campylobacter/faq.html>, attached as Ex. 33.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Supra* 3, Ex. 3.

<sup>82</sup> Martha P. Montgomery, MD, et al., *Multidrug-Resistant Campylobacter jejuni Outbreak Linked to Puppy Exposure – United States, 2016-2018*, 67 *Morbidity and Mortality Weekly Report* 1032, 1032 <https://www.cdc.gov/mmwr/volumes/67/wr/mm6737a3.htm> (dated September 21, 2018, last reviewed September 23, 2019), attached as Ex. 34. This article does not name Petland, but only refers to a “national pet store chain based in Ohio.” Subsequent CDC reports and correspondence cited throughout the Petition state that the chain is Petland, which is based in Ohio.

<sup>83</sup> *Id.*

to identify the outbreak source and prevent additional illness.<sup>84</sup> Health officials from six states visited pet stores and collected puppy fecal samples, antibiotic records, and traceback information.<sup>85</sup>

CDC discovered that the pet store strain of bacteria was “exceedingly resistant” to antibiotics, which puzzled CDC officials, until they learned about the large commercial dog breeding industry and how it operates. As Dr. Tauxe of CDC explained:

The outbreak strain of *Campylobacter jejuni* is exceedingly resistant-both by genetic resistance prediction and by traditional MIC testing. Resistant to azithro-, erythro-, and telithromycin, ciprofloxacin, tetracycline, clindamycin and nalidixic acid. Some also R tongentamicin and florfenicol. We think this leaves only carbapenems as possible treatment (not approved for that purpose). How did they get this resistant, we wonder? This particular chain of stores is particularly focused on dogs, and gets them from many breeders through a complex distribution network. It seems there are entire companies dedicated to collecting and transporting the dogs from the dog breeders, to the stores. They use specialized transport trucks....The scale of this business was surprising to us....It does seem to be standard practice to treat/pretreat the puppies with a number of antibiotics to prevent the spread of various pathogens. It seems to be likely that each puppy has received more than one antibiotic by the time they reach the store.<sup>86</sup>

CDC investigators thus learned that the entire commercial breeding distribution chain uses antibiotics prophylactically, to slow the spread of disease and illnesses among the dozens or hundreds of dogs living in these inhumane commercial breeding facilities: “Multiple dog breeds, multiple dog transport companies and multiple original breeders. Entire distribution chain seems to use antibiotics of a variety of types prophylactically, little stewardship recognized.”<sup>87</sup> “We are collecting data on antibiotic exposure. Prophylaxis appears to be nearly universal with a variety of agents against agents of diarrhea and pneumonia. This is during transport and distribution, and at stores. We don’t know what happens at the breeders. There seems to be no concept of stewardship.”<sup>88</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Supra* note 5, Ex. 4.

<sup>87</sup> Email dated Dec. 13, 2017 from Dr. Robert V. Tauxe, CDC, to CDC colleagues, attached as Ex. 35.

<sup>88</sup> *Supra* note 11, Ex. 6.

After this discovery, CDC reached out to Petland and recommended measures to reduce risk, such as testing dogs and ceasing the injudicious use of antibiotics.<sup>89</sup> CDC also met with Petland officials about their findings and reducing risk.<sup>90</sup> During these meetings with CDC, Petland agreed to stop selling symptomatic dogs and all dogs with diarrhea.<sup>91</sup> The fact that Petland agreed to *stop selling sick dogs* as a concession shows how reluctant Petland is to change its ways, and underscores the need for the proposed rule. However, even in the face of these outbreaks that were traced back to their puppies, and personal injury lawsuits brought by people who contracted *Campylobacter* from Petland puppies, Petland has not even met its commitment to not sell dogs with diarrhea. In other words, the one “concession” Petland made to not sell sick dogs – which should already be a given and which reveals that Petland routinely, and knowingly, *does* sell sick dogs – has not even been met. As just one example, during a 2019 HSUS investigation at Petland in Florence, Kentucky, an undercover buyer purchased a dog with obvious diarrhea.<sup>92</sup> After the purchase an independent veterinarian tested the dog and confirmed the dog had *Campylobacter*.<sup>93</sup> The investigator working at the store also contracted *Campylobacter*, as did another investigator working at Petland’s Frisco, Texas store.<sup>94</sup>

By the time CDC concluded its investigation into the first outbreak, it had identified 118 people in 18 states who had been infected, nearly all of whom had been in contact with pet store puppies.<sup>95</sup> This included 29 employees of pet stores where puppies were sold.<sup>96</sup> At least 26 of those infected were hospitalized.<sup>97</sup> CDC’s *Morbidity and Mortality Weekly Report (MMWR)* reported that

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<sup>89</sup> Memorandum dated Oct. 18, 2017, from Ian Williams, CDC, to Elizabeth Kunzelman, Director of Public Affairs, Petland, Inc., attached as Ex. 36.

<sup>90</sup> See CDC notes entitled “*Campylobacter* Outbreak associated with puppies from Petland – 10/11/17” at 2, attached as Ex. 37.

<sup>91</sup> *Id.*

<sup>92</sup> *Supra* note 21, Ex. 11.

<sup>93</sup> *Supra* note 21, Ex. 11 at 2.

<sup>94</sup> *Supra* note 21, Ex. 11 at 4.

<sup>95</sup> *Supra* note 82, Ex. 34.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* Several people were hospitalized, some more than once, and some people who were infected suffered for months. One man with an existing chronic disease became ill within a week of

“[o]utbreak strains were resistant to all antibiotics commonly used to treat *Campylobacter* infections.”<sup>98</sup> Reviews of pet store records revealed that, among 149 investigated puppies, 142 (95%) received one or more courses of antibiotics.<sup>99</sup>

CDC’s investigation of the 2019 outbreak is still ongoing, as the agency believes pet store dogs are still infecting people with *Campylobacter*.<sup>100</sup> As of December 17, 2019, CDC had identified 30 people infected in 13 states.<sup>101</sup> Of these, four people were hospitalized.<sup>102</sup> Twelve of these cases were linked to Petland, and include five Petland employees.<sup>103</sup> “Laboratory evidence indicates that bacteria from ill people in this outbreak are closely related genetically to bacteria from ill people in the 2016–2018 outbreak of multidrug-resistant *Campylobacter* infections linked to pet store puppies.”<sup>104</sup> The 2019 outbreak strain of *Campylobacter* bacteria also appears resistant to all common antibiotics.<sup>105</sup>

While the CPSC is not an agency dedicated to fighting infectious disease, it *is* an agency dedicated to protecting consumers and informing them of risks associated with consumer products. There is clear scientific evidence that pet store puppies are transmitting *Campylobacter* to people. The Commission can and should take note of this evidence and exercise its authority to require warnings to protect unsuspecting consumers.

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purchasing a puppy at a pet store. He experienced diarrhea and excruciating lower back pain and was hospitalized with failing kidneys. Only one type of antibiotic was able to treat his resistant *Campylobacter* infection. Due to complications from this infection and his chronic disease, he needed surgery to remove a dead section of stomach. U.S. Department of Health and Human Services: Centers for Disease Control and Prevention, ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES, 2019, at 80 (Dec. 2019), <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf>.

<sup>98</sup> *Supra* note 82, Ex.34.

<sup>99</sup> *Supra* note 82, Ex. 34 at 1032.

<sup>100</sup> *Supra* note 2, Ex. 1.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

V. THE COMMISSION HAS THE AUTHORITY TO TAKE THE REQUESTED ACTION TO PROTECT CONSUMER SAFETY.

Under the CPSA the Commission can issue a safety standard such as the one proposed, if it finds (i) that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury; (ii) that the promulgation of the rule is in the public interest; (iii) that the expected benefits from the rule bear a reasonable relationship to its costs; and (iv) that the rule imposes the least burdensome requirement to reduce the risk of injury.<sup>106</sup>

A determination of unreasonable risk involves balancing the likelihood and severity of injury with any harm that a regulation could impose on manufacturers and consumers.<sup>107</sup> Thus, under the unreasonable risk balancing test, even a very remote possibility that a product would inflict a severe injury could pose an “unreasonable risk of injury” and if the proposed safety standard is likely to reduce the risk, without unduly increasing the product's price, or decreasing the product’s availability or its usefulness, the standard has been met.<sup>108</sup>

The proposed safety standard is reasonably necessary because the potential injury, becoming ill from the *Campylobacter* infection, is severe. In addition, the fact that a novel strain of bacteria, one that is exceedingly resistant to antibiotics, has been identified, means that extra precautions are appropriate to protect public health. Although there is little historical data about the relevant risk, which the Commission often considers when considering whether to require warnings for a product, this is only because this is an emerging new risk.<sup>109</sup> Meanwhile, CDC’s view on this crisis, as recently stated in a letter to the HSUS, is that *Campylobacter* is still being transmitted to people through pet store puppies, and the risk to employees and customers exposed to puppies sold in pet stores is continuing.<sup>110</sup>

Despite significant evidence that irresponsible use of antibiotics is causing a multidrug-resistant

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<sup>106</sup> 15 U.S.C. § 2058(f)(3). *See also* 16 C.F.R. § 1051.9 (specifying the major factors the Commission considers in granting or denying rulemaking petitions).

<sup>107</sup> *See Southland Mower Co. v. Consumer Prod. Safety Comm’n*, 619 F. 2d 499, 508-09 (5th Cir. 1980).

<sup>108</sup> *Id.*

<sup>109</sup> 16 C.F.R. § 1051.5(b)(3).

<sup>110</sup> *Supra* note 16, Ex. 8.

strain of *Campylobacter* to sicken people and dogs, the commercial breeding and retail industry currently has no incentive to curb its use of antibiotics and appears totally disinclined to do so.<sup>111</sup> Therefore it is not surprising that CDC considers the risk of transmission from pet store puppies to be ongoing.<sup>112</sup> Given the ongoing risk to consumers from commercially bred puppies, it is imperative that the CPSC use its authority to warn the public about the possibility of becoming infected with a multidrug-resistant strain of *Campylobacter* from puppies at these stores as well as from puppies being sold directly to the public online. Exercising the agency's authority also might encourage the industry to reform its practices that provide such fertile breeding grounds for the infectious diseases.

The proposed rule to require consumer warnings is an inexpensive method for alerting consumers to the risk of this potentially severe infectious disease. The cost to the industry of providing warnings is extremely low if not *de minimis*. Commercial dog breeders could readily include a written warning in the file containing other paperwork to be conveyed with the purchase of the dog, such as health records, certificates of veterinary inspection, registration papers, or receipts. Breeders are already including paperwork with the puppies they sell, and that paperwork is transferred with a puppy at each point of transfer – e.g., from breeder to broker, to transport company, to store. And when breeders sell directly to the consumer, they include this paperwork with the sales. This would simply be one more piece of paperwork kept in that file.

As for pet stores selling puppies, they would be required to post signs warning of the risk of contracting *Campylobacter* from handling the dogs. Thus, there would be warnings in the puppies' paperwork file. Similarly, breeders selling directly to consumers via a website and other online sellers could readily place a warning on their website. This distribution and posting of warnings to reduce the risk of harm could not possibly be costly to the industry, especially when compared to other industry changes that have been mandated to reduce risk. For example, in *D.D. Bean & Sons Co. v. Consumer Product Safety Commission*, 574 F.2d 643, 649-50 (1st Cir. 1978), the court found that given the relatively small cost of less than one million dollars to the matchbook industry, a rule requiring a design change to include a closed cover was “reasonably necessary” to reduce the hazard

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<sup>111</sup> *Supra* note 21, Ex. 11.

from accidental matchbook ignitions.

The proposed rule is also the least burdensome way to reduce the risk of *Campylobacter* transmission. Petitioners are not requesting that the Commission issue rules to change how the industry produces commercially bred dogs, or even to require that commercially bred dogs be tested for *Campylobacter* before sale.<sup>113</sup>

Currently there is no voluntary safety standard to reduce the risk of transmission for the Commission to consider. Under the Act, the Commission would be obliged to consider as part of the rulemaking process.<sup>114</sup> Indeed, the actors in the commercial breeding and pet retail industry—breeders, distributors, transporters and pet stores—are acting only in their own self-interest, with virtually no oversight regarding the risk of *Campylobacter* infection and the injudicious use of antibiotics. A [few months] into the investigation of the first outbreak, Dr. Tauxe wrote to a colleague, “Seems like we have stumbled on another Wild West.”<sup>115</sup> Finally, the cost for implementing the rule requiring warnings is *de minimis*, and even more costly measures should be deemed acceptable given the evidence that pet stores are *deliberately hiding the risk* of *Campylobacter* infection from consumers.<sup>116</sup>

Another factor weighing in favor of the rulemaking is the likelihood that the risk of contracting *Campylobacter* from pet store dogs will only increase in the future, since there is no incentive for the commercial breeding and pet retail industry to scrap its highly profitable blueprint, where unhygienic and inhumane conditions and insufficient veterinary care can be covered up partly by

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<sup>113</sup> Boone County, Kentucky enacted an ordinance in November 2020 to require that pet store puppies be tested for parasites including *Campylobacter* prior to sale, and to require that pet stores post signs alerting consumers if there has been an outbreak at the store or if puppies test positive. The ordinance has not yet been codified, but attached as Ex. 38 is a draft believed to reflect the substance of the version enacted.

<sup>114</sup> 15 U.S.C. 2058(f)(3)(D).

<sup>115</sup> Email dated August 23, 2017 from Dr. Robert V. Tauxe, CDC, to Susan Lance, CDC, attached as Ex. 15.

<sup>116</sup> *Supra* note 21, Ex. 11. Although Petland leadership had been informed of known human *Campylobacter* cases linked to the Florence, Kentucky store, symptomatic puppies were not tested or treated, and undercover buyer was expressly told puppy did not have *Campylobacter*. After purchase the puppy tested positive for *Campylobacter* (as well as giardia, another serious zoonotic disease).

irresponsible use of antibiotics.<sup>117</sup> As Dr. Tauxe wrote to a colleague in January 2018, “The puppy story is not over - it is difficult to control with a whole system that lacks hygiene at many points and seems to use antibiotics instead.”<sup>118</sup> Finally, the Commission also has the benefit of CDC’s thorough investigations and considered judgment, and thus the rulemaking should not require a significant expenditure of Commission resources available for rulemaking actions for all consumer products.

## VI. SUBSTANCE OF THE PROPOSED RULE

The warnings should be printed to be conspicuous, with text in a large font, using the signal word “Warning” or a like term, in red if practicable, and the warning sheet should accompany the other documents (such as immunization records or certificates of veterinary inspection) that are transferred with the dog at the time of sale. Breeders who sell dogs to consumers online and who must be licensed under the AWA should be included in the regulation.<sup>119</sup> Online breeders who ship dogs to consumers should include the warning sheet in the file of documents, such as veterinary records, that accompany the dogs in transit. If an online seller delivers a dog to a consumer in person, the warning sheet can be included with the other documents. The Commission also should require that pet stores conspicuously post the warning language near the cages where dogs are displayed, to put consumers on notice of the risk before they handle the dogs.<sup>120</sup> Online sellers – and online marketplaces that host advertisements from various breeders – should be required to include a notice like the one described below prominently on their websites.

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<sup>117</sup> 16 C.F.R. § 1009.8(c)(3). (“Certain products, although not presently associated with large numbers of frequent or severe injuries, deserve priority attention if there is reason to believe that the products will in the future be associated with many such injuries.”).

<sup>118</sup> *Supra* note 9, Ex. 5.

<sup>119</sup> Under AWA regulations, breeders with five or more breeding females must be licensed, including those who sell dogs exclusively or partly online. 9 C.F.R. § 2.1(a)(3).

<sup>120</sup> *Supra* note 82, Ex. 34. As CDC investigators found, *Campylobacter* can be transmitted at any point during distribution because puppies from different breeders are commingled at distributors’ facilities, during transport, and in pet stores.



A proper warning shall contain, at a minimum, the following or equivalent text:

**WARNING!**

Pet store puppies have been linked to a multi-drug resistant strain of *Campylobacter jejuni*, **which can be passed from dogs to people, and which has caused serious illness in people**. Immediately take your new puppy to a qualified veterinarian for a fecal test, as this store does not routinely test dogs for this bacteria. Wash hands after contact with dogs. See reverse for symptoms of *Campylobacter* infection.

*[Reverse side or second page]*

**SYMPTOMS OF CAMPYLOBACTER INFECTION**

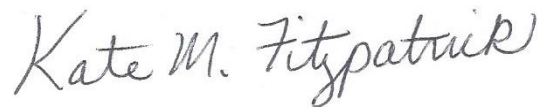
Symptoms include diarrhea, fever, and abdominal cramps, sometimes accompanied by nausea and vomiting. These symptoms usually start within 2 to 5 days after exposure and last about a week. In people with weakened immune systems, such as people receiving chemotherapy or people with AIDS, *Campylobacter* occasionally spreads to the bloodstream and can become life-threatening. Seek medical assistance immediately if you suspect infection.

**VII. REQUESTS TO INITIATE RULEMAKING AND FOR A HEARING**

CPSC should take the proposed action because the Commission's mandate is to protect consumers from the risks presented by products offered in the marketplace, and because it is the agency that has the authority and expertise to issue rules to protect consumers and their families from contracting *Campylobacter* from puppies sold in pet stores. Petitioners request that the Commission initiate a rulemaking requiring that a written warning accompany a commercially bred dog offered for sale into commerce and warning signage be posted in pet stores near the cages of the dogs offered for sale, or, in the case of internet sellers, on the websites where dogs are advertised or sold.

Petitioners further request a hearing before the Commission to consider the issues raised in this petition.

Respectfully submitted this 17<sup>th</sup> day of February 2021.

A handwritten signature in cursive script that reads "Kate M. Fitzpatrick".

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