



November 1, 2017

**PUBLIC COMMENT** to United States Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS). Docket No. APHIS – 2017-0062 entitled “Animal Welfare; Procedures for Applying for Licenses and Renewals.”

The following comments and suggestions are submitted by Animal Folks, based in Minnesota. Many of our comments pertain to dog- and cat-breeding facilities; however, where appropriate, comments can and should apply to exhibitors, auctions, transporters, researchers, and others licensed by or registered with the USDA. Thank you for the opportunity to provide suggestions to this process.

#### **Overview statement**

Animal Folks reviews USDA licensee inspection reports and enforcement documents and has done so for many years. We have submitted complaints to the USDA-APHIS office and directly to law enforcement in Minnesota when we see USDA-licensees who are in chronic violation of the Animal Welfare Act (AWA) or have committed actions that violate Minnesota animal cruelty statutes.

Through this research, we believe the facts found and the licensing choices made by the USDA are often in conflict. These “facts” (evidence) are well-documented, as cited in inspection reports (with photos), OIG audits, citizen complaints, and/or violations of state and local laws, and yet licenses are almost always renewed.

We believe APHIS is in violation of the Animal Welfare Act each time it grants a renewal license when the agency has evidence that the licensee is indeed out of compliance but has “self-certified” that he/she is in compliance and will be. If the USDA considers statutory language (relative to the issuance of renewal licenses) as ambiguous, we welcome the agency’s attempt to clarify its regulations — for the purpose of improved compliance and *welfare of animals*.

Further, if chronic or severe violations lead to an investigation by the USDA, this investigative process tends to take years and may result in a license revocation where no animals are confiscated — instead, the offender is allowed to dispose of the animals through their choice, resulting in animals being killed or placed in facilities that may be the same or worse. By not confiscating the animals or enhancing the process for confiscation, we believe the USDA is placing these animals at risk and continued harm.

We hope the decisions made during this proposed rulemaking process will strengthen the regulations, which will more effectively and efficiently protect animals in the care of licensees and meet the intent of the Animal Welfare Act. Thank you for accepting public comments.

## Comments

Our comments address both administrative and enforcement processes.

As outlined in the USDA proposal:

**1. USDA is proposing: *Establishing a firm expiration date for licenses (such as 3-5 years) after which the licensee would once again be required to affirmatively demonstrate compliance before obtaining another license.***

The current licensing scheme allows for an initial license to be issued with renewal licenses granted each year. It is unclear as to why a longer expiration date should be considered or established.

The annual inspection allows APHIS to determine if the licensee is in compliance. As stated in Part 2, Subpart A, Section 2.3, “each applicant for an initial license or license renewal must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection...” APHIS already has the authority to enter and inspect a facility *at any time* during the initial and renewal processes to ensure that AWA standards and the welfare of the animals are met.

Providing additional time (an extended expiration date) for APHIS to do what they are already allowed to do does not add any value to the process — in fact, “more time” would extend any pain and suffering of animals already at risk, making this action unreasonable. Further, as noted on inspection reports, a key factor to the efficiency of inspections is the lack of a responsible person on site, requiring inspectors to return to the facility repeatedly — adding time to the process.

**REQUEST:** We oppose expanding the license expiration date to 3-5 years and ask the USDA to keep the expiration date to one year. Extending the license date could place animals, who may already be suffering, at greater risk. We ask the USDA to shift away from self-certification and establish new criteria to be used in the decision-making for granting a renewal license. Considerations:

- Add a regulation that states the licensee "must pass an agency compliance inspection of its facilities before the renewal license may be issued;" and/or allow the annual inspection to be used to meet this condition.
- Instruct inspectors to increase the number and type of photos and video used as documentation.
- Establish a comprehensive evaluation that does not rely solely on conditions at the facility at any one point in time and does not rely on self-certification by the licensee; i.e., include history of animal care, verified complaints, and convictions at state and local levels.
- A key factor to the efficiency of inspections is the lack of a responsible person on site, requiring inspectors to return to the facility repeatedly — adding considerable time and labor to the process. Consider how to improve this step so licensees are available.

**2. USDA is proposing: *Specifying procedures to ensure licensees have ample time to apply for licenses and demonstrate compliance prior to the expiration of an existing license, and issuing conditional licenses to licensees with histories of compliance should they be in jeopardy of an inadvertent lapse in licensure during the license application process.***

We do not believe this proposed change is necessary. A current license is for a year; 365 days is ample time for a licensee to demonstrate compliance. The USDA has repeatedly stated its standards are minimal; all licensees should, at the very least, meet these minimal standards *at all times* — or exceed them.

As for issuing “conditional licenses,” does the inadvertent lapse in licensure happen once, twice, multiple times? How often would the USDA allow for this lapse? A former USDA-licensed dog breeder in Minnesota would often not submit his renewal application on time (lapse); the USDA would still allow him to operate and would eventually renew his license following the lapse. His license was eventually revoked by the USDA due to chronic animal welfare violations. A conditional license may be advantageous, if the licensee does not have a history of noncompliance, if firm terms are established where a conditional license does not evolve into a loophole, and if it provides adequate time for the USDA to more fully evaluate the application and compliance process. However, a new conditional license may also introduce uncertainty and another layer of oversight, adding more burden to the regulatory structure.

**REQUEST:** We believe a business must be held responsible for duties associated with licensure. The burden is on the licensee to prove he/she is worthy of a license to care for animals. We ask the USDA to further clarify procedures with licensees so they *clearly and without doubt* understand the duties of the license and their ongoing need to remain in compliance or exceed standards. This comment does not mean expanding “teachable moments”— where violations are then minimized or not cited.

**3. USDA is proposing: *Requiring licensees to affirmatively demonstrate compliance when making noteworthy changes subsequent to the issuance of a license in regard to the number, type, or location of animals used in regulated activities.***

Animal Folks supports licensees affirmatively demonstrating compliance when they have made changes to the number, type, or locations of animals used in regulated activities.

When reviewing licensee inspection reports and animal counts, Animal Folks has seen facilities increase in size (some dog-breeding facilities in Minnesota now have over 900 or 1,000 dogs and puppies) and yet rarely have we seen documentation in inspection reports that might reflect changes in the business, such as the *number* of employees to care for the increase in animals and personnel *qualifications*, which would be required to meet the additional duties such as exercise for each animal, housekeeping, arranging veterinary care, and other necessary tasks to ensure the welfare of each animals. Examples for consideration:

- Part 3, Subpart A, Section 3.12. Employees. Each person...” must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.”

*Comment: How are “enough” employees determined and documented by the USDA? How are “husbandry, knowledge, background, and experience” verified and documented?*

- Part 3, Subpart A, Section 3.2. Indoor housing facilities. (b) “Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation...”

*Comment: How are odors and ammonia levels defined by the USDA, in regard to what is sufficient? How is “well-being” defined?*

- Part 3, Subpart A, Section 3.8. Exercise for dogs. (c)(2) “Dealers, exhibitors, and research facilities, in developing their plan, should consider providing positive physical contact with humans that encourages exercise through play or other similar activities....”

*Comment: How is “positive physical contact with humans” documented and encouraged?*

- Part 3, Subpart A, Section 3.11. Cleaning, sanitization, housekeeping, and pest control. (a) “Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures daily ..... when steam or water is used to clean the primary enclosures, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process....”

*Comment: How do USDA inspectors document if dogs and cats have been removed and/or if they have been harmed, wetted, or distressed due to the cleaning method?*

**REQUEST:** We ask the USDA require licensees to demonstrate compliance when they have made changes to the number, type, or locations of animals used in regulated activities. Specifically:

- Clarify and strengthen regulations by developing new processes, forms, and training so inspectors can quantitatively and qualitatively document compliance or noncompliance of *all standards*.
- Numerous scientific studies document the need for proper enrichment, socialization, and exercise of animals for their health and well-being. We ask the USDA to use these studies to guide their decision-making and incorporate these scientific animal welfare findings into its regulations.

**4. USDA is proposing: *Eliminating the application fee and annual license fee and assessing reasonable fees only for licenses issued (as in the example above, such as every 3-5 years).***

The Animal Welfare Act (Section 2153) states: “The Secretary shall charge, assess, and cause to be collected reasonable fees for licenses issued. Such fees shall be adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed...”

Currently, the application fee for a USDA license is \$10 and the annual renewal fee is on a sliding scale based on revenues and type of license. License fees range from \$20 to \$760. Considering that an animal, such as a puppy, if sold wholesale, could generate \$200 (or more) each or, if sold retail, could be in the *thousands of dollars each*, a license fee of \$40 to \$760 is not a burden on a breeder, broker, auction house, or exhibitor.

To eliminate the fees, as proposed by the USDA, is not a “reasonable fee” as the AWA instructs; nor does such an action take into consideration the type and nature of the operations, such as size.

The USDA has stated it is trying to reduce regulatory burden. How is "burden" defined? Is this burden on the USDA, the licensee, or the citizens and taxpayers who pay for the USDA personnel and/or assume the costs of rescue efforts and veterinary care should animals be harmed? We understand that the funds may be directed to the general fund, but revenues received still benefit taxpayers.

**REQUEST:** We oppose the USDA wanting to eliminate the application and annual licensing fee. Instead, we support raising the application fee and annual licensing fees to more accurately reflect the cost of administering the regulations and meet the definition of “reasonable” and to reduce the burden on taxpayers. In addition to increasing the fees, we ask the USDA to also consider the type and nature of the operations by creating additional categories for Class A and B licensees who have *higher gross sales (above \$100,000) and/or number of animals*.

**5. USDA is proposing: *Requiring license applicants to disclose any animal cruelty convictions or other violations of Federal, State, or local laws or regulations pertaining to animals.***

The Animal Welfare Regulations do not allow initial licenses to be granted if the applicant has been found or is in violation of any Federal, State, or local laws (Part 2, Subpart A, Section 2.11). Further, as stated in Section 2.12, renewal licenses may be terminated for reasons defined in Section 2.11.

Animal Folks had filed a complaint against a Minnesota dog breeder (Rowell, former USDA license number 41-B-0268, located in Cass County) who was suspected of animal cruelty, resulting in an animal cruelty conviction and the seizure of the animals. At the time of the complaints and seizure, this kennel was licensed by the USDA. Other dog breeders in Minnesota, such as Kathy Bauck and Dayna Bell, who violated state animal anti-cruelty statutes, were also licensed by the USDA and were in business during the time of the local investigations and subsequent legal actions.

We agree that applicants must disclose any animal cruelty convictions or other violations of Federal, State, or local laws or regulations pertaining to animals — and if the applicant does not provide accurate and full disclosure, denial of the license must occur.

However, disclosure alone does not address the problem.

As stated, some USDA-licensed facilities in Minnesota have been charged with violations of animal cruelty statutes. These are cases where someone other than a USDA inspector, such as a consumer, kennel employee, or other individual, had access to the facility or the animals to witness the conditions. Evidence was collected by local authorities showing specific violations of state law, and yet often the same violations were not noted in USDA inspection reports.

Example: Photos below are from a Minnesota dog breeder who had been licensed by the USDA. (No revocation process was conducted by the USDA.) The photo on the left shows a dog who had died (unaware by licensee) in an outdoor kennel, forgotten and covered in maggots; photo on right shows mouse floating in water bucket used for drinking by the dogs. (Photos from sheriff investigation.) Not shown is a German Shepherd dog emaciated with her tail ripped off. These are just a few examples of evidence showing maltreatment and violation of standards, and yet none of these animals or conditions were cited in USDA inspection reports. This suggests an enormous disconnect between what is documented by the inspectors and what is seen and documented by other authorities.



While it is understood that USDA inspectors are limited and may not be aware of all incidents at a facility, attempts must be made to more comprehensively document compliance or violations of all standards — unannounced and intermittent inspections should be considered.

The fact that some breeders are operating with a federal license while the facility is in violation of state and/or local laws must be corrected. To better protect animals, changes must be made by the USDA to its licensing procedures to improve animal cruelty reporting processes and interactions between federal, state, and local authorities. Relying solely on the applicant to disclose convictions is not adequate. Assuming that a current licensee will reveal maltreatment is not realistic.

**REQUEST:** We support a requirement for license applicants to disclose any animal cruelty convictions or other violations of Federal, State, or local laws or regulations pertaining to animals. We also ask:

- Procedures and training be established for USDA inspectors and personnel to report suspected or known animal cruelty at regulated facilities to local law enforcement.
- In many states, veterinarians are mandated reporters of cruelty. If a USDA inspector is a licensed veterinarian for a state with animal cruelty reporting laws, he or she is required to report suspected or known cruelty.
- Procedures be created to enhance reporting and tracking of the reports.
- This data be made public so communities can determine if state statutes have been violated.

**6. USDA is proposing:** *With respect to pre-licensing inspections to assess compliance, reducing from three to two the number of opportunities an applicant has to correct deficiencies and take corrective measures before the applicant forfeits his or her application and fee and must reapply for a license.*

We support the reduction of opportunities for the potential licensee to correct deficiencies and take correct measures during pre-licensing inspections.

The USDA asserts that it tries to balance the AWA's "dual, but sometimes competing, goals of protecting both the animals and the businesses that exhibit them" (*USCA Case #16-5073*). We ask that the USDA, first and foremost, prioritize, guard, and protect the welfare of each animal during the pre-licensing process as well as after a license has been granted.

**REQUEST:** We support the reduction of the number of times given to an applicant to correct deficiencies and corrective measures. We also ask the USDA to clarify its goals and duties pertaining to the protection of a business versus the promotion and welfare of the animals, which may guide decisions and regulations such as this. We ask that the USDA more clearly define the husbandry, knowledge, background, and experience necessary, as required in Part 3, Subpart A, Section 3.12 in the Animal Welfare Regulations, to engage in these types of businesses.

**7. USDA is proposing:** *Closing a loophole in the current regulations that allows individuals and businesses, although they do not operate as bona fide exhibitors, to become licensed as such in order to circumvent State laws restricting ownership of exotic and wild animals to AWA-licensed exhibitors.*

**REQUEST:** We support the closure of loopholes that enable individuals and businesses to circumvent state laws that restrict ownership of exotic and wild animals.

**8. USDA is proposing:** *Strengthening existing prohibitions to expressly restrict individuals and businesses whose licenses have been suspended or revoked from working for other regulated entities, and prevent individuals with histories of noncompliance (or orders suspending or revoking a license) from applying for new licenses through different individuals or business names.*

In 2016, Animal Folks filed a complaint with the USDA-APHIS against two dog breeders located in Morrison County, Minnesota, requesting an investigation of a Consent Order written and agreed to by the USDA. One of the breeders was being investigated by the USDA for a history of violations of the AWA; however, this breeder cancelled her USDA license during the APHIS enforcement process and the investigation was then stopped.

The kennel was flipped to the breeder's daughter-in-law who was granted a new USDA license *on the same day* as the license cancellation and *on the same day* of the Consent Order. Further, no restrictions were placed on the Consent Order prohibiting the original kennel owner from working at the newly-licensed kennel, and the original owner was allowed to reapply for a license in just three months following the Order, essentially wiping out any prior violations. This breeder had also violated a local law by exceeding her limit of adult dogs at the kennel in four separate years.

Further, renewal licenses had been granted continuously for decades to the original breeder even though violations and warnings had been issued multiple times.

The incident above involved current regulations noted below:

- do not allow circumvention of the law for initial licenses (Subpart A, Section 2.11);
- do not allow initial licenses to be granted if the applicant has been found or is in violation of any Federal, State, or local laws (Subpart A, Section 2.11); and
- allow for termination of a renewal license at any time for any reason that an initial license may be denied (Subpart A, Section 2.12).

As of this date, no action has been taken on the complaint filed by Animal Folks in regard to these USDA-licensed breeders. This story illustrates the need for stronger enforcement of existing law by the USDA as well as strengthening current regulations when it involves family members, friends, and business associates in attempts to circumvent the law.

**REQUEST:** We support the full enforcement of the Animal Welfare Act and the strengthening of prohibitions to expressly:

- restrict individuals and businesses whose licenses have been suspended or revoked from working for other regulated entities;
- prohibit individuals and businesses from using other individual names or business entries to apply for a license;
- close the loophole that allows a licensee to cancel his or her license during a suspension or revocation process in order to stop the enforcement process and circumvent the law.

**9. USDA is proposing: *Streamlining the procedures for denying a license application, terminating a license, and summarily suspending a license.***

The initial license application form and the renewal license form states:

"...I hereby acknowledge receipt of and agree to comply with all the regulations and standards in 9 CFR, Subpart A, Parts 1, 2, and 3. ..."

Licensees sign this form for “self-certification” and yet many, as documented by inspection reports, do not comply with the regulations and standards. The USDA still grants renewal licenses, even though the Agency knows the licensee is not in compliance. We believe these actions by the USDA are in direct violation of the Animal Welfare Act and is the essence of arbitrary and capricious decision-making.

Example: Animal Folks filed a complaint against S. Glenice Viken (41-A-0298; located in Roseau County, MN) with the USDA, showing repeated violations of the Animal Welfare Act over many years. (A similar complaint was also filed with the county sheriff, reflecting violations of Minnesota's animal anti-cruelty statutes.) As of this date, this breeder is still licensed by the USDA and is still operating. It is assumed that each year when her license is renewed, this breeder has continued to sign the renewal form that states she is in compliance when this is not accurate.

We agree new regulations must be established to streamline how the USDA-APHIS denies, terminates, or suspends a license — including “speeding up” the process and allowing other legal actions to occur so animals are not languishing at noncompliant kennels for months or years. Streamlined procedures are especially needed when a licensee has repeatedly violated the Animal Welfare Act (i.e., allowing a licensee to commit and then “fix” the same violations year after year).

Section 2149 of the Animal Welfare Act provides the Secretary the ability to temporary suspend a license, provide notice and hearing, and revoke a license:

- (a) “If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sales subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person’s license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.”

We assume the USDA chooses to suspend a license in order to halt a licensee’s operations and his/her ability to conduct interstate commerce and, therefore, provide an incentive to force compliance. While this may work as an enforcement action, we strongly urge the USDA to revise the regulations for heightened protection of the animals. Specifically, we ask that regulations be strengthened to clearly allow and instruct USDA inspectors to enter the property and monitor conditions and the health and well-being of all animals during the suspension period. Again, the priority must be the humane treatment of the animal at all times.

The USDA is also granted authority to impose fines and fees for failure to comply with the Animal Welfare Act. Increasing financial penalties for violations may provide further incentives for compliance. We are unclear as to what percentage of the fines/fees are actually collected — i.e., 20%, 50%, or 100%? We ask the USDA to review its collection processes to ensure any and all penalties are being paid.

Further, the language in Part 4 of the Regulations (Rules of Practice Governing Proceedings Under the Animal Welfare Act) appears to differ slightly from 7 C.F.R. Section 2149. We ask that the USDA revise Part 4 to accurately reflect the statutory language.

**REQUEST:** No license should be automatically renewed. For the welfare of the animals, the burden must be placed on the licensee to prove why he or she should be reinstated. We ask the USDA to:

- Establish new regulations where the licensee must demonstrate (i.e., through an inspection) that he/she is in compliance with the standards of the Animal Welfare Act *prior to having his/her license renewed*. These procedures are especially needed when a licensee has repeatedly violated the Animal Welfare Act, as documented through inspections.
- Revise regulations, where needed, in regard to suspension of a license to ensure all animals on the property are cared for during the suspension period.
- Create incentives to compel faster compliance by imposing higher financial penalties; make certain penalties are being collected in a timely manner.
- Revise Part 4 of the Regulations to reflect authority granted in 7 C.F.R. Section 2149.

**10. USDA is asking: *Do you have any other specific concerns or recommendations for reducing regulatory burdens involving the licensing process or otherwise improving the licensing requirements under the AWA?***

One concern we have seen with the issuing of licenses and enforcement of standards is a lack of clarity of certain terms. For example, the Animal Welfare Act and the Regulations uses terms such as health, humane, and well-being and yet these terms are not defined in the regulations.

Examples of some terms used in the Regulations:

- animal welfare – as stated in title: Animal Welfare Regulations
- humane –
  - Part 1, Section 1.1. “Euthanasia means the humane destruction of an animal..”
  - Part 1, Section 1.1. “Standards means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals...”
  - Part 2, Subpart C – Research Facilities, Section 2.32 (c)(1) “Humane methods of animal maintenance and experimentation...”
  - Part 2, Subpart H, Section 2.100 (a) “...shall comply in all respects with...the humane handling, care, treatment, housing, and transportation of animals.”
  - Part 2, Subpart H, Section 2.11 (b) “...shall comply in all respects with...the humane transportation of animals in commerce...”
- health –
  - Part 1, Section 1.1. “Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.”
  - NOTE: The World Health Organization defines health as “a complete state of physical, mental, and social well-being, and not merely the absence of disease or infirmity.”

- health and well-being –
  - Part 1, Section 1.1 “Positive physical contact means the petting, stroking, or other touching, which is beneficial to the well-being of the animal.”
  - Part 2, Subpart C, Section 2.33 (b)(3) “Daily observation of all animals to assess their health and well-being...”
  - Part 2, Subpart D, Section 2.40 (b)(3) “Daily observation of all animals to assess their health and well-being...”
  - Part 2, Subpart I, Section 2.131 (d)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.”
  - Part 2, Subpart I, Section 2.131 (e) “When climatic conditions present a threat to an animal’s health or well-being, appropriate measures must be taken....”
- suffering and distress —
  - Part 2, Subpart I, Section 2.129 (a) ...”adequate care be given to alleviate the animal’s suffering or distress...”
- behavioral stress —
  - Part 2, Subpart I, Section 2.131 (b)(1) “Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.”
- experience and knowledge —
  - Part 2, Subpart I, Section 2.131 (a) “all licensees who maintains wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.”

Part 3 – These terms and other terms are also found throughout Part 3 (Standards), including “husbandry practices and care...” and “individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others.” (Part 3, Subpart A, Section 3.12)  
 How does the USDA currently define the terms, and based on what data?

**REQUEST:** We ask that the USDA provide definitions for specific terms used in the Animal Welfare regulations so that the public has a clearer idea as to how the USDA interprets language, which, in turn, guides its decision-making. We urge the USDA to rely on new scientific studies and credible input from qualified veterinarians and experts in the care of animals, especially as it applies to the health and well-being of specific species, for specific purposes (at auction or for research), and in specific facilities (mass production kennels or single exhibits). We ask the USDA to incorporate these studies and data in their decisions and training, and not rely on “industry standards.”

**11. USDA is asking: *Do you have any other specific concerns or recommendations for ... improving the licensing requirements under the AWA?***

Subpart D of Part 2 (Regulations) describes requirements for attending veterinary and adequate veterinary care. Section 2.40 specifically states: “(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include: (2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries...”

We ask that the USDA strengthen this regulation to include genetic testing as a method to prevent disease and injury. Genetic testing of adult intact animals used for the purpose of breeding will protect animals from grave discomfort, deformity, and unnecessary death.

Without such testing, consumers are often sold genetically flawed puppies from commercial breeding facilities — with problems such as hip and elbow dysplasia, cardiac disease, thyroid problems, and Degenerative Myelopathy (DM) — resulting in high medical expenses and emotional trauma for both humans and animals. DM, in particular, known as the canine form of ALS, has a devastating and terminal impact on the animal and humans caring for the animal, including lifting and caring of the animal to assist with mobility and extra cleaning to prevent pressure sores and urinary infections.

**REQUEST:** We ask the USDA to include a requirement for genetic testing of all adult intact animals used for breeding at licensed facilities, and the disclosure of this testing to the public.

**12. USDA is asking: *Do you have any other specific concerns or recommendations for ... improving the licensing requirements under the AWA?***

The role of the attending veterinarian and the veterinary care provided are critical to ensuring the health and well-being of each animal in a USDA-licensed facility. However, through our research of inspection reports as well as through consumer stories and news reports, it is apparent that animals within many USDA-licensed facilities develop illnesses, diseases, and injuries — that harm the animals confined in the facilities or if sold and passed on to consumers.

The welfare of each animal is the priority and, we hope, is the guiding principle for decision-making. As such, we ask the USDA to strengthen current regulations to provide attending veterinarians with clearer authority and direction in their duties. Examples from Part 2, Subpart D, Section 2.40:

- (a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

*Note: Define “adequate.”*

- (1) “.....regularly scheduled visits to the premises of the dealer of exhibitor...”

*NOTE: Define what is “regular” and what is allowed of the veterinarian when making a “visit” (i.e., Is visiting the kennel just once a year sufficient to ensure the health and well-being of each animals. Should every animal be examined each year? How can the regulations be strengthened to ensure the veterinarians have proper access to all animals?)*

- (b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

- (2) “The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care...”

*NOTE: How are methods evaluated and documented?*

- (3) “Daily observation of all animals to assess their health and well-being; ... *Provided, however...* That a mechanism of direct and frequent communication is required so that timely

and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian...”

*Note: How is this measured and documented — including the mental health of the adult animals confined, which reflects behavior and well-being?*

(4) “Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and...”

*Note: How is this measured and documented? Are inspection processes in place to ensure that a person not licensed as a veterinarian is not conducting surgical procedures at the kennel?*

**REQUEST:** Some inspection reports will document untreated injuries, diseases or illnesses with animals — and the need for and/or follow up of veterinary care. Rarely, if ever, however, do we see items included in inspection reports that document some of the specific questions cited above. We ask that the USDA fully review and strengthen all requirements of attending veterinarians in the care of animals and the veterinary care received by each animal, including communication, guidance, and procedures that veterinarians are required to provide to kennel owners and personnel.

### **13. USDA is asking: *Do you have any other specific concerns or recommendations for .... improving the licensing requirements under the AWA?***

As defined in Subpart G, Section 2.78, health certification and identification are required by the Animal Welfare Regulations. For years, Animal Folks has reviewed numerous health certificates for animals sold and shipped across state lines.

We have seen numerous USDA inspection reports showing the lack of proper record-keeping by licenses when detailing where an animal was obtained from or shipped to. We have also seen and submitted complaints in regard to puppies shipped to false addresses, and certificates signed in violation of Subpart G, Section 2.78 (a)(1) (dog, cat, or nonhuman primate inspected not more than 10 days prior to the delivery of the animal...) and in violation of Subpart I, Section 2.130 (minimum age requirements for transportation).

Further, numerous news reports and one recent news article (*“Pet-store puppies linked to bacterial outbreak among people in 7 states, CDC says”* – Washington Post, 09-11-17) document sickly animals that were sold to consumers. We recognize that diseases and illnesses can originate at the pet stores or from the breeding kennels; these diseases and illnesses must be minimized.

**REQUEST:** Regulations pertaining to the health certificates and the role of the veterinarian who examines the animal(s) and signs the certificates, such as examples cited above, must be reviewed and strengthened to ensure higher compliance and care of animals.

- We ask the USDA to consider expanding the veterinarian’s examination of the animal to include more than “any infectious or contagious diseases” as stated on the health certificate. Part 2, Subpart G, Section 2.78 (a)(2) states: “...when so inspected, the dog, cat, or nonhumane private appeared to the licensed veterinarian to be free of any infectious disease or physical

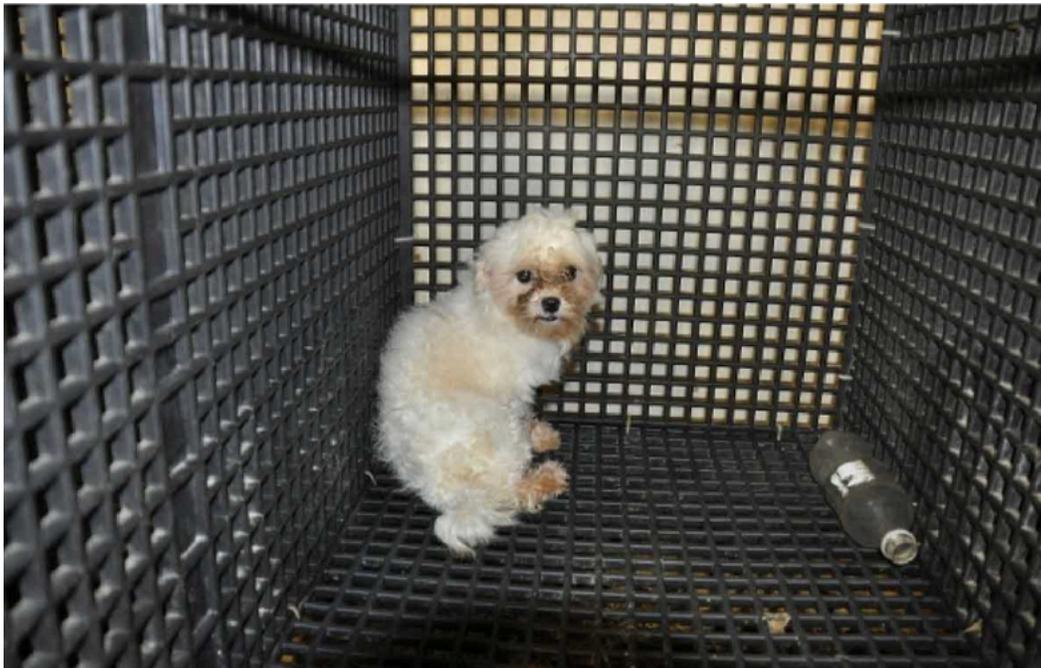
abnormality which would endanger the animal(s) or other animals or endanger public health.”  
We ask that the form be revised to include physical abnormalities and, if possible, other physical and behavioral/mental conditions that impact the health and well-being of the animal.

- If false, fictitious, or fraudulent statements are made on this document by the licensee or attending veterinarian, we asked this be reported to authorities and full penalties imposed.

**14. USDA is asking: *Do you have any other specific concerns or recommendations for ... improving the licensing requirements under the AWA?***

Confiscation of animals is allowed under Part 2 of the Animal Welfare Regulations (Subpart I, Section 2.129). Animal Folks strongly believes that regulations must be strengthened to increase and streamline the confiscation of animal(s) during the license revocation process or when animals are seen suffering during an inspection.

When a license is revoked (due to the individual or business not complying with the Animal Welfare Act), rarely are animals confiscated by the USDA; instead, the licensee is often allowed to dispose of the animals as he or she chooses, which could mean killing the animals or selling them to another breeder or dealer or at auction with conditions that may be the same or worse as the offender. No longer should licensees, who have created conditions that endanger animals, be allowed to keep and then sell animals to recover their "inventory" costs.



Above photo is from a former USDA-licensed facility in Minnesota (Ted Johnson, former license number 41-A-0466). After years of chronic violations, this breeder's license was revoked in 2015; however, as with other breeder license revocation, the dogs were not confiscated.

As stated in the Settlement Agreement between this breeder and the USDA: "[Breeder] agrees to sell, donate, and/or transfer ownership and possession of any dogs on his premises, regardless of ownership, within twelve (12) weeks from the date the [breeder] signs this Settlement Agreement."

This language is standard in many of the settlement agreements between breeders and the USDA, when a license is revoked. We ask that the welfare of each animal be prioritized, and who and how the animals are disposed of be reconsidered.

Credible animal welfare nonprofit organizations now have procedures in place to assist in the seizure, care and treatment, sheltering, and rehoming of animals. We ask that the USDA reach out and build efforts to improve its confiscation efforts. As stated in Part 2, Subpart 1, Section 2.129, animals can be:

"(c)(2) Placed with persons or facilities that can offer a level of care equal to or exceeding the standards and regulations, as determined by APHIS, even if the persons or facilities are not licensed by or registered with APHIS."

Examples of other Minnesota breeders where licenses were revoked and no animals were confiscated are below and on the following pages.



Above: Former USDA-licensed breeder Deloris Richards in Lyon County, MN (former license 41-A-0016). License revoked, but no animals were confiscated - breeder allowed to dispose of the animals. Above photo shows fly strike on the ear of the dog due to lack of pest control; this is one of many dogs at the kennel with untreated bloody sores needing medical attention. Source: USDA.



Above: Former USDA-licensed breeder Kathy Bauck in Otter Tail County, MN (former license 41-B-0159). Notorious case with breeder convicted of animal cruelty. License terminated, but no animals were confiscated - breeder allowed to dispose of the animals. Hundreds of dogs at kennel. Photo above shows pregnant, emaciated dog. Numerous photos, including a video, document conditions. Source: CAPS.



Above: Former USDA-licensed breeder: Ken Schroeder in Faribault County, MN (former license 41-B-0017). Breeder bred and sold animals to medical institutions. License revoked, but no animals were confiscated. Photo above shows barrels where animals were kept. Source: USDA inspection.



Above: Former USDA-licensed breeder Dayna Bell in Dakota County, Minnesota (former license 41-B-0265). Breeder was convicted of 13 felony counts of animal cruelty (per state law). No animals were confiscated by the USDA. Further, the USDA submitted a letter to the breeder telling her to dispose of the animals, which prevented the state from seizing animals following the conviction. Source: USDA.

**REQUEST:** No longer should the licensee, as offender, be allowed to dispose of the animals when his or her license is revoked. When a licensee has violated the law to the point of revocation, which most likely means animals have been harmed at some point, it is absurd to allow this person to continue to “profit” from the animals through selling the animals. We urge the USDA to, at all times, prioritize the welfare of each animal by:

- Strengthening the regulations to support confiscation of animals for their protection.
- Enhancing training of inspectors as part of these actions.
- Building alliances with qualified animal welfare organizations who have credible processes in place to assist with and coordinate the seizure, documentation, and rehoming of large numbers of animals.

## 15. Data privacy

We ask that the USDA-APHIS revisit its mission and duties to emphasize transparency in its actions and those of its licensees. The initial removal of animal welfare documents, including inspection reports and enforcement actions, and now redaction of considerable data have hurt efforts to protect animals and to hold businesses and the USDA accountable. Regulations are only as good as those who are enforcing the rules; without public access to monitor governmental actions, the public (and animals) lose.

Thank you for the opportunity to submit these comments.

The fact that animals are confined and used commercially for a variety of purposes demands that each and every animal receive humane care and treatment, as defined by the Animal Welfare Act (Section 2131):

“..to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment...”

Unfortunately, the current regulatory schemes have failed to provide this level of protection. As documented through lawsuits, news reports, and public comments, horrific cases of animal neglect and cruelty still exist. We are thankful that the USDA is reviewing the Animal Welfare Regulations, and we hope this review results in meaningful change.

Respectfully,

Animal Folks

[www.animalfolks.org](http://www.animalfolks.org)

1043 Grand Avenue, #115

St. Paul, MN 55105