



INPUT REGARDING USDA ANIMAL CARE (AC) STRATEGIC PLANNING EFFORTS

Submitted by: Missouri Alliance for Animal Legislation

It must be emphasized that these comments are addressed at the system and current policies of leadership within AC. The Alliance fully acknowledges the commendable efforts of many field personnel who are performing a difficult job and are consistently citing deficiencies within substandard and problem facilities. The Alliance, however, does not support policies that fail the animals, the public, and the diligent inspectors. AC owes it to the animals, the public, and its field staff, that they ensure policies that properly support the mission of the agency in its implementation of the Animal Welfare Act.

Most important goals that Animal Care should be working towards over the next 5 years

1) **Transparency & Candor.** There is a general consensus among animal welfare advocates that USDA's Animal Care (AC) officials speaks to the audience at hand and tells them whatever they want to hear. AC needs to communicate honestly and forthrightly with all interested parties. It is highly recommended that AC, going forward, record all presentations with regulated entities as well as with animal welfare advocates and place such presentations online or at least make them available via FOIA. Such transparency will ensure that all interested parties are receiving the same message. *AC needs to establish trust, not only with animal welfare advocates, but with the regulated community, who is equally cynical and distrustful of AC.* AC will never achieve its goals if there are perceptions, real or imagined, of duplicitous behavior among leadership.

2) **Place Focus on "Animal Welfare."** The stated purpose of the Animal Welfare Act is to ensure that animals "for use as pets are provided humane care and treatment." The Act was not enacted by Congress for the purpose of increasing profits for agricultural businesses. Licensees are not your "customers" and you should cease classifying them as such. Licensees are regulated entities that are being regulated to ensure the humane care and treatment of the animals that they are utilizing in the course of their business.

The following statements by senior AC officials are troubling to the public as well as to its own field staff and seem to indicate that the current focus of AC leadership is on serving the financial interests of businesses at the expense of the welfare of the animals the Act was intended to help.

We need to enable breeders to sell their dogs to pet stores...citing violations is an impediment to such sales.

If at any time a non-compliant item has the potential of affecting your business, please call our office immediately and let us know.

3) **Return to Enforcement Mode as Initiated in 2011.** In 2010, the Office of Inspector General established that "Animal Care's enforcement process was ineffective in achieving dealer compliance with the AWA." The OIG Audit reported that "the agency chose to take little or no enforcement actions against violators." OIG declared that

“This occurred because the agency believed that compliance achieved through education and cooperation would result in long-term dealer compliance.”

In response to the OIG findings, AC officials announced in 2011 that their days of educating breeders in an effort to gain compliance with the AWA were over and that the Agency was now in enforcement mode. Prior to such change in policy, the Department’s emphasis for 40 years was on educating breeders in the hopes that education would result in compliance. The new enforcement policy initiated in 2011 brought immediate results with numerous chronic substandard breeders ceasing operations. The results in Missouri were nothing less than remarkable with literally hundreds of deficient breeders exiting the business of raising dogs.

After remarkable success in bringing breeders into compliance with the AWA, as well as eliminating substandard breeders, AC leadership has unfortunately returned to education mode as indicated by the following statements by senior AC officials.

*Last year [2013], for instance, our Agency started a pilot program to help facility owners...**by teaching them how to identify areas where they are not in compliance with the AWA**. We then **discuss with them** the realistic ways they can change their practices to be in compliance.*

*We will not cite minor deficiencies; we will call them **teachable moments**.*

In response to complaints from breeders about state and local laws restricting purchases of puppies from breeders with non-compliant items, *“We hear your concerns; **we will not be documenting minor items**.”*

While AC recently admitted (June 16, 2015) that their education policy did not work with chronically substandard facilities, Animal Care Strategic Plan 2015-2019 states that AC plans to “Supplement the traditional inspection process with extensive **consultation for struggling facilities**.”

AC indicated on June 16 that they cannot continue to do the same thing over and over again and expect different results, yet that is exactly what it is planning on doing by returning to their 40 plus year history of trying to “educate” breeders into compliance.

4) Promulgate Humane Standards of Care. The AWA states that the “Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers.” Under existing standards of care, an adult breeding dog can be cramped in a cage only six inches longer than the dog itself for its entire life, and confined in a cage with wire flooring, and kept locked away in a barn never seeing the light of day with no access ever to the outdoors for fresh air or exercise. **The current standards of care are only “survival” standards** and in no way ensure the humane treatment of the animals.

Recently, several states have increased their standards of care to ensure humane treatment. Remarkably, these improved standards of care also enhanced enforcement efforts as many scofflaw breeders, who had no interest in complying with humane standards of care, consequently ceased operations. With current USDA standards of care so marginal, when conditions deteriorate, the treatment of the animals rapidly decline as there is no margin of safety. Under current standards, substandard breeders are allowed to waver in and out of compliance, which results in the inhumane treatment of the animals.

Most significant concerns about the future direction of the AC program in APHIS

Animal Care actively assisting breeders in the circumvention of state laws and local ordinances

Several states, counties, and municipalities have enacted laws and ordinances prohibiting pet stores from purchasing puppies from breeders who have a “direct” or a certain number of “indirect” deficiencies documented on their most recent USDA inspection reports. These laws were aimed at protecting consumers as well as ensuring that their communities were not contributing to cruel puppy mills. AC officials subsequently informed commercial

dog breeders that AC was aware of how such laws and ordinances were negatively affecting their businesses. In response, starting in the Fall of 2013, AC instituted a new policy referred to as “**teachable moments**.” AC argued that citing violations is an impediment to the sale of puppies at pet stores. In an effort to enable breeders to continue to market their puppies in jurisdictions with such restrictions, AC announced to breeders that it would no longer document “minor” non-compliant items on inspection reports.

It should be emphasized that AC has never defined “minor” nor stipulated exactly how many “minor” non-compliant items would be ignored by inspectors. Further, AC informed the breeders that if at any time a non-compliant item has the potential of affecting your business, please call our office immediately and let us know. AC stated that they would have an inspector out ASAP to perform another inspection so that the breeder could have a clean inspection report to allow them to bypass any law or ordinance interfering with their business.

Regrettably, this is just another example of how AC is communicating differently with regulated entities than how they communicate with the public. When initially called out on this new policy to help breeders circumvent state and local laws, AC emphatically denied having a “teachable moment” policy. After months of contesting any knowledge of such a policy, AC now admits the policy, but alleges that it has nothing to do with circumventing local laws or ordinances but merely coincidental with the passage of such legislation.

Ironically, these state laws and local ordinances are being enacted due to AC’s failure to promulgate humane standards of care and to adequately enforce its existing regulations. Instead of undermining local legislation aimed at addressing inhumane breeding situations, AC should own up to its responsibility of adequately enforcing and implementing the AWA so states and local municipalities do not have to bear this responsibility and do AC’s work for them.

Set of activities or particular function that AC should be doing that it is currently not doing

1) Record and make accessible to the public all presentations with regulated industries and other interested parties. Such a policy would help restore trust by ensuring that AC is communicating a consistent and identical message to all interested parties. Too often, animal welfare advocates are being told that AC’s sole focus is on animal welfare and it is their highest priority while dog breeders receive the message that AC’s sole focus is on education and helping them market their puppies. At a meeting with dog breeders in 2011, **an AC official actually apologized to the breeders for having to enforce the regulations, blaming it on the Office of Inspector General and pressure from Congress.** These recordings should include all presentations with the regulated industry including those sponsored by industry groups, trade associations, dog breeder associations, and those sponsored by AC. These recordings should include all Q & A sessions accompanying the presentation.

These recordings would help to ensure a common message and at the same time assist in a wider communication of the presentation to the industry and to the public. Many breeders, due to the obligations of their breeding operations, and the amount of travel time, cannot attend trade meetings and association meetings, as well as USDA sponsored conferences. Likewise, many state and local animal welfare groups that routinely deal with issues related to the Animal Welfare Act cannot attend national or even regional meetings that AC conducts with the large national animal welfare groups. Industry and animal welfare groups could also share such recorded presentations at regional and local gatherings. **Making these presentations available online or via web casts would be greatly beneficial in communicating AC’s message to substantially many more groups and individuals. This would also ensure openness and transparency and result in AC communicating a more honest and consistent message.**

2) Support field staff in the performance of their duties. Informing breeders that non-compliant items will now be “teachable moments” and telling breeders that AC will be “educating” and “discussing” with them on how to come into compliance, and that AC will be “working with breeders” to come into compliance, and “you only need to make a good faith effort,” only sends the wrong message. The breeders interpret such remarks to mean that

they should not be cited for any non-complaint item regardless how egregious it might be or how it affects animal welfare. As a result, the inspection process has frequently become an argumentative and at times an antagonistic experience. In turn, some inspectors are simply refusing to cite non-compliant items. It is not surprising then that at a recent dog breeders meeting, breeders were openly bragging that USDA has “caved” and documenting far fewer items than in the past. Field people have expressed their frustrations over the fact that **AC is in a constant pendulum going back and forth between education mode and enforcement mode.** This decreases morale among staff and gives licensees a reason not to take AC seriously and diminishes breeders’ compliance with AWA.

3) Perform re-inspections of breeders with direct non-complaint items in a timely manner. While the Department has a policy of re-inspection within 45 days, this is often not accomplished. The reason frequently provided for failure to do so is that USDA does not have adequate personnel. While we are understanding of budgetary and personnel restraints, at the same time, AC staff is informing breeders that if they have a non-compliant item on their most recent inspection report that is “affecting their business” AC will send out an inspector ASAP. ***Never mind that there are ongoing violations directly affecting the welfare of the animals that are being ignored due to insufficient personnel. The urgency appears to be on helping breeders circumvent state laws and local ordinances.*** This is a perfect example of why animal welfare is perceived to be a low priority for AC.

4) Cite all items dealing with lack of veterinary care and affecting the health and welfare of the animal as “direct” items of non-compliance. A review of hundreds of online inspection reports reveals that a lack of veterinary care is frequently being cited as “indirect.” In many cases, this occurred even when dogs were suffering with injuries or illnesses and not receiving veterinary care. Some lack of veterinary care items were cited as “indirect” even though it was noted that it was a “repeat” non-compliant item. In addition, substantial sanitation issues and major structural deficiencies should be cited as “direct” as they pose a grave risk to the animals on the premises. A recent review of inspection reports revealed an “indirect” for dogs housed outside without any bedding in minus one degree weather. *Ironically, this breeder is suing to overturn a local ordinance that restricts his ability to sell his dogs.* A failure to have a current “program of veterinary care” should also be cited as a “direct” item as it exhibits a total disregard for the welfare of the animals on the premises.

Since AC is in education mode and is failing to cite “minor” non-compliant items, it is even more critical that all items related to the health and welfare of the animal be interpreted as “direct” non-compliant items.

5) Cite all instances of direct non-compliance as separate non-compliant issues. In other words, if 10 dogs are suffering from lack of veterinary care, it is not acceptable to cite one direct item of non-compliance. These are 10 individual dogs that are suffering. There should be a separate violation cited for each individual animal.

6) Follow-up on substandard breeders that relinquish their licenses. While we commend many of AC’s field people for the overall excellent job they are performing in documenting violations at problem and substandard breeders, we recommend that AC perform follow-up on such facilities when they surrender their licenses, especially those that have been consistently out of compliance. It is apparent that many facilities that have chronic violations are merely surrendering their licenses to avoid scrutiny by USDA and then continue to operate without a license. Some of these facilities had dozens of breeding dogs, and one in particular in Missouri, had 700 breeding dogs, and yet there was no action taken against this breeder for continuing to breed and sell puppies after he surrendered his license. **One ACI recently admitted that once chronic violators surrender their license, “we walk away.”** There needs to be some type of follow-up on such substandard breeders to ensure that they are not allowed to surrender their licenses and continue regulated activity without any oversight.

7) Assess penalties for operating without a license. In conversations with unlicensed breeders, we consistently hear, “why should I obtain a license, the worst thing that can happen to me is USDA sends me an application in the mail.” USDA needs to aggressively deal with unlicensed breeders to send a message that you cannot continue to operate without a license until USDA finds you and then they send you an application.

8) **Assess penalties for failing to obtain a license under the new Retail Pet rule.** There appears to be no consequences for facilities that refuse to apply for a license. AC instead is trying to “educate” breeders into applying for a license. **Breeders are once again being coddled and told that AC “intends to work with anybody that makes a good faith effort.”** The breeders are interpreting such a message to mean they should request a licensing packet as making a good faith effort and there is no need to follow-up and actually apply for a license. The compliance with the new Retail Pet rule is abysmal. AC estimated that there would be 2,600 to 4,600 facilities that would be required to be licensed under the new rule and yet, so far, only 271 have applied for a license.

9) **Report findings of abuse and neglect to authorities with responsibility for investigating and enforcing animal cruelty statutes.** While it is commendable that such reports are being forwarded to the state veterinarians, such officials, in most states, do not have the authority to investigate and/or prosecute for animal abuse and neglect. It would be extremely advantageous if AC could identify the appropriate agency in each state to accept such reports. Most states have humane societies or SPCA’s that investigate allegations of abuse and neglect. These complaints need to be expedited as efficiently as possible to assure timeliness in case search warrants are needed by the appropriate authorities.

10) **Seek the relinquishment of dogs in stipulation agreements.** When breeders consent to terminate their businesses, it would be advantageous to stipulate that the dogs be surrendered to non-profit shelters or rescues either directly or via USDA. These dogs, in many instances, have suffered long-term neglect and need to be rehabilitated and have an opportunity to be placed in a loving home environment – not merely sold off at auction and confined to a system that has exploited them in the past. The Missouri Department of Agriculture has employed this strategy successfully for a number of years. Examples of such settlement agreements or consent judgements are available upon request.

Set of activities or a particular function that AC is doing currently, that it should stop doing

Cease “Teachable Moments” Policy - Education has been a failed policy on the part of the Department since the passage of the AWA and subsequent amendment in 1970 to cover dogs for pets. With the exception of a period from approximately 2011-2013, the Department has been educating breeders for 45 years with limited success. The results from 2011 – 2013, when AC was in enforcement mode, and hundreds of substandard breeders closed down, is clear evidence that enforcement works, in contrast to years of education which only allowed these same problematic breeders to flourish.

One need only look at the failure of Animal Care’s “Voluntary Compliance Visits” which are part of AC’s education efforts. These inspections were established to help educate the breeders with a promise that no violations would be cited during the educational visit. Yet, a very minute percentage of breeders ever took advantage of this offer. Of those few breeders that did request a “Voluntary Compliance Visit,” over half of them used the visits as an opportunity to engage in an argument with the inspector over how their way of doing things is better than USDA’s regulations. Even the majority of breeders that attend AC’s Canine Care Workshops only come to argue over the regulations. These confrontations occur as well at other meetings where AC staff interacts with breeders. Consider the hostility exhibited by breeders at a meeting with AC staff last year in Moberly, Missouri. It should be abundantly clear that the majority of breeders have no interest in education and any attempt to do so will be used as an excuse not to comply with the AWA. Regrettably, Animal Care Strategic Plan 2015-2019 indicates it will continue to “facilitate outreach to dog breeder and dealer communities, encouraging education and discussion in more non-formal environments...” even though such outreach and educational efforts has met with dismal failure.

While AC argues that there are over 100 pages of regulations for breeders to become familiar with and comply with, in fact, there are only 9 pages of regulations on the standards of care for dogs. These items and required paper work can be more than adequately addressed in the pre-licensing inspections.

These teachable moments - similar to the "Voluntary Compliance Visits" - are resulting in argumentative and confrontational inspections. Unfortunately, the "teachable moments" is being interpreted by the breeders as no non-compliant item should be cited if it is affecting their business. The "teachable moments" policy is only educating the breeders on another tactic to use to intimidate their inspector.

This is especially true due to AC assuring the breeders that they will assist them if any non-compliant item is "affecting their business." The breeders naturally assume then that such a policy will include all non-compliant items that are affecting their business and the inspectors should not be documenting any deficiencies on their inspection reports.

"Teachable moments" has also resulted in inconsistent inspections which results in increased resistance to compliance with the Act. There are no established criteria on what is a "minor" non-complaint item. There is also no specified number of "minor" items that can be ignored. All of this leads to arbitrary decisions by the inspector and results in inconsistent inspections.

More distressing is the fact that it sends a message to the breeder that they need not concern themselves with the maintenance of their facility and the care of their animals as there is now latitude and flexibility in complying with the regulations.

It should be emphasized that no non-compliant item is "minor" as all of the regulations are addressed at benefitting the welfare of the animal. While some violations, no doubt, pose a more immediate or serious threat to the welfare of the animal, labeling certain non-compliant items as "minor" and "not deserving of documentation" minimizes the importance of the regulations and discourages compliance with the Act.

The best way of educating the breeders is a citation AND an explanation on why the item is important to ensure animal welfare. Merely discussing the item without any documentation is teaching the wrong lesson and sending the wrong message to the breeder.