

Q's & A's on the U.S. Department of Agriculture's (USDA) Authority Under the Animal Welfare Act and the Animal Care Program

Q. What is the Animal Welfare Act (AWA)?

A. The AWA is a Federal law that Congress passed in 1966 and amended in 1970, 1976, 1985, and 1990 to protect warmblooded animals used in biomedical research, bred for commercial sale, exhibited to the public, or commercially transported. The law requires **minimum** standards of animal care to be established and enforced.

In 2000, Congress passed new requirements through the Aviation Investment and Reform Act for reporting animal incidents covered by the AWA to the U.S. Department of Transportation (DOT). The Act also calls for training of airline employees regarding AWA requirements. Regulations to enforce this part of the Act have not yet been developed by DOT.

Q. Who enforces the AWA?

A. The Secretary of Agriculture is charged with enforcing and administering the AWA. This includes developing and enforcing regulations, issuing licenses, conducting inspections and investigations, and overseeing administrative law cases, including assessing fines and suspending or revoking licenses.

The Secretary has delegated the authority to develop and enforce regulations, license and register facilities, and conduct inspections and investigations to the Animal and Plant Health Inspection Service (APHIS). The Animal Care (AC) program manages AWA activities and receives support from other APHIS program areas to conduct investigations and develop regulations.

Q. Where do the AWA regulations come from? How does USDA interpret the AWA?

A. The Act gives USDA authority to set and enforce standards and ensure the care and humane treatment of covered animals. The regulations establish

the specifics of how USDA enforces the law by defining terms, setting licensing and registration requirements, and setting standards of care.

When a regulation is created or changed, USDA may notify the public that it is considering new or changed rules, request public comments, and publish proposed and final rules. These notices are published in the *Federal Register*. Links to the regulations can be found on the AC publications Web page at

<http://www.aphis.usda.gov/ac/publications.html>.

Recently published rules and notices can be found on the APHIS Web page at

www.aphis.usda.gov/ppd/rad/webrepor.html.

AC also creates policies on how it enforces the regulations. USDA often publishes in the *Federal Register* notices about new or changing policies to keep the public informed, even though the notices are not required. These policies are available on the AC Web site at

www.aphis.usda.gov/ac/polmanpdf.html.

Q. Why does USDA settle AWA cases out of court?

A. Offering facilities the option of settling out of court instead of being officially charged with AWA violations allows APHIS to resolve more cases in less time and provides for greater flexibility in punitive actions. In out of court settlements, part of the agreement may include fines being directed toward facility improvements, employee training, or donation to a nonprofit organization benefiting the welfare of animals. When an Administrative Law Judge imposes a fine for AWA violations, all the money goes into the U.S. Treasury, not animal welfare programs. Most settlements state that the facility neither admits nor denies violating the Act.

Q. Why doesn't USDA confiscate more animals?

A. The Secretary of Agriculture has the authority to confiscate from a regulated facility animals that are suffering. Once APHIS has evidence of such a situation, a notice of intent to confiscate is given to the facility. If the facility fails to remedy the situation in a short period of time, authorization is obtained from the APHIS Administrator to confiscate the animals in question. In some cases, the facility is allowed to voluntarily surrender the animal(s) in question to an acceptable home. APHIS often works with local animal control officers, humane organizations, or other licensed facilities in good standing because they can assist in caring or finding homes for the animals. It is not uncommon for APHIS to negotiate with a facility to surrender the animals directly to the outside organization to simplify the process.

Under its authority to confiscate suffering animals, APHIS interpreted “suffering” to mean the animal was in imminent danger of death. Following a memorandum from AC’s Deputy Administrator in July 2000, that interpretation was clarified to be any condition causing pain or distress that is not alleviated.

For more information on confiscation of animals, see Animal Care Policy 8 (<http://www.aphis.usda.gov/ac/policy/policy8.pdf>).

Q. What’s the difference between licensed and registered? Why doesn’t USDA close down more facilities?

A. Dealers or exhibitors using animals covered under the AWA must be licensed by USDA to sell or display animals. To obtain a license, a facility must first be inspected and be in full compliance with the AWA standards and regulations. APHIS charges a modest fee for the license that must be renewed every year. A licensed facility may have its privileges suspended, revoked, or be disqualified from obtaining a license. These licensing actions would effectively “shut down” a facility, but only for regulated animals and activities.

Research and transportation facilities are registered with USDA. They are not subject to inspection prior to registration, but will undergo periodic inspections while registered. There is no fee associated with registration, and facilities must renew registrations every 3 years. Registered facilities may receive fines, but USDA cannot suspend, revoke, or prohibit their registration.

For more information on whether a facility should be licensed or registered, please see Program Aid 1117, “Licensing and Registration Under the Animal Welfare Act” (<http://www.aphis.usda.gov/oa/pubs/l&rawa.pdf> or <http://www.aphis.usda.gov/ac/awlicreg.html>).

Q. Why doesn’t USDA conduct inspections more often?

A. The AWA requires that USDA inspect research facilities at least once per year. For other facilities, AC uses a risk-based inspection system. Each facility is rated as low, moderate, or high risk. Moderate-risk facilities would be inspected about once per year; low-risk less often; high-risk more often. No matter what the facility’s rating, inspectors have the option of inspecting as often as they feel necessary and resources allow. This system allows inspectors to focus their attention on facilities that need assistance coming into compliance with the AWA or need to be monitored more often, so that they can conduct inspections that are more in-depth instead of just more frequent. Inspectors will also follow up on legitimate complaints from private citizens.

In fiscal year (FY) 2002, AC plans to have 99 inspectors. This is up from 64 inspectors in FY 1999. Such an increase in staff will allow USDA to conduct more education and outreach on caring for animals and participate in national initiatives such as developing guidelines, policies, and regulations. AC inspectors also conduct inspections and examinations for the Horse Protection Act.

Q. What animals are covered under USDA’s AWA authority?

A. The AWA covers all warmblooded animals used in regulated activities. Reptiles, fish, amphibians, insects, and other invertebrates are coldblooded animals and not covered under the AWA. The Act does not provide authority to regulate animals used for food and fiber; therefore only farm animals used for biomedical research are covered.

The regulations developed by USDA exclude all birds and certain rats (genus *Rattus*) and mice (genus *Mus*) bred for use in research. In February 2002, the Senate passed its version of the Farm Bill, which included language that would exclude these animals from coverage by law, not by interpretation of the Secretary. Similar language was not included in the House version of the bill. As of March 2002, the Farm bill was in conference.

Animals sold in retail facilities are also exempt through the regulations, except wild or exotic animals. For more information on what types of facilities are exempt from coverage, please see Program Aid 1117, “Licensing and Registration Under the Animal Welfare Act” (<http://www.aphis.usda.gov/oa/pubs/l&rawa.pdf> or <http://www.aphis.usda.gov/ac/awlicreg.html>).

Q. What is administrative court?

A. Administrative law is neither criminal nor civil. The USDA maintains its own court system to hear complaints regarding violations of the administrative laws it enforces. Hearings are presided over by Administrative Law Judges for the Secretary of Agriculture.

Q. Can an AWA violation ever be a criminal offense?

A. Violations of certain sections of the AWA are only pursued as criminal offenses, such as those related to animal fighting. Others may include fraudulent records pertaining to the acquisition and disposition of animals. In these cases, the USDA Office of the Inspector General usually conducts investigations and the U.S. Department of Justice prosecutes them. These cases are not overseen by Administrative Law Judges. Outcomes in criminal cases may include a prison sentence and/or fines.

Q. Does having a USDA AWA license exempt a person from State or local animal care laws?

A. No. Federal laws are administered under a different system. Some State or local laws may require that a person have a USDA license to own certain animals, but USDA will only grant the license if the person is conducting regulated activities. If a State also requires a license or permit, that does not affect the need for a USDA license or registration.

A person mistreating an animal could be prosecuted both under the AWA for mishandling if he or she is conducting covered activities and under local cruelty or mistreatment laws.

If a person or facility owns certain endangered or threatened species or imports or exports animals, a permit from the U.S. Fish and Wildlife Service (FWS) may also be required.

Contact FWS or State or local government for questions about their authority and requirements.

For More Information

More information on the AC program and the AWA and all publications are available on the Internet at <http://www.aphis.usda.ac>. You may also get information and copies of publications from one of the following AC offices:

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