

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
IMPLEMENTATION OF THE ANIMAL WELFARE ACT
WASHINGTON, D.C.
AUDIT REPORT NO. 33002-0001-Ch

MARCH 1992

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL - AUDIT
MIDWEST REGION
111 NORTH CANAL STREET - SUITE 1130
CHICAGO, ILLINOIS 60606



DATE: **MAR 16 1992**

REPLY TO
ATTN OF: 33002-0001-Ch

SUBJECT: Animal and Plant Health Inspection Service - Implementation
of the Animal Welfare Act

TO: Robert B. Melland
Administrator
Animal and Plant Health Inspection Service

ATTN: Donald Husnik
Acting Deputy Administrator for
Management and Budget

This report presents the results of our audit of the Animal and Plant Health Inspection Service's compliance with requirements of the Animal Welfare Act. Your January 17, 1992, response to the draft report is included as exhibit B with excerpts and the Office of Inspector General's position incorporated into the recommendation sections of the report.

Based on your response to Recommendation No. 3c in the draft report, we have removed this recommendation along with the related details from the final report. Management decisions have not yet been reached for any of the recommendations contained in the report. The Findings and Recommendations section of the report includes a description of the status of the management decision for each recommendation.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the planned corrective actions and timeframes for implementation for those recommendations for which a management decision has not yet been reached. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance, and final action to be taken within 1 year of the management decision. Correspondence concerning final actions should be addressed to the Office of Finance and Management.

JAMES R. EBBITT
Assistant Inspector General
for Audit

Attachment

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I - SCOPE AND SUMMARY

Scope

This report presents the results of our audit of the Animal and Plant Health Inspection Service's (APHIS) compliance with requirements of the Animal Welfare Act. The audit objectives were to determine (1) if APHIS is fulfilling its responsibilities under the act, (2) if internal controls are adequate to ensure the proper operation of the program, and (3) if followup actions are adequate when unsatisfactory conditions are noted.

Audit work was performed at the agency's headquarters office in Hyattsville, Maryland, and at sector offices in Ft. Worth, Texas, and Minneapolis, Minnesota. Licensed and registered facilities in Illinois, Indiana, Missouri, and Wisconsin were reviewed to evaluate the quality of animal care facilities under the jurisdiction of the act and subject to review by APHIS. These States contain about 40 percent of the facilities under the control of the act. Our audit was conducted from May through September of 1991, and covered activities performed by APHIS during fiscal years 1990 and 1991.

We interviewed officials at the agency's headquarters to determine the operating procedures (APHIS regulations) developed to implement the act, supervision and guidance provided to field offices, and the procedures established to ensure adequate training of inspectors. At the sector offices, we reviewed procedures for performing prelicensing and compliance inspections, procedures for followup inspections when violations were noted, documentation supporting training provided to field inspectors, and coordination activities between the animal care and regulatory enforcement staffs.

We reviewed a judgmental sample selected based on facility locations of 284 of the 3,051 facility inspection reports maintained at the sector offices. Then, we selected a sample of 30 facilities from the 284 inspection reports for site visits. This judgmental sample was selected based on our analyses of the 284 inspection reports and the geographical locations of the facilities. Accompanied by an APHIS inspector, we performed reviews at the 30 facilities to test the accuracy, efficiency, and effectiveness of existing APHIS inspection procedures. The audit was conducted in accordance with generally accepted government auditing standards.

Summary

Our audit concluded that APHIS cannot ensure the humane care and treatment of animals at all dealer facilities as required by the act. APHIS did not inspect dealer facilities with a reliable frequency, and it did not enforce timely correction of violations found during inspections. Specifically, we found the following conditions:

- Of 284 facilities reviewed, 46 or 16.2 percent of the facilities had received no annual inspection and another 126 or 80.8 percent of 156 facilities found to be in violation of the act had received no followup inspections in the required time period. The infrequency of inspections occurred because APHIS expects a limited number of qualified inspectors to perform a large number of inspections. We calculated that APHIS' 68 animal care inspectors would need to perform 15,070 inspections annually nationwide to meet APHIS' requirements.
- APHIS does not have an effective inspection monitoring system, and it does not have formal procedures which set the frequency of inspections or of followup inspections when regulatory violations are disclosed.
- APHIS had not timely penalized facilities found to be in violation of the act. During a review of 30 facilities, we found that 7 dealers had not corrected violations identified during 3 or more inspections. In one case, these continuous violations were noted as far back as July 1988. We also noted that for the 284 facility inspection reports reviewed, 49 facility licenses were renewed by APHIS when the facilities were known to be in violation of the act.

APHIS regulations need to be enforced to ensure the proper identification of animals and the accuracy of inventory records maintained at dealer facilities. Although APHIS regulations were specific about how dealers were to maintain inventory records and identify animals, the regulations were not being followed. Of the 22 licensed breeding facilities we visited, 17 had not properly identified the animals. In addition, 14 of these facilities did not maintain adequate inventory records.

APHIS had identified in its fiscal year 1989 yearend Financial Managers' Financial Integrity Act report that animal welfare was an assessable unit and scheduled an internal control review for 1993. Therefore, APHIS had not reported any of the control weaknesses identified. Internal control weaknesses disclosed during the audit are identified in exhibit A.

II - BACKGROUND INFORMATION

The Animal Welfare Act of 1966 and subsequent amendments outline the U.S. Department of Agriculture's responsibilities to ensure humane care and treatment of warmblooded animals used for research and exhibition, and sold as pets through wholesalers. Through the Secretary of Agriculture's mandate in April 1972, these responsibilities were delegated to APHIS. The primary mission of APHIS is to protect the animal and plant resources of the nation from diseases and pests in order to preserve the marketability of U.S. agricultural products within this country and abroad. Compliance with the requirements of the act is controlled by the regulatory enforcement animal care unit, created by a reorganization within APHIS during fiscal year 1989. The regulatory enforcement animal care unit is composed of 5 sector offices, overseeing about 5,638 licensed and 1,917 registered facilities (see Figure 1).

REAC SECTOR OFFICES

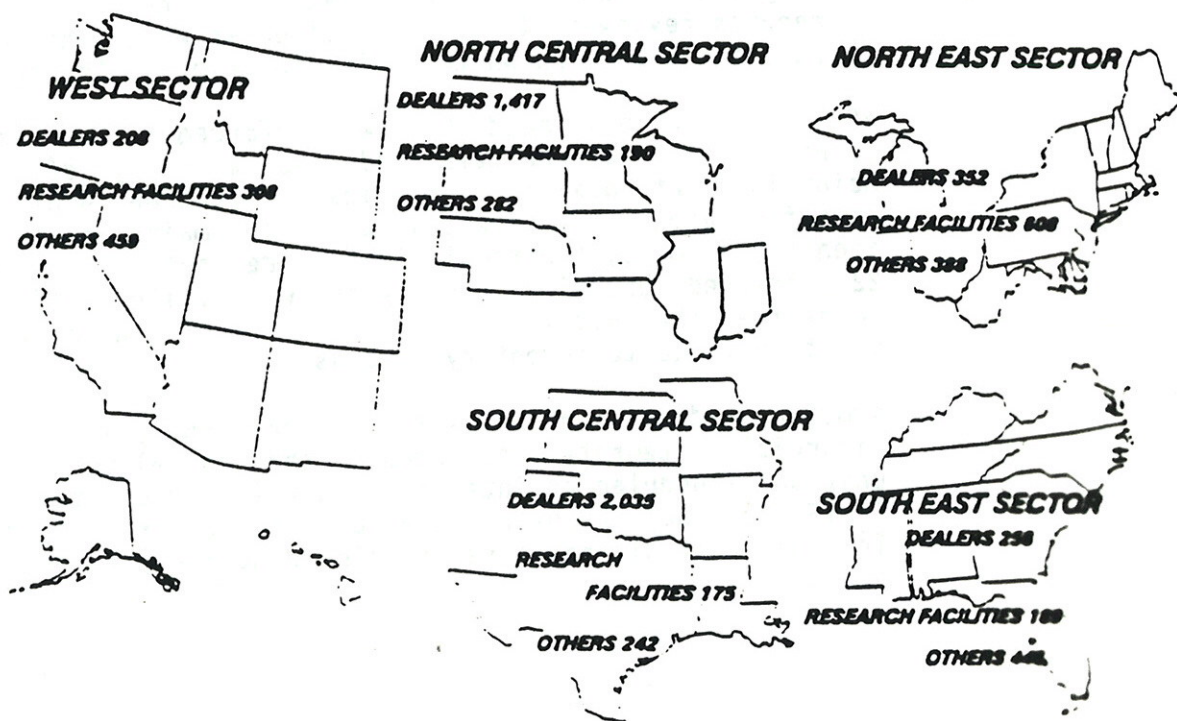


Figure 1

In addition to ensuring humane care and treatment of warmblooded animals used for authorized purposes, APHIS is responsible for ensuring the humane care of regulated animals when transported in interstate or intrastate commerce, and for preventing the sale of animals that are stolen.

Sector office supervisors and animal care specialists are responsible for facility licensing, registration, inspections, and investigations of complaints. The field staff of veterinary medical officers, animal health technicians, and investigators perform compliance inspections and investigations.

Facilities regulated by the act are either licensed or registered. Vendors of animals are licensed in three classes: Class A licensees (dealers) are breeders who deal only in animals which they breed and raise; class B licensees (dealers) are those who acquire animals from a variety of sources, and in turn sell the animals; and class C licensees (exhibitors) are those who display animals to the public. In order to qualify for a license, a vendor must meet minimal standards for facilities and care.

Facilities registered under the act include research facilities, carriers, intermediate handlers, and certain exhibitors. Adherence to APHIS regulations is ensured by having a trained inspector perform an initial prelicensing inspection, make at least one annual unannounced inspection of all facilities covered by the act, and investigate alleged violations of applicable laws and regulations.

The act requires all non-Federal research facilities to register with the U.S. Department of Agriculture every 3 years, be inspected once a year by a USDA official, and submit an annual activity report to the APHIS regulatory enforcement animal care sector supervisor in charge of the State where the facility is located. By law, the Secretary of Agriculture is required to propose standards to govern the humane handling, care, treatment, and transportation of animals by research facilities. This includes minimum requirements for handling, housing, feeding, and watering; sanitation, ventilation, and shelter from extremes of weather; and adequate veterinary care, which would include the appropriate use of anesthetic, analgesic, or tranquilizing drugs. The law, however, precludes the Secretary from developing rules, regulations, or orders with regard to design, outlines, guidelines, or performance of actual research or experimentation carried out by research facilities.

The Food Security Act of 1985 directs the Secretary to require each research facility to establish an institutional animal care and use committee to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility. The committee would represent society's concerns regarding the welfare of animals used at each facility for research. By law, the institutional animal care and use committee must consist of at least three members: A chairman, a Doctor of Veterinary Medicine, and a third member not affiliated with the facility to represent the general public. This committee is required to prepare a semiannual evaluation regarding the research facility's program for humane care and use of the animals and facilities, including the research study areas.

For fiscal year 1990, the Animal Welfare Program received \$7.46 million in appropriations. An estimated 13,050 compliance inspections of 7,555 licensees and registrants were made.

During fiscal year 1991, the regulatory enforcement animal care unit established a task force to address concerns from the general public and the animal industry regarding the humane care and treatment of animals. The task force's mission includes the development of alternatives to improve the welfare of animals and overall administration of the Animal Welfare Act. The primary focus of the task force is commercial pet breeders and distributors within APHIS' authority. However, the task force's mission gives it the flexibility to explore related issues and identify problems that affect the welfare of dogs and cats in the pet industry, not just problems with dealers.

III - FINDINGS AND RECOMMENDATIONS

1. INSPECTIONS OF ANIMAL DEALER FACILITIES WERE NOT PERFORMED IN A TIMELY MANNER

Inspectors were unable to inspect animal dealer facilities in a timely manner because APHIS required a large number of examinations to be performed by a limited number of qualified inspectors, and because the system used to monitor facility inspections was ineffective. As a result, APHIS cannot ensure humane care and treatment of animals at all facilities covered by the Animal Welfare Act (act) of 1966.

The act, most recently amended December 17, 1985, requires that the U.S. Department of Agriculture ensure humane care and treatment of animals maintained at dealer facilities. The regulations do not specify the number or frequency of compliance inspections, or the frequency of followup inspections to meet the mandates of the act. The Deputy Administrator of regulatory enforcement animal care told us that facility inspectors were instructed to perform at least one annual compliance inspection of each facility under the jurisdiction of the act. To ensure that facilities take timely corrective action, the Deputy Administrator issued a draft memorandum in 1990 requesting that followup inspections be performed within 30 days after the established corrective action deadline, when noncompliance items are identified.

To determine the timeliness of inspections, we reviewed inspection reports for 284 facilities out of 3,051 reports filed for as many licensed and registered facilities in Missouri and the North Central Sector. Our objectives were to determine if all facilities were inspected and if proper followup examinations were made when violations were disclosed. Of the 284 facilities whose reports we reviewed, 46 or 16.2 percent of the facilities had received no annual inspection. Of the remaining, APHIS had reported 156 in violation of regulations but had not performed followup inspections within the required timeframes for 126 or 80.8 percent of the facilities found to be in violation of the act. Forty-nine of the 156 facilities were granted license renewals while they were in violation of the act. Figure 2 indicates the results of our review of the 284 inspection reports.

We found that APHIS procedures do not distinguish the severity of violations of the act between serious or minor violations. We believe that if violations are prioritized in accordance with the severity of the situation, APHIS may not be required to perform immediate followup inspections for facilities with minor violations where the animals' health is not in jeopardy. If this procedure was implemented, this may reduce the number of facility inspections that APHIS inspectors are required to make.

Our audit also disclosed that a limited number of regulatory enforcement animal care inspectors are expected to perform a large number of inspections. To determine the number of site visits which would need to be performed to adequately complete all required inspections, we calculated the number of facility inspections performed in Missouri during July 1991. To be effective, inspections must be unannounced; however, we found that 18.7 percent of the unannounced inspections could not be conducted because key facility personnel were absent on the days selected. In addition, our review disclosed that about 85.6 percent of inspections performed in Missouri required a followup inspection because of identified violations. As a result, based on Missouri's 1,199 animal care facilities, 2,442 compliance inspections could be required to meet the mandates of the act. Taking into account the percentage of facilities that would require return visits to complete inspections, APHIS could be required to make 15,070 site visits nationwide each year. At the time of our audit, APHIS had a field staff of 68 animal care inspectors.

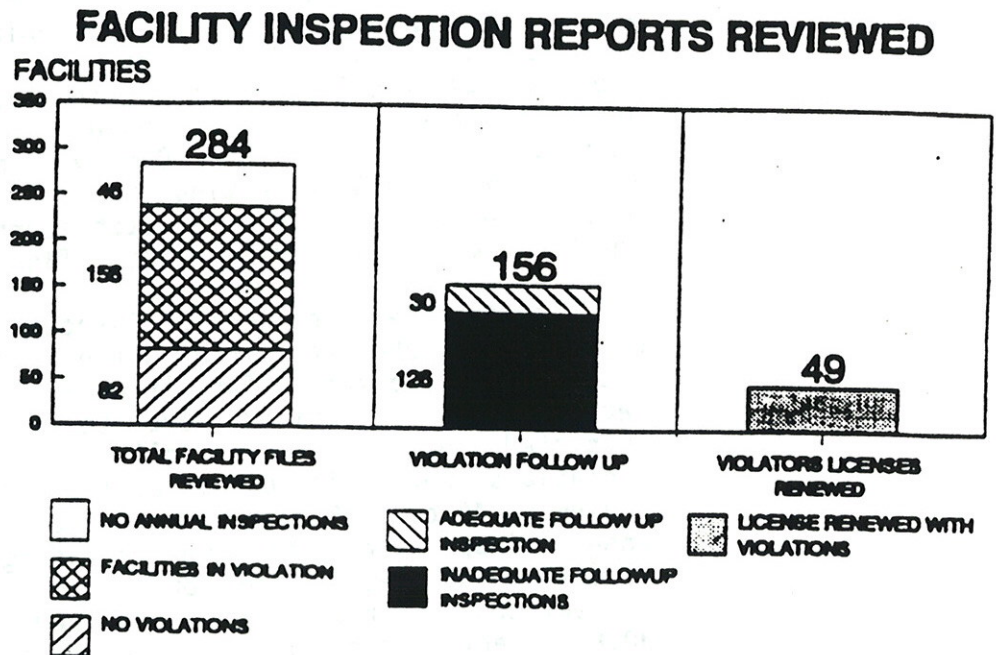


Figure 2

The time required to inspect each facility varied; depending on the size and the condition of the facility, inspections could take up to 3 hours. It appears that under existing APHIS policy, to perform annual inspections for all facilities and follow up within 30 days after the established corrective action deadline, when violations are disclosed, APHIS needs to implement a ranking system for facility inspections based on the compliance history of animal care facilities. The result would be to reduce the number of required facility visits.

We also reviewed existing monitoring systems used by APHIS to control required inspections. We found that a nationwide monitoring system had not been implemented. The Deputy Administrator for regulatory enforcement animal care told us that the animal care unit plans to implement a computerized monitoring system but that only limited systems development operations had been performed. Without some system to monitor inspections, APHIS cannot properly control the number of inspections and reinspections required to ensure the humane care and treatment of animals at dealer facilities.

Although APHIS regulations are very specific regarding inspections at research facilities, we could not locate regulations requiring inspections of dealer facilities. The Deputy Administrator for regulatory enforcement animal care informed us that the above-mentioned policies regarding inspections at dealer facilities have not been officially documented in APHIS regulations. We believe that for APHIS to properly document the requirements to meet the mandates of the act, it should include dealer facility inspection requirements in its official agency regulations.

Recommendation No. 1a

Establish a written policy documenting the severity of violations and followup action required by inspectors.

APHIS Response

APHIS maintained that written policy is already in place covering violations and inspections. Regulations such as veterinary services Memorandum 595.7, Inspection Procedures Relative to Documentation of Deficiencies, apply to this recommendation. Under the 1988 agency reorganization, there was a carryover of written policy (VS Memoranda) to provide direction to regulatory enforcement animal care inspections. To facilitate this carryover, they have changed the numbers of certain official forms and formal memoranda from veterinary services to regulatory enforcement animal care, and they indicated this process will continue as necessary.

OIG Position

Although specifically requested during the audit, we were not provided written procedures which identify the severity of Animal Welfare Act violations. Therefore, based on our discussions with the regulatory enforcement animal care officials, the carryover of written policy to the regulatory enforcement animal care unit, as disclosed in the agency's response, had not been accomplished at the time of our review. Based on the memoranda numbers for the policies provided by APHIS in their response to the report, it appears that the conversion had not been completed as of January 17, 1992. To accomplish the objectives of the recommendation, APHIS should complete their conversion of veterinary services memoranda into the regulatory enforcement animal care unit regulations.

To reach management decision, APHIS needs to provide a time-phased action plan to complete their conversion of veterinary services memoranda into regulatory enforcement animal care unit procedures.

Recommendation No. 1b

Establish a risk-based facility inspection ranking system, allowing facilities that continuously meet APHIS regulations to be inspected less often than facilities with continuous violations.

APHIS Response

APHIS indicated that the regulatory enforcement animal care unit adheres to APHIS' written policy veterinary services Memorandum 595.7. Procedure C priorities, which states, in part, "Deficiencies identified as "Major" will take priority over other deficiencies for reinspection in the utilization of available resources." Regulatory enforcement animal care uses the same approach as veterinary services since resources are limited for a vast and growing program. The regulatory enforcement animal care program field staff has prioritized reinspections by limiting them to those facilities of major concern. Minor deficiencies are addressed on the subsequent routine inspection. Minor deficiencies do not fall under a 30-day limitation for compliance unless they are chronic in nature and have reached a point whereby the inspector recommends a case be developed against the violator. Inspectors are well trained to initiate a decision to file a case if circumstances dictate.

OIG Position

As stated in OIG Position for Recommendation No. 1a, the carryover of veterinary services memoranda to the regulatory enforcement animal care unit regulations has not been completed by APHIS. In addition, veterinary services Memorandum No. 595.7 does not fully address Recommendation No. 1b. APHIS needs to establish a risk-based facility ranking system to monitor the larger number of facilities covered by the Animal Welfare Act with the present field staff. Our audit disclosed that all expected inspections and necessary followup activities could not be performed in a timely manner. The risk-based facility ranking system would allow for reducing the number of inspections for facilities that continuously experience no violations.

To reach management decision, APHIS needs to provide additional regulations to supplement veterinary services Memorandum 595.7, which will allow for reducing the expected number of inspections, or provide a time-phased action plan to implement a risk-based facility ranking system.

Recommendation No. 1c

Establish a nationwide data base of registered and licensed facilities to track inspections and monitor followup inspections of noted violations.

APHIS Response

APHIS responded that they have developed the Nationwide Computer System, License and Registration System. They indicated the regulatory enforcement animal care's Northeast Sector will be utilizing the system next month and will enter beta test (the first product on-line test phase). They stated all five sectors will have the same data base by the end of fiscal year 1992, and APHIS will be fully computerized for optimum efficiency.

OIG Position

The agency response failed to provide sufficient information to indicate how the Nationwide Computer System would track inspections and monitor needed followup inspections. In order for a nationwide data base system to effectively monitor required APHIS activities, the system must allow for functions to track inspections and monitor required followup activities.

To reach management decision, APHIS needs to provide necessary documentation to show that the proposed computer system will track inspections and monitor needed followup activities.

Recommendation No. 1d

Develop and issue regulations to clarify the required frequency of dealer facility inspections and followup inspections when violations are disclosed.

APHIS Response

APHIS replied that they depend upon supervisory instruction and written policy (such as veterinary services memoranda identified in their response to recommendation 1a) to prioritize inspections based on the compliance level of individual facilities. In addition, APHIS indicated that in line with industry and regulatory commitment to performance standards, the regulatory enforcement animal care unit has provided intensive training to inspectors so they make the best uniform professional judgement concerning inspections.

OIG Position

As stated in Recommendation No. 1a, the carryover of veterinary services' memoranda to regulatory enforcement animal care unit regulations has not been completed by APHIS. In addition, our review of the veterinary services' memoranda provided in the

agency's response did not disclose a regulation which provides for inspecting facilities within required intervals. Our audit disclosed the existing regulatory enforcement animal care procedures require research facilities to be inspected by APHIS inspectors at least once annually. However, existing regulatory enforcement animal care procedures do not specify the required frequency of inspections for other facilities under control of the act. To standardize the frequency of required inspections of all animal care facilities, APHIS needs to implement regulations to specify when facilities should be inspected and any required followup activities when problems are identified.

To reach management decision, APHIS needs to provide additional regulations outlining the frequency of inspections of animal care facilities, and provide a time-phased action plan to incorporate the procedures into the regulatory enforcement animal care regulations.

2. APHIS DOES NOT ENFORCE TIMELY CORRECTIONS OF VIOLATIONS

APHIS had not timely penalized facilities found to be in violation of the act. This condition exists because APHIS interprets the act to require court hearings to apply civil penalties for violators. In addition, APHIS regulations do not require that facilities be in compliance with the act to obtain license renewals. As a result, there is reduced assurance that animal care facilities will make required corrections to comply with the provisions of the act to ensure the humane care and treatment of animals.

The act authorizes the Secretary of Agriculture to suspend, for up to 21 days, the license of any facility that has violated any provision of the act or any of the rules, regulations or standards promulgated by the Secretary. In addition, the Secretary may assess a civil penalty of up to \$1,500 for each violation, and also order facilities to cease and desist when animal care facilities are found to be out of compliance. These penalties are to be assessed only after proper notice is given and hearings have been conducted on the identified violations. Each violation and each day during which a violation continues shall be a separate offense.

In addition, 9 CFR 2.31, dated August 31, 1989, requires the institutional animal care and use committee to assess animal care, treatment, and practices of research facilities. Each committee is charged with preparing a written evaluation at least once every 6 months of its research facility's program for humane care and use of the animals and facilities, including the research study areas.

As part of our audit, we visited 30 licensed and registered animal care facilities in Illinois, Indiana, Missouri, and Wisconsin. Fourteen of these facilities had been cited for violations during the last inspection made by APHIS inspectors. Seven of these facilities had experienced repeated violations, and the inspector who accompanied us verified that these conditions continued to exist. The most serious violations included inadequate veterinary

care and insufficient animal living space. Both of these conditions jeopardized the health and well-being of the animals. Figure 3 summarizes the results of our reviews at the 30 animal care facilities.

FACILITY COMPLIANCE INSPECTIONS

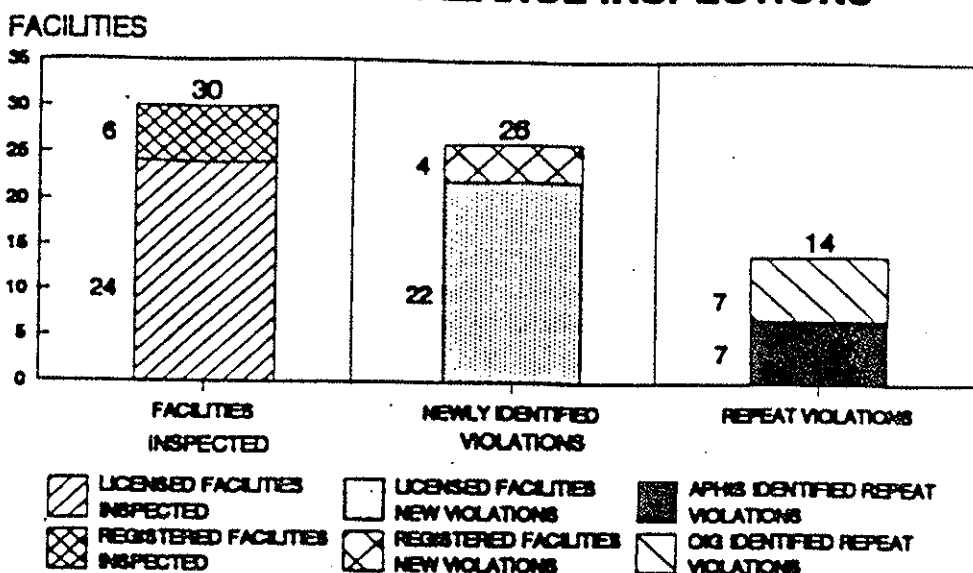


Figure 3

One facility's inspection reports indicated that repeat violations had occurred continuously since July 1988. The repeat violations included inadequate living space, sanitation of the overall facility, veterinary care for the animals, and too few employees to operate the facility. Other repeat violations disclosed during our audit directly affected the well-being of the animals maintained at the facility. At one facility, we found that the health of three dogs was in jeopardy due to inadequate veterinary care. For example, one dog had lacerations around the neck, and another had an infected eye. At this facility, we found 13 APHIS regulatory violations, including 7 repeat violations.

Our review further disclosed that the institutional animal care and use committee at one of the five research facilities visited was not approving all protocols for experiments as required by APHIS regulations. The committee at this facility was unaware of the requirement for protocol review and approval prior to experiments.

Animal protocols document tests and procedures to be performed on the animals, the pain the animals may expect to experience, the number of animals to be used, and the expected results and benefits to be derived from the experiment. The lack of documented approval of a protocol does not indicate that improper actions were taken by the research facility, but the facility is not in full compliance with the act if the committee has not approved all protocols in advance of experimentation.

The Deputy Administrator for regulatory enforcement animal care discussed the lengthy process currently used to assess civil penalties for continuous violations of the act. As identified in 9 CFR 4.1, dated February 25, 1977, APHIS currently follows the "Uniform Rules of Practice for the Department of Agriculture," promulgated in 7 CFR 1.131, to assess civil penalties for violators of the act. The rules of practice in this subpart require APHIS officials to use the court system to apply penalties authorized by the act. Under this method, certain procedures of evidence must be followed, which we believe result in an excessive period of time to assess civil penalties. For example, at 1 facility, APHIS inspectors identified violations on 13 separate occasions between September 1988 and February 1989. Final actions to implement civil penalties were not completed until April 1991. The administrative law judge assessed a civil penalty of \$26,000 and issued a 1-year cease and desist order.

The act allows the Secretary to assess civil penalties and issue cease and desist orders after the facility owner is given notice and any requested hearings are held. We believe a more effective method would be to institute local administrative hearings, whereby civil penalties could be assessed and cease and desist orders issued for continuous violations. Local administrative hearings would continue to allow facility owners the opportunity to appeal hearing decisions. The administrative hearing process could greatly reduce the amount of time now used to assess civil penalties and could provide more incentive for facilities to adhere to the regulations.

The Deputy Administrator also informed us that to reduce the time necessary to assess civil penalties, effective September 1991, stipulation procedures were implemented. Stipulation procedures would allow certain violations of the act and the APHIS regulations to be resolved without resorting to legal disciplinary proceedings. However, without the approval of the animal care facility operator, the stipulation procedures cannot be enforced. Based on that requirement, we believe APHIS will need to monitor closely the actual results obtained. We support the application of strict civil penalties for repeat violators of APHIS regulations and question whether, under the stipulation procedures, compliance with the intent of the act will be accomplished.

We found that, although facilities must meet the requirements of the act to obtain their original license, license renewals were being granted to facilities that were not in compliance with APHIS regulations. Our review disclosed that license renewals had been granted to 49 of 156 facilities in violation of the act. In addition, license certificates displayed at facility premises were not updated to indicate the current status of the license. During discussions with APHIS sector office officials, we were informed that attempts were being made to recover licenses that were revoked or suspended. However, the officials could not ensure the

certificates were returned. Therefore, expired or revoked licenses could exist at some animal care facilities and be construed as valid licenses by the general public and/or potential customers.

We believe APHIS should ensure that dealer facilities are in compliance with the intent of the Animal Welfare Act prior to issuance of license renewals. To protect the public, we also believe licenses displayed at animal care facilities should be updated annually with proper status indicators.

To provide an additional incentive for animal care facilities to remain in compliance with the act, APHIS should develop regulations to implement an animal care certification process. Under this process, APHIS could provide certificates to breeders, after a facility inspection determined that no violations exist. A certificate would then accompany each animal to the retail outlet, providing the public the assurance that the animal has been handled only by APHIS licensed facilities. We believe that a certification process to identify to potential purchasers, including consumers, that animals originated from and were handled by approved facilities could enhance the marketability of animals, and provide an added incentive for dealers and handlers to remain in compliance with the act.

We believe that APHIS should implement an administrative hearing process to reduce the time now used to assess civil penalties when facilities have been cited for continuous violations. We also believe that APHIS should ensure that dealer facilities are in compliance with the intent of the Animal Welfare Act through the use of compliance inspections prior to the renewal of licenses. To protect the public, we also believe licenses displayed at animal care facilities should be updated annually with proper status indicators. Finally, we believe that an APHIS certificate documenting that the animal originated from breeders meeting Animal Welfare Act standards could enhance the marketability of these animals and force breeders to meet standards.

Recommendation No. 2a

Establish local administrative hearing procedures to expedite the civil penalties process, to enforce compliance with the requirements of the act.

APHIS Response

APHIS responded that the present system of Administrative Law Judges (ALJ) presiding over cases is dictated by the Department Rules of Practice. They indicated they have no control over the manner in which the ALJ system is administered. APHIS stated that according to the Office of General Counsel, 99 percent of the hearings are conducted near the vicinity of the respondent. APHIS said that

there are five administrative law judges for 10 major programs. APHIS further stated that the cost of additional legal accommodations to expedite cases would be prohibitive.

OIG Position

Our audit disclosed, because APHIS currently uses the Administrative Law Judge system, excessive time is required to remove problem animal care facilities from the program. The Animal Welfare Act provides for civil penalty remedies, including monetary fines and cease and desist orders, by the Secretary of Agriculture. Currently, APHIS is controlled by the Department Rules of Practice which specifically requires the use of the Administrative Law Judge system. To decrease the time necessary to adjudicate cases, APHIS should implement procedures which would allow for hearing cases outside the Administrative Law Judge system. Therefore, APHIS should request from the Secretary of Agriculture a waiver from the requirements of the Department Rules of Practice for facilities continuously violating the Animal Welfare Act.

To reach management decision, APHIS needs to provide a time-phased action plan to obtain necessary waivers from the Secretary and implement local administrative procedures to expedite the civil penalties process authorized by the Animal Welfare Act.

Recommendation No. 2b

Require facilities to certify, on the annual license renewal form, that the facility is in compliance with all regulations promulgated to implement the act. If the facility is not in compliance with the intent of the act, license renewal should not be granted.

APHIS Response

APHIS stated that the Animal Welfare Act does not include a provision for withholding renewal of a license due to lack of facility compliance. This issue was also addressed by OGC, who advised that APHIS lacks authority to withhold renewals.

OIG Position

The Animal Welfare Act provides the authority to suspend and revoke license when animal care facilities are in violation of the act. It would appear that the intent of Congress, although not specifically stated, would be to allow the Secretary to withhold license renewals when a license has been suspended or revoked. This authority would greatly assist the Secretary in fulfilling the duties specified under the act. Because the Office of General Counsel has provided an opinion regarding the lack of authority to withhold licenses, APHIS should seek legislation to obtain the authority to withhold license renewals when facilities are known to be in violation of the act.

To reach management decision, APHIS should provide a time-phased action plan to seek legislation to obtain authority to withhold license renewals when deemed necessary by the Secretary.

Recommendation No. 2c

Reissue animal care facility licenses on an annual basis that would clearly show the current status of the facility.

APHIS Response

APHIS responded that each sector office presently renews licenses annually to dealers/exhibitors who meet regulatory licensing requirements. If legal action has been brought against a licensee, the cause for withholding of renewal would be determined and recommended by legal counsel. (See APHIS' response to 2b above.)

OIG Position

The agency's response does not address the recommendation. From visually reviewing the license at a facility, the public should be able to determine if the facility is currently in compliance with APHIS regulations. Through the use of an expiration date prominently displayed on the license, the public would be aware of the current status of the license. Also, the intent of the recommendation was to ensure that licenses were updated annually to visually show their compliance with the act. In order to reach management decision, APHIS needs to provide a time-phased plan of action to implement procedures to require expiration dates on license certificates maintained at animal care facilities.

Recommendation No. 2d

Initiate a procedure whereby APHIS would issue certificates to licensed breeders who operate in accordance with standards of the act, authenticating that animals originated from an APHIS-licensed breeder. This certificate should accompany the animal to the consumer.

APHIS Response

APHIS stated that the act limits the activities of the Department to ensuring that the licensee complies with the animal care standards including transportation of the animals. They said it does not permit a certification process which could be interpreted by the public that the facility meets more than minimum standards for their individual animals. In addition, they indicated present resources limit certification even if the act did not permit its use.

OIG Position

In order to realize the full impact of the recommendations contained in this report, the certification process would be a control over

all facilities handling animals. Through this process, a consumer could determine at the time of purchase that the animal had been cared for by only APHIS-approved animal care facilities. Since APHIS indicates that the act limits their activities to ensuring a licensee complies with animal care standards, we recommend that APHIS seek legislation to establish a certification process.

To reach management decision, APHIS should develop a time-phased action plan to seek legislation to allow for a certification process to authenticate that animals originated from and were handled by an APHIS licensed facility.

3. BREEDERS' IDENTIFICATION AND INVENTORY RECORDS WERE INADEQUATE

Animals at 17 of the 22 licensed facilities we visited were not properly identified. In addition, 14 of 22 facilities did not maintain sufficient inventory records on their animals. These facilities have not complied with the APHIS regulations to identify animals with tattoos and tags, and to adequately maintain complete inventory records. As a result, APHIS inspectors cannot be assured that animals maintained at the facility are the same animals reported to APHIS as breeding stock.

As required by 9 CFR 2.50 (A) (1), dated August 31, 1989, breeders shall identify all live animals on their premises with either an official tag affixed to the animal's neck by means of an approved collar, or by a legible tattoo approved by the APHIS administrator. Further, 9 CFR 2.75, dated August 31, 1989, states that each dealer shall maintain records which fully and correctly disclose detailed information concerning each animal purchased or otherwise acquired.

We could not reconcile the number of animals we counted during our inspections with the number of animals listed on licensees' inventories, when inventories were actually maintained. At 17 of 22 facilities, we noted that licensees were not properly tagging or tattooing animals. For example, tattoos did not include the facility license number. We found that for 14 of 22 licensed dealer facilities reviewed, the licensees had not maintained accurate and up-to-date animal inventory records. We found APHIS had developed forms for breeders to document the inventory of animals on hand or the disposition of animals; however, breeders were not using the forms to maintain appropriate records. We believe, that to ensure accurate inventory records are maintained, APHIS should require all facilities to use approved identification methods and inventory control forms. Figure 4 shows the results of our inventory maintenance and animal inventory review.

LICENSEE NON-COMPLIANCE

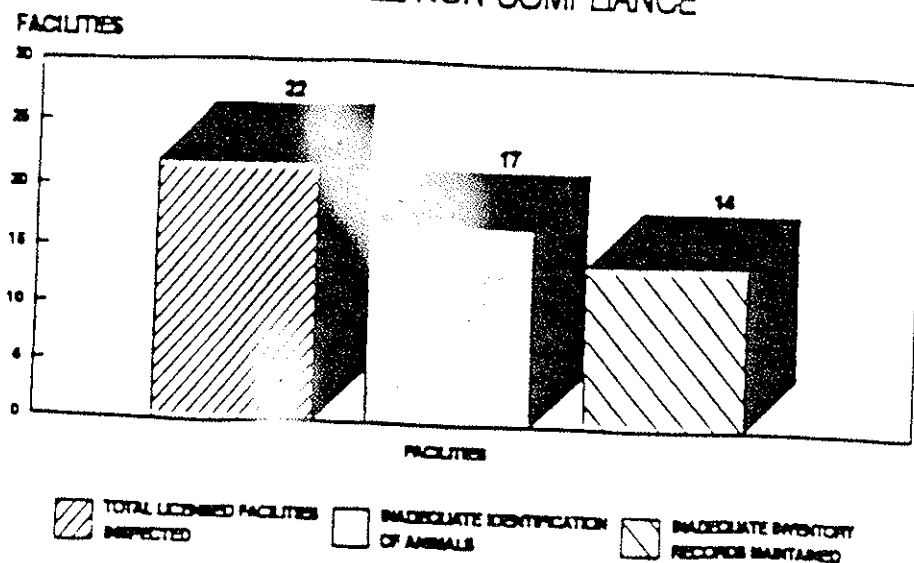


Figure 4

Recommendation No. 3a

Require that animal care facilities use APHIS Veterinary Services Form 18-5, "Record of Dogs and Cats on Hand," and Veterinary Services Form 18-6, "Record of Disposition of Dogs and Cats."

APHIS Response

APHIS indicated that many licensees use their own forms to record data required by VS Forms 18-5 and 18-6. They said other licensees elect to utilize the APHIS VS forms. They believe that the information recorded by animal care facilities on their own forms is adequate. APHIS stated they will, however, continue to review this issue.

OIG Position

Our audit disclosed that licensees were either not maintaining records, or records were incomplete. Although APHIS allowed facility owners to use unofficial forms to ensure that proper inventory records were maintained, the process was not followed by all facilities. The regulatory enforcement animal care evaluation task force also proposed a similar recommendation in their draft report to the APHIS administrator. The task force proposed that APHIS develop regulations requiring facilities to maintain mandatory records which are complete and uniform throughout the industry.

To reach management decision, APHIS needs to provide a time-phased plan of action to require facilities to maintain accurate and up-to-date inventory records.

Recommendation No. 3b

Require animal care facilities to use approved identification methods to properly describe animals.

APHIS Response

APHIS responded that the regulations for animal identification clearly stipulate that each animal is to be appropriately identified. APHIS recently adopted a new tattoo system that assists the licensee in applying permanent identification of each animal for trace back to the designated licensee.

OIG Position

OIG agrees with the action taken by APHIS to ensure that an adequate identification method is in place. To reach management decision, APHIS needs to provide a time-phased action plan to fully implement the newly adopted tattoo system.

SUMMARY OF MATERIAL INTERNAL CONTROL WEAKNESSES

<u>Finding</u>	<u>Internal Control Weaknesses</u>	<u>Causal Factors</u>			<u>Included in Agency FMFIA</u>
		<u>1</u>	<u>2</u>	<u>3</u>	
1	APHIS has no existing written policy, except for research facilities, identifying the frequency of facility compliance inspections in order to meet the mandates of the Animal Welfare Act.	x			No
1	APHIS does not perform followup inspections within established timeframes, when violations are disclosed by the maintenance inspections.	x			No

Causal Factors

1. Not Prescribed
2. Not Adequate as Prescribed
3. Adequate But Not Functioning as Prescribed



Subject: Animal and Plant Health Inspection Service (APHIS)
Implementation of the Animal Welfare Act (AWA)

To: James R. Ebbitt
Assistant Inspector General
for Audit, OIG

Date: JAN 17 1992

This correspondence represents our response to the Office of the Inspector General (OIG) review of the APHIS implementation of the AWA. Recommendations are addressed as they appear in the report.

OIG Recommendation 1a:

Establish a written policy documenting the severity of violations and follow-up action required by inspectors.

APHIS Response:

Written policy is already in place covering violations and inspections. The regulations listed below are Veterinary Services (VS) Memoranda (copies enclosed) which apply to this OIG recommendation:

- No. 595.7 - Inspection Procedures Relative to Documentation of Deficiencies
- No. 595.12 - Inspection and Related Activities of Research Facilities
- No. 595.13 - Guidelines for Inspection of Exhibitors and Pet Stores
- No. 595.16 - Animal Welfare Act, Guidelines for Inspection of Common Carriers and Intermediate Handlers

Under the 1988 Agency reorganization, there was a carryover of written policy (VS Memoranda) to provide direction to Regulatory Enforcement and Animal Care (REAC) inspectors. To facilitate this carryover, we have changed the numbers of certain official forms and formal Memoranda from VS to REAC, and this process will continue as necessary.

OIG Recommendation 1b:

Establish a risk-based facility inspection ranking system allowing facilities that meet APHIS regulations to be inspected less often than facilities with continuous violations.



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APHIS Response:

REAC adheres to APHIS' written policy. VS Memorandum 595.7 (enclosed), IV. Procedure, C. Priorities, states in part: "Deficiencies identified as "Major" will take priority over other deficiencies for reinspection in the utilization of available resources." REAC uses the same approach as VS since resources are limited for a vast and growing program. The REAC program field staff has prioritized reinspections by limiting them to those facilities of major concern. Minor deficiencies are addressed on the subsequent routine inspection. Minor deficiencies do not fall under a 30-day limitation for compliance unless they are chronic in nature and have reached a point whereby the inspector recommends a case be developed against the violator. Inspectors are well trained to initiate a decision to file a case if circumstances dictate.

OIG Recommendation 1c:

Establish a nationwide data base of registered and licensed facilities to track inspections and monitor followup inspections of noted violations.

APHIS Response:

We have developed the Nationwide Computer System, License and Registration System. REAC's Northeast Sector will be utilizing the System next month and will enter Beta test (the first product online test phase). All five Sectors will have the same data base by the end of Fiscal Year 1992, and APHIS will be fully computerized for optimum efficiency.

OIG Recommendation 1d:

Develop and issue regulations to clarify the required frequency of dealer facility inspections and followup inspections when violations are disclosed.

APHIS Response:

The Agency relies upon supervisory instruction and written policy (VS Memoranda identified in our response to Recommendation 1a) to prioritize inspections based on the compliance level of individual facilities. In line with industry and regulatory commitment to performance standards, REAC has provided intensive training to inspectors so they make the best uniform professional judgment concerning inspections.

OIG Recommendation 2a:

Establish local administrative procedures to expedite the civil penalties process to enforce compliance with the requirements of the AWA.

APHIS Response:

The present system of Administrative Law Judges (ALJ) presiding over cases is dictated by the Department Rules of Practice. APHIS has no control over

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the manner in which the ALJ system is administered. According to the Office of General Counsel (OGC), 99 percent of the cases conduct a hearing near the vicinity of the respondent. There are five ALJ's for ten major programs. cost of additional legal accommodation to expedite cases would be prohibiti

OIG Recommendation 2b:

Require facilities to certify, on the annual license renewal form, that the facility is in compliance with all regulations promulgated to implement the Act. If the facility is not in compliance with the intent of the Act, license renewal should not be granted.

APHIS Response:

The AWA (copy enclosed) does not include a provision for withholding renewal of a license due to lack of facility compliance. This issue was also addressed by OGC, who advised that APHIS lacks authority to withhold renewal

OIG Recommendation 2c:

Reissue Animal Care facility licenses on an annual basis that would clearly show the current status of the facility.

APHIS Response:

Each Sector office presently renews licenses annually to dealers/exhibitors who meet regulatory licensing requirements. If legal action has been brought against a licensee, the cause for withholding of renewal would be determined and recommended by legal counsel. (See Response to 2b above.)

OIG Recommendation 2d:

Initiate a procedure whereby APHIS would issue certificates to licensed breeders who operate in accordance with standards of the Act, authenticating that animals originated from an APHIS licensed breeder. The certificate should accompany the animal to the consumer.

APHIS Response:

The Act limits the activities of the Department to ensuring that the licensee complies with the Animal Care Standards including transportation of the animals. It does not permit a certification process which could be interpreted by the public that the facility meets more than minimum standards for their individual animals. In addition, present resources limit certification even if the Act did permit its use.

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OIG Recommendation 3a:

Require that animal care facilities use APHIS Form 18-5, Record of Dogs and Cats on Hand, and VS Form 18-6, Record of Disposition of Dogs and Cats.

APHIS Response:

Many licensees use their own forms to record data required by VS Forms 18-5 and 18-6. Other licensees elect to utilize the APHIS-VS Forms. We believe that the information recorded by animal care facilities on their own forms is adequate. We will, however, continue to review this issue.

OIG Recommendation 3b:

Require animal care facilities to use approved identification methods to properly describe animals.

APHIS Response:

The regulations for animal identification clearly stipulate that each animal is to be appropriately identified. We recently adopted a new tattoo system that assists the licensee in applying permanent identification of each animal for traceback to the designated licensee.

OIG Recommendation 3c:

Issue procedures to establish guidelines for breeders to control breeding during the animal exercise process.

APHIS Response:

APHIS is not authorized to issue guidelines directed toward breeding programs, as long as breeders meet good veterinary care practices. The industry as a group is familiar with their canine and feline breeding program requirements. Observant animal care givers can discern estrus in the female. Intense resistance by industry could make it extremely difficult for the Department to justify taking action to separate the males. We emphasize proper veterinary care, and we monitor those programs for compliance. APHIS, REAC offers assistance to licensees/registrants regarding their veterinary care program so they may elevate their level of compliance and cooperate more fully with their veterinarian to achieve improved animal health care. (See 9 CFR, Animal Welfare, Section 2.40, Veterinary Care Regulations.)

In addition to 595.7, the enclosed Memoranda are frequently used for reference and guidance in the Animal Welfare program:

VS Memorandum No. 595.1, Responsibilities and Accountability for Animal Care Program Activities

VS Memorandum No. 595.2, Animal Care Coordinator

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- VS Memorandum No. 595.5, Impervious Surfaces and Indoor and Outdoor Facilities
- VS Memorandum No. 595.6, Automatic Termination of License - Animal Welfare (9 CFR, Section 2.5(b))
- VS Memorandum No. 595.12, Inspection and Related Activities of Research Facilities
- VS Memorandum No. 595.13, Guidelines for Inspection of Exhibitors and Pet Stores, Oct. 2, 1972 and March 13, 1981
- VS Memorandum No. 595.14, Procedure in Handling License Applications and Monies - Animal Welfare Program
- VS Memorandum No. 595.17, Animal Welfare Act - Program Forms ANH 18-3 Through ANH 18-12 - Instruction Guidelines
- VS Memorandum No. 595-19, Instructions for Submitting the Research Facility Annual Report - VS Form 18-23, Annual Report of Research Facility
- VS Memorandum No. 595.20, Animal Welfare Act - Tattoo Identification for Animals
- VS Memorandum No. 595.21, Veterinary Care Under Animal Welfare Regulations
- VS Memorandum No. 575.4, Prohibited Conduct in Criminal or Civil Cases Involving the U.S. Government
- VS Memorandum No. 576.3, Submission of Animal Quarantine, Animal Welfare, and Horse Protection Apparent Violation Cases

Thank you for the opportunity to respond to the recommendations identified in the audit report. Please advise us if we have satisfied OIG's resolution requirements.



Robert Melland
Administrator

20 Enclosures

OIG NOTE: Enclosures not included with report.