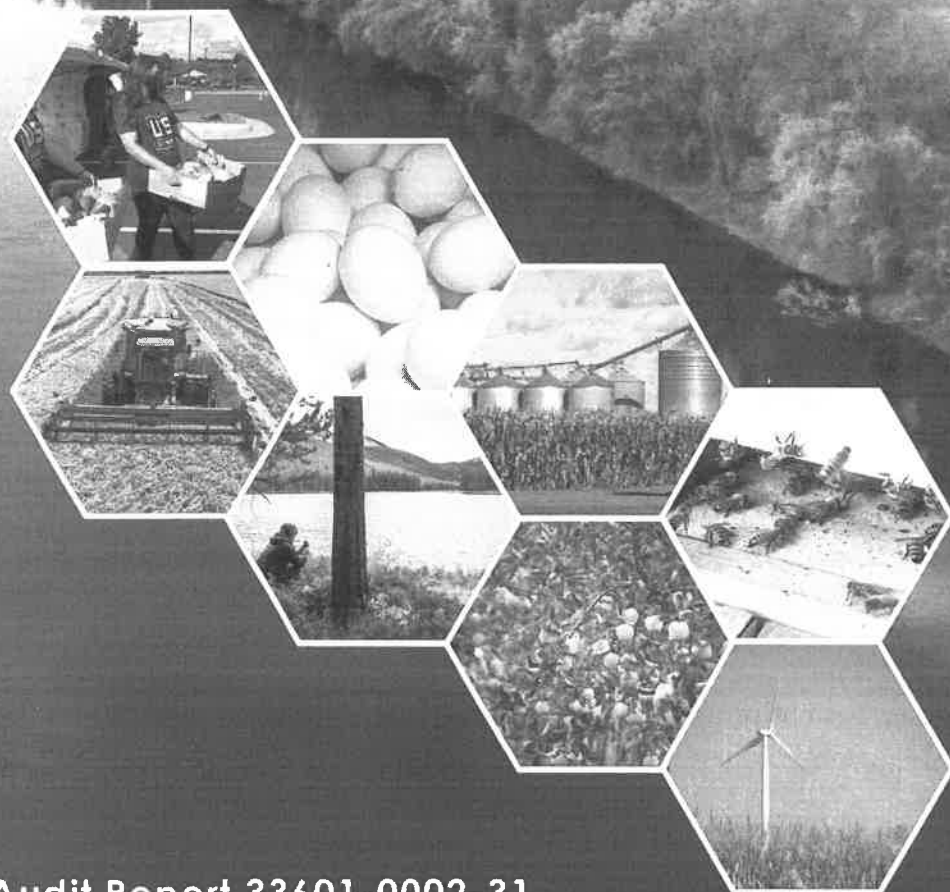




United States Department of Agriculture

Animal Care Program Oversight of Dog Breeders



Audit Report 33601-0002-31

June 2021

OFFICE OF INSPECTOR GENERAL

to document, collect, analyze, maintain, and report information gathered during its inspections. ACIS provides inspectors with access to information about the facilities being inspected, including their address, phone number, inspections conducted in the last 3 years, and animal inventory.

APHIS' Investigative and Enforcement Services (IES) personnel investigate alleged violations when licensees or registrants have not taken corrective measures to come into compliance with the AWA, individuals or businesses are conducting regulated activity without a license or without being registered with USDA, or the noncompliance presents (or presented) a direct risk to the health and well-being of the animals involved. When information and evidence gathered during an investigation supports a finding of a violation, APHIS may pursue enforcement action against the person or entity. In FY 2019, APHIS initiated 17 investigative cases for alleged AWA violations and assessed \$147,300 in penalties.

Prior Audit Follow Up

In May 2010, OIG issued Audit Report 33002-4-SF, *APHIS Animal Care Program Inspections of Problematic Dealers*.⁴ The prior audit objectives were to: (1) evaluate the adequacy of APHIS' controls to ensure dealer compliance with AWA, (2) review the impact of recent changes to the penalty assessment process, and (3) evaluate AC's new mission critical information system (i.e., ACIS) for reliability and integrity. However, due to unexpected delays in implementing the new system, the team was unable to complete the third objective. The prior audit identified several deficiencies in APHIS' enforcement of the AWA and included 14 recommendations.

Following the issuance of the prior audit report, OIG planned for and received multiple Congressional communications^{5, 6} requesting a follow-up review that would examine APHIS' actions in response to OIG's recommendations. Our current audit objectives included following up on APHIS' actions in response to recommendations from the previous report. Our review found that APHIS addressed the recommendations (see Exhibit B for a list of the recommendations).

Objectives

Our objectives were to evaluate the adequacy of APHIS' controls to ensure breeder compliance with the AWA and follow up on agency actions taken in response to Audit Report 33002-4-SF, *APHIS Animal Care Program Inspections of Problematic Dealers*, issued in May 2010.

Due to the Coronavirus Disease 2019 (COVID-19) pandemic, we experienced a scope limitation, which is more fully described in the Scope and Methodology section of this report, and were unable to evaluate breeder compliance with the AWA.

⁴ Audit Report 33002-4-SF, *Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers*, May 2010.

⁵ Pocan, The Honorable Mark and Honorable Brian Fitzpatrick, Letter to Honorable Phyllis K. Fong (Dec. 11, 2017).

⁶ Feinstein, The Honorable Dianne, Letter to Honorable Phyllis K. Fong (June 26, 2019).

roles as “Read Only,” OIG should not have had the ability to create or edit records. However, the agency informed OIG that an OIG user had created a record in the system. As a result, an APHIS inspector received an error message when entering an inspection report. When OIG questioned how it was possible for an OIG user with “Read Only” access to create a record within ACIS, APHIS officials could not provide an explanation. While APHIS is transitioning away from ACIS, it is essential that this user permissions issue does not continue to exist in the new systems.

During our audit, APHIS officials acknowledged there are reliability issues with ACIS-generated reports and agreed that the reports may not be accurate. However, on September 8, 2020, the agency replaced ACIS with Salesforce and eFile after obtaining the authority to operate the new systems. Due to this transition, the agency did not focus on investing resources in ACIS. APHIS officials stated that Salesforce will track complaints, and there will be a dashboard on the main page with real-time summaries of APHIS data. The dashboard will contain the qualitative and quantitative data, so it will be easier to track data without having to write new reports. All of the manual data formulation and compilation will be automated. APHIS is using eFile to assist breeders in determining the type of license they need.

Overall, the lack of a reliable information system impedes APHIS’ ability to make informed management decisions, to identify trends in noncompliant items, and to identify how many inspections have been completed. The agency has transitioned to Salesforce and eFile. However, the agency needs to ensure the reliability and security of these information systems which are mission-critical. APHIS needs to ensure that the issues with ACIS do not continue with the new systems.

Recommendation 1

APHIS should ensure the data reliability and security issues with ACIS do not persist in Salesforce and eFile.

Agency Response

In its June 25, 2021, response, APHIS stated:

APHIS agrees with this recommendation. As of September 7, 2020, Animal Care (AC) has transitioned to eFile to remedy the inconsistent data and security issues that impacted ACIS. APHIS eFile is set up on the Salesforce platform. Therefore, our actions to ensure data reliability and security in eFile are carried out within the Salesforce platform. While eFile has been live for less than a year, the reliability of reports and accuracy of data pulled from it are significantly improved. The eFile system allows tracking of individual actions within the database to identify the source of the change and provides consistent data management and access controls based on assigned users. In April 2021 AC developed an eFile Change Control Board and a standard operating procedure (SOP) for submitting requests through the AC Operations and Maintenance unit. They meet monthly to ensure required enhancements or maintenance are properly requested, approved, and tracked by AC. On November 7, 2020 AC added a data management

Finding 2: APHIS Should Improve Controls Over Its Complaint Process

We found that APHIS did not consistently address complaints it received or adequately document the results of its followup. This occurred because APHIS does not have a documented process for resolving complaints and recording the results of the agency's actions. As a result, some dog breeder facilities may be conducting regulated activity without a USDA license or oversight. Therefore, APHIS is not able to ensure the overall health and humane treatment of animals at these facilities.

GAO's *Standards for Internal Control in the Federal Government* require that management implement control activities through policies and require all transactions and other significant events be completely and accurately documented and readily available for examination. All documentation and records should be properly managed and maintained.¹¹

At the time of our review, APHIS did not have an official documented process for responding to complaints or for recording the results of the agency's followup. Although APHIS is drafting a standard operating procedure (SOP) for complaints, it does not provide a detailed and documented process for APHIS inspectors to adhere to when responding to complaints or when recording the results of a followup. Additionally, it does not provide a detailed process to ensure complaints of unlicensed activity are investigated.

We found that APHIS did not consistently address or adequately document 145 of the 322 complaints we reviewed.¹² We found that APHIS' response to complaints it received¹³ was not adequately documented in ACIS.¹⁴ Examples included: (1) the results section of the complaint form was not always completed to document APHIS' course of action in response to the complaint, (2) the complaint form prepared by APHIS was not uploaded to ACIS, and (3) the details of the complaint were not included on the complaint form or provided as an attachment in ACIS.

In addition, we found inconsistencies in APHIS' course of action when responding to a complaint. For some complaints, APHIS would attempt to directly contact the facility via phone or site visit. In response to other complaints, APHIS would only send a letter to the breeder indicating that APHIS had been informed that the breeder may be conducting activities that would require a license. When we asked APHIS officials to differentiate when they would directly contact a facility versus only sending a letter, APHIS officials stated that the complaint responses would have to be looked into on a complaint-by-complaint basis. They stated that the potential reasons for the different responses could include: (1) the breeder could not be

¹¹ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sept. 2014).

¹² For FYs 2017–2019, we reviewed all 322 complaints received by APHIS related to dog breeders.

¹³ APHIS encourages the public to report concerns about the conditions of regulated facilities or inform APHIS about facilities that should be licensed or regulated by filing an animal welfare complaint.

¹⁴ ACIS is APHIS' mission-critical data system used to process new and renewal applications for license or registration and allows the user to review and print inspection reports. The system is used to collect and analyze inspection data and update information related to AWA compliance. APHIS stores all licensee and registrant information in ACIS, including complaints.

Agency Response

In its June 25, 2021 response, APHIS stated:

APHIS agrees with this recommendation. AC will develop and implement guidance and procedures for AC employees on handling complaints in a new SOP document titled “Complaint Guidance”. APHIS will incorporate within the finalized “Complaint Guidance” SOP sufficient detail for inspectors across the country to respond consistently to all complaints received, including, specifically, how to document the complaint response and follow-up within eFile. eFile now provides a complaint report and dashboard to AC employees and management. APHIS anticipates releasing the “Complaint Guidance” SOP by October 31, 2021.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Provide inspectors training on the process of responding to complaints, documenting actions taken, and the reason for those actions.

Agency Response

In its June 25, 2021 response, APHIS stated:

APHIS agrees with this recommendation. AC will provide employees with training on handling complaints and ensure that the actions taken are in accordance with guidance and are documented in eFile. As noted above, APHIS will incorporate the requirements in a new SOP document titled “Complaint Guidance.” This document will be distributed to and discussed with AC employees during employee team meetings. APHIS will also update the AC Inspection Guide to include the information on complaint response and guidance to inspectors for consistent application across the program. APHIS anticipates updating the AC Inspection Guide by March 31, 2022.

OIG Position

We accept management decision for this recommendation.

- reviewing published information about the data,
- interviewing agency officials knowledgeable about the data,
- comparing supporting documentation to the information contained in the agency data for accuracy, and
- testing completeness by determining whether all active breeders were included in the agency-provided data.

Overall, we determined that the ACIS-generated dog breeder data provided by APHIS were unreliable, which is explained in greater detail in our finding (see Finding 1).

We assessed internal controls to satisfy our modified audit objectives. Our assessment included internal control components and principles of the Standards for Internal Control in the Federal Government.¹⁹ In particular, we assessed the following components and underlying principles:

Component	Principle
Control Activities	Management should design control activities to achieve objectives and respond to risks
Control Activities	Management should design the entity's information system and related control activities to achieve objectives and respond to risks
Control Activities	Management should implement control activities through policies
Information and Communication	Management should use quality information to achieve the entity's objective
Information and Communication	Management should internally communicate the necessary quality information to achieve the entity's objectives
Information and Communication	Management should externally communicate the necessary quality information to achieve the entity's objectives

However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. Except for the scope limitation described above, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

¹⁹ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sept. 2014).

Exhibit A: Number of Licensed Dog Breeders by State

State	Number of Breeders
Missouri	764
Indiana	331
Ohio	310
Iowa	217
Oklahoma	155
Kansas	116
Arkansas	105
Wisconsin	83
Illinois	49
New York	40
Nebraska	39
South Dakota	38
Pennsylvania	35
Texas	35
Minnesota	21
Michigan	15
Louisiana	9
Colorado	7
Mississippi	5
North Dakota	5
Georgia	4
Oregon	4
South Carolina	4
Utah	4
Florida	3
North Carolina	3
Unknown²⁰	3
Virginia	3
Washington	3
Kentucky	2
Maryland	2
Nevada	2
New Mexico	2
Alabama	1
Alaska	1
Montana	1

²⁰ Based on the data the agency provided, we were unable to determine the State.

Exhibit B: Results of Prior Audit Recommendations

The table below lists the results of APHIS' implementation of prior audit recommendations from Audit Report 33002-4-SF, *APHIS Animal Care Program Inspections of Problematic Dealers*, issued in May 2010.

Recommendation Number	Recommendation Detail	Fully Implemented?
1	Modify the <i>Dealer Inspection Guide</i> to require an enforcement action for direct and serious violations. Also, define a serious violation in the Guide.	Yes
2	Remove "no action" as an enforcement action in the <i>Dealer Inspection Guide</i> .	Yes
3	Incorporate instructions provided in the "Animal Care Enforcement Actions Guidance for Inspection Reports" into the <i>Dealer Inspection Guide</i> to ensure inspectors and their supervisors follow them in selecting the appropriate enforcement.	Yes
4	Modify regulations to allow immediate confiscation where animals are dying or seriously suffering.	Yes
5	Establish written procedures to refer animal cruelty cases to the States that have such felony laws.	Yes
6	Provide more comprehensive training and detailed guidance to the inspectors and supervisors on direct and repeat violations, enforcement procedures, evidentiary requirements (e.g., adequately describing violations), shelter medicine, and animal abuse.	Yes
7	Revise the <i>Dealer Inspection Guide</i> to require photos for all violations that can be documented in this manner.	Yes
8	Limit total penalty reductions on the new worksheet to less than 100 percent.	Yes

Finding 2: APHIS Should Improve Controls Over Its Complaint Process

Recommendation 2: Develop and implement guidance, policies, and procedures to ensure a consistent response to complaints and to ensure the response is sufficiently documented.

APHIS Response: APHIS agrees with this recommendation. AC will develop and implement guidance and procedures for AC employees on handling complaints in a new SOP document titled “Complaint Guidance”. APHIS will incorporate within the finalized “Complaint Guidance” SOP sufficient detail for inspectors across the country to respond consistently to all complaints received, including, specifically, how to document the complaint response and follow-up within eFile. eFile now provides a complaint report and dashboard to AC employees and management. APHIS anticipates releasing the “Complaint Guidance” SOP by October 31, 2021.

Recommendation 3: Provide inspectors training on the process of responding to complaints, documenting actions taken, and the reason for those actions.

APHIS Response: APHIS agrees with this recommendation. AC will provide employees with training on handling complaints and ensure that the actions taken are in accordance with guidance and are documented in eFile. As noted above, APHIS will incorporate the requirements in a new SOP document titled “Complaint Guidance.” This document will be distributed to and discussed with AC employees during employee team meetings. APHIS will also update the AC Inspection Guide to include the information on complaint response and guidance to inspectors for consistent application across the program. APHIS anticipates updating the AC Inspection Guide by March 31, 2022.



U.S. Department of Agriculture
Office of Inspector General



Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers

Audit Report 33002-4-SF
May 2010

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Animal Care Program – Inspections of Problematic Dealers

Executive Summary

In the last 2 years, there has been significant media coverage concerning large-scale dog dealers (i.e., breeders and brokers)¹ that failed to provide humane treatment for the animals under their care. The breeders, negatively referred to as “puppy mills,” have stirred the interest of the public, Congress, animal rights groups, and others. Accordingly, we conducted an audit of the Animal and Plant Health Inspection Service’s (APHIS) Animal Care (AC) unit, which is responsible for enforcing the Animal Welfare Act (AWA). The audit focused on AC’s inspections of problematic dealers. It is the latest in a series of audits related to AWA.²

In our last audit on animals in research facilities,³ we found that the agency was not aggressively pursuing enforcement actions against violators of AWA and that it assessed minimal monetary penalties against them.⁴ APHIS agreed to take corrective action by incorporating more specific guidance in its operating manual to address deficiencies in enforcement actions. It also agreed to revise its penalty worksheet to generate higher and more appropriate penalties.

In this audit, one objective was to review AC’s enforcement process against dealers that violated AWA. Accordingly, we focused on dealers with a history of violations in the past 3 years.⁵ Another objective was to review the impact of recent changes the agency made to the penalty assessment process. We identified the following major deficiencies with APHIS’ administration of AWA:

- ***AC’s Enforcement Process Was Ineffective Against Problematic Dealers.*** AC’s enforcement process was ineffective in achieving dealer compliance with AWA and regulations, which are intended to ensure the humane care and treatment of animals. The agency believed that compliance achieved through education⁶ and cooperation would result in long-term dealer compliance and, accordingly, it chose to take little or no enforcement action against most violators.

However, the agency’s education efforts have not always been successful in deterring problematic dealers from violating AWA. During FYs 2006-2008, at the re-inspection of 4,250 violators, inspectors found that 2,416 repeatedly violated AWA, including some that ignored minimum care standards. Therefore, relying heavily on education for serious or repeat violators—without an appropriate level of enforcement—weakened the agency’s ability to protect the animals.

- ***AC Inspectors Did Not Cite or Document Violations Properly To Support Enforcement Actions.*** Many inspectors were highly committed, conducting timely and thorough

¹ Breeders are those that breed and raise animals on the premises; brokers negotiate or arrange for the purchase, sale, or transport of animals in commerce.

² Refer to the Background section for more information on related prior audits.

³ Audit No. 33002-3-SF, “APHIS Animal Care Program Inspection and Enforcement Activities” (September 2005).

⁴ AWA refers to monetary penalties as civil penalties.

⁵ APHIS synonymously used the terms violations, alleged violations, and noncompliant items in its documents. For simplicity, we used the term violations in this report.

⁶ Education was generally provided through the inspectors’ interaction with dealers during routine inspections as well as periodic seminars.

To increase the effectiveness of inspections, AC should provide more comprehensive training and detailed guidance to its inspectors and supervisors on direct and repeat violations, enforcement procedures, and evidentiary requirements (e.g., adequately describing violations).

To calculate more reasonable penalties, APHIS should limit total reductions on its penalty worksheet to less than 100 percent. We also recommend that the agency ensure its penalty guidelines are consistently followed and that it include instructions to count each animal as a separate violation in cases involving animal deaths and unlicensed wholesale activities.

To prevent large breeders from circumventing AWA requirements, APHIS should propose that the Secretary seek legislative change to exclude these breeders from the definition of “retail pet store,” and require that all applicable breeders that sell through the Internet be regulated under AWA.

Agency Response

In its written response, dated April 23, 2010, APHIS concurred with the reported findings and recommendations. APHIS’ response is included at the end of this report.

OIG Position

We accept APHIS’ management decision on Recommendations 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13 and 14. The actions needed to reach management decision on Recommendations 4 and 11 are provided in the OIG Position section after these recommendations.

Table 1: Inspections Conducted in FYs 2006-2008

	2006	2007	2008
No. of Inspectors	99	101	99
No. of Inspections*	17,978	16,542	15,722
Average Inspections Per Inspector	182	164	159
* These numbers include inspections on all licensees (i.e., dealers and exhibitors) and registrants (i.e., research facilities) under AWA.			

Since 1994, AC tracked the inspections through its Licensing and Registration Information System (LARIS). LARIS included a risk-based inspection system, which calculated the minimum number of inspections that were needed annually based on a continual risk assessment of each facility's violation history. However, both our 1995 and 2005 audits found that LARIS generated unreliable and inaccurate information.¹⁰ AC agreed with our conclusions and hired a contractor to develop a new system—Online Animal Care Information System (OACIS). Later, AC determined that the OACIS contractor was not meeting the program's requirements and terminated the contract. APHIS then contracted with another system developer to build the Animal Care Information System, which was implemented in March 2009.

ENFORCEMENT PROCESS

When a violation is identified during an inspection of a dealer's facility, AWA authorizes AC to take remedial action against the violator by assessing a fine, suspending or revoking the license, or pursuing criminal penalties.¹¹ Before taking these actions, AC also considers other enforcement options: no action, a letter of information (an informal warning letter), an official warning letter, and an investigation.¹²

Investigations are conducted by APHIS' Investigative and Enforcement Services unit, which carries out enforcement activities and provides support to all APHIS programs. An investigation may result in a stipulation, suspension or revocation of license, or confiscation of animals. A stipulation is an agreement between APHIS and the violator, where the violator can pay a reduced penalty by giving up his right to a formal administrative hearing. APHIS' Financial Management Division in Minneapolis is responsible for collecting the stipulations and monetary penalties.

Cases that warrant formal administrative action undergo Office of the General Counsel review for legal sufficiency prior to issuance of a formal administrative complaint before the U.S. Department of Agriculture's (Department) administrative law judges. If the case is appealed, a final decision is made by the Department's Judicial Officer. Formal actions may result in license suspensions or revocations, cease-and-desist orders, monetary penalties, or combinations of these penalties.

¹⁰ OIG Audit No. 33600-1-Ch, "Enforcement of the Animal Welfare Act" (January 1995) and Audit No. 33002-3-SF, "APHIS Animal Care Program Inspection and Enforcement Activities" (September 2005).

¹¹ 7 *United States Code* (U.S.C.) §2149 (January 3, 2007).

¹² *Dealer Inspection Guide*, ch. 9.3 (May 2002). In 2007, AC discontinued "letter of information" as an enforcement option.

In 2005, OIG conducted an audit on animals in research facilities and found that the agency was not aggressively pursuing enforcement actions against violators of AWA and that it assessed minimal monetary penalties against them.¹⁶ Inspectors believed the lack of enforcement action undermined their credibility and authority to enforce AWA. In addition to giving an automatic 75-percent “discount,” APHIS offered other concessions making the fines basically meaningless. Violators considered the monetary stipulation as a normal cost of business rather than a deterrent for violating the law.

Objectives

Our audit objectives were to (1) evaluate the adequacy of APHIS’ controls to ensure dealer compliance with AWA, (2) review the impact of recent changes to the penalty assessment process, and (3) evaluate AC’s new mission critical information system for reliability and integrity. Due to unexpected delays in implementing the new system, we were unable to complete the third objective.

¹⁶ Audit No. 33002-3-SF, “APHIS Animal Care Program Inspection and Enforcement Activities” (September 2005).

on our observations and analysis, since inspectors were given the choice of not recommending an action, generally they did not.

- Inadequate Enforcement for Repeat Violators. The Guide states that inspectors “**must** recommend an enforcement action” for repeat violators; however, one of the choices is to take no action,²² which is what the inspectors did in 52 percent of the repeat violations we reviewed.

Also, AC narrowly defines a repeat violator as one that consecutively violates the same subsection of the animal welfare regulations. This means that on successive inspections a dealer can violate different sections of the regulations without being labeled a repeat violator and, therefore, the inspector is not required to recommend an enforcement action.

- Written Instructions Not Always Followed. In 2007, the national office provided instructions entitled, “Animal Care Enforcement Action Guidance for Inspection Reports,” to aid its inspectors in selecting enforcement actions. These instructions were never incorporated in AC’s Guide and, therefore, supervisors and regional management did not always ensure that the inspectors followed them. When instructions specified a stronger action, such as a stipulation or litigation, the inspectors were allowed to recommend a more lenient option.
- Delayed Confiscation. AWA allows APHIS to confiscate any animal found to be suffering as a result of a failure to comply with AWA.²³ APHIS added a provision requiring that the violator be given a final opportunity to take corrective action before confiscation can occur,²⁴ even in extreme cases where animals are dying or suffering.²⁵

To evaluate the effect of these practices, we selected 8 States and visited 50 breeders and 18 brokers (68 in total) that had been cited for at least one violation in their previous 3-year inspection history.²⁶ AC generally took little or no enforcement actions against these facilities during the period (see chart 1).

²² *Dealer Inspection Guide*, ch. 9.3 (May 2002).

²³ 7 U.S.C. § 2146(a) (January 3, 2007).

²⁴ 9 *Code of Federal Regulations* (CFR) §2.129(a) (January 1, 2005) and *Dealer Inspection Guide*, ch. 8.6.1 (April 2000).

²⁵ AC defines suffering as “any condition that causes pain or distress . . . Examples [include]: animals with serious medical problems that are not receiving adequate veterinary care; animals without adequate food or water; animals exposed to temperature extremes without adequate shelter or bedding; and animals held in enclosures that are filthy. Animals do not need to be in jeopardy of dying to be in a state of suffering.” AC Policy No. 8 (May 8, 2001).

²⁶ We visited a total of 81 dealers in 8 States but 13 had no history of violations and, therefore, were not part of our sample for determining the effectiveness of AC’s enforcement process.

hair loss over their entire bodies and raw, irritated spots on their skin.²⁷ Despite the continuing violations, AC did not take enforcement actions due to its lenient practices against repeat violators.

During our visit to the facility in July 2008, AC cited the breeder for another 11 violations (including 1 repeat and 3 directs). One of the direct violations involved a dog that had been bitten by another dog. The first dog was left untreated for at least 7 days, which resulted in the flesh around the wound rotting away to the bone (see figure 2).

Figure 2: Live Dog With Mutilated Leg



The breeder admitted the dog had been in this condition for at least 7 days. The inspector correctly required the dog to be taken to a local veterinarian who immediately euthanized it.

AC did refer the case to IES for investigation, but only after another direct violation was documented in a subsequent inspection after our visit. Based on the results of the investigation, AC recommended a stipulation. However, as of early June 2009—11 months after our visit—the violator had not yet been fined.²⁸

Also, although AWA states that “the Secretary is authorized to cooperate with the officials of the various States . . . in carrying out the purpose of [AWA],”²⁹ AC did not establish procedures to forward animal cruelty cases to these officials. In this case, AC did not notify the State of Oklahoma (which has first-offense felony laws for animal cruelty) of the inhumane treatment the dog received.

²⁷ After the direct violation was cited in December 2007, the inspector re-inspected the facility in January 2008 and found that the attending veterinarian prescribed treatment for the dogs.

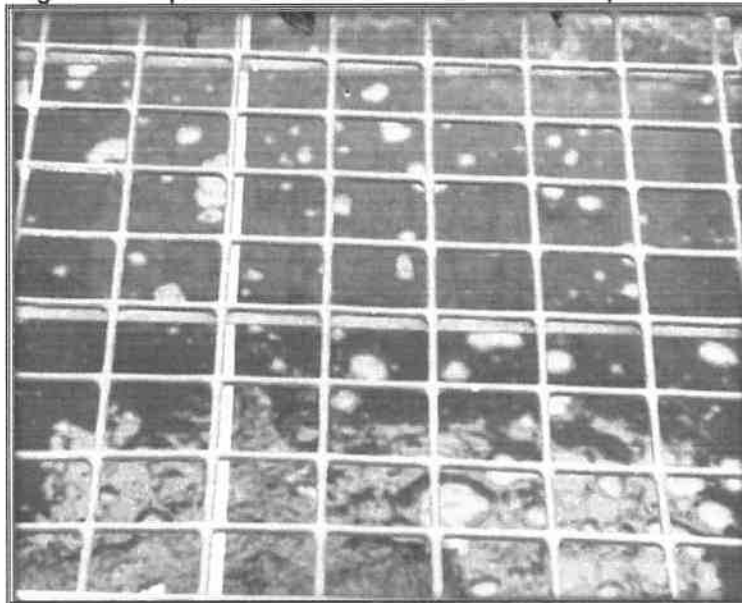
²⁸ For stipulation cases closed between October 2006 and April 2008, it took IES an average of 10 months to issue a stipulation.

²⁹ 7 U.S.C. §2145(b) (January 3, 2007).

National instructions state that an official warning can be sent if no other enforcement action was taken against the violator in the previous 3 years.³³ In this case, the violator had received an official warning 7 months before so a more serious action was warranted. When we asked AC why a more serious action was not taken, regional management told us that the breeder was making progress. Consequently, national instructions were not followed in order to give the breeder “a reasonable opportunity” to comply with AWA.

Four months later, during our visit to the facility in June 2008, AC cited the breeder for another 9 violations (including 4 repeats). For example, a large amount of feces and urine was pooled under the kennels producing an overpowering odor (see figure 4). The inspector recommended no enforcement action.

Figure 4: Deep Pool of Feces and Urine Under Occupied Kennel



The breeder was cited for cleaning and sanitation violations during this inspection.

Four months later, the breeder was re-inspected and cited for 4 more violations (including 3 repeats). Again, AC took no enforcement action because the violator was “making credible progress,” as noted in AC’s “Enforcement Action Option Worksheet.”

Example 4: At a facility in Oklahoma with 219 adult dogs, AC cited the breeder for 29 violations (including 9 repeats) during 3 inspections from February 2006 to January 2007.³⁴ AC requested an IES investigation in May 2007. However, before the investigation resulted in any enforcement action, the inspector conducted another inspection in November 2007 and found five dead dogs and other starving dogs that had resorted to cannibalism. Despite these conditions, AC did not immediately confiscate the surviving dogs and, as a result, 22 additional dogs died before the breeder’s license was revoked.

³³ *Animal Care Enforcement Action Guidance for Inspection Reports* distributed to AC staff in 2007.

³⁴ The facility was on our original sample list. However, we did not visit it because its license was revoked before our fieldwork. We performed a file review instead.

document and consolidate it with the *Research Facility Inspection Guide* and the *Exhibitor Inspection Guide* into one comprehensive document. APHIS anticipates completing the document consolidation by September 30, 2010.

OIG Position

We accept APHIS' management decision on this recommendation.

Recommendation 2

Remove "no action" as an enforcement action in the *Dealer Inspection Guide*.

Agency Response

APHIS agrees with this Recommendation. We changed the title of the "Enforcement Action Worksheet" to "Enforcement Action Option Worksheet" and changed the flow chart title to read "Enforcement Actions (EA) Guidance for Inspection Reports." We modified these to clarify that: (1) inspectors will forward to AC management a recommended EA (they believe will be most effective in attaining compliance) for all repeats and directs and any facility with inspection results that cause it to go from a lower frequency to High Inspection Frequency; and (2) taking no immediate action requires Regional Director approval and a 90-day reinspection to determine if compliance was achieved or if EA is necessary. Copies of the modified worksheet and flow chart are attached. AC will retain copies of all EA sheets in the facility files in accordance with records retention guidelines. AC's supervisors verbally directed their employees to utilize the modified EA worksheet beginning on December 1, 2009. In addition, this will be reemphasized at the National Meeting.

OIG Position

We accept APHIS' management decision on this recommendation.

Recommendation 3

Incorporate instructions provided in the "Animal Care Enforcement Actions Guidance for Inspection Reports" into the *Dealer Inspection Guide* to ensure inspectors and their supervisors follow them in selecting the appropriate enforcement.

Agency Response

APHIS agrees with this Recommendation. We will provide AC employees with guidance regarding all EA options to recommend to AC management drawn from OIG recommendations, OGC guidance, and legal decisions. AC will incorporate the requirements in a new document entitled "Inspection Requirements." This document will be distributed and covered for AC employees during AC's National Meeting, April 19-22, 2010. APHIS will update the *Dealer Inspection Guide* to include the information in the "Inspection Requirements" document and consolidate it with the *Research Facility Inspection Guide* and the *Exhibitor Inspection Guide* into one comprehensive document. APHIS anticipates completing the document consolidation by September 30, 2010.

Finding 2: AC Inspectors Did Not Cite or Document Violations Properly To Support Enforcement Actions

During their inspections of dealers, 6 of 19 inspectors did not correctly report all direct or repeat violations, which are generally more serious and require more frequent inspections. In addition, they did not always adequately describe violations in their inspection reports or support violations with photos. Although inspectors are allowed to use their judgment when the Guide does not give detailed instructions, some inspectors made poor decisions. In these cases, AC regional management told us that the inspectors may need additional training in identifying violations and collecting evidence. As a result, problematic dealers were re-inspected less frequently, which placed their animals at a higher risk for neglect or ill-treatment.³⁸ Also, between 2000 and 2009, the lack of documentary evidence weakened AC's case in 7 of the 16 administrative hearings decided during the period.

AC's Guide states that its purpose is to "provide APHIS Animal Care personnel with a clear, concise, user-friendly reference for inspecting the facilities of USDA licensed animal dealers. By facilitating the inspection process, the Guide will serve as a useful tool to improve the quality and uniformity of inspections, documentation, and enforcement of the Animal Care Program." However, the Guide does allow inspectors to use their judgment in the decision-making process.³⁹

We accompanied 19 of the 99 inspectors to observe their inspections of dealer facilities. While many inspectors are highly committed, conducting timely and thorough inspections and making significant efforts to improve the humane treatment of covered animals, we noted that six inspectors did not correctly report direct or repeat violations. Also, the inspectors did not always document violations with sufficient evidence.

DIRECT VIOLATIONS WERE NOT REPORTED CORRECTLY

The Guide defines a direct violation as one that "has a high potential to adversely affect the health and well-being of the animal."⁴⁰ These include: "infestation with large numbers of ticks, fleas, or other parasites" and "excessive accumulations of fecal or other waste material to the point where odors, disease hazards, or pest control problems exist." In such cases, the inspector must re-inspect the facility within 45 days to ensure that the violator has taken timely actions to treat the suffering animals.

In contrast, an indirect violation is one that "does not have a high potential to adversely affect the health and well-being of the animal."⁴¹ These minor violations include: "inadequate records" and "surfaces not [resistant] to moisture." In such cases, a re-inspection may not occur for up to a year.

³⁸ AC uses a risk-based inspection system to determine frequency of inspections. If a dealer is not cited for direct or repeat violations, it decreases the frequency of his inspections.

³⁹ *Dealer Inspection Guide*, ch. 1.2.1 (March 1999).

⁴⁰ *Dealer Inspection Guide*, ch. 7.6.1 (April 2000).

⁴¹ *Dealer Inspection Guide*, ch. 7.6.1 (April 2000).

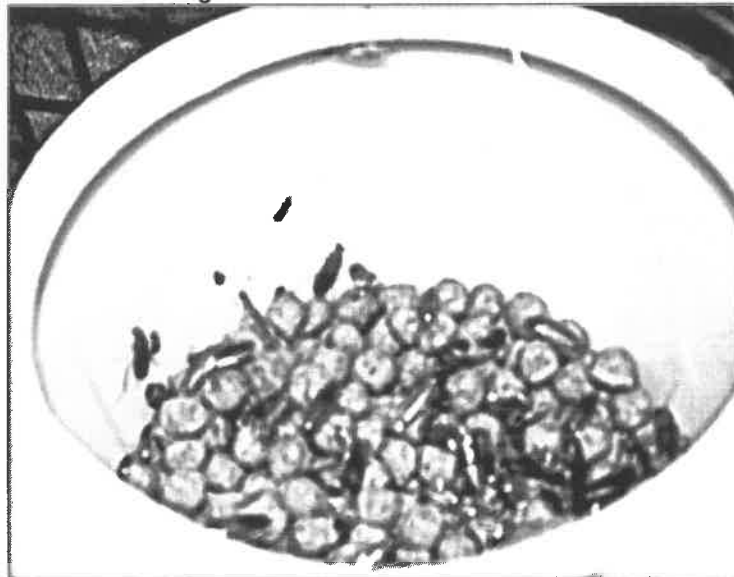
health care . . . [including] dates and other details of all treatments.”⁴⁴ The inspector told us she could not require the records because AC “cannot enforce policy” and current regulations do not require breeders to keep them.

We found that although AWA and AC regulations are silent on treatment records, they do require adequate veterinary care;⁴⁵ without these records, the inspector cannot determine if a violator corrected the problem. We also noted that this inspector had required such records at other facilities, as did other inspectors we travelled with.

Last, the inspector did not identify the specific animals in her inspection report. According to APHIS, the inspector documented and photographed the violation for enforcement action. However, we did not observe her taking any photos when we were there and she could not subsequently produce them. Without the documentation, it would be impossible to identify the animals during re-inspection to determine if they were treated or just disposed of.

Example 2: At a broker facility in Oklahoma with 525 adult dogs, we observed and the inspector reported “an excessive number of insects/ cockroaches” crawling on walls, the floor, and the ceiling. Food bowls were also infested with dead and live cockroaches (see figure 6).

Figure 6: Cockroach-Infested Food



The inspector required the broker to correct the contaminated food within 5 days. However, by not designating this as a direct violation, the inspector will not know if the correction occurred since she will not return for a re-inspection for a year.

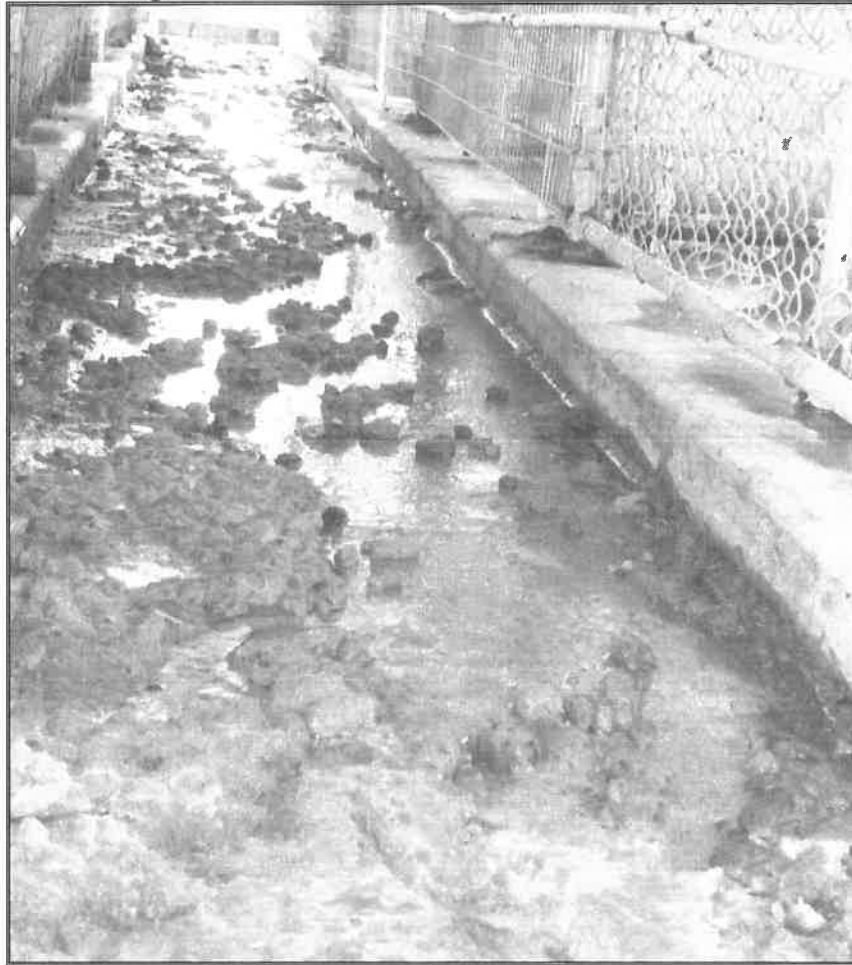
The inspector cited the violation as an indirect, even though contaminated feed and heavy vermin infestation in storage or feeding area are classified as direct violations in the Guide.⁴⁶ She told us that “cockroaches in the feed [do not necessarily pose] immediate health concerns . . . animals

⁴⁴ AC Policy No. 3 (July 17, 2007).

⁴⁵ 7 U.S.C §2143(a) (January 3, 2007) and 9 CFR §2.40 (January 1, 2005).

⁴⁶ *Dealer Inspection Guide*, ch. 7.6.1 (April 2000).

Figure 7: Excessive Accumulation of Feces and Urine



The inspector cited the breeder for failure to clean and sanitize the kennel, although this area was not included in the citation. Because the breeder was not cited for any direct violations, the inspector will not return for a re-inspection for a year.

In conclusion, by incorrectly reporting direct violations as indirects, AC re-inspected the violators less frequently, leaving the animals at a higher risk for neglect, illness, and ill-treatment.

REPEAT VIOLATIONS WERE NOT REPORTED CORRECTLY

The Guide defines a repeat violation as “a noncompliance cited on the previous inspection or previous consecutive inspections, which has not been corrected, and/or a new noncompliance of the same . . . subsection cited [in] the previous inspection.”⁴⁹ We found that 4 of the 19 inspectors did not follow the Guide in reporting repeat violations.⁵⁰

Example 4: At a facility in Oklahoma with 55 adult dogs, an inspector cited the breeder for 21 violations during 4 inspections from October 2005 to June 2008. One inspection identified a

⁴⁹ *Dealer Inspection Guide*, ch.7.3 (April 2000).

⁵⁰ Two of the inspectors were among the four that did not correctly cite direct violations.

ALJ decision dated March 7, 2006, the ALJ dismissed six violations in part because there was a lack of photo evidence.⁵⁴

Example 6: We found some inspectors did not adequately describe some violations in inspection reports. At one facility in Oklahoma, the inspector cited the breeder for inadequate floor space. Although her report stated “several dogs are kept in kennels that are not large enough to satisfy their space requirements,” the inspector provided no further details. This lack of documentation may impact future litigation. In a prior ALJ case, when the Department similarly charged another breeder, the ALJ ruled in favor of the breeder stating “without any documentation as to the size of the shelters in the pen, a determination as to their adequacy cannot be made.”⁵⁵

In summary, the issues and examples discussed above seriously impacted APHIS’ ability to enforce AWA. Using their own judgment, some inspectors did not always report direct or repeat violations correctly according to the Guide and did not always document violations with sufficient evidence. When we discussed this issue with the agency, both the deputy administrator and the western regional director generally agreed that the inspectors should be provided more training. In particular, the deputy administrator suggested additional training in shelter medicine and animal abuse.

To correct these deficiencies, we agree that APHIS should provide more comprehensive training and detailed guidance to its inspectors and supervisors on direct and repeat violations, enforcement procedures, evidentiary requirements (e.g., adequately describing violations), shelter medicine, and animal abuse. Also, the agency should revise the Guide to require photos for all violations that can be documented in this manner.

Recommendation 6

Provide more comprehensive training and detailed guidance to the inspectors and supervisors on direct and repeat violations, enforcement procedures, evidentiary requirements (e.g., adequately describing violations), shelter medicine, and animal abuse.

Agency Response

APHIS agrees with this Recommendation. We have provided training for all inspectors on identifying direct and repeat NCIs and adequately describing NCIs, during fall 2009 meetings between supervisors and their inspector teams. We will provide additional training and guidance (i.e., the “Inspection Requirements” document) to AC’s inspectors and supervisors on identifying direct and repeat NCIs, adequately describing NCIs, enforcement procedures, and common medical conditions seen at commercial kennels during AC’s National Meeting, April 19-22, 2010. In addition, we will provide a training session on shelter medicine at the National Meeting. We will develop a comprehensive technical training plan through the Center for Animal Welfare by November 30, 2010.

⁵⁴ *Karen Schmidt*, AWA Docket No. 03-0024.

⁵⁵ *Karen Schmidt*, AWA Docket No. 03-0024.

Section 2: Stipulations

Finding 3: APHIS' New Penalty Worksheet Calculated Minimal Penalties

Although APHIS previously agreed to revise its penalty worksheet to produce “significantly higher” penalties for violators of AWA, the agency continued to assess minimal penalties for the majority of its stipulation cases. This occurred because the new worksheet allowed reductions up to 145 percent of the maximum penalty. As a result, APHIS continued to assess monetary penalties that were inadequate to deter violators. For the 94 stipulation cases we reviewed, APHIS imposed penalties totaling \$348,994, nearly 20 percent less than the \$434,078 calculated using the old worksheet.

Congress authorized APHIS to enforce AWA and assess monetary penalties to “any dealer, exhibitor, research facility . . . that violates any provision of this chapter, or any rule, regulation or standard promulgated by the Secretary.”⁵⁶ For our sample cases, the maximum penalty ranged from \$2,750 to \$3,750.

IES, in conjunction with AC, developed a worksheet to calculate penalties for violators. The overall goal for this worksheet was “to discourage dealers [and others] from violating the Act.”⁵⁷ In our prior audit report, we found that IES reduced the amount of the penalties for several factors (e.g., gravity of violations, size of business, etc.) authorized by AWA.⁵⁸ After making these adjustments, IES further reduced the penalties by 75 percent, an automatic reduction applied universally to all penalties, as an incentive for violators to pay the stipulation and thereby forego a hearing. However, this lowered penalties to such an extent that violators considered them a normal cost of business. We concluded that the resulting penalties were ineffective deterrents and APHIS agreed to develop a new penalty worksheet.

In April 2006, APHIS implemented a revised worksheet with two significant changes: adding a “good faith” factor⁵⁹ and changing the automatic reduction from 75 to 50 percent, as shown in figure 8.

During the management decision process,⁶⁰ APHIS officials explained that “the new [worksheet] results in significantly higher stipulations than have previously been issued for similar violations. This has not only been seen in current cases, but also in a number of previous cases that the team used to Beta-test the new penalty [worksheet].”⁶¹ They provided two sample cases, which corroborated their explanation.⁶²

⁵⁶ 7 U.S.C. §2149(a) and 2149(b) (January 1, 2007).

⁵⁷ “Determining Penalties under the Animal Welfare Act,” pg. 2 (April 2006).

⁵⁸ OIG Audit No. 33002-3-SF, “APHIS Animal Care Program Inspection and Enforcement Activities” (September 2005).

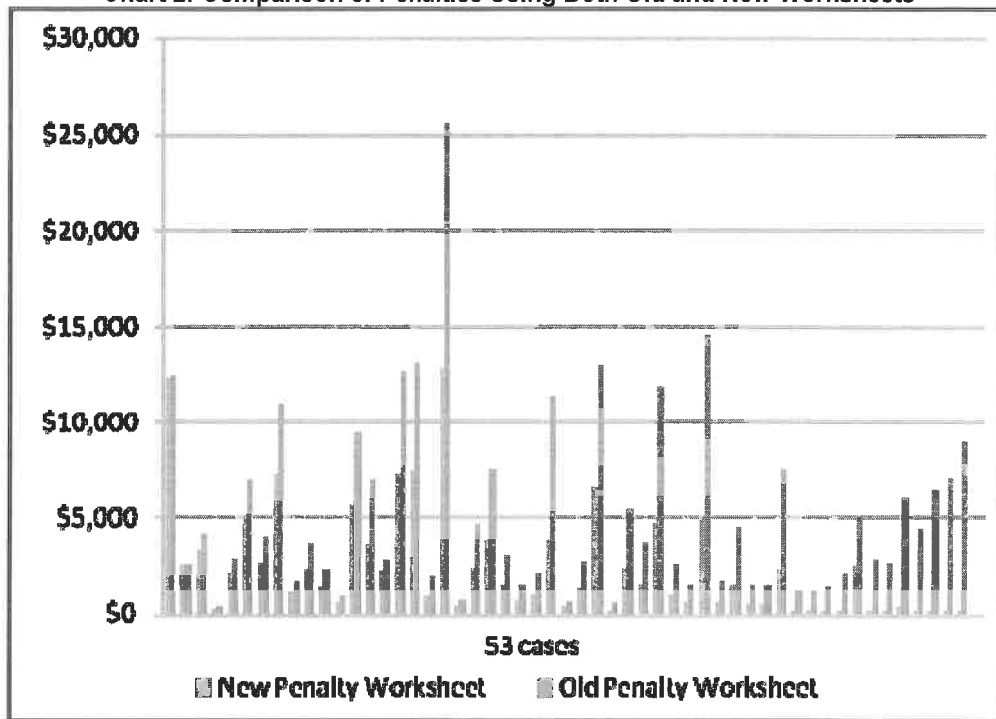
⁵⁹ Authorized by 7 U.S.C. §2149(b) (January 1, 2007). AC defines good faith as “compliance with standards of decency and honesty” and “sincere integrity in profession and performance.” For purposes of AWA, a person who shows good faith “may be: willing to comply and correct violations; have animals that are in good health that do not suffer as a result of the violations, and; cooperative with IES and AC.”

⁶⁰ Management decision is the agency's evaluation of the findings, recommendations, and monetary results in an audit report and its issuance of a proposed decision in response to such findings and recommendations, including any corrective actions determined to be necessary.

⁶¹ Memorandum dated September 21, 2006.

⁶² During this audit, we asked APHIS for the entire sample. The agency was unable to provide this information.

Chart 2: Comparison of Penalties Using Both Old and New Worksheets



During a 14-month period, IES lacked controls over the minimum stipulation amount in that it changed four times, as shown in table 2.

Table 2: Penalties Calculated with the New Penalty Worksheet

			a	b	
1	8/25/06	9	\$25,750	(\$231)	\$250
2	10/4/06	16	\$55,000	(\$325)	\$200
3	10/13/06	14	\$46,500	(\$1,163)	\$200
4	11/8/06	44	\$165,000	(\$24,469)	\$250
5	11/22/06	7	\$26,250	(\$937)	\$250
6	2/8/07	7	\$26,250	(\$2,906)	\$250
7	8/3/07	1	\$3,750	(\$281)	\$275
8	8/6/07	31	\$97,500	(\$11,344)	\$250
9	8/30/07	2	\$5,500	(\$412)	\$250
10	9/28/07	5	\$18,750	(\$469)	\$250
11	10/2/07	15	\$56,250	(\$1,406)	\$250
12	10/19/07	2	\$7,500	(\$188)	\$250
a. These amounts were calculated by multiplying the number of violations by the maximum penalty authorized.					
b. These amounts were calculated by applying so many reductions that the stipulations became a negative number.					

We inquired why IES used different minimums. In March 2009, IES' chief of Enforcement and Operations Branch stated, "it is not possible to glean from the email exchanges between the enforcement specialist and the program official why [this occurred]." Other IES officials also had no explanation about how the different minimums were calculated for the cases.

In addition, APHIS stated that stipulations increased using the new worksheet. To support this, the agency compared the average stipulation before our 2005 audit report to the average stipulation after our 2005 audit report. However, the agency did not consider factors that affected the average stipulation, such as the gravity of violations, size of business, violation history, and increases in the authorized maximum penalty.

To determine the impact of these factors, we reviewed stipulation cases collected for our 2005 audit⁶⁸ and found: (1) the violations after 2005 were more serious than those in earlier years;⁶⁹ (2) the size of business of the violators after 2005 was larger;⁷⁰ (3) more violators after 2005 had a violation history;⁷¹ and (4) the maximum penalty increased since our last audit.⁷² Since the above factors increased stipulations, we disagree that stipulations increased because of the new worksheet.

Finally, APHIS stated that OIG recommended it produce higher penalties without regard to penalty precedent established by the courts, which is binding on APHIS. It also stated that the JO routinely imposes a fraction of the statutory maximum penalty even for the most egregious violations.

APHIS' legal proceedings were not the focus of our audit. However, to validate APHIS' statement, we reviewed the seven cases the agency provided. We found:

- In three cases, the JO imposed the same or almost the same penalty that APHIS asked for.⁷³
- In three other cases, the JO reduced the civil penalty because APHIS either did not provide sufficient evidence or used the wrong maximum penalty amount.⁷⁴
- In the last case, the JO did not impose a penalty because he found that AWA and the regulations were ambiguous on the issue.⁷⁵

In 1995 and again in 2005, we reported that the monetary penalties were often so low that violators regarded them as a cost of business and that APHIS reduced the stipulations making them basically meaningless. In our current audit, we found that this problem has not yet been corrected. APHIS continues to impose negligible stipulations by applying excessive reductions (up to 145 percent) to the maximum penalties. To correct this on-going problem, the agency needs to issue stipulations that will serve as a better deterrent for encouraging violators to comply with the law.

⁶⁸ We reviewed 77 of 197 cases closed from 2002 to 2004, the sample selected during our last audit.

⁶⁹ Serious and grave violations made up nearly 60 percent of all violations in our sample after 2005, whereas serious and grave violations only accounted for 11 percent of cases before 2005.

⁷⁰ Large businesses made up 30 percent of all violators in our sample after 2005, whereas large businesses only accounted for 13 percent of cases before 2005.

⁷¹ Over 38 percent of the violators had a violation history in our sample after 2005, whereas only 26 percent of the violators had a violation history of cases before 2005.

⁷² The maximum penalty increased from \$2,750 to \$3,750 in 2005, a 37 percent increase.

⁷³ *Marilyn Shepherd*, AWA Docket No. 05-0005, *Lorenza Pearson*, AWA Docket Nos. 02-0020 and D-06-0002, and *Jewel Bond*, AWA Docket No. 04-0024.

⁷⁴ *Martin Colette*, AWA Docket No. 03-0024, *Jerome Schmidt*, AWA Docket No. 05-0019, and *Karen Schmidt*, AWA Docket No. 03-0024.

⁷⁵ *Daniel Hill*, AWA Docket No. 06-0006

Monetary Penalty Action Team established guidelines in 2006 that elaborated on the use and amount of penalty reductions.⁷⁷

After AC completes an inspection and considers enforcement action against a violator, it may request an IES investigation generally depending on the severity of the violations. If the investigation confirms the violations, AC may request that a stipulated (i.e., compromised) penalty be offered to the violator, who in return gives up his right to a hearing. IES, in coordination with AC, calculates the penalties while allowing reductions consistent with those listed in AWA.

In 32 of the 94 stipulation cases closed from October 2006 to April 2008, we found that APHIS misused guidelines in completing the penalty worksheet. (Since some individual cases contained multiple errors, the following add up to more than 32 cases.)

- In 18 cases involving animal deaths or unlicensed wholesale activities, APHIS used a smaller number of violations than the actual number.
- In 13 cases, APHIS applied a 50-percent or 25-percent good faith penalty reduction without supporting evidence or with contradictory evidence.
- In 22 cases, APHIS applied a penalty reduction, established for violators with no prior violation history, to violators that had a prior history.
- In 1 case, APHIS arbitrarily reduced the gravity of some violations and the size of the business from what was originally reported on the penalty worksheet.

We concluded that APHIS applied these penalty reductions without merit for the purpose of lowering penalties. AC regional management told us that they wanted to assess penalties that the violators would agree to pay rather than exercise their right to a hearing.

VIOLATIONS INCONSISTENTLY COUNTED

In our prior audit report, we recommended that APHIS calculate penalties on a per animal basis, as appropriate.⁷⁸ In September 2006, APHIS' prior Administrator agreed stating, "the criteria for total number of violations is calculated on a 'per animal, per day' basis."⁷⁹ Our review of the 94 cases disclosed that APHIS used this criterion only in cases involving animal deaths or unlicensed wholesales. However, because APHIS did not include the "per animal" part in its guidelines, this practice was not consistently followed, as discussed below.

In five cases involving animal deaths, APHIS calculated penalties based on one violation even though multiple animals died in each case. For example, in 2006 an airline company transported eight puppies from Europe to New York. Five puppies died because they were not adequately fed or hydrated. APHIS cited the violator for one grave violation for the deaths of the five

⁷⁷ "Determining Penalties Under the Animal Welfare Act" (April 2006).

⁷⁸ OIG Audit No. 33002-3-SF "APHIS Animal Care Program Inspection and Enforcement Activities" (September 2005).

⁷⁹ Memorandum from the Administrator to the Assistant Inspector General (September 21, 2006).

4 of which were repeats that caused additional deaths.⁸³ In a letter dated July 3, 2007, the regional director stated that “we have no evidence of good faith.” Nonetheless, when APHIS calculated the penalty for all 34 violations, the violator received a 50-percent good faith penalty reduction. We concluded that the violator had actually displayed a lack of good faith by not correcting previous violations that caused the additional deaths.

- One licensed breeder in Ohio, with no veterinary qualifications, operated on a pregnant dog without anesthesia; the breeder delayed calling a veterinarian and the dog bled to death. The inspector also found that 40 percent of the dogs in the kennel were blind due to an outbreak of Leptospirosis.⁸⁴ The inspector determined that the facility’s water was contaminated and had caused the outbreak.

Guidelines state that “a person who shows ‘good faith’ . . . [has] animals that are in good health that do not suffer as a result of the violations . . .”⁸⁵ Despite the lack of good faith demonstrated by the breeder, APHIS applied a 25-percent good faith penalty reduction to lower the penalty. Four months later, a subsequent inspection continued to document violations at the facility. The inspector reported that “this is a veterinary care issue that continues to be a serious problem—failure to provide adequate veterinary care for over 200 adult dogs.”

HISTORY OF VIOLATIONS

A history of violations is defined as a previous violation of AWA or a “pattern of ongoing violations.”⁸⁶ When there is no prior history of violations, the guidelines allow a 25-percent penalty reduction.

We found that in 22 cases, APHIS allowed a 25-percent reduction of the maximum penalty amounts for “no prior history of violations,” even though the violators had a prior history of violations, as shown in the IES tracking system or through our review of the case files. Two examples are:

- A breeder in Ohio with about 62 adult dogs was cited for 1 minor, 16 significant, and 12 serious violations during 5 inspections between 2005 and 2006. The violations included the breeder’s failure to inform his attending veterinarian that some of his dogs delivered dead puppies, which is important if the puppies died of a disease like Brucellosis.⁸⁷ The breeder was also cited for administering medications to his dogs without his attending veterinarian’s knowledge. Although the breeder was issued an official warning in 2005 for numerous violations including inadequate veterinary care, APHIS gave him a 25-percent penalty reduction in 2007 for “no prior history of violations.”

⁸³ The agency incorrectly used 32 violations on the worksheet when the settlement agreement, which was sent to the breeder, showed 34.

⁸⁴ This is a bacterial disease that affects animals as well as humans and causes damage to the inner lining of blood vessels. The liver, kidneys, heart, lungs, central nervous system, and eyes may be affected.

⁸⁵ “Determining Penalties Under the Animal Welfare Act,” pg. 4 (April 2006).

⁸⁶ “Determining Penalties Under the Animal Welfare Act,” pg. 5 (April 2006).

⁸⁷ This is an infectious bacterial disease, which is spread through contact with aborted fetuses and discharges from the uterus of infected bitches, during mating, through maternal milk, and possibly through airborne transmission in some cases. The bacteria enter the body through mucous membranes and spreads from there to lymph nodes and the spleen. It also spreads to the uterus, placenta, and prostate gland as well as other internal organs at times.

Agency Response

APHIS agrees with this Recommendation. We recently reorganized the enforcement component of our Investigative and Enforcement Services (IES) to establish two branches: the Animal Health and Welfare Enforcement Branch (AHWEB) and the Plant Health and Border Protection Enforcement Branch. A GS-14 Chief will supervise each branch with full supervisory authority for branch staff. The Chief of AHWEB and his/her subordinate staff are responsible for EAs involving only AC and the APHIS Veterinary Services programs, greatly increasing the level of staff specialization afforded to these programs when compared to that in place during the audit. The Chief of AHWEB will assume responsibility for ensuring that AWA penalty calculations are consistent and in accordance with the instructions included in "Determining Penalties Under the Animal Welfare Act." In an instance where the AHWEB Branch Chief is unavailable or the position is vacant, the IES Deputy Director will assume this responsibility.

OIG Position

We accept APHIS' management decision on this recommendation.

Recommendation 11

Include instructions in "Determining Penalties Under the Animal Welfare Act" to count each animal as a separate violation in cases involving animal deaths and unlicensed wholesale activities.

Agency Response

APHIS partially agrees with this Recommendation. The Recommendation is not always practical for unlicensed wholesale activities. We will request an opinion from Office of the General Counsel about a penalty structure for unlicensed wholesale activities by September 30, 2010. However, we will count each animal as a separate violation when an animal death results from NCIs. Specifically, AC will clarify the penalty guidelines by September 30, 2010, to count each animal as a separate violation when an animal death resulting from NCIs is involved.

OIG Position

We agree with APHIS' corrective action. However, our concern remains whether APHIS will count the violations for unlicensed wholesale activities consistently. To achieve management decision, APHIS needs to provide us with a copy of the Office of the General Counsel's opinion.

person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises . . . to any research facility” is exempted.⁹⁴

However, many Internet breeders do not fall in the small business category because they have more than three breeding females. Some are very large breeders that derive a substantial income from the breeding of dogs. For example, one Internet breeder we visited in Iowa had over 140 breeding dogs and generated sales of \$160,000 in 2007.

In April 2009, APHIS publicly acknowledged that not requiring Internet breeders to be licensed and inspected is “a massive loophole.”⁹⁵ To quantify the loophole, we used two search engines to identify how many of these breeders were licensed in two of our eight sampled States. We identified 138 breeders that had more than 3 breeding females or handled more than 25 dogs a year. We found 112 of the 138 (81 percent) were not licensed by APHIS. If these breeders had sold their dogs wholesale (i.e., not retail through the Internet), they would have needed a license.

Without a license, these breeders are not monitored or inspected for their animals’ overall health and humane treatment. With the dramatic increase in online sales, consumers who purchased dogs in this manner sometimes found health problems with their dogs. Examples of some consumer complaints are listed below:

“This one pound puppy was very sick when she arrived . . . my vet informed me that she was suffering from severe hypoglycemia and massive infestations of Giardia, Threadworm, Roundworm and Coccidia. She also had two groin hernias. Her blood glucose level was dangerously low so she was immediately put on an IV.”—source: an OIG Hotline Complaint.

“The [puppies] were mutts with poor body conformation, crooked teeth and were completely unsocialized. No health records came with the dogs and the information on the website was completely false.”—source: a Better Business Bureau sponsored website.

“After suffering from numerous health issues that cost . . . thousands of dollars in vet bills, [the puppy] died when he was just eight months old.”—source: San Francisco Chronicle.

“A breeder with a criminal record for animal cruelty was selling hundreds of puppies on the Internet.”—source: USA Today.

To ensure that large Internet sellers are inspected, APHIS should propose that the Secretary seek legislative change to cover these sellers under AWA. Specifically, the agency should propose that the Secretary recommend to Congress that it exclude Internet sellers from the definition of “retail pet store,” thereby ensuring that large breeders that sell through the Internet are regulated under AWA.

⁹⁴ 9 CFR §2.1 (January 1, 2005)

⁹⁵ “A (Designer) Dog’s Life,” *Newsweek* (April 13, 2009)

Section 4: Information System

Finding 6: Security Controls Need to Be Addressed for AC's New Information System

AC started using the Animal Care Information System (ACIS), its new mission critical system,⁹⁶ before the Department's Cyber Security Office gave its concurrence to operate it. This occurred because APHIS' Chief Information Officer (CIO) believed that the majority of the new system's security controls were operating as intended and recommended that it be implemented. The Cyber Security Office disagreed with the CIO's assessment and identified issues in the concurrency review checklist. As a result, there is no assurance that the new system has the security controls mandated by the Department.

Departmental Manual 3555-001 states, "all USDA IT systems require certification and accreditation prior to the system becoming operational. . . . Certified systems will undergo an independent concurrence review by the ACIO-CS [Associate Chief Information Officer for Cyber Security] prior to submission to the DAA [Designated Accrediting Authority]."⁹⁷ APHIS' condensed guide also states, "the concurrence of ACIO-CS with the [Certifying Official] is mandatory prior to submission to the DAA."⁹⁸

Since 1994, AC has used LARIS (Licensing and Registration Information System) to record licensing and registration of all breeders, exhibitors, and other facilities and to document their inspection and violation histories. After reviewing LARIS in our last audit,⁹⁹ we determined that this mission critical information system lacked certain key features that prevented it from effectively tracking violations and prioritizing inspection activities. Also, it generated unreliable and inaccurate information, limiting its usefulness to AC inspectors and supervisors. APHIS agreed with our recommendation for a new system. However, due to contractor failure, APHIS did not start to develop ACIS (LARIS' replacement) until September 2007.

AC closed down LARIS on September 30, 2008, expecting that ACIS would be certified and accredited the next month. However, the certification and accreditation did not occur the next month; in fact, AC did not have an operating information system for 5 months before launching the new system. Throughout this period, inspectors worked without a system, manually tracking reports and calculating future inspection dates.¹⁰⁰

By January 2009, APHIS' CIO believed that the majority of ACIS' security controls were in place and operating as intended. The CIO recommended that ACIS be authorized for use, disregarding the required departmental concurrence review. Based on the CIO's recommendation, the DAA (in this case, APHIS' deputy administrator) issued the authority to operate ACIS, and AC inspectors started using the new system. Once the system became operational in March 2009, inspectors then had to enter the 5 months of accumulated data into the new system.

⁹⁶ Any system whose failure or disruption in normal business hours will result in the failure of business operations.

⁹⁷ *Departmental Manual 3555-001*, ch. 11, pt. 1 (October 18, 2005).

⁹⁸ *Certification and Accreditation Condensed Guide*, pg. 7 (April 24, 2007).

⁹⁹ Audit No. 33002-3-SF, "APHIS Animal Care Program Inspection and Enforcement Activities" (September 2005).

¹⁰⁰ LARIS and ACIS could not be run simultaneously on the inspectors' computers due to compatibility issues. LARIS had to be removed before ACIS could be loaded.

Section 5: Debt Management

Finding 7: IES Did Not Adequately Establish Payment Plans for Stipulations

IES did not adequately establish the payment plans for AWA violators that had stipulation agreements. This occurred because IES did not follow the payment plan process that was presented by the Financial Management Division (FMD) during a meeting in 2004. Further, FMD did not provide sufficient oversight or follow up of IES' debt management activities. As a result, 20 payment plans totaling \$92,896 were (1) established without verifying the violators' ability to pay, (2) not legally enforceable, and (3) not always established as accounts receivable.

Overall, FMD provides debt management services for APHIS and other agencies within the Department. According to APHIS' Budget and Accounting Manual, "FMD is responsible for developing and implementing an effective debt management program for the Agency . . . and providing oversight of Agency debt management activities."¹⁰²

To accomplish this, FMD partners with IES, which negotiates payment plans for violators that claim they are unable to pay the full amount of an agreed-upon stipulation. In March 2004, FMD representatives met with IES to discuss the payment plan process and the responsibilities that IES would be expected to assume. FMD did not provide further oversight.

We reviewed all 20 payment plans for stipulation agreements closed from October 2006 to April 2008. In assuming debt management responsibilities, IES did not comply with several regulatory requirements involving all 20 plans—most having overlapping errors. Specifically, we found that IES:

- Did not collect financial information when the violators claimed inability to pay. After IES and a violator agree to a stipulation, the violator may either pay in full or if he is unable to do so, then negotiate a payment plan. For all 20 plans, IES did not verify violators' eligibility to qualify for the plans. Regulations require that plans must be based on debtor's inability to pay in a reasonable time, which should be supported by financial information, such as tax returns and credit reports.¹⁰³ IES told us it was not aware of this requirement.
- Did not obtain legally enforceable written agreements (payment plans) from the violators. After IES and the violator mutually agree to a payment plan, IES signs the document before sending it to the violator. However, for 19 plans, IES did not require the violators to sign.¹⁰⁴ Regulations require that debtors provide "a legally enforceable written

¹⁰² APHIS' *Budget and Accounting Manual*, ch. 12 p. 2 (October 1, 2002).

¹⁰³ 31 CFR §902.2 (July 1, 2006).

¹⁰⁴ For one case, IES did not require the violator to sign the original payment plan. After accepting its terms, the violator asked IES to renegotiate the fine to a lower amount, and IES agreed to do so but required the violator to sign the second payment plan that was generated based on the renegotiated amount.

Scope and Methodology

We conducted a nationwide review of AC's inspections of dealers and its enforcement of AWA during FYs 2006 through 2008. We performed fieldwork at the AC and IES national offices in Riverdale, Maryland; the two regional offices in Raleigh, North Carolina, and Fort Collins, Colorado; the FMD Financial Services Branch in Minneapolis, Minnesota; and 81 dealer facilities in 8 States (see exhibit B for a complete list of audit sites). We performed site visits from April 2008 through March 2009.

With data exported from the LARIS database,¹⁰⁷ we judgmentally selected eight States—Arkansas, Iowa, Minnesota, Missouri, Ohio, Oklahoma, Pennsylvania, and Texas—based on the number of licensed dealers operating in the States. We also considered the type of animal welfare laws or inspection programs that had been adopted by the States.

To accomplish our audit, we:

- *Reviewed Criteria.* We reviewed the pertinent laws and regulations governing the AC program and the current policies and procedures AC established as guidance for inspections and enforcement.
- *Interviewed APHIS Personnel.* We interviewed AC and IES national and regional office officials as well as 19 of the 99 inspectors to gain an understanding about the AC program, its inspections, and investigation procedures. We also interviewed FMD personnel to gain an understanding of the penalty collection process.
- *Visited 81 Dealer Facilities.* Using Audit Command Language software, we judgmentally selected 81 of 3,954 licensed dealers in our sampled States (33 in the Eastern Region and 48 in the Western Region). Generally, we selected the dealers based on the largest number of violations or repeat violations cited during our scope, the size of the facility, elapsed time since the last inspection, availability of its regular inspector, and proximity to other dealers in our sample.

We accompanied 19 inspectors on their inspections of these dealers to (1) determine if the dealers were in compliance with AWA and related regulations and (2) evaluate the effectiveness of AC's enforcement actions. Of the 81 dealers we selected, 68 had been cited for violations since FY 2006.

- *Reviewed AC Inspection Reports and Files.* For the 81 dealers we visited, we reviewed inspection reports and other documentation in AC's files to determine if violations had been adequately addressed by the violators at re-inspections and, if not, whether appropriate enforcement action had been taken by AC.
- *Analyzed Total Violations Cited During Inspections.* We obtained nationwide data from LARIS of the violations cited during inspections in FYs 2006-2008. We then used Audit Command Language software to determine if the violators achieved compliance during

¹⁰⁷ The data was exported in April 2008.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Exhibit A: Summary of Monetary Results

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
3	8	Although APHIS previously agreed to revise its penalty worksheet to produce “significantly higher” penalties for violators of AWA, the agency imposed penalties totaling \$348,994, nearly 20 percent less than the \$434,078 calculated using the old worksheet for the 94 stipulation cases we reviewed.	\$85,084	FTBPTBU* – Management or Operating Improvements/Savings
7	14	IES did not adequately establish payment plans for stipulations totaling \$92,896.	\$92,896	FTBPTBU – Improper Accounting
TOTAL MONETARY RESULTS			\$177,980	
*Funds to be put to better use				

ORGANIZATION	LOCATION
27	Brewster, MN
28	Walnut Grove, MN
29	Luverne, MN
30	Ruthton, MN
31	Reading, MN
32	Walnut Grove, MN
33	Avoca, MN
APHIS Western Regional Office	
Animal Care	Fort Collins, CO
Investigative and Enforcement Services	Fort Collins, CO
Dealer Facilities:	
34	Dardanelle, AR
35	Pleasant Plains, AR
36	Booneville, AR
37	Booneville, AR
38	Everton, AR
39	Green Forest, AR
40	Harriet, AR
41	Mountainburg, AR
42	Hindsville, AR
43	Ozark, AR
44	Agra, OK
45	Jones, OK
46	Jones, OK
47	Atoka, OK
48	Coalgate, OK
49	Lane, OK
50	Tishomingo, OK
51	Atoka, OK
52	Duncan, OK
53	Duncan, OK
54	Lebanon, MO
55	Edgar Springs, MO
56	Edgar Springs, MO
57	Huggins, MO
58	Houston, MO

Exhibit C: Violations Cited at Dealer Facilities in FYs 2006-2008

VIOLATION	COUNT
Housing Facilities, General	4,744
Attending Veterinarian and Adequate Veterinary Care	3,537
Cleaning, Sanitization, Housekeeping, and Pest Control	3,504
Primary Enclosures	3,170
Access and Inspection of Records and Property	2,900
Outdoor Housing Facilities	2,678
Records: Dealers and Exhibitors	1,601
Time and Method of Identification	1,260
Sheltered Housing Facilities	731
Sanitation	651
Indoor Housing Facilities	576
Feeding	546
Watering	459
Facilities, General	428
Exercise for Dogs	254
Facilities, Indoor	237
Facilities, Outdoor	165
Notification of Change of Name, Address, Control	124
Procurement of Random Source Dogs and Cats, Dealer	82
Environment Enhancement To Promote Psychological Welfare	71
Employees	69
Minimum Age Requirements	69
Requirements and Application	68
Compatible Grouping	60
Records: Operators of Auction Sales and Brokers	55
Handling of Animals	52
Others (e.g., Health Certification, Space Requirements, Care in Transit, etc.)	352
TOTAL	28,443



Ohio breeder violated AWA: This was an unsuitable kennel for puppies because their paws slipped through the wires, allowing regular contact with feces. The inspector correctly cited the breeder for failure to protect the dogs' feet from injury (9 CFR §3.6).



Texas breeder violated AWA: This dog had cloudy eyes covered with a heavy discharge, matted hair, and skin irritations. The inspector cited the breeder for lack of adequate veterinary care (9 CFR §2.40) and required the breeder to take the dog to a veterinarian for treatment. The inspector did not consider this a direct violation.

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RESPONSE TO AUDIT REPORT

to AC management a recommended EA (they believe will be most effective in attaining compliance) for all repeats and directs and any facility with inspection results that cause it to go from a lower frequency to High Inspection Frequency; and (2) taking no immediate action requires Regional Director approval and a 90-day reinspection to determine if compliance was achieved or if EA is necessary. Copies of the modified worksheet and flow chart are attached. AC will retain copies of all EA sheets in the facility files in accordance with records retention guidelines. AC's supervisors verbally directed their employees to utilize the modified EA worksheet beginning on December 1, 2009. In addition, this will be reemphasized at the National Meeting.

Recommendation 3: Incorporate instructions provided in the “Animal Care Enforcement Actions Guidance for Inspection Reports” into the *Dealer Inspection Guide* to ensure inspectors and their supervisors follow them in selecting the appropriate enforcement.

APHIS Response: APHIS agrees with this Recommendation. We will provide AC employees with guidance regarding all EA options to recommend to AC management drawn from OIG recommendations, OGC guidance, and legal decisions. AC will incorporate the requirements in a new document entitled “Inspection Requirements.” This document will be distributed and covered for AC employees during AC's National Meeting, April 19-22, 2010. APHIS will update the *Dealer Inspection Guide* to include the information in the “Inspection Requirements” document and consolidate it with the Research Facility Inspection and the Exhibitor Inspection Guides into one comprehensive document. APHIS anticipates completing the document consolidation by September 30, 2010.

Recommendation 4: Modify regulations to allow immediate confiscation where animals are dying or seriously suffering.

APHIS Response: APHIS agrees with the intent of this Recommendation, but believe that current regulations are sufficient to allow immediate confiscation. We believe that we can effect the intent of the Recommendation by reviewing and clarifying the confiscation processes so that confiscations can be accomplished with maximum speed and effectiveness. We will distribute the clarified guidance to employees during AC's National Meeting, April 19-22, 2010.

Recommendation 5: Establish written procedures to refer animal cruelty cases to the States that have such felony laws.

APHIS Response: APHIS agrees with this Recommendation. While the Animal Welfare Act (AWA) does not give APHIS the authority to determine if state or local animal cruelty laws have been violated, we do believe that we should work with state and local authorities in our shared goal of eliminating animal cruelty. APHIS will

comprehensive document. APHIS anticipates completing the document consolidation by September 30, 2010.

Recommendation 8: Limit total penalty reductions on the new worksheet to less than 100 percent.

APHIS Response: APHIS agrees with this Recommendation. We will develop and implement a new worksheet which limits total penalty reductions to less than 100 percent by September 30, 2010.

Recommendation 9: Establish a methodology to determine a minimum stipulation amount and consistently apply that amount, when appropriate.

APHIS Response: APHIS agrees with this Recommendation. We will formally document the “minimum stipulation amount” in the “Determining Penalties Under the Animal Welfare Act” document by September 30, 2010.

Recommendation 10: Designate a responsible party to ensure that “Determining Penalties Under the Animal Welfare Act” (April 2006) is consistently followed by AC and IES and that penalties are properly calculated.

APHIS Response: APHIS agrees with this Recommendation. We recently reorganized the enforcement component of our Investigative and Enforcement Services (IES) to establish two branches: the Animal Health and Welfare Enforcement Branch (AHWEB) and the Plant Health and Border Protection Enforcement Branch. A GS-14 Chief will supervise each branch with full supervisory authority for branch staff. The Chief of AHWEB and his/her subordinate staff are responsible for EAs involving only AC and the APHIS Veterinary Services programs, greatly increasing the level of staff specialization afforded to these programs when compared to that in place during the audit. The Chief of AHWEB will assume responsibility for ensuring that AWA penalty calculations are consistent and in accordance with the instructions included in “Determining Penalties Under the Animal Welfare Act.” In an instance where the AHWEB Branch Chief is unavailable or the position is vacant, the IES Deputy Director will assume this responsibility.

Recommendation 11: Include instructions in “Determining Penalties Under the Animal Welfare Act” to count each animal as a separate violation in cases involving animal deaths and unlicensed wholesale activities.

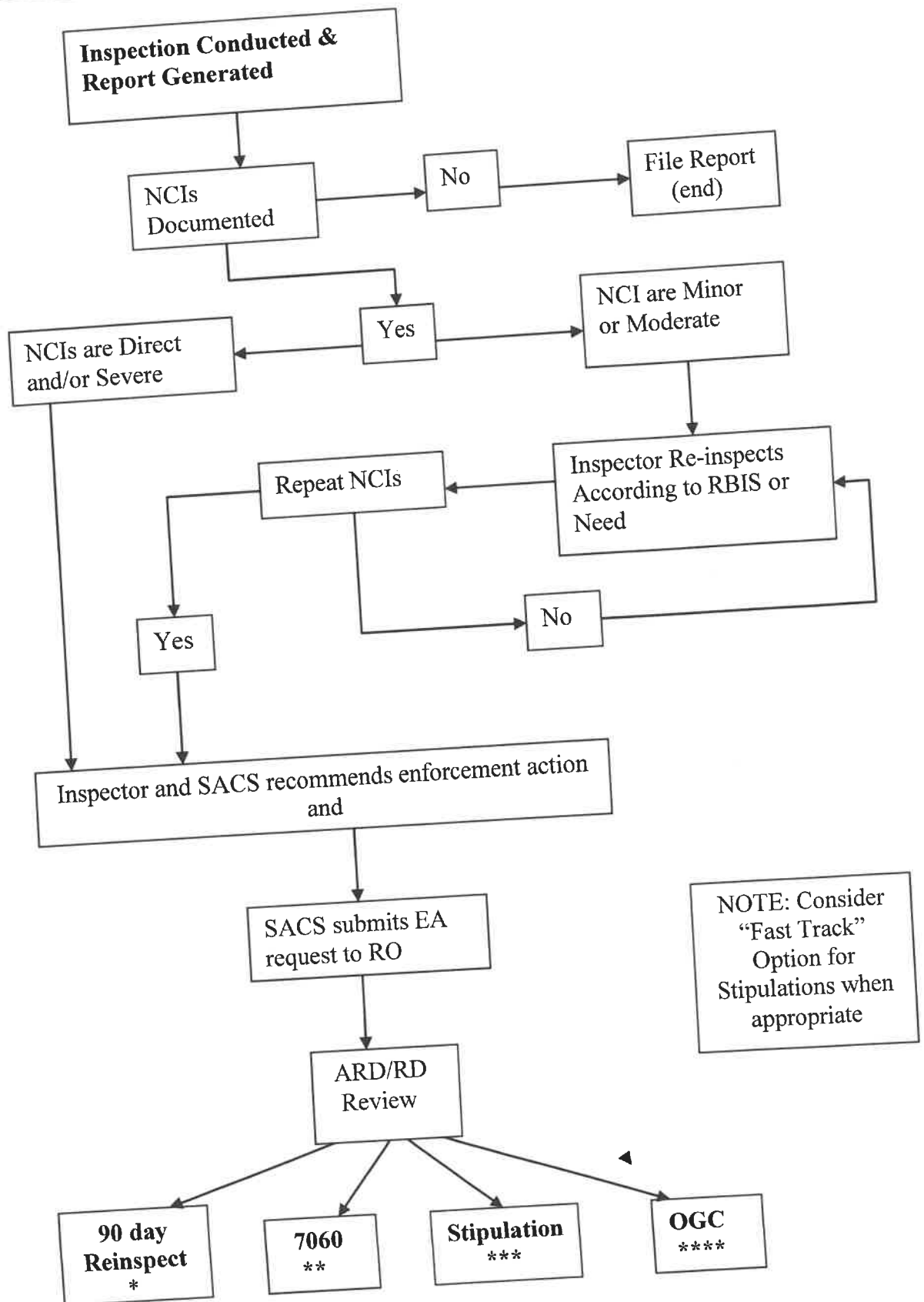
APHIS Response: APHIS partially agrees with this Recommendation. The Recommendation is not always practical for unlicensed wholesale activities. We will request an opinion from OGC about a penalty structure for unlicensed wholesale activities by September 30, 2010. However, we will count each animal as a separate violation when an animal death results from NCIs. Specifically, AC will clarify the

financial information,” but the regulation actually states, “Agencies *should* obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible.” (emphasis added) Additionally, OIG states, “APHIS’ debt management policies *require* that the plans be signed by the debtor,” but FMD’s Guidelines for Establishing Payment Plans actually state, “Agencies *may* accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or provide financial statements.” (emphasis added)

We hope that with this memorandum you are able to reach management decisions.

Attachments

Animal Care Enforcement Actions (EA) Guidance for Inspection Reports





United States
Department of
Agriculture

Marketing and
Regulatory Programs

Financial
Management
Division

Minneapolis Financial Services Branch
Debt Management Team
PO Box 3334
Minneapolis, MN 55403

AGREEMENT BETWEEN
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
AND

TIN: _____ CASE # _____

This Agreement, dated this _____ day of _____ is between _____ of _____, and the United States Department of Agriculture, Animal and Plant Health Inspection Services, Financial Service Branch, Minneapolis, MN, hereinafter referred to as APHIS.

_____ acknowledges that a civil penalty debt is owed to APHIS in the principal amount of _____. _____ agrees to pay this amount to APHIS in monthly installments. The first installment payment of _____ shall be due on _____ with subsequent payments of _____ due on the (either 1st or 15th) of each successive month, beginning _____. Please annotate your case number on the payment.

_____ understands the terms of this agreement and agrees as follows:

- In accordance with the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, late payments will be subject to interest and or penalty charges.
- In the event of default on the payment schedule (which default remains uncured for 60 days from the due date thereof), the total unpaid balance shall be immediately due and payable without demand or notice thereof. The balance due will be unpaid principal, interest calculated from the first day following the due date of the payment schedule, and late payment penalty.
- Failure to complete payments agreed to in this payment plan will result in this debt being prepared for referral to the United States Department of Treasury for further collection action.
- The interest rate will be the current value of funds rate established by the Department of Treasury. For late payments, interest will be charged from the first day following the due date of the payment.
- _____ agrees to reference their USDA APHIS account number on all payments, and to remit all installment payments under this Agreement to the USDA APHIS lockbox bank in accordance with either of the following methods:

Mail Address:

USDA, APHIS, (Case #)
P.O. Box 979043
St. Louis, MO 63195

Physical Address:

U.S. Bank (Case #)
Attn: Gvmt Lockbox – P. O. Box 979043
1005 Convention Plaza
St. Louis, MO 63101

Please return the signed agreement to:

USDA, APHIS, IES (Case #)
Attn: (Specialist name)
4700 River Road, Unit 85
Riverdale, MD 20737

APHIS and _____ understand and will abide by all of the terms outlined in this agreement.

USDA Animal and Plant Health Inspection Service

(Signature)
(print name) _____
Date _____

(Signature)
(Specialist & Phone #.) _____
Date _____



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T82 Payment Plan Agreement (11/09)