

## Background

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The Animal Welfare Act (AWA) sets minimal welfare requirements for certain animals in commercial facilities; yet the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) has continually failed to enforce those requirements. Despite routine criticism of the USDA's inadequate enforcement from Congress and a wide array of stakeholder groups, the USDA has consistently shown that they are unable or unwilling to protect animals in the facilities they oversee. This inaction has created an untenable environment, where licensed facilities operate with impunity.

In two recent high-profile cases, the public watched as thousands of dogs were removed from USDA-licensed facilities in Virginia and Iowa. In both cases, the USDA had numerous opportunities to take action before the problem escalated but chose to do nothing. Eventually, the Department of Justice intervened and negotiated the surrender of thousands of dogs who were released to welfare organizations committed to their care, rehabilitation, and placement. Thousands of vulnerable animals have suffered and died because of the USDA's inaction, and hundreds of thousands more remain under the USDA's failing oversight. These cases are not outliers but are rather the direct result of the USDA's pattern of inaction.

## OIG Audits

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The Office of Inspector General (OIG) has conducted a series of audits related to Animal Care's (AC) administration and enforcement of the AWA between 1992 and 2010. All of the audits describe APHIS' failure to enforce this law.

- 1992: "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."<sup>1</sup>
- 1995: "APHIS needs to take stronger enforcement actions to correct serious or repeat violations of the Animal Welfare Act."<sup>2</sup>
- 2005: AC is not "aggressively pursuing enforcement actions against violators of AWA."<sup>3</sup>
- 2010: 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 education and cooperation would result in long-term dealer compliance and, accordingly, it chose to take little or no enforcement action against most violators."<sup>4</sup>

Following the 2010 audit, and facing intense public scrutiny, the USDA agreed to make changes. APHIS developed an enhanced enforcement plan which included actions aimed at ensuring the consistent citation and documentation of violations, monthly press releases highlighting enforcement taken by the agency, and direction to proactively share violations with relevant state law enforcement agencies.

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<sup>1</sup> Animal and Plant Health Inspection Services Implementation of the Animal Welfare Act, Audit Report No. 33002-0001-Ch, March 1992.

<sup>2</sup> Animal and Plant Health Inspection Service Enforcement of the Animal Welfare Act, Audit Report No. 33600-1-Ch, January 1995.

<sup>3</sup> Audit Report APHIS Animal Care Program Inspection and Enforcement Activities, Report No. 33002-3-SF, September 2005.

<sup>4</sup> USDA OIG Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers, Audit Report 33002-4-SF, May 2010.

Along with the enhanced enforcement plan, APHIS shared the initial results of their shift from education to enforcement: APHIS had doubled the number of investigations and initiated 277 enforcement actions involving dog dealers alone.

However, since then, APHIS has reversed many of the policy changes aimed at strengthening AWA enforcement and has reverted back to education and incentives—the very philosophy the OIG deemed ineffective. As a result, fewer violations are documented and even fewer pursued through enforcement actions.

## Violations Are Not Reported

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One primary strategy APHIS employs to avoid enforcement is to limit the number of observed violations recorded by inspectors in the first place by relying on a host of programs that prioritize licensee business interests over animal protection. Some of these programs were not made public until years after they were in use and summarily discontinued once they were exposed, while others required Congressional intervention<sup>5</sup> before they were ended. However, many of these programs and policies remain in place, obscuring compliance with the law and regulations.

- **Courtesy Visits:** Animal Care staff who observe violations of care at a licensed facility do not record them on any inspection report if the observation occurred during a “courtesy visit.”<sup>6</sup> The agency does not proactively publish which facilities receive a courtesy visit, but based on public records requests, APHIS conducted 1,159 courtesy visits between FY18 and FY21. The agency claims that reports are not created for courtesy visits and provides no information or documentation to the public regarding what the agency observes or learns through a courtesy visit.
- **Veterinary Care:** The agency directs that APHIS inspectors shall not record “minor veterinary issues” at all if they can be addressed rapidly and shall not record “serious

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<sup>5</sup> In 2017, the USDA removed tens of thousands of animal welfare records from its public database. In late 2019, Congress passed a law requiring the USDA to restore the records, and post inspection reports and enforcement records moving forward. Likewise, APHIS implemented a “Teachable Moments” program that allowed inspectors to document “minor” violations or non-compliant items (NCIs) separately from the official inspection report. Until 2020, these reports were not proactively disclosed by the agency. Through appropriations bills, Congress repeatedly directed the agency to end this program. The agency announced they would cease issuing Teachable Moments in July 2022.

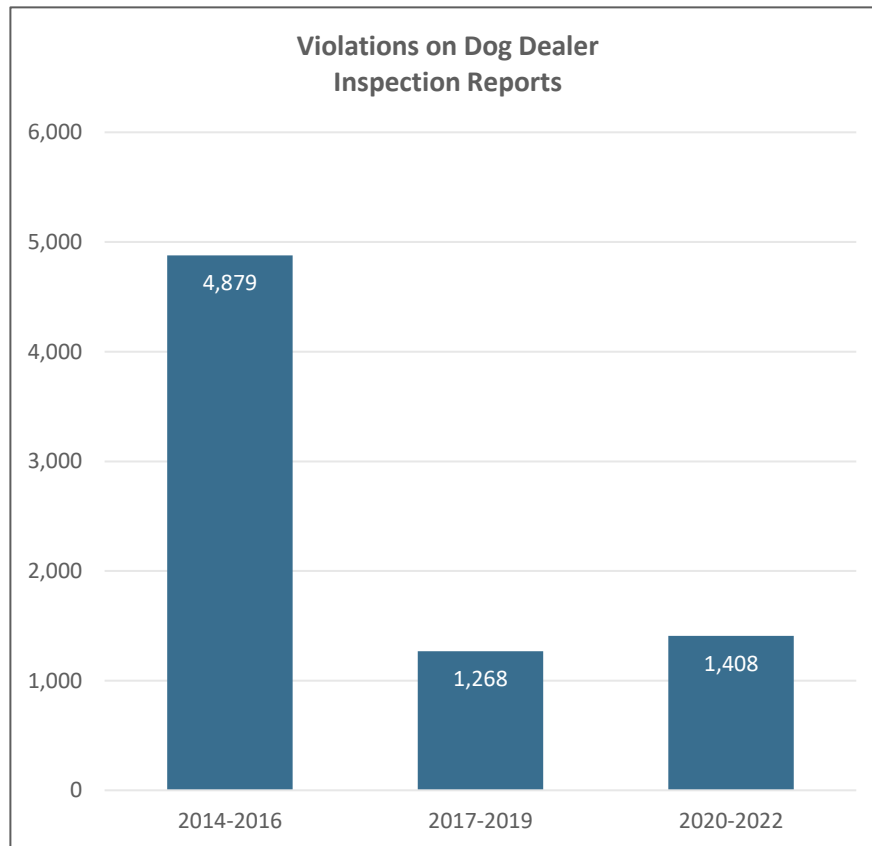
**Self-Reporting Incentives Program:** In 2018, the USDA issued a “Tech Note” describing an incentives program for identifying, reporting, correcting, and preventing AWA noncompliance. Now discontinued, the program allowed facilities to avoid the inclusion of some NCIs on inspection reports by self-reporting them. In February 2021, Animal Care removed the Incentives Tech Note from its website and removed the Self-Reporting section from the Inspection Guide.

**Announced Inspections Pilot Program:** USDA has traditionally considered unannounced inspections to be a central function of its enforcement responsibilities but in 2018, USDA piloted an announced inspection program that has since been discontinued. This action was not subject to rulemaking or opportunity for public comment. Records received in response to a FOIA request show that in 2018, over 100 dog dealers received announced inspections. In October 2019, Dr. Betty Goldentyer, the Deputy Administrator for APHIS’ Animal Care program, indicated that the agency is not proceeding with the pilot program.

**Third Party Inspection Program:** In 2018, USDA proposed the use of third-party inspection and certification programs when determining APHIS inspection frequencies at facilities licensed or registered under the AWA: <https://www.regulations.gov/document/APHIS-2017-0102-0001>. In May 2018, USDA announced it is rejecting its proposal to recognize third party inspections as a part of its enforcement of the AWA: <https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/1f27bf1>

<sup>6</sup> Section 4.3.2, [https://www.aphis.usda.gov/animal\\_welfare/downloads/Animal-Care-Inspection-Guide.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf)

veterinary issues that require medical attention” if certain conditions are met. APHIS devotes nearly a page to such examples. As APHIS has no authority over veterinarians, it is unclear how this deference improves welfare. Prior to this initiative, according to the USDA’s own analysis, veterinary care deficiencies involving dogs resulted in 231 veterinary care citations (4.6% of all inspection reports). APHIS has not since reported a breakdown of violations.



These programs and policies have had their intended effect: the agency records fewer violations on formal, public inspection reports. Between FY14 and FY16, APHIS recorded nearly 5,000 violations on inspection reports. However, beginning in 2017, the number of recorded violations declined significantly and has remained low. And, although in FY22 there was a slight increase, the number of violations recorded still likely represent a significant undercount of true noncompliance.

## Violations Do Not Result in Penalties or Other Action

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Even when violations are recorded, APHIS rarely takes any action against licensees who fail to comply with the minimum requirements under the Act. This is despite having multiple enforcement tools at their disposal, such as:

- Filing a formal administrative action seeking to suspend or revoke a license
- Imposing financial penalties
- Entering into a pre-litigation agreement for a monetary penalty
- Confiscating suffering animals

Despite documenting over 800 AWA violations at licensed dog breeding facilities in FY22, the agency filed no formal complaints requesting license revocation. The agency did not suspend any licenses, nor did it impose a single penalty against any dog dealer through a settlement or a formal administrative order. Even in egregious cases like Envigo or Daniel Gingerich, where thousands of dogs were subject to persistent, horrific treatment documented by the USDA, the agency imposed no fines. Because the agency never took administrative action against Envigo, the company is permitted to continue operating commercial breeding, dealing, and research facilities across the U.S.

While the USDA documented over 3,000 violations across more than 13,000 licensed and regulated entities in FY22, the agency filed only five formal complaints and reached only 17 settlements in FY22. Approximately 200 other facilities received a “warning” letter— something the agency refers to as regulatory communication rather than enforcement. Warnings have no impact on the licensee’s record and do not indicate a step forward toward future enforcement action.

- During a May 2022 inspection of a licensed Oklahoma facility (Chris McGill, 73-A-1257), USDA inspectors documented a litter of nursing puppies—two of whom were deceased and decaying, another was listless with shallow breathing, with the three remaining huddled nearby. The puppies’ kennels contained a severe accumulation of feces and cockroaches infested their food. Although the licensee has a history of violations, the USDA took no action.
- In August 2022, the USDA inspected a facility in Arkansas (Elisa Brandvik, 71-A-1423) where inspectors documented elevated outdoor enclosures with drains full of liquid and waste. An accumulation of hair and other organic debris was found on the ground with large swarms of maggots. Inspectors returned in November and noted half of the outdoor enclosures did not have protection from cold or rain, and dogs did not have access to food or water. According to the USDA, the facility was first licensed in April 2022, after “failing” two pre-license inspections; however, no action was taken.
- In August 2022, the USDA inspected a Missouri facility (Royal Heritage Kennel, 43-A-6613) where inside temperatures exceeded 95 degrees. Mother dogs were observed standing and panting excessively, which prevented the puppies from nursing. Five weaned Corgi puppies were observed sitting or lying with their heads outstretched and their mouths wide open panting very heavily. The USDA indicated that the dogs were moved to air-conditioned housing; however, when the USDA returned three weeks later, they only observed one dog. It is unclear what happened to the others. No action was taken.
- In September 2022, the USDA inspected an Iowa facility (Loren Yoder, 42-A-1541) with approximately 130 dogs. They noted underweight dogs, including a nursing dam whose spine and hips were easily felt under the haircoat. None of the underweight dogs had been evaluated by a veterinarian, and the facility failed to address violations that were recorded at prior inspections in 2022, including dirty kennels. During the inspection, the licensee told the inspector to cancel the license. There is no record of the USDA taking any action or returning to the location.