

Summary of USDA Malfeasance – Animal Welfare Act

1. Aiding and abetting substandard dog breeders in circumventing state and municipal laws.

Seven states, along with numerous municipalities (including New York City), have enacted laws that prohibit pet stores from selling puppies acquired from dog breeders who have a certain number of non-compliant items documented on their USDA inspection reports. These statutes have greatly inhibited the ability of inhumane breeders to market their dogs.

In response to complaints from substandard breeders concerning these state and local laws, USDA made a commitment to help the scofflaws in the industry circumvent state and local statutes. In 2014, USDA informed the breeders that its inspectors would no longer cite many non-compliant items on inspection reports but would instead refer to them as “teachable moments.” USDA subsequently enacted additional rules/policies that were intended to conceal violations of the AWA and to cover-up conditions at substandard breeding facilities, enabling disreputable breeders to evade state and local laws. One of these rules was referred to as “self-reporting” whereby certain violations are not documented on the inspection report if the breeder admits to such violations prior to the start of the inspection. The self-reporting rule was reversed in February of this year due to a lawsuit by the Alliance and SAEN. However, USDA continues to implement the “teachable moment’s rule.”

USDA has long defended these rules/policies by claiming that the Agency needs to limit the number of non-compliant items documented on inspection reports; the argument provided is that **“we need to enable breeders to sell their dogs to pet stores...citing violations is an impediment to such sales.”**¹

This raises the issue of whether the federal government should engage in the practice of aiding and abetting AWA violators in the circumvention of state and local statutes. These local laws have now been rendered useless due to USDA’s decision to conceal violations of the AWA from state and local officials as well as from the public. What other federal agency has ever acted to thwart state and local laws against substandard businesses?

2. Unlawfully enacting rules without going through the federal rulemaking process 5 U.S.C. § 553.

USDA unlawfully issued two legislative rules that allow licensed dog breeders to conceal violations of the AWA from the public, from unsuspecting consumers, and from state and local officials who monitor violations to ensure that substandard dog breeders are not selling dogs in their jurisdictions. These rules are not only problematic for the animals but were enacted in violation of federal law. **These rules were adopted without providing public notice and an opportunity for interested parties to comment as stipulated under 5 U.S.C. § 553.**

Substandard licensed dog breeders rely on and benefit from the “teachable moments” rule and the “self-reporting” rule, as they use it to circumvent the reach of state and local legislation regulating the source of dogs through obfuscating the nature and extent of their AWA violations. These rules protect the worst in the industry from public oversight and inhibit consumers from making an educated decision when purchasing a puppy. USDA is thereby undermining the Animal Welfare Act through the unlawful adoption of the “teachable moments” and “self-reporting” rules. As mentioned above, USDA halted the self-reporting rule in Feb 2021 but continues to implement the “teachable moments” rule even though this rule was illegally adopted by intentionally bypassing the federal rule making process.

3. Instructing USDA inspectors to conceal material facts and make false representations on inspection reports both of which are violations of 18. U. S. C. § 1001.

After the adoption of the “teachable moments” rule and the “self-reporting” rule, USDA instructed its inspectors to continue to document on the inspection reports that “no noncompliant items were identified during this inspection” even when, in fact, noncompliant items were identified during the inspection and were cited on other forms separate from the inspection report.

In July of 2019, The Missouri Alliance for Animal Legislation individually notified by email, all USDA inspectors, and USDA Animal Care staff, pointing out that it is a federal offense to falsify a federal document.

Subsequently, USDA issued new instructions to its inspectors. According to the most recent Animal Welfare Inspection Guide (2.4.1), USDA personnel are to no longer document “no noncompliant items identified during this inspection” when, in fact, noncompliant items do exist; instead, the notation on the inspection report is now to state, “no noncompliant items documented on this inspection report.”

Unfortunately, any reasonable person would conclude that if there were no noncompliant items identified and documented on the USDA inspection report, then the facility must have had no noncompliant items present. Even this new documentation appears to be a violation of 18 USC 1001, which makes it a federal criminal offense for anyone to falsify a federal document or for anyone who “**conceals** or covers up by any trick, scheme or device **a material fact...or makes a false representation.**” It would be difficult to argue that such language on an inspection report is not a “false representation” of a facility’s compliance with the federal Animal Welfare Act. The intentional omission of noncompliant items on an inspection report would certainly appear to be “concealing a material fact.”

The intent of such illegal documentation is to thwart the enforcement of state and local laws that prohibit pet stores from acquiring dogs for re-sale from breeders

that have a threshold level of non-compliant items documented on their USDA inspection reports.

1. Statement of Dr. Chester A. Gipson, Deputy Administrator, Animal Care, USDA, June 16, 2015 at public meeting with animal welfare organizations.