

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. USDA subsequently 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 enacted additional rules/policies that were also intended to conceal violations of the Animal Welfare Act (AWA) and to cover up conditions at substandard breeding facilities, enabling disreputable breeders to successfully evade state and local laws. One of these policies was to instruct inspectors to discontinue citing every violation discovered during the inspection process but to only cite only one violation per category of the regulations. For example, if ten dogs are suffering due to lack of food, only one violation would be documented on the inspection report as regards lack of food, even though there are 10 individual dogs that are starving.

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 be aiding and abetting AWA violators in the circumvention of state and local statutes. These local laws have now been rendered meaningless 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 them 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 has thereby undermined the Animal Welfare Act through the unlawful adoption of the “teachable moments” and “self-reporting” rules. USDA finally halted the “self-reporting” rule in Feb 2021 due to the lawsuit brought against the Agency by the Missouri Alliance for Animal Legislation which successfully argued that USDA illegally adopted such a rule. **Even though the “teachable moments” rule was also adopted illegally, USDA continues to implement this rule regardless that it was adopted by intentionally bypassing the federal rulemaking 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 non-compliant items were identified during this inspection” even when, in fact, non-compliant 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 notified by individual 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 non-compliant items identified during this inspection” when, in fact, noncompliant items do exist. Instead, when there are noncompliant identified by the inspector that the inspector does not want to document on the inspection report, the notation on the inspection report is now to state, “no non-compliant items documented on this inspection report” even when the inspector did identify non-compliant items and documented them separate from the official inspection report.

Unfortunately, any reasonable person would conclude that if there were no non-compliant items documented on the official USDA inspection report, then the facility must have had no non-compliant items present. Even this new documentation is 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 non-compliant 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 a public meeting with animal welfare organizations.