

Policy #8

Subject: **Guidelines for the Confiscation of Animals**

References: AWA Section 16, Section 19
9 CFR, Part 2, Section 2.38(e) and 2.129

History: This replaces Policy #8 dated April 14, 1997.

Justification: Under the Animal Welfare Act (AWA), the Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) is authorized to confiscate and destroy regulated animals if they are suffering. This guideline specifies the protocol for such action.

Policy: Animals (as defined in 9 CFR, Subchapter A, Part 1, Section 1.1) shall be confiscated in accordance with Section 2.38(e) and Section 2.129, if they are found to be suffering and relief has not been provided by the licensee or registrant. This policy established procedures to:

- a. Require the licensee or registrant to provide proper care and relief to a suffering animal as soon as possible, but typically not to exceed 24 hours.
- b. Confiscate the animal and/or make arrangements for relief, relocation or euthanasia, as appropriate, if the licensee or registrant does not provide the needed relief from suffering.

Recognition of Suffering by AC

Animals can be found to be suffering from any condition which causes pain or distress if action is not taken to alleviate the condition. Examples of conditions which can cause suffering include, without limitation: 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. Veterinary Medical Officers (VMO) and Animal Care Inspectors (ACI) are qualified to recognize a suffering animal.

Responsible Person Agrees that an Animal is Suffering

The facility owner, manager, or responsible person, hereafter referred to as "responsible person," should provide the necessary relief, veterinary care, or euthanasia, within the time frame specified by AC personnel. Typically, this time frame should not exceed 24 hours, and it may be considerable less depending on the circumstances. If the animal is an endangered species or a marine mammal, the AC representative should also comply with the requirements of the responsible government agencies. Euthanized animals may be disposed of on the licensee's premises or the registrant's facility, provided such disposal complies with all applicable local, State and Federal laws.

Follow-up by the AC inspector is essential to verify all the necessary relief and/or euthanasia has been accomplished and the matter is satisfactorily resolved. The inspector will document all noncompliant items in accordance with established procedures and initiate enforcement action as appropriate.

Responsible Person is Unavailable

When the AC and Investigative Enforcement Services' (IES) representatives have reason to believe that an animal is suffering and the responsible person for the animal cannot be found after a reasonable time (24 hours or less), the IES investigator shall contact local law enforcement for assistance, and the AC veterinarian shall contact a qualified private veterinarian to accompany them to the premises. The veterinarian and the AC representative shall determine whether or not the animal is suffering, diagnose the problem and probable cause, and document the findings and recommendations in writing. The AC representative shall ensure that adequate care is provided to the animal. If the condition of the animal cannot be corrected by this temporary care, the AC representative shall confiscate the animal in accordance with this policy.

Responsible Person Disagrees that an Animal is Suffering

If the inspector determines that an animal is suffering and the responsible person disagrees, that determination should be confirmed by a second VMO or ACI whenever possible. If the suffering is caused by a medical condition and there has been inadequate veterinary care, the confirmation must be made by at least one, and preferably two, VMOs. The determination must be documented with a complete inspection to include photographs and/or other physical evidence as may be available. A private veterinarian, or a veterinarian from another government agency, may also be requested by AC to examine the animal to confirm a state of suffering.

Similarly, the responsible person may call upon a qualified veterinarian for a second opinion. This will be at the licensee's or registrant's expense and must be done as soon as possible within the specified correction time frame (typically less than 24 hours) so as not to unduly jeopardize the health and well-being of the animal. The second opinion will be considered only if the veterinarian provides a signed written statement to the responsible person and to the AC representative indicating the following:

1. Time and place of examination
2. Number and species of animal(s) examined
3. Examination findings and tentative diagnosis
4. Recommended treatment of course of action, including euthanasia if indicated
5. Time and method of treatment of euthanasia administered, or, a statement that the animal(s) is healthy and sound and that veterinary treatment or euthanasia is not required
6. Any recommended follow-up treatment or action

If AC disagrees with the veterinarian's findings, the Animal Care Regional Director (ACRD) may obtain the assistance of a non-APHIS veterinarian with expertise with the species of animal involved. The final decision in determining if an animal is suffering shall be made by the ACRD based upon all of the relevant findings. The ACRD shall maintain contact with the responsible person until the matter is resolved.

Suffering Not Confirmed or Is Relieved

If the ACRD determines that the animal is not suffering, or if the condition causing the suffering is adequately remedied within the prescribed time period, the inspector will document any noncompliant items in accordance with established procedures and initiate enforcement action, as appropriate. Reinspections will be conducted as needed by the AC inspector.

Notification to Owner of Intent to Confiscate

If it is determined that an animal is suffering and in need of veterinary care or other form of relief, the AC inspector should contact IES for assistance if an IES investigator is not already involved. The IES investigator should assist in documentation of violations and suffering during the examination and inspection by AC personnel.

If confiscation of an animal is being considered, the AC inspectors should immediately notify the responsible person (with the approval of the ACRD),

both verbally and in writing, and request correction of the problem causing the suffering. Correspondence to the responsible person should include the “Notice of Intent to Confiscate” (Appendix A) and an inspection report or other document that includes all of the following specific information:

1. Number and species of animal(s) found to be suffering and individual identification number (for dogs or cats) or brief description of each animal.
2. Identification of deficiencies or conditions causing the suffering.
3. Steps that must be taken to correct the problem and alleviate the suffering; e.g., examination and treatment by a qualified veterinarian.
4. The time period in which the animal is to be given relief and adequate care. This time period must be as soon as possible after determining the animal is suffering, but typically no more than 24 hours
5. Current location of the premises or transport conveyance holding the affected animal.
6. A statement that the animal(s) shall not be removed from the premises or location without prior approval from AC.
7. The signature of the responsible person receiving this notification. (If the responsible person refuses to sign, the AC representative must document the issuance of this notification by a sworn statement.) Follow-up notification will be accomplished by the ACRD.

Confiscation Authorization

Copies of all relevant correspondence should immediately be forwarded by the AC inspector to the AC Regional Office. Notification will be forwarded from the Regional Office to the Animal Care Deputy Administrator (DA) as soon as possible, via fax to (301) 734-4993. The DA shall seek written authorization from the APHIS Administrator for confiscation of the animal under the authority of Section 16(a) of the Act, and as provided in Sections 2.38 and 2.129 of the regulations. To expedite approval, the ACRD shall provide the DA with the most current information, to include a summary memo listing the number and species of animals to be confiscated, the location of the animals, and the reason(s) for the confiscation action. If at all possible, digital photographs of the conditions should be forwarded electronically to the DA along with the summary memo. The ACRD will also prepare the “Notice of Confiscation of Animals” letter (Appendix B) for the Administrator’s signature as well as the list of animals to be confiscated. These will ordinarily be forwarded by e-mail to the DA. The DA will seek any necessary legal counsel from the Office of the General Counsel (OGC) and then obtain the Administrator’s signature, as appropriate.

Arranging for Facility to Hold Confiscated Animal

In rare circumstances, the confiscated animal may be held by AC on the premises, provided that the premises complies with AWA standards and regulations. AC shall maintain constant supervision of the confiscated animal if they are left on the premises.

If the confiscated animal will not be held on the premises, the ACRD should arrange for transportation and transfer of the animal to an appropriate facility capable of providing the necessary care and housing consistent with the requirements of the AWA and regulations. Back-up plans for animal placement should also be considered. The ACRD must ensure proper care, holding, treatment or euthanasia of the animal at the facility receiving the confiscated animal.

The ACRD shall arrange for the following provisions as needed:

1. Transportation of the confiscated animal which meets all standards as required for that species of animal, including trained animal handlers and tranquilization or sedation, if required.
2. A premises, kennel, staging area, or other facility which meets the standards and which may house or contain the confiscated animal until it is permanently placed or euthanized.
3. The services of a veterinarian knowledgeable in the species involved, caretakers, handlers or truck drivers, as required.
4. Feeding, watering, veterinary treatment, euthanasia, or other care as may be indicated.
5. Assist inspector in providing equipment, such as a table or shade tent, etc., needed to facilitate the confiscation.
6. Identification and record of each animal confiscated, including ID tags and a record of any tattoos found on the animals.

Any services provided will be at the expense of the responsible person, although APHIS will assume responsibility for such expenses subject to reimbursement from the responsible person. (See sample memo at Appendix C) Whenever possible, written estimates of the cost of all contracted services should be obtained by the ACRD prior to the confiscation and prior to actually incurring the expenses. The ACRD may seek the cooperation of local humane organizations, industry associations, zoos, and shelters for the use of their transportation, personnel, and other facilities. The ACRD will seek to procure the most appropriate and cost effective transport and placement of the animals. An animal that does not require euthanasia will be placed in another facility at

no cost to APHIS whenever possible. If it cannot be placed after a reasonable time, it will be euthanized.

When working with outside organizations, the ACRD should be in direct contact with those people who will actually be assisting with the confiscation. A clear list of responsibilities for each participant should be developed.

Seizure of Animal

If it is deemed necessary prior to the seizure of an animal, the IES investigator shall request the local police, sheriff, U.S. Marshal, or other appropriate law enforcement personnel to accompany him/her and the AC representatives to the premises for the purpose of providing security to APHIS personnel. The IES representative shall serve oral and written notice to the responsible person that AC is seizing the animal under the provisions of the AWA, Section 16(a), and the regulations, Sections 2.38 and/or 2.129. The IES representative shall read these sections of the regulations and serve a copy to the responsible person. If agreeable, the responsible person shall sign a statement surrendering the custody and rights of the animal to APHIS for disposition. If the responsible person will not sign a statement surrendering the animal (See sample at Appendix D), the IES investigator will provide the responsible person the “Notice of Confiscation of Animal” letter signed by the Administrator, and the confiscation of the animal will proceed as planned.

Summary Suspension of License and Injunctive Relief

An injunction against further violations or an immediate summary suspension of the license, as provided in Section 19 of the AWA, may be recommended by the ACRD at the time of confiscation proceedings. This would be especially prudent if there are on-going conditions which may affect other animals remaining at the facility. Such a request should be made immediately by the ACRD by telephone to the Director of IES. The request would need to be supported by a preliminary report prepared by IES, documenting evidence that there have been flagrant violations of the AWA, regulations, and/or standards. The report shall be submitted by the ACRD as an alleged violation to the IES staff and coordinated with the Animal Care DA.

Guidelines for Billing and Reimbursement for Confiscation of Animal

The following procedure is to be used to recover expenses from the responsible person for the costs associated with the confiscation of animals (veterinary care, transportation, housing, feeding, handlers and other related expenses). This should not include salary, travel expenses, etc., APHIS personnel.

1. Regional offices will prepare a memo to the Marketing and Regulatory Programs - Business Services Office (MRP-BS), Accounting Section, with a copy to Resource Management Staff (RMS) in Riverdale, Maryland, requesting that payment be made for expenses incurred in connection with the confiscation of animals. The memo must include either a taxpayer i.d. or social security number of business/individual receiving the reimbursement. If multiple parties will be receiving payment, contact RMS for guidance. This memo will also seek reimbursement of costs from the responsible person. (see Appendix C, "Billing and Collection for Confiscated Animals")
2. MRP-BS has the responsibility of billing and collecting reimbursement from responsible persons and for making payment to veterinarians, transporters, handlers, etc., for care of the animal.

INDIVIDUAL RESPONSIBILITIES IN CONFISCATION ACTIONS

AC Inspector Responsibilities

- Promptly recognize animal suffering and initiate confiscations procedures in accordance with the regulations and this policy.
- Clearly communicate to the responsible person, verbally and in writing, all conditions that are causing animal suffering and the actions necessary for providing relief of that suffering.
- Clearly communicate to the responsible person AC's authority and intent to confiscate animals if the suffering is not relieved within the prescribed time frame.
- Early in confiscation efforts, involve and coordinate all on-site efforts with an IES Investigator.
- Keep the ACRD informed of the situation and current on all pertinent facts and issues. This includes providing inspection reports, photographs, and other relevant documents.
- If negotiating with owners, be clear about what can and cannot be agreed upon prior to the actual confiscation or voluntary relinquishing of the animals. Any agreements should be put in writing and signed by the responsible person.
- If the suffering animal subject to confiscation is an endangered species or

a marine mammal, notify the ACRD, who will then ensure coordination with appropriate government agencies.

- Should any injury or illness occur during the course of a confiscation ensure delivery of prompt emergency care as needed. Refer to the AC Occupational Health and Safety Manual or contact the Collateral Duty Safety and Health Officer (CDSHO) for assistance. Also promptly notify your supervisor and/or the ACRD.
- Consider weather conditions and have available a tarp/canopy for shelter, tables, and chairs and other equipment as needed during the actual confiscation or in the staging area.

AC Regional Director Responsibilities

- Promptly notify the DA that confiscation procedures have, or will be, initiated.
- If it is deemed necessary, obtain the opinion of a second AC VMO or a private veterinarian with appropriate expertise with the species involved.
- Provide the DA with the most current information, to include a summary memo listing the number and species of animals to be confiscated, the location of the animals, and the reason(s) for the confiscation action. If at all possible, digital photographs of the conditions should be forwarded to the DA to include with the memo.
- Advise the DA if the suffering animal subject to confiscation is an endangered species or a marine mammal so that coordination with the appropriate government agencies can be initiated.
- Request assistance and coordinate confiscation procedures with the IES Regional Director (IESRD).
- Coordinate all proposed legal actions (subpoenas, etc.) with the IESRD.
- Notify Legislative and Public Affairs (LPA) and provide information for the press releases and arrange media assistance on site, if indicated (This may be especially important if animals will be euthanized.).
- Document anticipated expenses in advance and send written estimates of costs for products or services to AC Headquarters.
- When working with animals with contagious diseases, e.g., dogs infected

with or exposed to canine brucellosis, establish a plan to deal with the disease. Determine APHIS' financial responsibility to test or treat any infected or exposed animals.

- Consider a temporary staging area to triage process large numbers of animals.
- Promptly review and forward the IES investigative report to the IES Headquarters' Staff.

Deputy Administrator Responsibilities

- Seek authorization from the Administrator for all confiscation actions.
- Contact OGC to arrange for legal assistance with the confiscation and provide the contact information to the ACRD.
- If the suffering animal subject to confiscation is an endangered species or a marine mammal, inform the Department of the Interior, the Department of Commerce, and/or other appropriate cooperating services as required and consistent with any functioning interagency agreement.

IES Investigator Responsibilities

- Contact and coordinate with local law enforcement officials, the U.S. Marshal, or other appropriate law enforcement officials as needed with the confiscation or to protect APHIS employees.
- Maintain a complete list of all participants in the confiscation including name and contact information. The investigator should inform participants that APHIS will coordinate security but does not assume liability for non-APHIS personnel in the case of injury or illness.
- Develop a plan to report and handle injuries or possible adverse after effects.
- During and after the confiscation, document all apparent violations of the AWA which led to the suffering of the animal. This may include videotaping the facility and/or confiscation for accurate documentation. Back-up cameras should be available.
- Submit an investigative report to the ACRD as an alleged violation within 15 calendar days after the completion of the confiscation procedures.

Appendix A

Notice of Intent to Confiscate Animals

Date:

TO: _____

Notice is hereby given that the animals identified on the attached inspection report dated _____, are subject to confiscation by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and may be confiscated unless the instructions given in the report are followed.

Such action is authorized by Section 16 of the Animal Welfare Act (7 U.S.C. § 2146) and Title 9, Code of Federal Regulations, Section 2.129 (9 C.F.R. § 2.129).

Should you need further information, you may contact _____ at _____ (phone number).

Animal Care
Animal and Plant Health Inspection Service
U.S. Department of Agriculture

By: _____

Appendix B

Notice of Confiscation of Animals

Date:

TO: _____

Notice is hereby given that the following animals (list attached) are hereby confiscated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, pursuant to the authority of Section 16 of the Animal Welfare Act (7 U.S.C. § 2146) and Title 9, Code of Federal Regulations, Section 2.129 (9 C.F.R. § 2.129), for failure to provide necessary care for the animals.

Animal Care
Animal and Plant Health Inspection Service
U.S. Department of Agriculture

By: _____

S A M P L E

Appendix C

Date:

Subject: Billing and Collection for Confiscated Animals

To : Accounting Section
Marketing and Regulatory Programs
Business Services, MRPBS
Minneapolis, MN

Please make payment to John Doe, File No. 12345, City, State, in the amount of \$999.99 (bill enclosed), and charge accounting code 1596101500. Dr. Doe's taxpayer i.d. is 34-12345.

John Doe provided examination, evaluation, euthanasia, and necropsy services on June 1-4, 1992, for the animal(s) confiscated from Jack Smith, 1234 Main Street, City, State. Refer to 9 CFR, Animal Welfare, Section 2.129 (a), (b), and (c).

Also, please bill for collection Jack Smith at the above address using the following statement of charges:

All costs for providing care, treatment, euthanasia, or disposition of confiscated animals (as provided in Section 2.129 (a), (b), and (c) of the 9 CFR) shall be reimbursed by the person responsible for the animal(s).

When funds are received, please deposit them back to Accounting Code 1596101500. If you have any questions regarding the payment, please contact Terry Schneider at (301) 734-5015.

Name
Director
Regional Office, Animal Care

Enclosure

cc:
AC, RMS, Riverdale, MD

S A M P L E

Appendix D

We, _____ and _____ voluntarily agree to
donate _____ dogs to the _____.

I understand that this donation is permanent and I have no further claims or interests in these animals or their offspring.

Signature

Signature

Date

Date