

The Animal Welfare Act: A Legislative and Regulatory History

The Law

In 1966, Congress enacted Public Law (P.L.) 89-544, known as the Laboratory Animal Welfare Act. This law regulated dealers who handle dogs and cats, as well as laboratories that use dogs, cats, hamsters, guinea pigs, rabbits, or nonhuman primates in research.

The first amendment to the Laboratory Animal Welfare Act was passed in 1970 (P.L. 91-579). This amendment changed the name of the law to the Animal Welfare Act (AWA) and authorized the Secretary of Agriculture to regulate other warm-blooded animals when used in research, exhibition, or the wholesale pet trade.

An amendment in 1976 (P.L. 94-279) prohibited most animal fighting ventures and regulated the commercial transportation of regulated animals. In 1985, the Improved Standards for Laboratory Animals Act—part of the Food Security Act (P.L. 91-198)—added another amendment to the AWA. These amendments required the Secretary of Agriculture to issue additional standards for the use of animals in research.

The Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624) added provisions to the AWA concerning injunctive relief and pet protection. The injunctive relief provision authorizes the Secretary to seek an injunction to stop certain licensed entities from continuing to violate the AWA while charges are pending. (Injunctions are generally used in cases involving stolen animals and in cases where an animal's health is in serious danger or may become endangered.) The pet protection provision mandated that the Secretary issue additional regulations pertaining to random-source dogs and cats, i.e., “dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.”

In April 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act (P.L. 106-181, also known as the Federal Aviation Administration (FAA) reauthorization bill), requiring air carriers to report incidents involving animals. Primarily affecting the Department of Transportation, this law requires carriers to submit monthly reports to the Secretary of Transportation regarding any incidents involving the loss, injury, or death of an animal (as defined by the Secretary of Transportation). The Departments of Transportation and Agriculture entered into a Memorandum of Understanding that allows USDA's Animal and Plant Health Inspection Service (APHIS) to receive this information as well. The law also calls for data related to these incidents to be published, similar to FAA's practice for other consumer complaints and incident data. The law also requires training air carrier employees concerning the air transport of animals and notification of passengers of the conditions under which the animals are traveling.

The Regulations

Through APHIS' Animal Care (AC) program, USDA is charged with developing and implementing regulations to support the AWA. These regulations, which appear in Title

9, *Code of Federal Regulations* (CFR), Chapter 1, Subchapter A, Parts 1–3, require the licensing of animal dealers, exhibitors, and operators of animal auction sales where animals regulated under the AWA are sold.

Licenses are valid unless the licensee terminates the license voluntarily or fails to renew it, APHIS denies the renewal of the license without challenge, or an administrative law judge suspends, denies renewal, or revokes the license in an enforcement proceeding. Licensing fees for dealers and exhibitors are determined by a graduated schedule listed in the regulations at 9 CFR 2.6(5)(c). Dealers pay between \$30 and \$750 per year and exhibitors pay from \$30 to \$300 per year. These fees are deposited as miscellaneous receipts in the U.S. Treasury and are not added to the AC budget.

The regulations also require all carriers, intermediate handlers, and all non-Federal research facilities using animals to register with the Secretary of Agriculture. There is no charge to register. A list of licensees and registrants for each State, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands is kept on the AC Web site and updated periodically.

All licensees and registrants must provide their animals with care that meets or exceeds USDA's standards for veterinary care and animal husbandry. These standards include requirements for handling, housing, feeding, sanitation, ventilation, shelter from extreme weather, veterinary care, and separation of species when necessary.

Over the years, USDA has made substantive changes to the AWA regulations. In the late 1980s, USDA amended the requirements pertaining to the use of animals in research. In response to the Improved Standards for Laboratory Animals Act, these amendments established standards for the exercise of dogs and for the psychological well-being of nonhuman primates. The amendments also set standards to minimize the pain and distress of animals; ensure the proper use of anesthetics, analgesics, and tranquilizers; and require researchers to consider alternatives to potentially painful or distressful procedures.

To ensure that these standards are met, the amendments require each research facility to establish an Institutional Animal Care and Use Committee (IACUC) to approve and monitor all research conducted at the institution. USDA published the final regulations for Parts 1 and 2 of Title 9 CFR, Chapter 1, Subchapter A, on August 31, 1989. Those for Part 3 were published on February 15, 1991.

USDA published revised standards for guinea pigs, hamsters, and rabbits in final form in the *Federal Register* on July 15, 1990. These standards increased the minimum space requirements for cages and provided additional requirements to protect animals being transported via common carrier.

In 1993, USDA established holding periods for animals in pounds and shelters and certification requirements to ensure that animals have been held for the duration of these

periods. The regulations were published as a final rule on July 22, 1993, and became effective August 23, 1993.

In 1994, changes to the Marine Mammal Protection Act (MMPA) placed sole responsibility for regulatory oversight of “swim with the dolphin” interactive programs with APHIS. The change to the MMPA prompted AC to initiate the regulatory process to address the special needs of these programs. APHIS published a proposed rule in the *Federal Register* and, after reviewing and considering all comments received, published a final rule. However, soon after publication of the final rule, questions were raised that led APHIS to suspend enforcement of the provisions until the rule could be reanalyzed and clarifications could be proposed. Enforcement of the provisions remains suspended.

In 1998, AC published new standards pertaining to wire flooring for dogs and cats and revised the AWA temperature requirements, which included clarification of climatic conditions for housing facilities, conveyances, and holding areas at airport terminal facilities.

In 1999, AC published its final rule on perimeter fencing requirements for animals covered under the AWA, with emphasis on wild and exotic animals. In general, the rule requires a perimeter fence at least 6 feet high for most animals and 8 feet high for dangerous animals, such as elephants, bears, and large cats. All requirements are designed to better contain the animals and to keep out unwanted animals and the uninvited public. For more details, see the section on regulatory initiatives.

A final rule that amended the definition of “field study” became effective March 10, 2000. Prior to the rule, the term “field study” was defined in the regulations as a study “conducted on free-living wild animals in their natural habitat, which does not involve an invasive procedure, and which does not harm or materially alter the behavior of the animals under study.” Due to concern that the definition could be interpreted incorrectly to mean that a field study may include one but not both of these situations, APHIS amended the language in the regulations to specifically exclude *any* study that involves an invasive procedure or the potential to cause harm *or* materially alter the studied animal’s behavior.

In FY 2000, USDA adopted two guides that facilities can use to clarify accepted standards of care for agricultural animals used in nonagricultural research or exhibition. In June 1990, USDA began regulating horses used for biomedical or other nonagricultural research and other farm animals used for biomedical or other nonagricultural research or for nonagricultural exhibition. Previously, the standards in 9 CFR, Chapter 1, Subchapter A, Part 3, Subpart F, applied. In 1999, USDA requested and received comments on adopting as regulation two existing guides on standards as they apply to the handling, care, treatment, and transportation of animals. The guides are the “Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching,” published by the Federation of American Societies of Food and Science, and the “Guide for the Care and Use of Laboratory Animals,” published by the Institute of

Laboratory Animal Research. More information on the guides can be found in AC Policy 29, posted online at www.aphis.usda.gov/animal_welfare/downloads/policy/policy29.pdf.

In 2001, APHIS published a final rule that addressed several issues related to marine mammal exhibitors in the AWA regulations. The rule, among other things, introduced requirements for enclosures constructed so as to keep unwanted animals from entering and established new medical and feeding recordkeeping requirements for individual animals, including a requirement that facilities maintain necropsy records for 3 years and make them available to AC inspectors upon request. AC implemented the rule after establishing a Marine Mammal Negotiated Rulemaking Advisory Committee to recommend revisions to the marine mammal regulations. The Committee met for three sessions and—under the rules governing the negotiated rulemaking process, and in accordance with the organization protocols established by the Committee—APHIS agreed to publish as a proposed rule any consensus language developed during the meetings unless substantive changes were made as a result of authority exercised by another Federal Government entity. The Committee developed consensus language for changes to 13 of the 18 sections that comprise the regulations, as well as for a single paragraph in a 14th section. The proposed rule reflected the consensus language, and was published for public comment on February 23, 1999. It was made final with some changes on January 3, 2001, and became effective on April 3, 2001.

Between FY 2002 and FY 2007, USDA developed and published several more rules, policies, and other tools to provide more consistent interpretation of the requirements. In 2003, APHIS published a final rule that further clarified AC's policy of regulating only wholesale dealers of dogs intended for hunting, breeding, or security purposes—not retail dealers of dogs for these purposes. This rule made the regulations consistent with AC's policy and clarified the licensing and inspection requirements for affected dealers. The rule also amended the definition of “dealer” to include only wholesale dealers.

In FY 2004, AC began to apply AWA regulations and standards for the humane transportation of animals in commerce to all foreign air carriers operating to or from any point within the United States, its territories, possessions, or the District of Columbia. AC made this change to ensure that any animal covered by the AWA—whether coming into, traveling from point to point in, or leaving the United States, its territories, or possessions—is provided the protection of the AWA regulations and standards. Prior to the publication of the determination to regulate foreign air carriers, AWA regulations and standards for air carriers applied only to U.S.-based companies.

In June 2004, the AWA regulations were amended to reflect an amendment to the Act's definition of the term “animal.” The Farm Security and Rural Investment Act of 2002 amended the definition of “animal” in the Act to specifically exclude birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research. While the definition of “animal” in the AWA regulations has excluded rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, that definition has also excluded all birds—i.e., not just those birds bred for use in research. To make the definition of “animal” in the AWA regulations consistent with the definition of “animal” in the AWA, this final rule

amended the regulations by narrowing the scope of the exclusion for birds to only those birds bred for use in research.

APHIS published a final rule in 2004 that changed various provisions throughout the AWA regulations, including the addition of language prohibiting abuse and harassment of USDA employees by registrants (the previous language only specifically addressed licensees); the updating of penalty charges for “bounced” checks written to pay license fees; and a requirement that licensees maintaining wild or exotic animals demonstrate adequate experience and knowledge of the species they maintain. The rule also included an expansion of the provision that requires those who have more than three breeding females on their premises be licensed with USDA to include small exotic or wild mammals such as hedgehogs and spiny mice. This also included clarification that the “three breeding females rule” applied to all animals on the premises, not to each *owner* on the premises—that is, each member of the family cannot own three breeding females and remain unlicensed if there are a total of more than three breeding females on the premises.