

# CAPS

## Companion Animal Protection Society



### **COMMENTS ON THE ANIMAL CARE POLICY MANUAL (JULY 2007)** **Submitted to the USDA Animal and Plant Health Inspection Service November 16, 2007**

As the only national organization dedicated exclusively to protecting companion animals, the Companion Animal Protection Society (“CAPS”) is committed to promoting the humane and ethical treatment of companion animals by commercial breeders. Since 1995, CAPS has investigated over 1,000 commercial breeding facilities in sixteen states throughout the Midwest and surrounding areas. Based on its experience documenting violations at many of these facilities and viewing firsthand how United States Department of Agriculture (“USDA”) policies are being implemented—and have sometimes failed to be implemented at all—across the nation, CAPS believes it is in a special position to relate suggestions on how to clarify, revise, and ultimately improve aspects of the Animal and Plant Health Inspection Service’s (“APHIS”) *Animal Care Policy Manual*.

CAPS appreciates the opportunity to provide the following comments, which are by no means exhaustive, and it strongly encourages APHIS to continue engaging interested stakeholders in an effort to improve administration of its Animal Care Program.

#### Policy 1: Denial of AWA License Applications.

*Policy 1 describes under what circumstances APHIS can deny an Animal Welfare Act (“AWA”) license application. The Manual states that denial of an AWA license is appropriate in instances where a “new applicant” fails “to pass three compliance inspections within 90 days of first inspection as specified in Section 2.3(b) or to comply with the regulations and standards as specified in Section 2.11(a)(3).”*

CAPS believes that this policy is not stringent enough. New license applicants, in particular, should be held to a high standard for compliance with the Animal Welfare Act and its implementing regulations. This will help ensure the adoption of good practices by the prospective licensee and within the industry, generally. The policy should, therefore, be revised

to require denial of an AWA license in cases where a “new applicant” fails to pass “one compliance inspection within 90 days of first inspection.”

*The Manual also states that denial of an AWA license is appropriate in instances where an applicant “has been fined or sentenced to jail under State or local animal cruelty laws as specified in Section 2.11(a)(4).”*

CAPS believes that this policy should be expanded to state that AWA license denial is appropriate not only where the applicant has been fined or convicted under State or local animal cruelty laws, but also where an applicant has been fined or convicted under animal neglect laws.

*The Manual further states that denial of an AWA license is appropriate in cases where an applicant “is under investigation by State or local authorities for animal cruelty.”*

Again, CAPS believes that this policy should be expanded to state that AWA license denial is appropriate not only where the applicant is under investigation by State or local authorities for animal cruelty, but also in cases where the applicant is under investigation for neglect of animals.

### Policy 3: Veterinary Care.

*Policy 3 describes the level of veterinary care that must be provided to regulated animals in compliance with Section 2143 of the Animal Welfare Act, which requires that all regulated animals be provided “adequate” veterinary care. The Manual specifies that survival surgeries and major operative procedures must be performed only in “dedicated surgical facilities.” It also specifies that nonsurvival surgeries must be performed in “a clean area, free of clutter, and using acceptable veterinary sanitation practices analogous to those use in a standard/examination/treatment room.”*

CAPS believes that this policy should be revised to state that only licensed veterinarians are authorized to perform cesarean section operations, spays and neuters, dewclaw removals, and ear cropping surgeries. In other words, dog breeders or dealers holding a USDA license should be banned from doing these types of procedures. CAPS has witnessed first hand the unsanitary conditions in which dog breeders and dealers often perform these types of surgeries. CAPS believes that the high infection and mortality rates resulting from the performance of surgeries by anyone other than a licensed veterinarian are unwarranted and can be easily remedied by revising this policy.

*Policy 3 also states that the “method of euthanasia must be consistent with the current Report of the AVMA Panel on Euthanasia” and specifically states that gunshot is not an acceptable form of euthanasia.*

CAPS believes that this policy should be revised to state that euthanasia should only be performed by licensed veterinarians, under the direct supervision of licensed veterinarians, or after consultation with a licensed veterinarian. This policy will help ensure that the standards

and methods by the American Veterinarian Medical Association (“AVMA”) are followed. CAPS strongly supports the policy that gunshot is not an acceptable method of routine euthanasia. Finally, CAPS notes that the title of the *Report of the AVMA Panel on Euthanasia* has been changed by AVMA to *AVMA Guidelines on Euthanasia*.

#### Policy 13: Microchip Implants.

*Policy 13 specifies when APHIS will grant approval for microchip implantation in regulated animals, as well as the requirements for microchip identification systems.*

CAPS believes that this policy should state that only licensed veterinaries are authorized to implant microchips into regulated animals and that USDA licensees are prohibited from implanting microchips themselves. CAPS believes that this policy is warranted due to the degree of accuracy required in implanting a microchip and the resulting pain and risk of infection from not performing this procedure correctly.

#### Policy 18: Health Certificate for Dogs, Cats, and Nonhuman Primates.

*Policy 18 describes when a health certificate must accompany a regulated dog, cat, or nonhuman primate that is transported by a licensee or registrant.*

CAPS believes that this policy should also state that identification of a breeder’s name and USDA number must appear on each animal’s health certificate. The rationale for the health certification and identification policy found at 9 C.F.R. Part 2 is, in part, to reduce endangerment to animals and public health caused by transporting sick or infectious animals. At present, however, only the names of animal brokers appear on these certificates. CAPS believes that the inclusion of breeders’ names in animal health certificates would serve an important information-generating and tracking function that would assist officials in responding to public health emergencies caused by the transportation of animals with health problems.

CAPS also believes that health certificates should be available in electronic form in a database that permits the certificates to be searched and accessed according to an animal broker’s name, as well as the certificate’s date of origin. Finally, CAPS believes that the form of the health certificates themselves should be standardized across all states. The percentage of regulated animals that travel in interstate commerce warrants a nationalized approach. This approach would, furthermore, assist public health officials tracking the emergence and spread of infectious disease.

#### New Policy: Inspections and Enforcement.

The AWA requires commercial breeders to provide their animals with adequate housing, nutrition, water and veterinarian care, and to protect the animals from extreme weather and temperature and unsanitary conditions. Since 1995, CAPS has investigated over 1,000 commercial breeding facilities in sixteen states and has documented significant violations of APHIS’s Animal Care program in each of those states. Animals are frequently found in poor

physical and emotional health, without food or water, and living in their own waste, often next to dead or dying companions. The AWA, 7 U.S.C. § 2146, expressly provides USDA with ample inspection and enforcement authority to ensure that its minimum animal care and welfare standards are being met. Notwithstanding this authority, APHIS' Animal Care Program has been audited at least four times over the past twenty years and each time was found lacking in its inspection and enforcement efforts.

For example, in 1985, the U.S. General Accounting Office reviewed USDA's Animal Welfare Program and found that many regulated facilities were not being inspected, as required. In 1992, USDA's independent Inspector General audited the program and found that inspections still were not being performed at many facilities, and that when inspections were performed and violations discovered, USDA did not require timely correction of those violations. The USDA Inspector General again audited the program in 1995 and found that many of the deficiencies noted in its 1992 report had not been corrected. In addition, the 1995 report noted that when enforcement action was taken, the penalties were so low that many facilities simply incorporated the penalties into their cost of doing business. This finding was repeated in 2005 when yet another USDA Inspector General report was issued specifically addressing APHIS's inspection and enforcement program activities under the Animal Care Program. That report specifically cited the "lack of clear National guidance" as a contributing factor in the agency's underperforming enforcement program.

CAPS believes that APHIS must adopt "clear National Guidance" for its inspection and enforcement program. That guidance should be incorporated into the *Animal Care Policy Manual*. CAPS recommends that a task force be assigned to review the four major audit reports discussed above, identify the principle deficiencies identified in those reports, and prepare guidelines for how to improve the Animal Care investigation and enforcement program. At a minimum, APHIS should adopt a policy stating the minimum number of annual inspections that must be performed at each licensed commercial breeding facility under its jurisdiction. Such a policy might include a tiered inspection program based on past performance and the date of license. Newer facilities and known violators should be inspected more frequently. CAPS recommends that APHIS use the basic information and format contained in its May 2005 *Animal Care Compliance Inspections Fact Sheet* as a framework document for the new policy, and then supplement that information with specific recommendations for improving the performance of the inspection and enforcement program.