

Congress of the United States
Washington, DC 20515

The Honorable Phyllis K. Fong
Inspector General
United States Department of Agriculture, OIG
Room 117-W Jamie Whitten Bldg.
1400 Independence Avenue SW
Washington, DC 20250

December 11, 2017

Dear Inspector General Fong:

In May 2010, the Office of Inspector General (OIG) released an alarming Audit Report, entitled “APHIS Animal Care Program – Inspections of Problematic Dealers” (Report 33002-4-SF). The OIG Report found several major deficiencies with USDA’s Animal and Plant Health Inspection Service’s (APHIS) Animal Care (AC) unit’s enforcement of the Animal Welfare Act (AWA) for commercial dog breeders, including the documentation of violations, assessment of penalties and the circumvention of USDA oversight by Internet sellers. After the report’s release, the Animal Care Unit committed to several changes in policy and procedures to address the significant deficiencies outlined in the audit. However, it appears that many of those changes have been directly reversed in light of recent actions by the USDA which erode transparency and accountability. To understand the impact of actions on animal welfare and safety, we request that OIG conduct an audit of AC’s enforcement of the AWA for commercial dog breeders.

Seven years have gone by since OIG’s audit recommended important changes to AC’s inspection and enforcement practices. Over this period, evidence has shown that AC has lapsed back into behavior that the 2010 OIG report identified as ineffective and counter-productive to enforcing the Animal Welfare Act for commercial dog breeders. Specifically, the AC is emphasizing “education” over enforcement with a new protocol referred to as “teachable moments;” once again neglecting to proactively share information about possible cruelty violations with State authorities and law enforcement; and taking years to resolve enforcement actions. These concerns, combined with APHIS’s removal of previously available AWA enforcement and inspection records from its website and the new redaction of the names of nearly all Class A dog breeders from inspection and enforcement documents, have eliminated APHIS’s public accountability for enforcement against problematic breeders. These troubling changes not only mean that the public can no longer see the identities of problematic dog breeders (either online or through FOIA) or see whether AC has pursued enforcement, but it also raises serious doubts about APHIS’s adherence to the recommendations of the 2010 audit.

In order to understand the impact of AC’s actions on the welfare of the animals the agency is charged to protect, we request that OIG conduct a new audit of AC’s enforcement of the AWA for commercial dog breeders, taking into account the following questions and insights:

- Recommendations 1, 2, and 3 of the 2010 Report instructed the agency to emphasize enforcement over education. Instead, AC has instituted a parallel enforcement scheme focused on “teachable moments” – referred to as an “educational approach” – that are documented in place of citations. **What actions has AC taken to ensure that violations are being reported and enforced properly and consistently? Are there assurances that the “no-action” enforcement action phased out by the 2010 Report has not been replaced by “teachable moments,” “closed without action,” or other inappropriate handling of unreported violations?**
- Recommendation 5 of the 2010 Report instructed AC to develop written procedures to refer potential animal cruelty cases to relevant State authorities. AC has recently indicated that it no longer proactively provides information about direct violators to State officials or law enforcement. **Given that this**

information on AWA violators is no longer available online, how is information about potential cruelty cases being proactively transmitted to States and local law enforcement?

- In APHIS' action plan following the 2010 audit, APHIS committed to "publicize violations of the AWA." It further said, "This action will provide a greater deterrent to violating the AWA. APHIS will begin issuing monthly press releases announcing enforcement actions taken to address violations of the Animal Welfare and Horse Protection Acts." Prior to August 2016, APHIS posted warning letters, stipulations, pre-litigation settlement agreements, and administrative complaints on its website. APHIS stopped publishing new enforcement actions in August 2016 and in February 2017, removed all historical enforcement actions from its website. In August 2017, USDA indicated it no longer intended to post enforcement actions, committing to posting quarterly statistical summaries instead. These statistical summaries cannot serve as a deterrent for violators since there is no identifying information provided. **We ask that OIG examine AC's decision to eliminate enforcement actions from their website and the implications of this decision.**
- Recommendation 4 of the 2010 Report instructed APHIS to undertake immediate confiscation of animals who are dying or seriously suffering. Although AC has clarified some aspects of its confiscation procedures since 2010, the agency has both neglected to confiscate seriously suffering animals and has botched some confiscations it has undertaken. Reports from local humane groups and rescues enlisted by AC to participate in confiscations reveal serious disorganization on the part of USDA. **We ask that OIG examine AC's recent confiscations with an eye toward improving the confiscation process and urging more frequent and proficient use of confiscation authority.**
- Recommendation 12 of the 2010 Report instructed AC to close the "internet loophole" which allowed certain breeders to skirt oversight by selling animals sight-unseen over the internet or through the mail. USDA responded to this recommendation via rulemaking concerning "retail pet stores" in 2013. USDA estimated that the rule would bring between "2,600 and 4,640 dog breeders, about 325 cat breeders, and no more than 75 rabbit breeders" under regulation. By USDA's own account, since the promulgation of the retail pet store rule four years ago it has only issued 279 new AWA licenses as a result the rule. **What is APHIS's plan to bring under enforcement the thousands of breeders, identified by the USDA in 2013, that continue to evade oversight?**
- AC Investigative and Enforcement Services (IES) reports that in FY2017, the 39 final actions APHIS has taken on AWA violations average 642 days from opening to a final action closure." It is difficult to fathom how USDA believes breeder compliance can be achieved via such drastically deferred enforcement. **What actions has AC taken to ensure that enforcement actions are completed efficiently, including an examination of delays in the Office of the General Counsel and an evaluation of the Investigative and Enforcement Services' investigation process?**

We request a report on APHIS's continued progress on all the report's recommendations, and the specific questions and concerns raised in this letter, to ensure continued transparency and accountability.

The humane treatment of animals remains important to all Americans. We hope that APHIS's Animal Care Unit will enforce the Animal Welfare Act in accordance with the public's expectations and with the utmost transparency. Thank you for your attention to this issue.

Sincerely,



Mark Pocan
Member of Congress



Brian Fitzpatrick
Member of Congress