

Amendment #18 – The Farm Bill
Analysis of Proposed Animal Welfare Enforcement Improvement Act

(a) Remove Section 2133 (7 U.S.C. § 2133) (Section 3 of the Animal Welfare Act) to be replaced in its entirety by new language

The proposed wholesale change to Section 2133 is designed to detail and establish more restrictive rules and procedures relating to the licensing of pet dealers and exhibitors. For example:

- Currently, AWA licenses are valid for three years. This legislative proposal would require yearly renewals.
- Currently, to obtain a new AWA license, an applicant has up to three attempts to pass the requisite inspection demonstrating full compliance with the AWA. The proposal gives a new applicant only two chances.
- Under the proposal, APHIS would be required to deny a renewal request for (among other reasons) mere non-compliance with *any* APHIS standards during any two unannounced inspections conducted over the previous two calendar years – an obviously onerous requirement with which even the best of facilities would find nearly impossible to comply.

This proposal would overturn existing regulations that have successfully been vetted through the notice and public comment requirements of the Administrative Procedure Act. This amendment essentially usurps the regulatory process, reduces stakeholder input and should not be allowed to succeed.

(b) Addition of a new subsection 9 to Section 2143(a) (7 USC § 2143)

As above, specifics regarding the care and maintenance of animals, the topic of the proposed provision, is best left to the regulatory, not the legislative process. Stakeholders, policy experts and the public who are impacted are best equipped to offer thoughtful and appropriate comments and suggestions. Statutory amendments that lack input from subject matter experts and stakeholders are inappropriate, have little likelihood of positive policy outcomes and should be opposed.

(c) Amendment of Section 2149(a)

Essentially, this proposed new language limits the Secretary’s discretion by distinguishing between (1) *possible* license suspension/revocation where the Secretary “has reason to believe” that a violation has occurred or is occurring, and has discretion whether and to what extent to impose a penalty, versus (2) a violation for which “the Secretary determines presents a risk to animal welfare” and for which the Secretary *must* suspend or revoke a license.

The language does not indicate how or when the Secretary determines that a violation presents a “risk to animal welfare,” a phrase that by itself is fraught with ambiguity. Does a license holder have an opportunity for a hearing before this determination can be made? As

written, the proposed amendment does not provide this right. After the determination is made by the Secretary, the license holder would only be granted an “informal” hearing (a term that it does not define) before being subjected to potential “permanent” license revocation.

In short, this amendment eliminates procedural due process protections for licensees and will reduce a license holders’ legal rights.

(d) Addition of a new Section “PUBLICATION OF INFORMATION ON ENFORCEMENT”

The requirement to publish the inspection reports containing non-compliance citations and other enforcement records “in their entirety and without redaction” is overly broad and should be rejected.

It includes no allowance for FOIA exemptions or allowing affected persons to invoke administrative and court processes to protect against public disclosure of their protected information.

Finally, it does not exempt publication of inspection reports containing allegations of non-compliance where the inspected person/entity successfully challenged on appeal a report that the agency consequentially amended, rescinded, or revoked.