

2005 Enforcement of the Animal Welfare Act:

Whose Side is the USDA on?

By

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Introduction

The Animal Welfare Act (AWA) is the primary piece of legislation that regulates the existence of animals held within entities such as zoos, laboratories, and animal dealers. The AWA is enforced by the Animal Care (AC) division of the Animal & Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA).

While it is difficult to assess the effectiveness of many laws or their enforcement, it is still possible to examine trends in violations of these laws, and their enforcement. In order to begin this assessment, information from the USDA/APHIS Animal Care website has been examined. This data delineates the number of times during a year that the AWA was violated as well as the number of animals effected by each violation. The trends in these statistics, as well as information from an audit of the activities of APHIS by the USDA Office of the Inspector General, have been included in this report. Lastly, information issued by the USDA in the form of statistics regarding the use of animals in laboratories will be assessed (in general terms) for accuracy. The main focus of this information assessment will be to determine the dependability of the data available from the USDA/APHIS/AC.

Executive Summary

The Animal Welfare Act (AWA), the only piece of legislation which protects animals held in laboratories, dealers, or exhibitors, is being violated at an increasing rate and the number of animals potentially injured by these violations is increasing at an even higher rate. The Animal Welfare Act was violated 20,845 times during the reporting year ending in September of 2005 impacting 1,364,358 animals -- a three-year increase of 44% in violations (6384) and 321% in animals impacted (1,040,268). As the violations are increasing the USDA is doing less and less about it. Fewer enforcement actions are being taken; fines are routinely reduced by 75%, or in some cases eliminated entirely.

The USDA routinely promulgates misleading, if not downright dishonest statistics regarding the use of animals by laboratories, which is not surprising since (according to the USDA OIG) in many instances inspectors do not even bother to count animals in labs when they are inspected.

Animals used in federally owned labs are excluded from currently published national totals, making comparisons with previous information which did include these federally owned animals meaningless and deceiving. Many other animals in labs are not counted in these totals including animals held for breeding or conditioning. Additionally, animals used in agricultural research (including the majority of those used in the USDA's own labs) are totally excluded from protection by the AWA and from all national statistics. When these exclusions (for agricultural research) are ignored and all animals listed as being covered species (regardless of type of research they are used in) are counted the USDA is, itself, the federal agency using the largest number of animals in labs.

Clearly, the USDA is not protecting animals adequately whether they are in facilities owned by labs, dealers, or exhibitors. Animals are not counted; as violations and animal suffering increases enforcement decreases; millions of animals are excluded from any legal protection, and the public is deceived as to the size of animal experimentation as well as which federal agencies conduct it. The labs of other federal agencies receive no outside inspections whatsoever. One of the prime beneficiaries of this combination of exclusion and secrecy is the USDA itself. The agricultural exemption removes the majority of animals in USDA labs from protection, and the omission of reporting on federally owned facilities hides the fact that the USDA is one of the largest users of animals in experimentation in the United States.

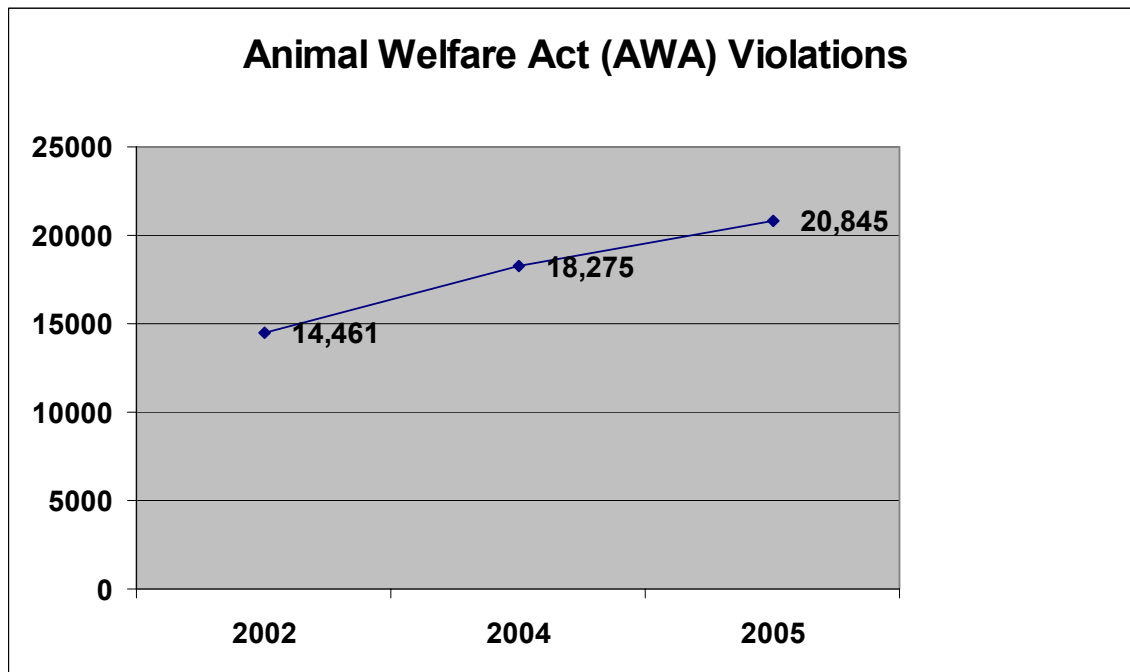
The conclusion of this report is that the USDA has far too much of a vested interest in the area of animal experimentation to adequately enforce the AWA with regard to laboratories, and historically the agency has been too lenient with regard to enforcement at all varieties of facilities. It is the opinion of this author that enforcement of this crucial law which impacts public safety as well as the lives of tens of millions of animals should be delegated to an independent entity which is empowered to inspect labs owned by all federal agencies and which is not tied in any way to the performance of animal experimentation. The USDA has conducted itself as though promoting public safety and protecting the animals who the Animal Welfare Act was designed to protect has become little more than an annoyance which gets in the way of other important activities -- such as protecting laboratories from the intrusive eyes of the tax-paying public.

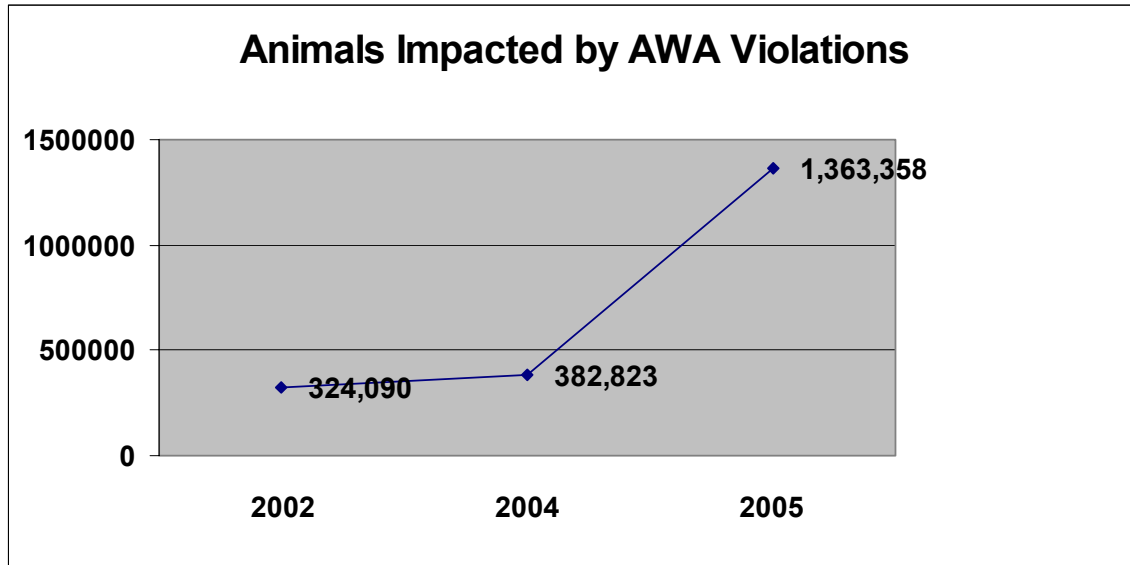
National Trends in Violations of the Animal Welfare Act

The Animal Welfare Act regulates many industries that use animals. The provisions of the AWA are very basic in nature, primarily governing issues such as sustenance, housing, sanitation, adequacy of veterinary care, etc. Therefore, the trends in violation of this act should provide a snapshot as to the overall treatment of domesticated animals in the United States. For complete statistics on violation of the Animal Welfare Act for the years 2004 & 2005 please see Appendix A.

The Animal Welfare Act was violated 20,845 times during the reporting year ending in September of 2005. These violations negatively altered the lives of 1,364,358 animals. Statistics for the year ending in September of 2004 there were 18,275 violations potentially injuring 382,823 animals. This is a single year increase of 2570 violations (14.1 %) and 981,535 (256.4%) animals. For an additional basis for comparison -- the number of violations during 2002 was 14,461 with 324,090 animals potentially harmed -- or a three-year increase of 44% in violations (6384) and 321% in animals impacted (1,040,268). The trends revealed by these statistics clearly indicate that the fate of animals within the United States is worsening, and that this change is accelerating. More animals are suffering in our nation's institutions, and the laws governing their care are being violated on an increasingly regular basis. For Graphic representations of these statistics, please see the charts below.

During the year ending in September of 2005 the Animal Welfare Act was violated 2.4 times every hour, and 65.5 animals suffered as a result of each of these violations.



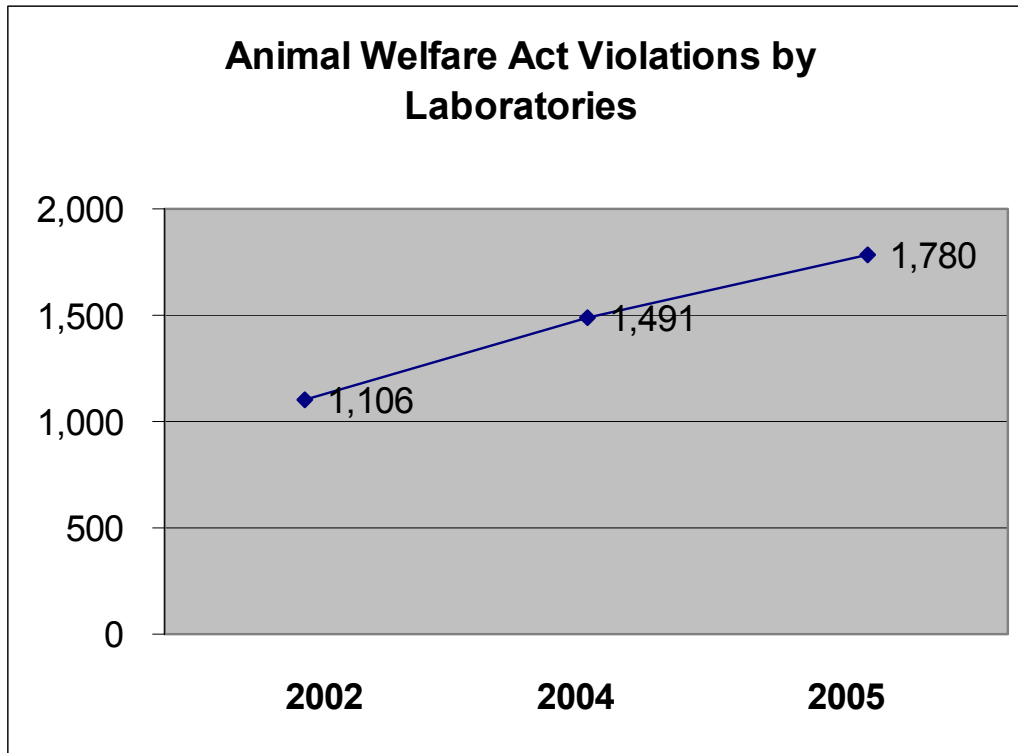


Some violations impact the lives of animals more directly than others. While record keeping requirements may not have the highest direct impact on the lives of individual animals, other areas have a much clearer influence.

Areas which have a clear and undeniable effect on the lives of animals would include: food, water, veterinary care, sanitation, shelter, space, exercise, etc. During the year ending in September of 2005 regulations governing these areas were violated 7,211 times impacting 834,642 animals. Similar numbers for the previous year were 3,975 violations impacting 174,032 animals. For the 2005 reporting year violations in these areas increased by 81% and the number of animals negatively impacted by these violations increased by 379%. The animals involved in these violations comprised 61% of all animals effected by violations of the Animal Welfare Act for the 2005 reporting year. Please see Appendix B for full statistics on these violations.

In many instances it is not possible to ascertain which violations are relevant to which type of regulated entity. The regulations for many areas are common to all regulated entities. For example, the regulations governing feeding, watering and housing of animals can cover dealers, exhibitors, intermediate handlers, and even laboratories.

However, many regulations are specific to laboratories due to the specialized nature of their animal use. Laboratories violated the AWA 1,780 times during the 2005 reporting year. During the 2004 reporting year the same regulations were violated 1,491 times, and again 1,106 times in 2002. The 2005 violation total for laboratories represents a one-year increase of 19.4% or a three-year increase of 60.9%. The rate of increase in violations by laboratories is climbing faster than the statistics for all categories of animal use. The chart below provides a graphic representation of this information.



In summary it is clear that the Animal Welfare Act is being violated at a rate that is increasing dramatically, and that the number of animals impacted by this higher number of violations is increasing at an even higher rate. More animals are suffering in more direct ways as well because many of the types of violations that directly change the lives of animals in captivity are increasing at a high rate, as is the number of animals whose lives are changed by these violations.

The most logical question that must be discussed is what is the USDA/APHIS/AC doing about the increase in these violations? This issue will be discussed in the next section of this report.

The OIG Audit of the USDA/APHIS/AC

The Office of the Inspector General of the United States Department of Agriculture recently released a report that examined the enforcement of the AWA by the Animal Care division of the Animal & Plant Health Inspection Service of the USDA. This audit had many findings, which are contained in an Executive Summary which is contained in Appendix C of this report.

In brief, the OIG report stated that the enforcement efforts of the Eastern Regional Office of USDA/APHIS/AC have actually declined, cutting the number of cases referred for prosecution to 82 (2004) from an average of 209 during the 2002 & 2003 years. This represents a reduction of 61% in prosecutions, at a time when the number of violations increased by 44% and the number of animals who were negatively impacted by these violations increased by 321% overall.

Similarly, according to the OIG audit, stipulated fines are often discounted (agency wide) by as much as 75%. So, even though the ability of the USDA/APHIS/AC to assess fines is somewhat limited, once fines are meted out, they are routinely reduced by $\frac{3}{4}$ to make the machinery of government run more efficiently (reducing court cases).

USDA policy has apparently not changed since the publication of the OIG audit. The \$25,000 fine assessed in the case of Ronald Armitage, Arbuckle & Ozarks Development Company d/b/a Animal Paradise AWA Docket No. 05-0033 1/30/06 was totally suspended. In the case of Chester Gaither d/b/a Chet's Pets, AWA Docket No. 04-0034, December 16, 2004 a fine of \$200,000 was reduced to \$1000. In the case of Tom Parker d/b/a African Northwest, Inc., AWA Docket No. 03-0002, December 16, 2004 a \$15,000 penalty was reduced to \$6000. In the case of DEVA EXOTICS, INC., a Wisconsin corporation, and successor-in-interest to DEVA EXOTICS, LLC, a Wisconsin limited liability company; MICHAEL V. DEMMER; AN INDIVIDUAL; and JOANNE VASSALLO, an individual. AWA Docket No. 02-0027, October 12, 2004, while licenses were revoked – no fines were assessed. In cases since the issuance of the OIG audit report, the USDA is still reducing/eliminating fines so as to make them essentially meaningless.

This must make anyone with a skeptical mind wonder if the USDA/APHIS/AC (or at least the hierarchy of this agency) really wants to enforce federal law. The law is being broken more often, more animals are feeling the negative consequences of these violations, but fewer enforcement actions are being taken, and the fines which result from these enforcement actions are being reduced (making them virtually meaningless) or eliminated entirely. If any private individual had this kind of record in the private business world – they would be terminated immediately.

Reliability of USDA/APHIS/AC Information

The OIG audit report had another finding which is rather startling. Apparently, many inspectors are simply taking the word of research facilities for the number of animals on hand during inspections, not doing any independent verification of these numbers. This kind of lapse raises even further doubts about the enforcement of animal protection laws in the United States. If federal inspectors can't even be bothered to count animals, we must wonder how thorough these inspections really are. Again, does the USDA want to do its' legally mandated job? Is the goal of this agency to protect the interests of the American people, or protect the entities which it regulates from the scrutiny of the American people?

If the number of animals present during an inspection is not determined independently, then we must wonder if any examination is made of annual reports filed by research facilities. This must cast doubt on the totals for animals in laboratories promulgated by the USDA. Since the USDA is the only source for this information, both the general public and the rest of the federal government (i.e. congress) are utilizing information that is highly suspect, at best.

The website of USDA/APHIS/AC contains reports on animal use in labs which include statistics dating back to the year 1973. However, in recent years the statistics for federal agencies have been omitted from this report. This eliminates at least 9% of the total animals (for fiscal 2001, as an example) for a given year. In some species the statistics can be significantly skewed by the number of animals omitted. For 2001 48% (or 12,641 sheep) of the 26,236 sheep reported for the nation were used by federal agencies. In more recent years, the numbers may be even more skewed. For 2004 the USDA reports the use of 172 sheep in the state of Nebraska. However, this total is by no means all inclusive. The USDA's own facility in Clay Center, NE used 10,854 sheep for this year. The unreported USDA sheep in Nebraska are equivalent to 56% of the total reported by the USDA for the nation. In total, the USDA used over 50,000 animals in 2004. None of these animals were included in the published national totals for animal experimentation. In fact, potentially the majority of animals used by the USDA may be permanently excluded from any coverage by the AWA because these animals are used in "agricultural" research. It must be noted that the animals in USDA facilities, most of whom are not protected by the AWA, receive no independent protections.

Partial documentation for the USDA and other federal agencies reveals a total of 81,726 non-reported animals for the 2004 reporting year. This number is extremely limited. It omits data for several of the largest Department of Defense laboratories including: Fort Detrick and Walter Reed Hospital. Additionally, the agency which is one of the largest users of animals in laboratories – the National Institutes of Health – is not included in this total. Past totals have listed DOD regulated animal usage at over 36,000 and the NIH has had usage of over 16,500 (for 2000). This would put the potential total at 127,500.

Since the data released for previous years included the information from federal agencies which is omitted in current totals, any comparison of the statistics on the USDA/APHIS/AC website is extremely misleading – because a minimum of 9% of the current total is not disclosed due to the omission of federal agencies.

The totals disclosed for recent years 1,137,580 (2002), 1,188,469 (2003), 1,101,958(2004) appear to show a decrease in animal use when compared with the 2001 of

1,236,903. However, when the 10% estimated for federal agencies is added back in, the picture changes. The totals become: 1,251,338 (2002), 1,307,316 (2003), 1,229,458 (2004 – using the estimated federal figure above). And the 2004 number may be low due to increases in the use of animals by federal agencies for experimentation related to bioterrorism.

It must also be noted that the animals in the laboratories of other federal agencies receive no independent protection from abuse. The DOD labs are inspected only by officials of the DOD. The NIH labs are inspected only by officials of the NIH. If it were not important for independent enforcement of the regulations of the Animal Welfare Act then why was responsibility for inspecting private labs given to a government agency? If such protections are still important, then why are federal facilities not inspected independently?

Clearly, there is a conflict of interest when research facilities are expected to self-regulate. Is there not a similar conflict of interest in existence when a government agency is expected to self-regulate? Shouldn't all of the federally owned research facilities be independently inspected by an entity that doesn't have an interest in defending the legitimacy of animal research? In short, all regulation of animals in labs is currently done by agencies who are, themselves, conducting animal experimentation. This is not a desirable situation.

Other animals are also omitted from USDA reporting. For example, the USDA statistics do not include the animals who are confined in a research facility that are used in or breeding are being conditioned for later use in research. In some instances this number can be substantial. For example, in Louisiana for the year 2004, the USDA states in their annual report that 2213 primates were used in research. 2159 of these primates were experimented on at either Tulane University or the University of Louisiana at Lafayette. However, these universities have a combined total of 9843 primates who were held for breeding or conditioning purposes. Similar situations exist at other facilities. Why are these animals not disclosed? How many animals are being purposely hidden in this way? And if the inspectors are not verifying how many animals are present, why should we believe that these animals are only being housed and not experimented on?

Other animals in laboratories are also prohibited from being reported, and in fact receiving any coverage under the Animal Welfare Act. Rats and mice are legislatively prohibited from coverage in the AWA. Farm animals used in agricultural research are also exempted from coverage of the Animal Welfare Act. This last provision has a very interesting consequence for the USDA itself. The USDA performs a large number of research projects regarding animals used in agriculture. In fact, if the animals who are exempted under this provision (i.e. sheep, pigs, goats, etc. that ARE covered in other research facilities) are added back into the totals for the USDA, this agency becomes the largest federal agency in terms of regulated species used in experimentation.

It is extremely convenient that the law/regulations governing the use of animals in laboratories specifically exclude from coverage in those laws/regulations the majority of animals experimented on by the agency who administers those laws and regulations.

Conclusion

The situation for animals in U.S. laboratories, animal dealers, exhibitors, and intermediate handlers is very grave. The USDA/APHIS/AC is arbitrarily decreasing enforcement actions at a time when the numbers of violations of the Animal Welfare Act and the number of animals negatively impacted by those violations is increasing dramatically (44% for violations and 321% for animals effected). The USDA/APHIS/AC is deliberately choosing not to prosecute offenders, is reducing fines to the level of non-existence, and is also promulgating misleading information.

Statistics regarding the use of animals in laboratories has been reported in such a way (by omitting information about the use of animals in federally owned laboratories) so as to give the appearance of a reduction in the use of animals in experimentation, at a time when the actual total is rising. These omissions have been made by a part of the federal government who actually uses more animals intramurally than any other agency. However, the majority of the USDA's own animals are specifically excluded from all protections of the Animal Welfare Act – even though these are the same species that are protected in the labs of private universities and other research facilities.

Any non-governmental entity with such a poor record would either go out of business or would make massive changes in the hierarchy of the agency in question. However, things continue without major alterations at the USDA – despite internal documentation of malfeasance. When inspectors can't even be bothered to count animals, what hope is there that federal law is being enforced with any degree of reliability? Though the reported totals of violations and animals effected by those violations are skyrocketing, how many violations go unreported? How much protection do animals really receive?

Additionally, many other federal agencies use substantial numbers of regulated species in experimentation. The Department of Defense is estimated to utilize over 36,000 regulated animals per year. The National Institutes of Health uses an estimated 16,500 regulated animals per year. The Veteran's administration experiments upon roughly 13,000 regulated animals per year. Other miscellaneous agencies (including the EPA, Department of the Interior, etc.) use another 11,200 regulated animals per year.

The research facilities which contain these animals receive no outside inspections; they agencies are expected to be self-regulating. There is no independent oversight. There are no prosecutions, no fines, and no meaningful enforcement actions. The roughly 127,500 animals in federally owned laboratories have no meaningful protections. There is no law, because there is no realistic enforcement.

Recommendations

1. Enforcement of the Animal Welfare Act in laboratories should be taken out of the hands of the USDA. This agency is clearly far too involved in animal experimentation to regulate this industry effectively.
2. An independent agency that is uninvolved in the performance of animal experimentation should be given the responsibility for enforcement of the Animal Welfare Act in all laboratories, both federal and non-federal.
3. All Federal Facilities should be required to post listings of their research projects (i.e. similar to the CRISP system or DOD Biomedical Research Database) on the internet, along with annual reports (as is currently done by the DOD). This information should be posted annually in a timely manner. Though the DOD posts an annual report on this issue, the latest report available covers animal use in 2001.