

**MEMORANDUM**

**TO:** Chairman Garrett Love, Interim Committee on Agriculture and Natural Resources  
**FROM:** Dr. Michael Faurot, Division of Animal Health, Kansas Department of Agriculture  
**DATE:** November 19, 2013  
**SUBJECT:** Responses to Questions Related to Animal Facilities Inspection (AFI) Program

**1. What has changed with how AFI manages Foster Homes?**

Pet animal foster homes have historically been licensed by the AFI program. Animal shelters and rescues have identified foster homes as playing a key role in their ability to manage their inventory of stray and rescued animals. In March 2013, the AFI program had issued more than 1,200 pet animal foster home licenses for FY 2013 at a fee of \$10 each. In examining the administrative costs associated with issuing these licenses, the department found it was not cost effective. An increase in the \$10 fee was initially considered but through discussion with the Pet Animal Board, KDA staff, and licensees, an increase in the fee was the least desirable option. Instead, foster homes were moved under their subordinate shelters and rescues. This registration process allows KDA to keep the fee at \$10 without seeking an increase. The responsible shelters and rescues submit the \$10 registration fee to KDA along with a quarterly report that details the foster homes being utilized. This process is done primarily electronically. By registering the foster homes, KDA is able to record animal movement, which is vital from a disease tracking standpoint. Shelters and rescues are also required to keep track of where animals are obtained and their method of disposition (adoption, euthanasia, etc.) for recordkeeping purposes. The shift from licensing to registering allows us to ensure that we are meeting the requirements of K.A.R. 9-18-2 which requires all licensed premises to be "routinely inspected".

**2. Number of animals, litters and capacity by individual licensee (FY13).**

Licensee type	Facilities reporting info to KDA	Avg # of animals on hand	Avg # of litters per fiscal year	Avg. capacity
Animal Breeder	123	66	NR (not reported)	NR
Animal Breeder and Distributor	14	249	NR	NR
Shelter	129	41	N/A	184 reported an avg capacity of 48
Boarding/Training	109	26	NR	129 reported an avg capacity of 56

Group Foster Home	36	7	N/A	NR
Hobby Breeder	89	18	3	NR
Pet Store	17	18	NR	NR
Rescue	17	7	N/A	NR
Retail Breeder	146	37	NR	NR

**3. Egregious Violations (Seizures/Consent Agreements/Violations/Diseases)**

- a. AFI has completed one seizure since June 2011. This was done on an unlicensed facility in which seven dogs were seized. This individual has been a repeat offender and remains under a consent agreement with the program. The individual ultimately was charged with animal cruelty.
- b. Since July 2011, AFI has entered into or maintained 22 consent agreements, 11 of them were unlicensed individuals. The licensed facilities include 4 animal shelters, 3 retail breeders, 3 animal breeders and 1 hobby breeder. Through the consent agreement process, these individuals have relinquished approximately 237 dogs, 391 cats and 26 rabbits to KDA. Of these, 89 dogs, 2 cats and 26 rabbits were from licensed facilities. When looking at the number and type of violations, they are similar to other failed inspections which averaged out to approximately 6.7 violations per fail, with the top categories being surfaces, maintenance, cleaning/housekeeping and shelter. The difference between those that progress to legal remedies and those that don't is the lack of correction and failing to return to compliance. There is a geographical similarity between license density and consent agreements, shown in Attachment A.
- c. There have been several notable disease outbreaks since July 2011, the first of which occurred in July 2012. This particular case was in response to a nationwide event in which individuals in an Indiana distributing plant became ill with Lymphocytic Choriomeningitis. The illness was contracted through rodents that the plant was distributing to pet stores, including some in Kansas. The response to this disease outbreak was a multi-agency effort. Since pet stores are required to be licensed in Kansas, KDA took the lead. There were large numbers of rodents removed and euthanized at a cost of over \$8,200 to the agency. KDA has assisted with outbreaks of several infectious/contagious diseases of companion animals. Most recently, KDA has worked with licensees that have had outbreaks of canine parvovirus, canine distemper virus, and canine brucellosis, the latter of which is a zoonotic disease. These outbreaks are common enough that it is difficult to track the expense, especially the time commitment, related to them, but is estimated to be approximately \$10,000 over the last two fiscal years. Another recent disease outbreak stems from the purchase of "tiny turtles," the sale of which is prohibited according to FDA regulations. A case of salmonellosis was recently reported in Kansas that was linked back to the purchase of tiny turtles at a Kansas pet store. Because of KDA's expertise and working knowledge of the pet stores, KDA was asked by KDHE, CDC, and FDA to remove the tiny turtles and take appropriate samples in order to perform testing to try and match the salmonella species harvested from the turtles

to the case in question. The cost of this was approximately \$430. KDA commonly conducts disease or illness investigations that do not qualify as an "outbreak," but instead are either isolated cases or have other outcomes.

#### **4. Complaints**

Complaints can come to the program in several ways, including phone calls, through the KDA website, local officials, or inspectors. Since July of 2011 (FY 12-current) the AFI program has received approximately 293 complaints with the following breakdown: 115 unlicensed facilities, 56 shelters, 36 pet stores, 31 retail breeders, 14 animal breeders, 12 boarding/training, 11 group foster homes, 10 hobby breeders, 5 foster homes, and 3 "others." Of these 293 total complaints, in FY '13 there were 117 complaints logged with the following breakdown: 51 unlicensed facilities, 19 shelters, 16 retail breeders, 14 pet stores, 6 boarding/training, 3 hobby breeders, 3 animal breeders and 5 group foster homes. A majority of the complaints are on unlicensed facilities that are required to be licensed but are not. A large percentage of all other complaints are based around animal conditions, odor/sanitation, and disease concerns. KDA works closely with other agencies such as the consumer protection division of the Attorney General's office, KDHE and local officials. On average, 50% of the complaints that we investigate are founded.

#### **5. Violations**

In a review of random failed inspections it was determined there are approximately 6.7 violations per failed inspection. The top categories of violations cited were surfaces, maintenance, cleaning/housekeeping and shelter. For clarification purposes, we have included examples of concerns that would constitute a violation:

Surfaces - houses, dens, fixture and objects resembling furniture shall be constructed in a manner that allow them to be readily cleaned and sanitized or if not then removed or replaced when soiled or worn, free of excessive rust which prevents cleaning and sanitization or affects the structural strength, free of jagged edges or sharp points. Refers to those areas in which the animals would have direct contact.

Cleaning/Housekeeping - Remove excreta and food waste as often as necessary to prevent excessive accumulation of feces and food waste, to prevent the soiling of animals and to reduce disease hazards, insects, pests and odors. Dogs and cats must be removed from a primary enclosure when steam or water is used to clean unless enclosure is large enough to ensure they are not wetted, harmed or distressed in the process. The premises where the housing facilities are located shall be clean and in good repair to protect the animals from injury, to facilitate proper husbandry practices and to eliminate breeding and living areas for rodents and pests. This includes the accumulations of trash, junk, waste products and discarded matter.

Maintenance - The facilities must be maintained in good repair and shall not be potentially injurious to animal. These are areas such as, but not limited to floors, ceilings and walls.

Shelter – This area is broken up in to indoor, outdoor and sheltered facilities. But some examples are: provide protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous, provide shade, wind and rain breaks, temperature, humidity and odor control. Not exposing animals to conditions which they are not acclimated to. Allowing sufficient size structures for the animals they are housing.

From FY '11 to FY '13 the Animal Facilities Inspection Program has completed approximately 4,000 inspections with 3400 (85%) passing. This means that there have been approximately 600 failed inspections (15%) since July 2011. After a typical failed inspection, the licensee is given a certain amount of time (depending on the type of violation) to return to compliance. If they have not returned to compliance then they receive a second fail. There have been approximately 22 second (or consecutive) failed inspections. This means that of the licensees that fail their first inspection, 95% of them return to compliance by their next inspection. Attachments B and C show the counties with the highest rates of failed inspections.

**6. Estimated cost for unlicensed facilities (in addition to disease outbreaks information above) since July 2011.**

There have been approximately 118 complaints on unlicensed facilities during this time period. At an estimated average inspection cost of \$215 per inspection that equates to \$25,370. When considering failed inspections and the follow up required, then that costs is increased by approximately \$10,000. Cases that have gone on to require legal relief, and in several cases involve the relinquishment of animals, add an additional cost which is estimated at \$14,000.

**7. Average inspection time per license category.**

License Type	Inspection Time (hr)
Animal Breeder(AB)	1.88
ABD (AB/Distributor)	2.83
Distributor	1.88
Closing Permit	0.58
Group Foster Home	1.10
Hobby Breeder	1.37
Boarding/Training	1.08
Pet Store	1.20
Shelter	1.68
Retail Breeder	1.88
Rescue	0.93
Temporary Pet Store	1.50

### 8. Travel Expense Information for AFI Program in FY2013. Travel expenses

Expense Type	Expenditures
MEALS & LODGING	\$ 3,963.59
PRIVATE MILEAGE	\$ 259.60
VEHICLE EXPENSE	\$ 1,601.96
GASOLINE - ALL	\$ 15,024.14
MISC SUPPLIES	\$ 214.00
<b>TOTAL</b>	<b>\$ 21,063.29</b>
Field Staff	4.04
Travel Costs Per Inspector	\$ 5,215.67
MILES DRIVEN	90,877.00
Miles Driven Per Inspector	22,502.88

### 9. AFI role related to animal welfare

The Kansas Pet Animal Act (KPAA), under which the Animal Facilities Inspection program operates, protects the health and welfare of pet animals by establishing guidelines for professionals who operate pet animal facilities. The act prescribes the jurisdictional limits of the program based on the type of activity conducted on the premises and the number of animals or litters maintained on the premise. The regulations implementing the provisions of the act prescribe the specific requirements for operating an animal facility, specifically housing, feeding, and other husbandry standards.

Kansas animal cruelty laws also serve to protect the health and welfare of animals by criminalizing certain conduct. The KPAA does not authorize the division of animal health to enforce state laws that prohibit cruelty to animals. Rather, such laws are enforced by local law enforcement agencies and prosecuted at the district court level.

K.S.A. § 21-6412 defines "cruelty to animals" as:

- (1) Knowingly and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;
- (2) knowingly abandoning any animal in any place without making provisions for its proper care;
- (3) having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;

- (4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;
- (5) knowingly but not maliciously killing or injuring any animal; or
- (6) knowingly and maliciously administering any poison to any domestic animal.

Subsection (b) of that statute provides that certain conduct is considered either a felony or class A misdemeanor.

It is possible that conduct can be both a crime under the animal cruelty statute and a violation of the Kansas Pet Animal Act. If an individual commits a crime under the animal cruelty statute and is licensed or required to be licensed (having the requisite number of animals or litters on the premise), the Division of Animal Health could issue an order assessing civil penalties or take other enforcement actions against the licensee based on the same conduct, depending on the facts.<sup>1</sup>

Local governments throughout Kansas differ in the degree to which they provide animal control as part of law enforcement activities. Some jurisdictions have large, staffed animal control units, while others have minimal or no animal control operations. This is likely based on local need. The KDA Division of Animal Health is frequently able to assist in local animal control matters, but only when the matter involves licensed activity or activity that would require a license. In isolated animal welfare incidents outside of KDA's jurisdiction, KDA cannot intervene to seize animals or prosecute violations. Cooperation between the division of animal health and local law enforcement agencies is vitally important, both in cases where jurisdiction overlaps and in cases where it does not.

#### **10. Difference between inspections for USDA vs. Non-USDA licensed facilities**

Federal and state licensing of animal facilities overlaps with regard to breeders and distributors. For facilities that are licensed by both the USDA and the state of Kansas, the KDA will enforce either Kansas regulations or USDA regulations with regard to the facility upon inspection. For dual-licensed facilities, each licensee is separately inspected by KDA and USDA.

K.S.A. § 47-1712(b) provides that the animal commissioner shall only adopt as rules and regulations for USDA licensed animal distributors and animal breeders, the regulations of the USDA (9 C.F.R. § 3.1-3.12). Thus, only the USDA regulations apply to those categories of licensees. For a facility also licensed by the USDA, for example a retail breeder, the commissioner enforces Kansas AFI regulations (retail breeders are governed by K.A.R. 9-25-1 et seq.). USDA enforces its own regulations with regard to these facilities and separately inspects.

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<sup>1</sup> The commissioner is prohibited from issuing or renewing, and shall suspend or revoke, any license if a licensee or applicant is convicted of cruelty to animals. K.S.A. § 47-1706(b).

KDA's approach to inspections can be distinguished from USDA inspections in the following ways:

- KDA allows for flexibility and adjusts for situational differences when deciding upon a re-inspection date.
- KDA will allow for minor on-site corrections to be made without citing as a violation.
- KDA insures health certificates are completed and maintained as required in AFI regulations. USDA does not check these.
- KDA has a system in place that allows for the ability to expedite complaints at the local level.
- KDA inspectors have the ability to remove and receive animals.
- KDA works one-on-one with licensees in a cooperative manner, in a way that helps to support business in Kansas.
- USDA generally is concerned only about the breeding animals, and not the other animals that may be on premise.
- KDA inspects a much wider variety of animal facilities than does the companion animal portion of the USDA Animal Care program. Examples include animal shelters, retail breeders, retail pet stores, boarding and training kennels, hobby breeders, rescues and group foster homes. USDA animal care may inspect certain retail breeders, hobby breeders and pet stores if they sell wholesale and have over three breeding females.

#### **11. How many licensees have a third party/kennel club inspection?**

Upon polling the Pet Animal Advisory Board, the following information was gathered; hobby breeders, animal shelters, boarding and training kennels, rescues, group foster homes and pet animal foster homes receive no other types of routine inspections. Pet stores are sometimes inspected by the city in which they conduct business and do receive USDA inspections but only those who conduct wholesale activities or who exhibit animals for a fee. Licensees registered with AKC state that most inspections are focused on record keeping and keeping the genetic lines pure and "honest" and do little as far as inspections of the premise. The inspections varied from six months to several years apart and seemed to take in to consideration the numbers of litters present. Licensees that distribute animals or wholesale have to be USDA licensed and have an annual visit conducted by their veterinarian. An annual veterinary visit is required by KDA of all of our licensees aside from those USDA licensed animal breeders and animal distributors who have their own requirements. The veterinarian's visit is focused animal health and not on the facility or records.

#### **12. How inspection frequency changed since the merger into KDA**

Prior to the merger of the Animal Health Department with the Department of Agriculture, hobby breeders, rescues, group foster homes and boarding/training kennels were only inspected upon initial application, then again upon a complaint. After the merger, a schedule was set up to ensure these facilities were receiving at least an annual inspection (except for foster homes which remain on a complaint basis). The KDA is moving to a performance based inspection system that accounts for facilities past inspection history when determining an inspection schedule.

	USDA licensed	Non USDA licensed	Hobby Breeder	Pet Shop	Shelter	Rescue/group foster home	Boarding/Training	Fosters
Prior to merger	1/yr	2/yr	On initial and complaint	2/yr	2/yr	On initial and complaint	On initial and complaint	Complaint
Upon merger	1/yr	2/yr	<10 =1/yr >10 =2/yr	2/yr	2/yr	1/yr	1/yr	Complaint
March 2013	Performance based inspection system							Complaint

### 13. What due process is provided in the AFI program?

The Division of Animal Health is authorized by statute to enforce the provisions of the KPAA. Enforcement actions most commonly take the form of civil penalties, but also include actions to suspend or revoke licenses, or to order an unlicensed person to cease engaging in unlicensed activities.

Civil penalty orders are issued when a licensee fails three consecutive inspections. When the failed inspections are reported to the director of the AFI program, the director reviews and refers the matter to the department's legal section to review the case and prepare an order assessing civil penalties based on the number and type of violations.

Once an order is issued, the respondent licensee is provided with a period of time to request a hearing, consistent with the Kansas administrative procedure act (KAPA). If a hearing is requested, the department will first provide an opportunity for a settlement conference, allowing the parties to discuss the violations reported and any corrective action taken by the licensee. Based on this discussion, the department may offer to reduce or modify the penalties assessed if there is sufficient information to show that the corrective actions taken by the licensee have eliminated or will eliminate the conditions that caused the violations. If an agreement is reached, a consent agreement is executed, which eventually becomes a final order of the agency.

Civil penalties may also be assessed against individuals who are not licensed, but who are required to be licensed under the Kansas Pet Animal Act. The same opportunity to request a hearing and settlement conference is provided to these individuals. The department may also pursue a civil injunction against an unlicensed person if the person refuses to cease unlicensed activities following an order issued by the department.

In any type of enforcement action, including a civil penalty, suspension or revocation of a license, or action against an unlicensed person, the KPAA authorizes the commissioner to seize and impound any animals the person's custody when the health, safety, or welfare of animals is endangered. This is handled in accordance with the emergency provisions of the KPAA,



whereby the agency can take immediate action and allow a hearing to be held virtually immediately. The department's practice has been to hold hearings via telephone as soon as possible (often within one day) to allow the respondent to dispute the seizure. A bond is required by statute to cover the cost of caring for the animals during the period of seizure. The commissioner may return the animals at any time if there is satisfactory evidence that the animals will receive adequate care.

A respondent, regardless of the type of action, always has the opportunity to seek the advice of independent legal counsel and to have a fair hearing in the matter. Consent agreements, in all cases, are entirely voluntary. If consent agreements are not reached, cases are referred to the Office of Administrative Hearings for further proceedings.

#### **14. What inspections are optional vs. required?**

K.S.A. § 47-1709 prescribes the circumstances in which the animal health commissioner is required or permitted to inspect premises that are licensed or required to be licensed by the division of animal health. The commissioner "shall" inspect a premise upon receiving an application for an original license and the inspection must be passed before a license can be issued.<sup>2</sup> Additionally, the commissioner is required to inspect premises where the commissioner has reasonable grounds to believe the premise is required to be licensed by the division.<sup>3</sup>

The commissioner "may" inspect any premise for which a license has been issued.<sup>4</sup> This provision gives the commissioner to inspect any current licensee, at an interval determined by the commissioner. K.S.A. 47-1712(a)(12) authorizes the commissioner to adopt rules and regulations concerning inspections of licensed premises.

Regulations of the division of animal health currently provide that each premise licensed or required to be licensed are subject to routine inspections by the commissioner or the commissioner's authorized representatives.<sup>5</sup> In addition to routine inspections, premises may be inspected if violations were found in a previous inspection, in response to a complaint, in the event of ownership change, or if a license was not timely renewed.<sup>6</sup>

The commissioner is also authorized to conduct inspections at the end of a 30-day temporary closing permit, to ensure the permittee has ceased conducting business as an animal facility.<sup>7</sup> This provision serves the limited purpose of confirming closure of a business, though the statute does not clearly indicate whether it is a mandatory or permissive inspection. The agency's practice is to always conduct this inspection to confirm closure. Of the inspections conducted from FY '11 to FY '13, approximately 3,200 inspections were required inspections, and 800 were discretionary inspections (periodic routine or follow-up inspections).

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<sup>2</sup> K.S.A. § 47-1709(a).

<sup>3</sup> K.S.A. § 47-1709(c).

<sup>4</sup> K.S.A. § 47-1709(b).

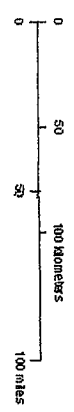
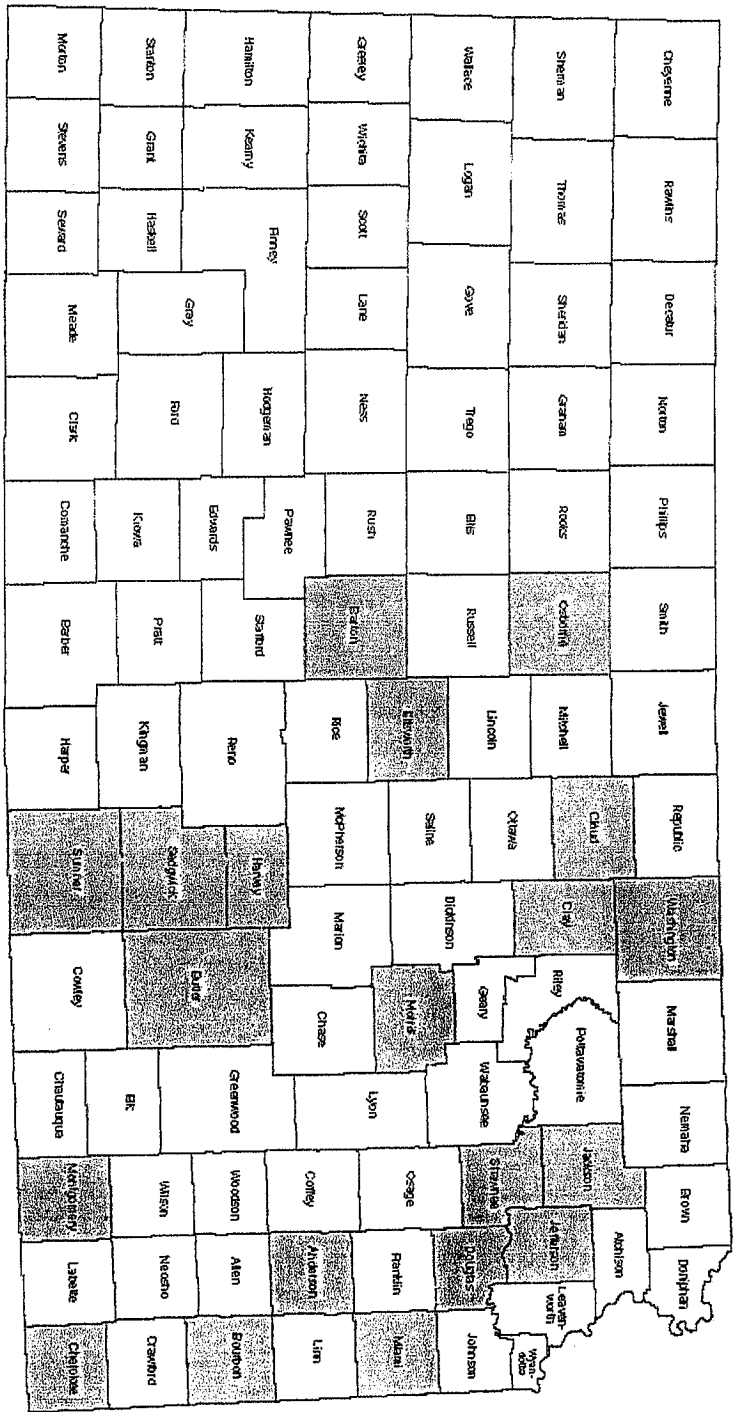
<sup>5</sup> K.A.R. § 9-18-2(a).

<sup>6</sup> K.A.R. § 9-18-2(b).

<sup>7</sup> K.S.A. § 47-1732(c).

# KANSAS

## Consent Agreements 10/22/13



Counties with facilities having 2 consecutive fails as of 10/24/13

# KANSAS

