

Subject: Denial of AWA License Applications Policy #1

References: AWA Section 3
9 CFR, Part 2, Sections 2.1, 2.5, 2.10, 2.11

History: This replaces the September 3, 1992 memo entitled “Denial of AWA License Applications.”

Justification: Under the Animal Welfare Act (AWA) regulations and standards, the Animal & Plant Health Inspection Service (APHIS), Animal Care (AC) can deny an AWA license application under certain restricted circumstances. This policy serves to clarify when a license application can be denied, and when and what it means for a license to be invalid.

Policy: The Investigative & Enforcement Services (IES) staff has met with the Office of General Counsel (OGC) and identified the following situations where the denial of a license is appropriate:

a. Failure of new applicant 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).

The Animal Care Regional Director (ACRD) will issue a letter (attached) to the applicant informing him/her of APHIS’ denial of his/her license application. The denial letter will notify the applicant of his/her right to a formal administrative hearing to show why the application should not be denied as required in Section 2.11(b). The letter will also inform the applicant of the procedures required to request a hearing. The license denial will remain in effect until the final legal decision. Once a hearing is requested, IES will be responsible for compiling a case of existing evidence and submitting it through the ACRD to the IES staff within a short period of time. The IES staff will coordinate with OGC to arrange a hearing date.

b. Applicant has been fined or sentenced to jail under State or local animal cruelty laws as specified in Section 2.11(a)(4).

IES will prepare a case file documenting the evidence from the State or

local case including a copy of the court's decision and sentence levied. The ACRD will inform the applicant of APHIS' denial of license application with a letter. The letter will contain information on the applicant's right to a hearing and procedures to initiate the process. Once a hearing is requested, the ACRD will immediately submit the case to IES staff. The IES staff will coordinate with OGC to arrange a hearing date.

c. Applicant is under investigation by State or local authorities for animal cruelty.

IES will conduct an investigation and collect evidence to substantiate or refute the allegations. The evidence should include information collected by State or local investigators in addition to corroborating evidence from interviews and/or AC inspections. The ACRD will submit the case to the IES staff for review and forwarding to OGC. If OGC concurs with the denial, IES staff will notify the ACRD. The ACRD will issue a letter informing the applicant of the denial of license application. The letter will contain information on the applicant's right to a hearing and procedures to initiate the process. If a hearing is requested, the ACRD will submit the case to IES staff. The IES staff will coordinate with OGC to arrange a hearing date.

What is a "valid" license?

A license shall be considered valid and effective unless:

- a. The license has been revoked or suspended.
- b. The license is voluntarily terminated by the licensee in writing. (This may include notation of the surrendering of the license to the inspector on the APHIS inspection form.)
- c. The license has expired.
- d. The applicant has failed to pay the application and appropriate annual licensing fee.

Licenses are issued for specific premises and are not valid at a different location.

Dear _____:

This letter is to inform you that your application for a license under the Animal Welfare Act (7 U.S.C. § 2131 et seq.) is denied pursuant to Section 2.11 of the regulations (9 C.F.R. § 2.1 et seq.) for the following reason(s):

_____ Failure to comply with the requirements of Section 2.1 of the regulations (9 C.F.R. § 2.11(a)(1)).

_____ Failure to comply with the requirements of Section 2.2 of the regulations (9 C.F.R. § 2.11(a)(1)).

_____ Failure to comply with the requirements of Section 2.3 of the regulations (9 C.F.R. § 2.11(a)(1)).

_____ Failure to comply with the requirements of Section 2.4 of the regulations (9 C.F. R. § 2.11(a)(1)).

_____ Failure to comply with the requirements of Section 2.6 of the regulations (9 C.F.R. § 2.11(a)(1)).

_____ License has been revoked or is currently suspended as set forth in Section 2.10 of the regulations (9 C.F.R. § 2.11(a)(3)).

_____ Has been fined, sentenced to jail, or pled nolo contendere (no contest) and paid a penalty under State or local cruelty to animal laws within 1 year of application (9 C.F.R. § 2.11(a)(4)).

_____ Has made false or fraudulent statements or has provided false or fraudulent records to the Department (9 C.F.R. § 2.11(a)(5)).

You may request a hearing in accordance with the applicable Rules of Practice for the purpose of showing why your application for a license should not be denied. You must notify this office, in writing by certified mail, within 20 days from receipt of this letter if you desire a hearing, and a hearing will be held in due course. Failure to request a hearing within 20 days from receipt of this letter will be deemed a waiver of such hearing.

If you have any questions with reference to this matter, please do not hesitate

to contact this office by mail or by phone at _____.

Sincerely,