

*AMERICAN ANIMAL
WELFARE LEGISLATION*

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First of all, I would like to thank professor Teresa Giménez-Candela. She taught me lots of things last year in Roman Law, and she is teaching me lots of things this year in Animal Law. She has made me appreciate how important Animal Law can be, and how we must fight in order to make Animal Law be so important in Spain as it is in the United States of America. She is a pioneer of Animal Law in Spain, as this subject is not still taught in Spanish universities, except in our university, the Autonomous University of Barcelona.

I would also like to thank professor David Favre, whose conference called “Animal law, animal welfare and animal rights” which took place in the Autonomous University of Barcelona the 26th of October was also an inspiration to write this project.

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INTRODUCTION

As I said, Animal Law is not an important subject at Spanish Universities. However, this will change. I am sure; we must see how important it is in the US, and how important it is also in some other “common law” countries: UK, New Zealand, Canada, Australia...

I could have written this project about “Animal Law”, but I have decided to write only about “Animal welfare”. As I will explain later, I could have chosen several point of view:

*Animal law, which is specially a private law.

*Animal welfare, which is a human responsibility of ensuring animal well-being.

*Animal rights, which is a group of ethical and philosophical thoughts about animals.

Although the three topics are very interesting, I chose the second one. I didn't choose the first one as I thought that it is too wide. And I didn't choose the third one as I think that then I would do a project on philosophy more than a project on Law, which I wanted to do.

Of course, I will not talk about Animal Welfare only saying that it is a human responsibility; I will analyze the Laws that regulate what happens if some human does not take this responsibility. This topic is really important.

Humans can feel hot, cold, we can feel sad, thirsty, hungry... Animals can also have the same feelings. Humans are not usually concerned about that, but this is important. When we travel on a plane, we want to be comfortable sat; do animals want to be uncomfortable in the hold of the plane? No, they don't want.

But we have the ways of making animals feel OK. This is not a great effort, this is just thinking about it.

As we will see in this project, in the US are lots of laws related to animal welfare, and also lots of cases. In Spain? Still not. But this will change. We must believe.

1.-What is exactly “animal welfare”?

Animal welfare is the state of an animal with regard to its experiences, needs, feelings, and ability to cope with its physical and social environment. Welfare is measured by indicators such as behavior, physiology, animal choices, longevity, production and reproduction. Welfare, like health, may be good or poor: the concept generically applies to the state of an animal and should not be equated only with positive well-being.

In other words, animal **welfare is the ethical responsibility of ensuring animal well-being**. Animal well-being is the condition in which animals experience good health, are able to effectively cope with their environment, and are able to express a diversity of species-typical behaviors. Protecting an animal's welfare means providing for its physical and mental needs.

Ensuring animal welfare is a human responsibility that includes consideration for all aspects of animal well-being, including proper housing, management, nutrition, disease prevention and treatment, responsible care, humane handling, and, when necessary, humane euthanasia.

There are numerous perspectives on animal welfare that are influenced by a person's values and experiences. There are also various means of measuring animal welfare, including (but not limited to) health, productivity, behavior, and physiological responses.

The term “animal welfare” is being used increasingly by corporations, consumers, veterinarians, politicians... Can this term mean different things to different people? Yes,

of course. Caroline J. HEWSON¹ considers that there are three points of view of this concept, which we will analyze.

In the past, veterinarians and farmers have seen animal welfare chiefly in terms of the body and the physical environment (shelter, feed, etc.): if an animal is healthy and producing well, it is faring well. Research on aspects of animal welfare has also focused on the body, using physiological measures, such as endorphins, plasma cortisol, and heart rate, to examine how the animal is coping with its environment. As we can clearly see, this concept is not the one that we will use.

A second point of view considers that animal welfare includes not only the state of the animal's body, but also its feelings. If an animal feels well, it is faring well.

A third view of welfare, linked to the feelings-based approach, is that animals fare best if they can live according to their nature, and perform their full range of behaviors. In this case, physical suffering, such as feeling cold, and mental suffering, such as the fear induced by being preyed upon, may be acceptable.

Although the second and the third point of view may be very reasonable (we will not consider the first one in this project), we will choose the second one because the third point of view approaches to the “natural-living” aspects of welfare, and we will talk about the aspects of animal welfare which are mostly related to their life together with humans. We will try to analyze some laws which talk about animal welfare, but thinking that animals are not always living free. However, even if animals are not always free, we must concern about their welfare.

¹ *What is animal welfare? Common definitions and their practical consequences.* Caroline J.Hewson, Canadian Veterinary Journal 2003 June; 44(6): 496–499.

So, as we can see, animal welfare is not a thing far from us. We can and we must contribute to help animals to have a good life; animal well-being is very important, in the USA or in Spain, it should be important everywhere.

2. - Differences between “animal welfare”, “animal law” and “animal rights”.

We have just seen what “animal welfare” is. However, we must remember that there are two concepts related, which don’t mean exactly the same thing: “animal law” and “animal rights”.

We will first analyze the differences between “animal welfare” and “animal rights”, because “animal law” is a wide concept which requires more explanations.

“Animal welfare”, as we have seen, is a human responsibility that encompasses all aspects of animal well-being. “Animal rights” is a philosophical view and personal value characterized by statements by various animal rights groups. So, “animal welfare” and “animal rights” are not the same thing.² Consequently, the term “animal rights” refer to moral beliefs, a moral consideration of the status of animals.

We will briefly analyze an example of a philosophical thought about animals. Jean-Jacques Rousseau in his *Discourse on Inequality (Discours sur l’origine et les fondements de l’inégalité parmi les hommes,*³ 1754), argued that animals should be part of natural law, because they are sentient:

Par ce moyen, on termine aussi les anciennes disputes sur la participation des animaux à la loi naturelle. Car il est clair que, dépourvus de lumières et de liberté, ils ne peuvent

² American Veterinary Medical Association.

³ *Discours sur l’origine et les fondements de l’inégalité parmi les hommes.* Ed Folio Essais.

reconnaître cette loi ; mais tenant en quelque chose à notre nature par la sensibilité dont ils sont doués, on jugera qu'ils doivent aussi participer au droit naturel, et que l'homme est assujetti envers eux à quelque espèce de devoirs. Il semble, en effet, que si je suis obligé de ne faire aucun mal à mon semblable, c'est moins parce qu'il est un être raisonnable que parce qu'il est un être sensible ; qualité qui, étant commune à la bête et à l'homme, doit au moins donner à l'une le droit de n'être point maltraitée inutilement par l'autre.

English translation: We put an end to the time-honoured disputes concerning the participation of animals in natural law: for it is clear that, being destitute of intelligence and liberty, they cannot recognize that law; as they partake, however, in some measure of our nature, in consequence of the sensibility with which they are endowed, they ought to partake of natural right; so that mankind is subjected to a kind of obligation even toward the brutes. It appears, in fact, that if I am bound to do no injury to my fellow-creatures, this is less because they are rational than because they are sentient beings: and this quality, being common both to men and beasts, ought to entitle the latter at least to the privilege of not being wantonly ill-treated by the former.

In consequence, we have seen that « animal rights » is a moral or philosophical point of view.

We will now analyze what “animal law” means. This is a huge concept which is a combination of statutory and case law in which the nature – legal, social or biological – of nonhuman animals is an important factor. Animal law encompasses companion animals, wildlife, animals used in entertainment and animals raised for food and research. As we can see, “animal law” is a wide concept which includes all the laws related to animals. In the other way, as we have seen, “animal welfare” is a human responsibility of ensuring animal well-being. So, in one hand we have the laws and, in the other hand, we have a human responsibility.

In my opinion, “animal welfare” could be included inside a wide meaning of “animal law”, because this responsibility of ensuring animal well-being is legally based; however, this is not always like that, because we may (and we must) ensure animal well-being even if there is any law which tells us what we must do.

“Animal law” includes some of the next topics: ⁴

- Animal custody disputes in divorce or separations.
- Veterinary malpractice cases.
- Housing disputes involving “no pets” policies and discrimination laws.
- Damages cases involving the wrongful death or injury to a companion animal.
- Enforceable trusts for companion animals being adopted by states across the country.
- Criminal law encompassing domestic violence and anti-cruelty laws.

Joyce TISCHLER⁵ considers that: “*What we now call Animal Rights Law or Animal Law began when attorneys consciously considered animal-related legal issues from the perspective of the animal’s interests, when they began to view the animal as the de facto client, and where the goal was to challenge institutionalized forms of animal abuse and exploitation*”. This affirmation can make us think that “animal law” will be increasingly important, not only in the United States, where is now a really important topic, even in Spain, where this topic is not important. Spanish legislators do not think about animals when they make the laws, but this will change. The American example is clear: animals may be important in the legal system.

⁴ Animal Legal Defense Fund.

⁵ Joyce Tischler: *The history of animal law, part I*. Stanford Journal of Animal Law and Policy.

3.-The Five Freedoms.

Although The Five Freedoms were created in the United Kingdom, and we are only analyzing American legislation, we have considered that its importance related to “animal welfare” is such that we should include them in this project.

The concept of Five Freedoms originated with the Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems, the Brambell Report, December 1965. This stated that farm animals should have freedom “to stand up, lie down, turn around, groom themselves and stretch their limbs,” a list that is still sometimes referred to as Brambell’s Five Freedoms.⁶

As a direct result of the Brambell Report, the Farm Animal Welfare Advisory Committee (FAWAC) was set up. This was disbanded at the same time that the Farm Animal Welfare Council (FAWC) was established by the British Government in July 1979, with some common membership. One of these bodies started to list the provisions that should be made for farm animals in five categories, which also became known as the Five Freedoms (despite the fact that not all the categories were actually freedoms).

However, the Five Freedoms, as we know them, have been established by the British Royal Society for the Prevention of Cruelty to Animals in 1994.⁷

⁶ Farm Animal Welfare Council.

⁷ Royal Society for the Prevention of cruelty to Animals.

✓ **Freedom from hunger and thirst**

by ready access to fresh water and a diet to maintain full health and vigour.

Freedom from discomfort

- ✓ by providing an appropriate environment including shelter and a comfortable resting area.

Freedom from pain, injury or disease

- ✓ by prevention or rapid diagnosis and treatment.

Freedom to express normal behavior

- ✓ by providing sufficient space, proper facilities and company of the animal's own kind.

Freedom from fear and distress

- ✓ by ensuring conditions and care which avoid mental suffering.

We can see the importance of these freedoms. They talk about animal welfare, and this is the reason which we have decided to include these Freedoms in a project on American legislation, even if they were created in the UK.

4.-Animal welfare in American legislation.

In my opinion, this is the most important part of the project. Here we will see the most important American legislation related to animal welfare. The base, of course, will be The Animal Welfare Act, but we will also analyze some other legislation. There has been no special criterion to choose this legislation; we just choose this legislation because we thought that it was a good example of American legislation. We know that there may be some important act or law which we have not included.

4.1.-The Animal Welfare Act. (1966).

The Animal Welfare Act (Public Law 89-544) was signed into law in 1966. It is the only Federal law in the United States that regulates the treatment of animals in research, exhibition, transport, and by dealers. Other laws, policies, and guidelines may include additional species coverage or specifications for animal care and use, but all refer to the Animal Welfare Act as the minimum acceptable standard.

There was in the early 1960s a discussion in Congress concerning the issue of the use of animals in science and research. At the same time, there was a media outcry over dogs and cats which were stolen frequently. In consequence of these two topics, there was a mass promotion of the AWA, which was approved in 1966.

David FAVRE⁸ has widely analyzed the AWA and has concluded that there is a wide assortment of issues with which the AWA is concerned, including:

⁸ *Animal Law: welfare, interests and rights*, by David Favre. Aspen Publishers, 2008.

- The thief of pet dogs and cats that were being sold to research and testing facilities
- Animals in zoos & exhibitions
- Animal fighting (dogs and bird cocks primarily)
- The breeding and wholesale distribution of some mammals
- Auctions of animals
- Animals in research labs (universities and private industry)
- The transportation of listed animals by other than common carriers

However, David Favre has considered that there are many topics are not covered by the federal law

- Veterinary care of animals outside licensed institutions.
- Use of animals in K-12 education
- Hunting & fishing & trapping issues
- Slaughter of animals (but see federal Humane Slaughter Act)
- Animals in agriculture production
- Retail pet stores
- Injuries by animals or inflicted upon animals

Here we can see the importance of the other laws which we will analyze; these other laws try to legislate about the topics that the AWA does not include. However, we must say that the AWA is such a very complete law, a legislative prodigy. I cannot think that in Spain we could have had a law like this one in 1966. Today, we don't still have a law like this one. And this is not only the case of Spain: most part of countries does not have such an important law treating animal welfare. In my opinion, the only countries which are really concerned about animal welfare are "common law" countries: the Unites States, of course; Canada; United Kingdom; Australia and New Zealand.

We have selected some fragments of the AWA which we will comment: ⁹

⁹ Text of the Animal Welfare Act (1966), obtained in the United States Department of Agriculture.

[80 STAT. 351.] (h) *The term "animal" means live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits.*

As we said before, in the original text of the AWA, there were not many animals included, because this law was the response to a need of the moment (cats and dogs which were stolen and animal experimentation, as we said). However, the definition of “animal” was expanded in the 1970 amendments of the AWA, as we will see next.

[License requirements.] SEC. 4. No dealer shall sell or offer to sell or transport or offer for transportation to any research facility any dog or cat, or buy, sell, offer to buy or sell, transport or offer for transportation in commerce to or from another dealer under this Act any dog or cat, unless and until such dealer shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

Here we can see the importance of licenses. We must remember that this law was created with the purpose of stopping stolen pets, which were sold outside the USA in many cases, as we will read in the 1966 Senate Report number 1280.

[Purchase restrictions.] SEC. 7. It shall be unlawful for any research facility to purchase any dog or cat from any person except a person holding a valid license as a dealer issued by the Secretary pursuant to this Act unless such person is exempted from obtaining such license under section 3 of this Act.

We can see again the important of licenses. These administrative requirements had the goal to assure that animal owners (cat and dogs owners) were the person who really had them; how was it possible to assure that if I had a dog or a cat it was my dog or my cat? The license is the way to prove that it was my animal and that I had not stolen it in order to sell it.

After having seen some fragments of the AWA, we will now analyze the 1966 Senate Report number 1280, which talks about the illegal or stolen animals, topic which is very important in the AWA. This report is very important because also explains the purposes of the AWA. As noted in the Senate Report:

The demand for research animals has risen to such proportions that a system of unregulated dealers is now supplying hundreds of thousands of dogs, cats, and other animals to research facilities each year (...). Stolen pets are quickly transported across State lines, changing hands rapidly (...) [and] State laws (...) proved inadequate both in the apprehending and conviction of the thieves who operate in this interstate operation.

This Senate Report also explains which the main purposes of the AWA are:

1. To protect the owners of pet dogs and cats from the theft of their pets;
2. To prevent the use or sale of stolen dogs or cats for purposes of research or experimentation; and
3. To establish humane standards for the treatment of dogs, cats, and certain other animals by animal dealers and research facilities.

We have seen the importance of that law. Even if this act only sets the minimal standards for the care, housing, sale, and transport of dogs, cats, primates, rabbits, hamsters, guinea pigs, and other animals held on the premises of animal dealers or laboratories, these minimal standards are more than anything we can find in any other legislation; could we imagine a law like this one in some other places in 1966? It is difficult to think.

In order to expand these minimal standards, there have been some amendments of this law, which we will analyze next.

4.2- The amendments of the Animal Welfare Act (AWA).

As we said before, these amendments expanded the list of animals and the degree of federal regulation in the laboratory setting. In consequence, the regulation included in the 1966 Act has been expanded several times, making it be a really complete Act, which is always updated.

These have been the amendments:¹⁰

- **Animal Welfare Act amendments of 1970.** (Public Law 91-579). Public Law 91-579 expands the list of animals covered by the Act to include all warm-blooded animals determined by the Secretary of Agriculture as being used or intended for use in experimentation or exhibition except horses not used in research and farm animals used in food and fiber research. Exhibitors are incorporated into the act and research facilities are defined. Retail pet stores, state and county fairs, rodeos, purebred dog and cat shows, and agricultural exhibitions are exempt from the Act. The Secretary is directed to develop regulations regarding recordkeeping and humane care and treatment of animals in or during commerce, exhibition, experimentation, and transport. There is also mention of inspections, and appropriate anesthetics, analgesics, and tranquilizers. There are further regulations on dog and cat commerce.
- **Animal Welfare Act amendments of 1976.** (Public Law 94-279). This amendment is primarily refining previous regulations on animal transport and commerce. "Carrier" and "Intermediate Handler" are defined. Health certification prior to transport or sale is required and must be performed by a veterinarian. Licenses, method of payment, and penalties for violations are discussed. This amendment also introduces and defines "animal fighting ventures" to the Act. Animals used in hunting waterfowl, foxes, etc. are exempt. It is illegal to exhibit or transport via interstate or foreign commerce animals used in fighting ventures such as dogs or roosters.

¹⁰ This information comes from the Animal Welfare information center, which belongs to the United States Department of Agriculture.

- **Food Security Act of 1985 (Public Law 99-198), Subtitle F- Animal Welfare.** Also called "The Improved Standards for Laboratory Animals Act" and enacted December 23, 1985, this section clarifies what is meant by "humane care" by mentioning specifics such as sanitation, housing, and ventilation. It directs the Secretary of Agriculture to establish regulations to provide exercise for dogs and an adequate physical environment to promote the psychological well-being of nonhuman primates. It specifies that pain and distress must be minimized in experimental procedures and that alternatives to such procedures be considered by the principle investigator. It also defines practices that are considered to be painful. No animal can be used in more than one major operative experiment with recovery (exceptions are listed). The establishment of the Institutional Animal Care and Use Committee (IACUC) is introduced with a description of its roles, composition, and responsibilities to the Animal and Plant Health Inspection Service (APHIS). Also included is the formation of an information service at the National Agricultural Library to assist those regulated by the act in prevention of unintended duplication of research, employee training, searching for ways to reduce or replace animal use, and to provide information on how to decrease pain and distress. The final section explains the penalties for release of trade secrets by regulators and the regulated community.
- **Act of 1990, Section 2503- Protection of Pets. (Public Law 101-624, Food, Agriculture, Conservation and Trade).** Enacted November 28, 1990, and establishes a holding period for dogs and cats at shelters and other holding facilities before sale to dealers. It requires dealers to provide written certification regarding each animal's background to the recipient. Specific items included on the certificate are mechanisms of enforcement, injunctions, and penalties for violation.
- The Farm Bill containing an amendment by Jesse Helms (R-NC) to exclude "birds, mice of the genus *Mus*, and rats of the genus *Rattus*, bred for use in

research" from the AWA definition of the term 'animal' was passed in both the U.S. House of Representatives and the Senate, despite on-going investigations at several prestigious research institutions regarding inadequate care and negligent deaths of numerous animals used in laboratories. President Bush signed the Bill into law on May 13.

- June 4, 2004: USDA publishes a Final Rule in the *Federal Register* states that it is amending the AWA Regulations to reflect the 2002 Farm Bill Amendment to the Act's definition of the term 'animal,' thereby excluding "birds, rats of the genus *Rattus*, and mice of the genus *Mus* bred for use in research" from its AWA Regulations. June 4, 2004: USDA also publishes an Advanced Notice of Proposed Rulemaking in the *Federal Register* and requests comments on various issues regarding regulations for birds, mice, and rats not excluded by the 2002 AWA Amendment.

All these amendments let us see how important his Act is, as, if it wasn't important, this would not have amended so many times. This is a way of showing that in the United States there is a great concern about animal welfare, concern which does not exist in much more countries.

4.3. - Some other legislation. (alphabetically ordered).

As we said before, there has been no specifically criterion to choose this legislation. The only criterion that we have followed has been the fact that we have considered this legislation to be representative of the importance that animal welfare has got in the United States.

- **Arizona state's pet shop laws (A. R. S. § 44-1799 - 1799.09).** This Arizona statutory section comprises the state's pet shop laws. The section requires that retail pet sellers provide purchasers a notice of rights that includes a statement of good health signed by a veterinarian. Purchasers

have fifteen days to return unhealthy or diseased dogs and receive a refund or compensation for reasonable veterinary expenses.

Fragment of the law: § 44-1799.08. *Civil penalties*

A. A pet dealer who violates this article is subject to a civil penalty of not more than one thousand dollars per violation.

B. This section does not prohibit prosecution for criminal violations.

- **Adoption of Military Animals, 10 U.S.C. § 2583.**¹¹ This statute provides, in part: “The Secretary of the military department concerned may make a military animal of such military department available for adoption ... under circumstances as follows: (1) At the end of the animal’s useful life. (2) Before the end of the animal’s useful life, if such Secretary ... determines that unusual or extraordinary circumstances justify [it]. (3) When the animal is otherwise excess to the needs of such military department.” The statute defines “military animal” as “[a] military working dog” or “[a] horse owned by the Department of Defense.” When this statute was first enacted in 2000, it applied only to military working dogs; prior to then, under Department of Defense policy, such dogs were caged, sometimes for as long as a year, and then euthanized. See 146 Cong. Rec. H 599 (daily ed. October 10, 2000). The statute was amended to cover horses in 2006.

- **Animal Health Protection Act, 7 U.S.C. §§ 8301-8321.** This statute authorizes the Secretary of Agriculture, if he determines it to be necessary to prevent the introduction into or dissemination with the United States of any pest or disease of livestock, to prohibit or restrict, among other things, the importation or exportation of any animal into or from the United States, the movement in interstate commerce of any animal, or the use of any means of conveyance in connection with the importation or entry of

¹¹ This law and the following come from the *Brief summaries of Federal Animal Prosecution Statutes*, written by Henry Cohen, legislative attorney; Updated August 15, 2008

livestock. The statute also authorizes the Secretary, if it is necessary for the above purpose, to order the destruction or removal from the United States of any animal, or to seize, quarantine, or dispose of any animal.

- **Antarctic Marine Living Resources Convention Act of 1984.** This statute implements the Convention on the Conservation of Antarctic Marine Living Resources, and makes it unlawful to harvest, or knowingly to engage in commerce in any Antarctic marine living resource harvested in violation of the Convention.

- **Depictions of Animal Cruelty, 18 U.S.C. § 48.** This statute, enacted as P.L. 106-152 (1999), makes it a crime knowingly to create, sell, or possess any visual or audio “depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain.” It provides an exception for “any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.” The statute was aimed at outlawing “crush video” films, in which small animals are crushed to death.

- **Horse Protection Act, 15 U.S.C. §§ 1821-1831.** This statute makes it a crime to exhibit, or transport for the purpose of exhibition, any “sore” horse, which is a horse whose feet have been injured in order to alter the horse’s gait. The Secretary of Agriculture is authorized to enforce the act. The Horse Protection Act also provides that “no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted” by the Secretary of Commerce. Such waivers may be granted only “if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.”

- **Pets Evacuation and Transportation Standards Act of 2006, 42 U.S.C. §§ 5170b(a)(3)(J), 5196(e)(4), 5196(j)(2), 5196b(g).** This statute (P.L. 109-308) amended the Robert T. Stafford Disaster and Emergency Assistance Act to authorize federal disaster assistance in the “rescue, care, shelter, and essential needs” of “household pets and service animals”; to authorize the Director of the Federal Emergency Management Agency (FEMA) to develop “plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency”; to authorize the Director of FEMA to “make financial contributions ... to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities...; and to require the Director of FEMA, “[i]n approving standards for State and local emergency preparedness operational plans..., [to] ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.”

- **The Prevention of Equine Cruelty Act (H.R. 503/S. 727).** Amends the federal criminal code to impose a fine and/or prison term of up to three years for possessing, shipping, transporting, purchasing, selling, delivering, or receiving any horse, horse flesh, or carcass with the intent that it be used for human consumption. Reduces the prison term to one year if the offense involves less than five horses or less than 2,000 pounds of horse flesh or carcass and the offender has no prior conviction for this offense. This law will end the slaughter of horses for human consumption and the domestic and international transport of live horses or horseflesh for human consumption. This is not yet a law; this is a project which is thought to be approved soon.¹²

¹² For further information about this law, please go to the website of the Animal Welfare Institute (<http://www.awionline.org/ht/d/sp/i/11222/pid/11222>).

➤ **Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340.**

This statute makes it a crime, with respect to any wild free-roaming horse or burro, to (1) remove it from the public lands without authority from the Secretary of the Interior or Agriculture (depending on the public land), (2) convert it to private use, without authority from the Secretary, (3) maliciously cause its death or harassment, (4) process its remains into commercial products, or (5) sell it if it is maintained on private or leased land.

These laws which we have briefly explained show us only a little example of hundreds of laws about animal welfare that we can find in American legislation.

5.-Chimpanzee laws in the United States. ¹³

Chimpanzees are a very important animal due to their relationship with humans. This is the reason why chimpanzees need a wide and special regulation. Chimpanzees are in danger of extinction in the wild. In the United States, chimpanzees are bred for use in research and entertainment. We must remember that chimpanzees are one of the four species of great apes, and they are genetically very close to humans (in fact, chimpanzees genetically are the closest animals from humans). This fact is clear: if they are so close, there will be lots of experimentation with them.

Chimpanzee faces are pinkish to black, and the apes' bodies are covered with long black hair. Chimps lack a tail. Their opposable thumbs and toes help them grasp objects easily. Chimpanzees are quadruped, which means that they walk on all four limbs, although they can also walk upright (bipedal) for short distances.

Alicia S. IVORY considers that: *“The American legal system offers some protection to the chimpanzee, but what level of protection they deserve is still hotly debated. Some countries are edging closer to giving chimpanzees and other Great Apes protection akin to legal personhood. In the United States, chimpanzees occupy a sort of legal limbo, in a system that attempts to protect wild chimpanzees from extinction, and yet continues to allow breeding of “domestic populations” to supply animals for entertainment and research.”*

In consequence, we will analyze which this regulation is. We will start to analyze a International Trade, then we will analyze US Federal laws and finally we will analyze Local Law.

International laws.

¹³ For further information, read articles *Overview of laws affecting Chimpanzees* and *Chimpanzee laws in the United States and abroad*, written by Alicia S. Ivory, Michigan State University College of Law.

- **CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna)** 27 U.S.T. 1087 under U.S. Treaty Services, is legal name for an international treaty established to regulate trade activities involving endangered and threatened species.

US Federal laws.

- **Animal Welfare Act.** The AWA covers chimpanzees captively held in the United States, wild chimps are not reached by the Act; the Endangered Species Act covers wild chimps and their habitat. Regulates ownership by certain groups of certain species (including non-human primates), and regulates conditions under which the covered animals must be kept. For instance, research facilities, dealers and exhibitors—such as circuses—are covered by the AWA.
- **Endangered Species Act.** This is key law at the national level for the listing and protecting of endangered species and their critical habitat. It also implements the US obligations under the treaty CITE.

Here is a fragment of the law:

§ 1531. Congressional findings and declaration of purposes and policy [ESA§2]

(a) Findings. The Congress finds and declares that--

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to--

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

- **The Chimp Act.** The CHIMP (Chimpanzee Health Improvement, Maintenance and Protection) Act was signed in to law in 2000.^[43] It established a national sanctuary system in which chimpanzees who are retired from U.S. laboratory research are sent. Once retired, the federally-funded sanctuaries must provide lifetime care for the residents, as well as house them in social groups in a natural environment, and must not engage in euthanasia. Chimp Haven, a sanctuary in Shreveport, Louisiana, received the first of the retired chimps in 2002. It is

estimated that 131 retired laboratory chimpanzees will live there by the end of 2006.

Here is a fragment of this law:

With respect to chimpanzees that are accepted into the sanctuary system, standards under paragraph (1) shall include the following:

(A) A prohibition that the chimpanzees may not be used for research, except as authorized under paragraph (3).

(B) Provisions regarding the housing of the chimpanzees.

(C) Provisions regarding the behavioral well-being of the chimpanzees.

(D) A requirement that the chimpanzees be cared for in accordance with the Animal Welfare Act [7 U.S.C.A. § 2131 et seq.].

(E) A requirement that the chimpanzees be prevented from breeding.

(F) A requirement that complete histories be maintained on the health and use in research of the chimpanzees.

(G) A requirement that the chimpanzees be monitored for the purpose of promptly detecting the presence in the chimpanzees of any condition that may be a threat to the public health or the health of other chimpanzees.

(H) A requirement that chimpanzees posing such a threat be contained in accordance with applicable recommendations of the Director of the Centers for Disease Control and Prevention.

(I) A prohibition that none of the chimpanzees may be subjected to euthanasia, except as in the best interests of the chimpanzee involved, as determined by the system and an attending veterinarian.

(J) A prohibition that the chimpanzees may not be discharged from the system.

(K) A provision that the Secretary may, in the discretion of the Secretary, accept into the system chimpanzees that are not surplus chimpanzees.

(L) Such additional standards as the Secretary determines to be appropriate.

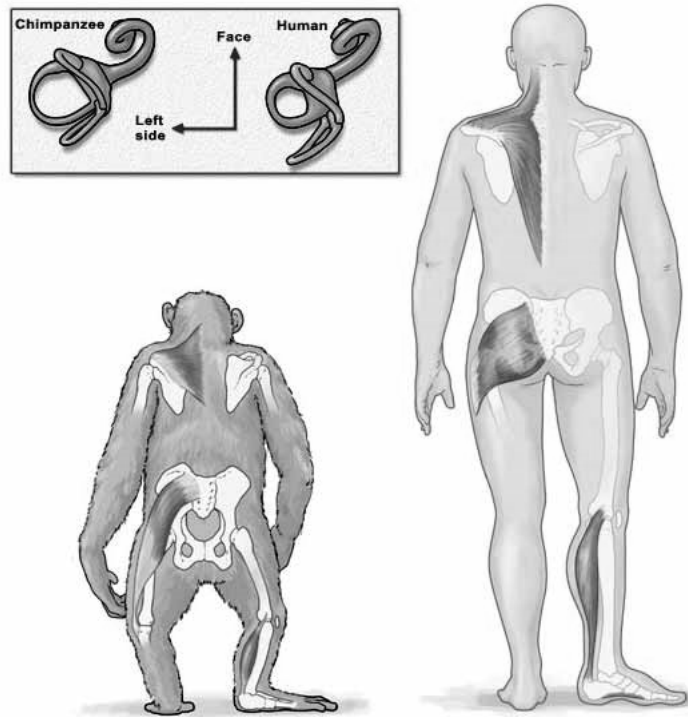
(3) Restrictions regarding research

(A) In general

For purposes of paragraph (2)(A), standards under paragraph (1) shall provide that a chimpanzee accepted into the sanctuary system may not be used for studies or research, except that the chimpanzee may be used for noninvasive behavioral studies or medical studies based on information collected during the course of normal veterinary care that is provided for the benefit of the chimpanzee, provided that any such study involves minimal physical and mental harm, pain, distress, and disturbance to the chimpanzee and the social group in which the chimpanzee lives.

Local law.

- State Cruelty Statutes. Every state has some form of an anti-cruelty statute on the books. While federal law applies mainly to chimps in research facilities, state cruelty laws apply to all mammals, and in terms of chimpanzees, that would in turn apply mainly to those in exhibitions and exhibitors operating within the jurisdiction of a particular state's law.



In this image we can appreciate how close chimpanzees are from human.

6.-Animal experimentation.¹⁴

Animal experimentation is a complicated topic. On one hand, scientists must engage scientific inquiries. This is really important. On the other hand, animals have their rights, as we have been trying to see all along this project. So, is it possible to scientists to make experimentations without harming animal rights?

First of all, we must describe what “animal experimentation” is: animal experimentation, animal testing, animal research, and in vivo testing, is the use of non-human animals in experiments. These terms have similar meanings, but different connotations. For example, the *Encyclopaedia Britannica* describes “vivisection” as the "Operation on a living animal for experimental rather than healing purposes; more broadly, all experimentation on live animals";

As we can see, there may be different ways of experimenting with animals, but all the ways have the same problem: the animal has some rights that are not usually considered. The regulations that apply to animals in laboratories vary across species. In the U.S., under the provisions of the Animal Welfare Act and the *Guide for the Care and Use of Laboratory Animals* (the *Guide*), published by the National Academy of Sciences, any procedure can be performed on an animal if it can be successfully argued that it is scientifically justified. In general, researchers are required to consult with the institution's veterinarian and its Institutional Animal Care and Use Committee (IACUC), which every research facility is obliged to maintain. However, there is a problem: even if it is scientifically justified, the animal cannot suffer? Of course that the animal can suffer even if it is scientifically justified.

David FAVRE considers that *the federal government does not do a particularly good job of enforcement, and outside organizations, like the Animal legal Defense Fund, have found it extraordinarily difficult to bring public enforcement issues against either the*

¹⁴ For further information, read the article *Some thoughts on animal experimentation*, written by David Favre

federal government or the institutions themselves. Research is big money--a major industry. So, according to him, research is an activity which gives lots of money; in consequence, it will be quite difficult to make animal experimentation laws change.

Animal experimentation is a torture; humans have no right to do this. In most cases, there are some different ways of getting information by scientists without torturing an animal, but this is the cheapest option, so they prefer to torture an animal.

Animal experimentation is also used, apart from medical research, in some tests whose goal is not “medical”, as we will see. There are some usual tests:

Some information on the various tests used:

- The Draize Eye Test

This test is used to test shampoos, weed-killers, pesticides, household detergents and riot natural gases. The substances are applied to the eyes of conscious rabbits in order to test irritancy. Apart from the cruelty of this test, a rabbit's eye is a bad model and there are major differences between a rabbit's eye and a human eye.

- The LD50

Rabbits, dogs, cats, mice and guinea pigs are used in the LD50 test and it's used to test lipsticks, skin-care products such as moisturizers and cleaners, shampoos and nail polish. The LD50 test (Lethal Dose 50 percent) is administered by introducing the ingredients under investigation into the animal via the mouth or intravenously. The animal is fed up to 50 percent of its body weight and the aim of the test is to find the dose which will kill half the animal sample. For the test to be valid statistically, a minimum of 50 animals are required.

- Skin Test for Toxicity

Rats are used in this test. Their fur is shaved and the substance to be tested is applied thickly to the exposed skin. The skin is frequently abraded (broken) to increase absorption.

In animal experimentation, **anticruelty laws** are very important. However, scientists are exempt by most of the cruelty laws. Why? Because animal experimentation, as we said before, gives a lot of money. We will see some anticruelty laws:

- **AR ST § 5-62-101 -126.** This section contains the Arkansas anti-cruelty and animal fighting provisions. A person commits a misdemeanor if he or she knowingly abandons any animal (defined as any living vertebrate creature, except human beings and fish) subjects any animal to cruel mistreatment, fails to supply an animal in his or her custody with a sufficient quantity of wholesome food and water, fails to provide an animal in his or her custody with adequate shelter, kills or injures any animal belonging to another without legal privilege or consent of the owner, or carries an animal in or upon any motorized vehicle or boat in a cruel or inhumane manner. In 2009, the state legislature created the offense of aggravated cruelty to a cat, dog, or horse. This Class D felony involves the torturing of those listed species.

- **CA PENAL § 597.1.** Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. The statutes also creates a duty in peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned.

- **CA PENAL § 597.7** This California statute provides that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. A first conviction for violation of this section is punishable by a fine not not exceeding \$100 per animal. If the animal suffers great bodily injury, a violation of this section is punishable by a fine not exceeding \$500, imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment. Penalty enhancements are provided for subsequent convictions.

- **CO ST § 18-6-800.3** "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal.

- **DC ST § 22-1001 - 1015** This D.C. statutory section comprises the anti-cruelty and animal fighting provisions. Whoever knowingly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly chains, cruelly beats or mutilates, any animal, or knowingly causes such acts, or one who unnecessarily fails to provide proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather, faces imprisonment up to 180 days, or a fine of \$250, or both. Actions that result in serious bodily injury or death to the animal result in felony prosecution with imprisonment not exceeding 5 years or a fine of \$25,000, or both. "Animal" is defined by statute as all living and sentient creatures (human beings excepted). This section also prohibits animal fighting as either a felony (i.e., wagering or conducting the fight) or a misdemeanor (knowingly being present).

- **FL ST 828.01 - 828.30** This section comprises the Florida anti-cruelty laws. Under this section, the word "animal" includes every living dumb creature. The misdemeanor violation of animal cruelty (section 828.12) occurs when

a person unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or carries in or upon any vehicle, any animal in a cruel or inhumane manner. A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering is guilty of a felony of the third degree. Psychiatric or psychological counseling are also mandatory for convicted offenders. The section also criminalizes animal abandonment and neglect as well as animal fighting.

- **NC ST § 14-81 - 82; § 19A-20 - 44; § 19A-60 - 65; § 67-1 - 36; § 90-187.7; § 113-291.5; § 130A-184 - 204; § 145-13; § 160A-186; § 160A-212** These North Carolina statutes comprise the state's dog laws. Among the provisions include pet shop provisions, rabies vaccination laws, and the dangerous dog chapter.

Can we think that in the future there will be less animal experimentation? It is difficult.

7.-Some cases.¹⁵

We have chosen some cases related to Animal welfare, and specially related to the Animal Welfare Act (AWA). There is no chronological criterion, the cases are ordered alphabetically. We only transcribe one case: *In re: DELTA AIRLINES INC*, which we have considered that is specially significant. We also transcribe this case as an example of a case relating to animal welfare laws.

- ❖ **ALDF v. Glickman. 154 F.3d 426 (1998)** Animal welfare organization and individual plaintiffs brought action against United States Department of Agriculture (USDA), challenging regulations promulgated under Animal Welfare Act (AWA) to promote psychological well-being of nonhuman primates kept by exhibitors and researchers. The United States District Court for the District of Columbia, Charles R. Richey, J., 943 F.Supp. 44, ruled that regulations did not set

¹⁵ We only transcribe the summary of the cases, except one; if you want to read all the whole cases, you may go to this website: <http://www.animallaw.info/cases/topiccases/catoawa.htm>

standards and constituted impermissible delegation of USDA's legal responsibility. USDA appealed. A panel of the Court of Appeals, 130 F.3d 464, vacated on ground that none of plaintiffs had standing to challenge regulations. After vacating the panel's judgment and granting suggestion of rehearing in banc, 136 F.3d 829, the Court of Appeals, sitting in banc, 154 F.3d 426, found that one individual plaintiff had standing to challenge regulations, and referred merits of appeal to panel. The Court of Appeals, Williams, Circuit Judge, held that: (1) regulations were valid, and (2) animal welfare organization did not have standing to raise procedural injury.

- ❖ **American Society For Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus. 317 F.3d 334 (C.A.D.C.,2003)** This is really interesting case because it is connected with another interesting topic: animals in spectacles ¹⁶. The American Society for the Prevention of Cruelty to Animals, the Animal Welfare Institute, the Fund for Animals, and Thomas Rider sued Ringling Bros. and its owner, Feld Entertainment, Inc., claiming that Asian elephants are an endangered species and that the circus mistreated its elephants in violation of the Endangered Species Act, 16 U.S.C. § 1531 et seq. The only question was whether, as the district court ruled in dismissing their complaint, plaintiffs (including a former elephant handler) lack standing under Article III of the Constitution. The Court of Appeals held that the former elephant handler demonstrated present or imminent injury and established redressability where the elephant handler alleged enough to show that his injuries will likely be redressed if he is successful on the merits.

¹⁶ If you are interested in animals in spectacles, you can read a book about animals in Rome: *Animals for Show and Pleasure in the Ancient Rome*, by George Jenninson. University of Pennsylvania Press, 2005.

- ❖ **Doris Day Animal League v. Veneman. 315 F.3d 297 (D.C. Cir. 2003).**
Animal rights group brought action challenging validity of regulation exempting breeders who sell dogs from their residences from licensure under Animal Welfare Act. The United States District Court for the District of Columbia, Colleen Kollar-Kotelly, J., held that regulation was invalid, and appeal was taken. The Court of Appeals, Randolph, Circuit Judge, held that regulation was reasonable interpretation of Congressional intent.

- ❖ **In re: Judie Hansen. 57 Agric. Dec. 1072 (1998) .** Recommendations of administrative officials charged with responsibility for achieving congressional purpose of statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of experience gained by administrative officials during their day-to-day supervision of regulated industry; however, recommendation of administrative officials as to sanction is not controlling, and in appropriate circumstances, sanction imposed may be considerably less, or different, than that recommended by administrative officials.

- ❖ **In re: DELTA AIR LINES, INC. 53 Agric. Dec. 1076 (1994) .** The Judicial Officer affirmed the Decision by Chief Judge Palmer (Chief ALJ) assessing civil penalties of \$140,000, with \$60,000 held in abeyance for 1 year, for transporting 108 dogs and cats in a cargo space that was without sufficient air, causing the death of 32 dogs. The Order also directs Respondent to cease and desist from violating the Act, regulations and standards, and, in particular, to cease and desist from failing to ensure that dogs and cats have a supply of air sufficient for normal breathing. On appeal, the court held that when regulated entity fails to comply with Act, regulations or standards, there is separate violation for each animal consequently harmed or placed in danger.

TRANSCRIPTION OF THIS CASE (In re: DELTA AIR LINES, INC. 53 Agric. Dec. 1076 (1994) :

Judge Initial Decision issued by Victor W. Palmer, Chief Administrative Law Judge. Decision and Order issued by Donald A. Campbell, Judicial Officer. delivered the opinion of the court.

Opinion of the Court:

This is a disciplinary proceeding under the Animal Welfare Act, as amended (7 U.S.C. s 2131 et seq.), and the regulations issued thereunder (9 C.F.R. s 1.1 et seq.). On June 13, 1994, Chief Administrative Law Judge Victor W. Palmer (Chief ALJ) issued an Initial Decision and Order assessing civil penalties of \$140,000, with \$60,000 held in abeyance for 1 year, for transporting 108 dogs and cats in a cargo space that was without sufficient air, causing the death of 32 dogs. The Order also directs Respondent to cease and desist from violating the Act, regulations and standards, and, in particular, to cease and desist from failing to ensure that dogs and cats have a supply of air sufficient for normal breathing.

On July 29, 1994, Complainant, seeking a civil penalty of \$140,000, with no part thereof held in abeyance, appealed to the Judicial Officer, to whom final administrative authority has been delegated to decide the Department's cases *1077 subject to 5 U.S.C. ss 556 and 557 (7 C.F.R. s 2.35). [FNa1] Respondent filed a Cross-Appeal seeking reduced civil penalties, and a Petition to Reopen Hearing to introduce evidence showing Respondent's participation in a study with USDA and the Federal Aviation Administration to enhance the knowledge necessary for improving the conditions for safe and humane transport of animals in aircraft cargo compartments. The case was referred to the Judicial Officer for decision on October 13, 1994.

**2 Oral argument before the Judicial Officer, which is discretionary (7 C.F.R. s 1.145(d)), was requested by Respondent, but is denied inasmuch as the issues are not complex, the case has been thoroughly briefed, and oral argument would seem to serve no useful purpose.

Based upon a careful consideration of the entire record, I am adopting the Initial Decision and Order as the final Decision and Order, with deletions shown by dots, changes or additions shown by brackets, and trivial changes not specified. The effective date of the Order is changed in view of the appeal, and directions as to payment are added. Additional conclusions by the Judicial Officer follow the Chief ALJ's conclusions.

ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION

(AS MODIFIED)

This is a proceeding under the Animal Welfare Act, as amended (7 U.S.C. ss 2131-2157; the Act). The Administrator of the Animal and Plant Health Inspection Service (APHIS) initiated this proceeding by filing a complaint on January 3, 1991, which charges that, on June 6, 1990, Delta Air Lines, Inc. (Delta), wilfully violated the Act and pertinent regulations and standards under the Act, by transporting 108 dogs and cats in a cargo space that was without sufficient air. The complaint alleges all of the animals suffered harm from deprivation of oxygen which resulted in the death of

32 dogs. Delta answered the complaint on April 3, 1991, and admitted that 32 dogs died following their transportation by Delta on June 6, 1990, but denied any wilful *1078 violation of the Act or Departmental regulations or standards.

A motion that the case was ready for hearing was filed on July 28, 1993, and a telephonic prehearing conference was held on October 6, 1993.

I held an oral hearing in Atlanta, Georgia, on April 5, 1994. Complainant was represented by its attorney, Robert A. Ertman. Delta was represented by its attorneys, Karen L. Abrahams and Jason R. Archambeau. Briefing was completed on June 1, 1994.

Upon consideration of the evidence of record and the arguments of the parties as set forth at the hearing and in their proposed findings, conclusions and supporting briefs, an Order is being entered requiring Delta to cease and desist from placing live animals in any cargo space which does not have a supply of air sufficient for their normal breathing. Delta is also being assessed a civil penalty of \$140,000.00 for its [serious] violations of the Act, the regulations and the standards. However, \$80,000.00 of the civil penalty shall be held in abeyance for one year, at which time it will be abrogated if Delta implements new animal handling guidelines determined by APHIS to be adequate, to assure that animals transported will have sufficient air for normal breathing.

Findings of Fact

1. Delta Air Lines, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business located at Hartsfield Atlanta International Airport, Atlanta, Georgia 30320.

**3 2. Delta is, and at all times material herein was, a registered carrier within the meaning of sections 2 and 6 of the Act (7 U.S.C. ss 2132 and 2136).

3. On June 6, 1990, Delta transported 106 dogs and 2 cats contained in 58 primary enclosures (kennels); one dog was accompanying a passenger; the rest were being shipped Air Express by animal dealers. They were placed in the aft cargo compartment of a Boeing 737 and flown from Lambert Field, St. Louis, Missouri, to Salt Lake City International Airport, Utah. Upon arrival, many of the puppies contained in the kennels appeared to be dead or ill and all of the animals were sent by Delta to a veterinary clinic. Twenty-five of the puppies were dead-on-arrival at the veterinary clinic and 7 others died after arrival (CX 1). Fifty-two other animals received treatment for various degrees of depression, dehydration and abdominal distention and some for vomiting and diarrhea; symptoms consistent with oxygen deprivation and stress responses. (CX 6 and RX 1). Twenty-four of the animals recovered and did not require treatment, but had been deprived of requisite air for normal *1079 breathing and are found to have necessarily suffered discomfort while confined in the cargo compartment (Tr. 18-22).

4. An histologic examination of the lungs of the dead puppies was performed by a veterinary pathologist who diagnosed the likely cause of their deaths to be hypoxia (deficiency of oxygen). (CX 7).

5. The animals were transported on Delta Flight #1431, which was delayed for 2 hours and 12 minutes in departing St. Louis because of weather problems. (CX 1 and RX 5).

6. During the entire 2 hour and 12 minute delay, the aft cargo compartment was not opened. The cargo compartment on this aircraft had "no air ventilation other than a small amount caused by leakage around the cargo seals during flight. Tight sealing of the 737 compartments is required because they are Class .D' compartments, which are designed to control cargo fires by limiting available oxygen." (Boeing document identified as Exhibit A which was submitted with Respondent's Proposed Findings, Conclusions and Brief.)

7. Upon the closing of the cargo compartment doors, the only supply of air for the animals was the air already contained in the compartment which would not be replenished until the doors were reopened. This fact was unknown to Delta's station master at St. Louis, who had control over the loading and transporting of the animals; he believed there were air inlets into the cargo bin (Tr. 43, 55).

8. Delta's station master had decided the aft cargo compartment of the airplane would provide the 108 animals with a sufficient supply of air for their normal breathing. He based this decision upon calculations he made in accordance with a Delta Standard Practice Manual which specified guidelines respecting the carbon dioxide various types and sizes of animals are likely to generate in replacement of the oxygen the cargo compartment would contain. The Practice Manual had been used for 25 years before the June 6, 1990, flight, and during the 2 prior years, Delta had regularly transported 55 to 60 kennels, containing up to 2 animals per kennel, on one of its planes every Wednesday. Delta did not furnish any evidence to show that its guidelines were scientifically correct or were developed in collaboration with a veterinarian or any other appropriate expert.

Conclusions

**4 1. The Department of Agriculture has jurisdiction in this matter.

2. Respondent, Delta Air Lines, Inc., is a licensed carrier as defined in the Act.

*1080 3. On June 6, 1990, Delta placed 108 animals in a cargo space that did not have a supply of air sufficient for normal breathing for each live animal. As a result, the animals did not receive the requisite humane transportation it was incumbent upon Delta to provide, and the animals suffered harm from the deprivation of oxygen which caused 32 puppies to die and the rest to suffer stressful effects in varying degrees.

4. Delta's actions on June 6, 1990, constituted [serious] violations of the Act, the regulations ([9] C.F.R. s 2.100), and the standards ([9] C.F.R. s 3.13(c)), issued pursuant to the Act.

5. It is appropriate under the Act (7 U.S.C. s 2149(b)), for an order to be issued requiring respondent to cease and desist from the described violations and to pay a civil penalty of \$140,000.00. However, \$80,000.00 of the penalty should be held in abeyance for one year from the effective date of the order, at which time the \$80,000.00 shall be abrogated if respondent has implemented new animal handling guidelines, developed in collaboration with recognized veterinarians and other appropriate experts, which are determined by APHIS, shall adequately assure that animals transported by Delta in the future, will have a sufficient supply of air for normal breathing.

Discussion

On June 6, 1990, Delta loaded 108 animals consisting mainly of puppies, into the aft cargo compartment of a Boeing 737. Delta's station manager in St. Louis testified that he did so on the basis of calculations specified in the guidelines of a "Standard Practice Manual" developed by Delta, for determining the adequacy of the air supply for transported dogs and cats. He was unaware that fresh air could not enter the cargo compartment after it was closed and no effort was made to reopen the cargo compartment during the 2 hours and 12 minutes the plane awaited weather conditions to clear for its flight.

The guidelines specified the amount of carbon dioxide animals of various types and sizes were likely to generate in displacement of available oxygen. To determine the weights of the animals, they were weighed together with their primary transport enclosures. Having earlier weighed empty specimen primary transport enclosures, the station master deducted its weight from that of each enclosure housing an animal to find each animal's weight and then applied Delta's guidelines. He may have miscalculated a lower than actual gross weight for the animals. (See his testimony compared with CX 4). Delta argues that its guidelines had been used for over 25 years and, without *1081 incident, it had regularly loaded 55 to 60 kennels of animals onto a plane every Wednesday for at least 2 years prior to June 6, 1990. It should therefore not be found to have wilfully violated the Act this day when things went wrong.

**5 No evidence was introduced by Delta to show that the guidelines were scientifically accurate or were developed in collaboration with a veterinarian or other expert on the subject. At any rate, the amount of air in the aft cargo compartment proved to be inadequate on June 6, 1990, and 108 animals suffered the effects of oxygen deprivation and 32 of the puppies died.

....

As explained by Dr. Ron De Haven, who holds a degree in veterinary medicine and is the APHIS sector supervisor who administers and enforces the Act in 13 western states, Delta violated a performance standard which is phrased in terms of its goal rather than specific engineering or design terms. It was so written because of the many variables in aircraft design, environmental conditions, and the amount of inanimate cargo transported with animals on a given flight. (Tr. 12). The performance standard stated ([9] C.F.R. s 3.13(c) (1990)):

No live dog or cat shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each dog or cat has access to sufficient air for normal breathing.

The cross-examination of Dr. De Haven by Delta's counsel (Tr. 15-18) illustrates the fact that Delta's "Standard Practice Manual," which its employees were instructed to follow, required correct measurements of animal weights and cargo space which left virtually no room for error and became meaningless in the eventuality of a lengthy delay between the closing of the cargo compartment and actual takeoff. Moreover, Delta's station master in charge of loading the 108 animals at St. Louis had apparently not been instructed that new air could not enter the cargo compartment after it was closed for flight.

In these circumstances, Delta's violation of the standard and thereby the pertinent regulation ([9] C.F.R. s 2.100) must be construed as [serious]. . . .

A carrier that violates a regulation or standard under the Act:

*1082 may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. . . . The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations. Any such civil penalty may be compromised by the Secretary. (7 U.S.C. s 2149(b)).

Consistent with established Departmental policy, when a regulated entity fails to comply with the Act, the regulations or the standards, there is a separate violation for each animal consequently harmed or placed in danger. See Mary Bradshaw, 50 Agric. Dec. 499, 504 (1991); Jerome Johnson, 51 Agric. Dec. 209, 212 (1992); James W. Hickey, 47 Agric. Dec. 840, 848 (1988), *aff'd*, 878 F.2d 385 (9th Cir. 1989) (Table) (text in WESTLAW) (not to be cited as precedent under 9th Circuit Rule 36 3), printed in 48 Agric. Dec. 107 (1989); and James Petersen and Patricia Petersen, d/b/a Windy Hills Exotic Animal Farm, 53 Agric. Dec. ___ (May 6, 1994) (AWA Docket No. 93-13; page 20 of slip opinion).

**6 In accordance with that policy, APHIS has recommended a \$1,000.00 civil penalty for each of the 108 animals exposed to the oxygen deprived environment, and an additional \$1,000.00 penalty for each of the 32 puppies who died, or a total of \$140,000.00.

In light of the seriousness of the harm caused by Delta's violation of the standard, its [serious] nature, the size of Delta's business, and its history of previous violations, [FN1] the recommended penalty is appropriate. In a somewhat similar case, a \$60,000.00 consent decision and order was entered on March 3, 1994. See TransWorld Airlines, Inc., AWA Docket No. 93-35 (Complaint alleged that 81 dogs were transported without sufficient air and 56 died as a result). However, I have no reason to doubt Delta's good faith in wanting to meet its obligations under the Act. For that reason, part of the penalty will be abrogated upon Delta's implementation of new animal handling guidelines it develops in collaboration with recognized veterinarians and other appropriate experts, that are satisfactory to APHIS, which shall ensure that *1083 the animals Delta transports in the future will indeed have sufficient air for normal breathing.

Shipping animals in the unventilated cargo compartments of airplanes is inherently dangerous. Its akin to being locked inside a bank vault. Eventually there is no air to breathe. Even before that moment is reached, as available oxygen becomes seriously depleted, emotional stress and physical discomfort becomes more and more intense.

The surest way to prevent such suffering in the future is to prohibit the transport of animals in an airplane cargo compartment unless it is constantly supplied with new oxygen in maintenance of the levels needed by animals for normal breathing. It is uncertain, however, whether requisite airplane modifications would meet Federal Aviation Administration safety regulations for passenger and crew. The fresh oxygen could help fuel fires ignited in these least accessible, least monitored regions of airplanes. The pragmatic response to the requirement might be the cessation of animal transport by airplanes.

Then animals might well be subjected to possibly greater traumas inherent in being transported long distances by rail or truck; and owners traveling by plane could not take their pets with them.

The best source of requisite data for formulating workable, economically feasible standards for the protection of animals transported by air, is a concerned air carrier. Delta is now in precisely that position. It has all the resources needed to bring together veterinarians, engineers and those familiar with acceptable freight costs to develop these sorely needed standards. In requiring APHIS to first approve them, I leave it to the Administrator's regulatory wisdom to determine whether this process should be expanded into industry-wide rulemaking, or is best developed with Delta ad hoc.

If Delta develops a satisfactory new methodology, it will not only avoid the payment of the majority of the assessed penalty, it will also effectively demonstrate to the public its commitment to the safe, humane transport of animals.

**7 Accordingly, the following order shall be entered.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Complainant's Response to Respondent's Petition to Reopen Hearing states (Complainant's Response at 2):

There is no basis for Delta's claim that the hearing should be reopened *1084 to receive further evidence on a newly raised question. Nevertheless, in order to avoid any later posturing that the finding of wilful violations was sustained only because respondent's attorneys failed to timely offer exonerating evidence, Complainant does not object to supplementing the record with the attachments to Delta's request to reopen the hearing. The documents must, however, be viewed in context.

In the circumstances, the documents attached to Respondent's Petition to Reopen Hearing are received as part of the evidence in this case. However, they have not affected my decision as to the sanction.

The Chief ALJ held that Respondent's violations were "willful," stating (Initial Decision at 6):

The Secretary considers a violation to be wilful if regulatory requirements have been carelessly disregarded. The *Norinsberg Corporation*, 52 Agric. Dec. 1617, 1624 (1993)[, appeal docketed, No. 93 4264 (D.C. Cir. Dec. 10, 1993)]; and *Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978); aff'd sub nom. *Arab Stock Yard v. United States*, 582 F.2d 39 (5th Cir. 1978). Under that standard, Delta's violations were clearly wilful.

I have omitted that paragraph from the portions of the Chief ALJ's Initial Decision adopted as the final decision, and I have changed the Chief ALJ's adjective "willful" to "serious" not because of any disagreement with the Chief ALJ but, rather, to avoid an unnecessary issue on appeal. There is no need to determine whether Respondent's violations were willful since no license is being suspended or revoked. See 5 U.S.C. s 558(c). Although this Department and some courts take the position that a violation is willful if regulatory requirements have been carelessly disregarded, other courts apply a stricter standard. [FN2] It is sufficient for the purposes of this case that Respondent's violations were serious. The harm to the animals could have been avoided if Respondent had taken corrective action in the face of a 2-hour plus delay in the departure of the aircraft. Also, Respondent's station master at St. Louis should have been informed that no air could enter the *1085 compartment once the cargo compartment doors were closed.

As to the sanction, the Department's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, No. 91 70169 (9th Cir. Apr. 23, 1993) (Table) (text in WESTLAW) (not to be cited as precedent under 9th Circuit Rule 36 3), as follows:

It is appropriate to state expressly the practice that has been followed by the Judicial Officer in recent cases, *viz.*, that reliance will no longer be placed on the "severe" sanction policy set forth in many prior decisions, *e.g.*, *In re Spencer Livestock Comm'n Co.*, 46 Agric. Dec. 268, 435 62 (1987), *aff'd* on other grounds, 841 F.2d 1451 (9th Cir. 1988). Rather, the sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

**8 I am in complete agreement with the views of the Chief ALJ. Although Respondent entered into five prior consent decisions (see note 1, *supra*), these prior consent orders do not show prior violations by Respondent. [FN3] However, the fact that the five prior consent orders did not deter the violations at issue here "could be used to determine what kind of sanction is needed to deter [Respondent] from conduct prohibited by the statute." *Spencer Livestock Comm'n Co. v. USDA*, 841 F.2d 1451, 1458 (9th Cir. 1988).

In closing, it should be noted that Respondent erroneously argues that the Judicial Officer is subject to the same limitations in reviewing a sanction imposed by an ALJ as a court in reviewing a sanction imposed by the Judicial Officer (Respondent's Appeal at 13 14). That argument is erroneous. "On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule." 5 U.S.C. s 557(b). See, *e.g.*, *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 634 44 (1986), *aff'd*, 810 F.2d 916 (9th Cir. 1987) (35-day suspension order imposed by ALJ increased by Judicial *1086 Officer *sua sponte* to 6 months, notwithstanding Complainant's continuing recommendation for a 35-day suspension order).

For the foregoing reasons, the following Order should be issued.

Order

1. Respondent, Delta Air Lines, Inc., its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and, in particular, shall cease and desist from failing to ensure that no live dog or cat shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein.

2. Respondent is assessed a civil penalty of \$140,000 of which \$60,000 shall be paid within 60 days after service of this order on Respondent, by a certified check or money order made payable to the Treasurer of the United States and sent to the following address:

United States Department of Agriculture

Office of the General Counsel

Marketing Division

14th and Independence Ave., S.W.

Room 2014 - South Building

Washington, D.C. 20250-1417

The remaining \$80,000 shall be held in abeyance for 1 year from the effective date of this Order. At the expiration of the 1-year period, the remaining \$80,000 shall be paid by certified check or money order made payable to the Treasurer of the United States and mailed to the above address; unless, before the 1-year period ends, the Animal Plant and Health Inspection Service files a statement attesting to its receipt of written animal handling guidelines developed by Delta Air Lines in collaboration with recognized veterinarians and other appropriate experts, which APHIS has determined will satisfactorily ensure that animals transported by Delta in the future shall have a sufficient supply of air for normal breathing. Upon APHIS filing such a statement, \$80,000 of the \$140,000 civil penalty shall be abrogated.

**9 The cease and desist provisions of this Order shall become effective on the first day after service of this Order on Respondent.

FN1 The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g), and Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219 (1953), reprinted in 5 U.S.C. app. at 1280 (1988). The Department's present Judicial Officer was appointed in January 1971, having been involved with the Department's regulatory programs since 1949 (including 3 years' trial litigation; 10 years' appellate litigation relating to appeals from the decisions of the prior Judicial Officer; and 8 years as administrator of the Packers and Stockyards Act regulatory program).

FN1 Delta has entered into five consent orders in prior cases: 39 Agric. Dec. 558 (1980); 42 Agric. Dec. 14 (1983); 42 Agric. Dec. 1053 (1983); 44 Agric. Dec. 157 (1985); and 49 Agric. Dec. 1017 (1990) (a civil penalty of \$10,000.00 was assessed in the most recent order).

FN2 Capital Produce Co. v. United States, 930 F.2d 1077, 1079 81 (4th Cir. 1991); Capitol Packing Co. v. United States, 350 F.2d 67, 78 79 (10th Cir. 1965). See also Parchman v. USDA, 852 F.2d 858, 864 65 (6th Cir. 1988).

FN3 In re Jackie McConnell, 52 Agric. Dec. 1156, 1171 (1993), aff'd, 23 F.3d 407 (Table) (6th Cir. 1994) (text in WESTLAW); In re Dr. Wade Markham, 51 Agric. Dec. 419, 429 n.6 (1992).

8.- Conclusions.

We have tried to show briefly in this project some American legislation about animal welfare. However, this project would not be complete if we don't analyze the conclusions. As we have seen, in the USA there is a lot of legislation about animal welfare, more than in any other country (the other country which has so much legislation about this topic is the UK). But we cannot say that American legislation about animal welfare is complete and perfect. It is a very good legislation, of course, and it must be an inspiration to all the countries. However, it isn't perfect, because there are topics which are not enough covered.

These are the main conclusions of this project:

- ❖ American legislation about animal welfare is the most complete legislation of all around the world about this topic.

- ❖ This legislation is and must be an example for all the other countries. Spain, my country, should try to create a legislation like the American.

- ❖ All the "common law" countries have a good animal welfare legislation; the USA, of course, as we have seen, but also the UK, Canada, Australia and New Zealand.

- ❖ However, American legislation about animal welfare is not perfect. It includes many topics, but there are many important topics which are not still covered in any law or act:
 - Invertebrates.
 - Animal experimentation. As we have seen, this topic is not yet enough regulated.
 - Chimpanzee laws. As we have seen, this topic isn't enough regulated.

- ❖ But American legal system is very good, so I trust that these topics which are not covered will be covered in the future.

9.-Bibliography.

These are the books and articles which we have used to make this project:

- *What is animal welfare? Common definitions and their practical consequences.* Caroline J.Hewson, Canadian Veterinary Journal 2003 June; 44(6): 496–499.
- *Discours sur l'origine et les fondements de l'inégalité parmi les hommes.* Ed Folio Essais.
- Joyce Tischler: *The history of animal law, part I.* Stanford Journal of Animal Law and Policy.
- *Animal Law: welfare, interests and rights,* by David Favre. Aspen Publishers, 2008.
- *Brief summaries of Federal Animal Prosecution Statutes,* written by Henry Cohen, legislative attorney; Updated August 15, 2008
- *Overview of laws affecting Chimpanzees and Chimpanzee laws in the United States and abroad,* written by Alicia S. Ivory, Michigan State University College of Law.
- *Some thoughts on animal experimentation,* written by David Favre

These are the websites which we have used:

- www.animallaw.info
- www.derechoanimal.info
- <http://www.avma.org/>
- www.awionline.org
- <http://awic.nal.usda.gov/>
- <http://www.ifaw.org/splash.php>

