

21—67.13(162) Access, seizure and impoundment.

67.13(1) *Access to facilities and records.* The premises, housing facilities and records required by Iowa Code chapter 162 and this chapter shall be open for inspection by authorized personnel of the department during normal business hours.

67.13(2) *Seizure and impoundment.*

a. Failure of any pound, animal shelter, pet shop, boarding kennel, commercial kennel, commercial breeder, public auction or dealer to adequately house, feed, water or care for the animals in the person's or facility's possession or custody may subject the animals to seizure and impoundment. Seizure and impoundment shall be at the discretion of the secretary of agriculture. Standards to guide discretion shall include, but not be limited to, the following:

(1) An assessment of the condition of the animals, including but not limited to direct visual examination. Such assessment may include procedures and testing necessary to accurately determine disease, nutritional, and health status.

(2) An assessment as to the likelihood that the condition of the animals will deteriorate if action is not taken.

(3) An assessment as to the degree of failure to provide for the animals. Primary consideration will be based on the general health of the animals and the adequacy with which the animals are being fed, watered and sheltered.

(4) An assessment as to the history, if any, of the facility's compliance, noncompliance, and willingness to take corrective action. Such an assessment will be based on past inspection reports completed by regulatory personnel from the appropriate licensing agency.

(5) Court determination, if any, as to the existence of cruelty, abuse or neglect under Iowa Code chapter 717B.

(6) The willingness of the facility to allow frequent monitoring and the ability of the department or local law enforcement officers to provide this service.

(7) A determination as to whether adequate impoundment facilities or resources exist and are available for use by the department for the seizure and impoundment of animals.

b. In proceeding under this subrule, the department may either:

(1) Petition the court in the county where the facility is located for an ex parte court order authorizing seizure and impoundment, either separately or as part of an action commenced pursuant to Iowa Code chapter 717B. The petition shall request an expedited hearing within seven days of the order for seizure and impoundment. The expedited hearing shall determine final disposition of the animals seized and impounded.

(2) Issue an administrative order authorizing seizure and impoundment. The order shall state the finding of facts on which issuance of the order was based. The order shall be personally served upon the owner or manager of the facility. If the owner or manager cannot be found after a reasonable effort to locate, the notice shall be posted conspicuously at the facility. The notice shall state the time and place of an administrative hearing to determine the appropriateness of the seizure and impoundment; and if such seizure and impoundment is upheld, then the hearing shall determine final disposition of the animals seized and impounded.

The administrative hearing shall be held within three days of the seizure unless a continuance is agreed upon by the department and the owner. A decision at the administrative hearing will not be stayed by the department for more than 48 hours pending appeal without a court order. However, the department may delay the disposition if the department determines the delay is desirable for the orderly disposition of the animals. Unless otherwise provided in this subrule, the department will follow adopted departmental rules on the conduct of the administrative hearing.

c. The release of animals for final disposition to the department will allow for the sale, adoption or euthanasia of the animals. Determination of the most appropriate option for final disposition of a specific animal shall reside with the department and be based on, but not limited to, the animal's physical health, the presence of any condition which would necessitate treatment of significant duration or expense, and the appropriateness of the animal as a pet. All due consideration shall be given to the sale or adoption of an animal as the preferable option of disposition.

d. Any moneys generated from the sale or adoption of animals shall be used to provide compensation for the cost of care of the animals while impounded or the cost of disposition. Any residual moneys shall be directed to the owner. If the moneys generated from the sale and adoption of the animals are insufficient to meet the costs incurred in caring for the animals, the difference may be recovered in an action against the owner of the animals.

e. The department may arrange for impoundment services, including final disposition, with any licensed facility able to adequately provide for the care and disposition of the animals. Animals for which an order is issued authorizing seizure and impoundment shall be individually identified and records maintained relating to their care and final disposition. The department, or its representatives, shall be allowed access during normal business hours to the records and impounded animals.

f. In lieu of seizure and impoundment, the secretary of agriculture may authorize a one-time dispersal of animals, including by sale, as a remedial option. The owner may petition the department in writing for full or partial dispersal. The petition shall address the terms and conditions for dispersal which are being requested. The department may require additional terms and conditions. The terms and conditions governing dispersal will be contingent upon department approval. Such approval shall be in writing.

g. Conditions of this subrule and subrule 67.13(1) and Iowa Code sections 162.13 and 162.14 shall likewise apply to all eligible licensees and registrants, whether or not they have been properly licensed by Iowa Code chapter 162.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]