

Questions and Answers: Proposed Rule – Retail Pet Sales

Q. What is APHIS proposing?

A. APHIS is proposing to revise its definition of “retail pet store” to close a loophole that has in some cases threatened the health of pets sold sight unseen over the Internet and via phone- and mail-based businesses. Under the current definition of “retail pet store,” which was developed over 40 years ago and predates the Internet, some breeders selling pets are taking advantage of a loophole that improperly exempts them from meeting the basic requirements of the Animal Welfare Act (AWA). The proposed rule will close this loophole, ensuring that animals sold over the Internet and via phone- and mail-based businesses are better monitored for their overall health and humane treatment.

The proposal will restore the definition to its original intent so that it limits the retail pet store exemption to only those places of business and residence:

- that buyers physically enter to observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and
- where only the following animals are sold or offered for sale at retail for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species.

APHIS is also proposing to increase the number of breeding females from three to four that small hobby breeders of dogs, cats, and small exotic or wild mammals can own and still be exempt from licensing requirements. To meet the exemption requirements, these breeders can only sell the offspring of the breeding females that were born and raised on their premises, and sold for only pets or exhibition.

Q. Why does APHIS want to change this rule?

A. This proposed rule is intended to help ensure the health and well-being of animals sold at retail for use as pets. The current definition of “retail pet store” was written in the 1970s to exempt from federal regulation traditional pet stores and other facilities whose animals are subject to a certain degree of oversight from customers who enter a place of business or residence to observe the animals available for sale prior to purchase or to take custody of the animals after purchase.

Today, the Internet allows retailers to sell animals directly to the public sight-unseen. Because the current definition is broadly defined, those retailers continue to qualify for exemption, even though they don't meet the intent of the definition. As a result, some buyers have received animals with health issues. APHIS wants to restore the original intent of the AWA and modernize its regulations to reflect today's business practices.

The change to the licensing exemption for small hobby breeders of dogs, cats, and small exotic or wild mammals will increase the number of breeding females from three to four. This will allow us to focus more on the facilities that present the greatest risk of noncompliance with the regulations.

Q. How will this affect retail pet stores?

A. This proposed rule would not affect traditional retail pet stores, breeders, and other dealers whose buyers physically enter a place of business or residence to observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase. They will continue to be exempt from licensing and inspection under the AWA. However, they will still be subject to any applicable individual state and county regulations.

Q. How will this affect Internet, phone- and mail order retailers?

A. The proposal will affect these retailers if they currently sell their pet animals to buyers sight-unseen. Pet animal retailers will have a choice. They can either sell their animals to buyers who physically enter a place of business or residence to observe the animals available for sale prior to purchase or to take custody of the animals after purchase, or they can obtain a license under the AWA and allow APHIS inspectors to inspect their facility.

Q. How will this affect retailers who sell their animals to buyers in face-to-face transactions at a location other than their own premises?

A. The proposed rule is designed to close a loophole in the current regulations that allows pet animals to be sold sight-unseen, without any oversight by the public or APHIS. Pet animal retailers who sell their animals to their customers in face-to-face transactions at a location other than their own premises are subject to some degree of public oversight and therefore are not the focus of this proposed rule and would not need to obtain a license.

Q. How would this proposal affect rescue groups that participate in off-site adoption events?

A. As mentioned above, persons who engage in face-to-face transactions at a location other than their premises, which include off-site adoption events, are subject to some degree of public oversight and therefore are not the focus of this proposed rule and would not need to obtain a license.

Q. What does this mean for State, county, or city owned and operated pounds and shelters, as well as humane societies and other organizations that contract with those jurisdictions?

A. This proposed rule would have no effect on State, county, or city owned and operated pounds and shelters, or humane societies and other organizations that contract with those jurisdictions. These public agencies are exempt from regulation under the AWA.

Q. How will the proposed rule affect retail breeders who sell their dogs for use as working dogs?

A. The proposed rule would not change current AWA requirements for retail breeders of working dogs. Retail breeders who sell their dogs only for use as working dogs are not required to obtain an AWA license.

Q. What will this mean for consumers?

A. The changes will help ensure the welfare of animals sold to consumers through retail channels. Under the proposed rule, no dog or other pet animal will be sold at retail without either public or APHIS oversight, except those exempt from licensing and/or not otherwise regulated under the AWA.

Q. Why are you proposing to raise the threshold of breeding females from three to four?

A. Under the current AWA regulations, breeders who own three or fewer breeding females (dogs, cats, or small exotic or wild mammals) are considered hobby breeders and exempt from APHIS oversight. Based on a recent review of compliance among currently regulated facilities, we believe that a facility that

maintains four breeding females, one more than the current limit of three, can be considered a low-risk facility and exempt from regulation even if they sell their animals sight-unseen. This would allow us to continue to concentrate our regulatory resources on those facilities that present the greatest risk of noncompliance and thereby ensure the welfare of animals.

Q. How will the proposed four breeding female rule apply to breeders with a partial ownership interest in a number of breeding animals? Would they be considered as “acting in concert” with their partners for purposes of this exemption?

A. The restriction on individuals “acting in concert” in the current and proposed AWA regulations is designed to prevent a loophole in the regulations. In the past, some individuals have contended they were not required to have a license even when they kept more than three breeding females (dogs, cats, or small exotic or wild mammals) on the same premises as long as no single member of the household owned more than three. However, when several members of the same household (or other persons acting in concert) maintain breeding females on the same premises such that the number of breeding females in total is more than three (or four under the proposed rule), the activities are no longer exempt and the dealers need to be licensed.

Q. What will this mean for dealers of domestic farm animals and coldblooded species?

A. This proposal will have no substantive effect on APHIS’ regulation of domestic farm animals and coldblooded species. Normal farm-type operations that raise, or buy and sell, animals only for food and fiber, and businesses that use only fish and other coldblooded animals are excluded from the definition of “animal” in the AWA and, therefore, are categorically exempt by law from coverage.

Q. What will this mean for dealers of rabbits who sell their animals for use as food or fiber?

A. This proposed rule would not change APHIS’ regulation of dealers who sell rabbits or other animals for use as food or fiber. As mentioned above, anyone selling any animals only for food or fiber are exempt under the AWA.

Q. If this proposal is adopted, would breeders who come under regulation and allow their dogs to roam free in their homes have to put their animals in a kennel?

A. No. The AWA regulations define a primary enclosure broadly to mean any structure or device used to restrict an animal or animals to a limited

amount of space. As such, a home can be considered a dog's primary enclosure. If a room of a house is used as a dog's primary enclosure (e.g., a whelping room or nursery), APHIS will apply the applicable regulations and standards to the room.

If, however, a dog breeder allows their dogs to have free run of the entire house, APHIS will assess whether the home can house animals within the health and humane standards contemplated by the AWA. If the breeder has a kennel or cages that the dogs can stay in inside the home that meet AWA standards, we would consider that compliance with the primary enclosure requirements has been achieved.

Q. What is the Animal Welfare Act (AWA)?

A. The AWA sets standards for humane care and treatment that must be provided for certain animals that are bred for commercial sale; exhibited to the public; used in biomedical research; or transported commercially. The AWA does not apply to cold-blooded animals or agricultural animals used for food or fiber. Individuals and entities licensed under the AWA must provide their animals with adequate housing, sanitation, nutrition, water and veterinary care. They must also protect the animals from extreme weather and temperatures.

Q. What does a proposed rule mean?

A. APHIS has issued this proposed rule as part of its rulemaking process. It is just a proposal, issued for public review and comment. It has no immediate effect on potentially regulated facilities.

Q. What is the next step in the rulemaking process?

A. The original 60-day comment period for the proposed rule was extended for an additional 30 days and will close on August 15, 2012. Once the comment period closes, APHIS will consider all comments received and, if warranted, will revise the rule in response to those comments.

Q. How can I comment on this proposal?

A. To comment on this proposal, you can submit your comments one of two ways:

- Visit the Federal eRulemaking Portal at www.regulations.gov/#!documentDetail;D=APHIS-2011-0003
- Mail your comments to: Docket No. APHIS-2011-0003, Regulatory Analysis and Development PPD APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD, 20737-1238.

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