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**Regulatory Impact Analysis and  
Final Regulatory Flexibility Analysis**

**Final Rule  
APHIS-2011-0003  
RIN 0579-AD57**

**Revision of the Definition of Retail Pet Store**

Policy & Program Development

Policy Analysis & Development

## Summary

APHIS is revising the definition of retail pet store and related regulations in order to ensure that the definition of retail pet store in the regulations is consistent with the Animal Welfare Act (AWA), thereby bringing more pet animals sold at retail under the protection of the AWA. To ensure that animals sold at retail receive humane handling, care, and treatment, we are revising the definition of retail pet store so that it only includes those places of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase. We are also increasing from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection requirements if he or she sells only the offspring of those animals born and raised on his or her premises, regardless if the offspring of those animals are sold at retail or wholesale. In addition, we are removing the limitation on the source of gross income from the licensing exemption in the regulations for any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

This rule will primarily affect dog breeders who maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. The rule may also affect some cat and rabbit breeders. While the scope of this rule applies to certain other animals, based on our experience, most retailers of animals other than

dogs will meet the amended definition of retail pet store and continue to be exempt from regulation.

The benefits of this rule justify its costs. More pet animals sold at retail will be brought under the protection of the AWA and monitored for their health and humane treatment. Improved animal welfare will benefit buyers of pets and the general public in various ways. Monitoring the health and humane treatment of pet animals should reduce the number of pets receiving inadequate care and reduces the possibility of sick or injured pet animals being purchased sight unseen. When a buyer receives a sick or abused pet animal, sight unseen, the responsibility for correcting inadequate care has been effectively transferred from the seller to the buyer without the buyer's knowledge or consent. If that buyer is unable or unwilling to provide the pet animal with needed care, a shelter may become the default caregiver for that animal. A reduction in the number of sick or abused pet animals received by buyers may reduce the number of such animals sent to shelters. Public shelters provide for the care of these unwanted pet animals, usually at local taxpayer expense. Also, as noted by several commenters, neglected or abused pet animals confiscated from substandard breeding operations are often sent to shelters to provide for their care. Newly regulated commercial breeders working to comply with AWA regulations will increase the health and well-being of the pet animals under their care.

In addition, when breeding operations for which regulatory oversight is insufficient fail to adequately provide veterinary care for their animals, the buyer may subsequently incur greater costs associated with providing that care because needed care has been delayed. The rule will benefit buyers of animals by providing regulatory oversight to ensure that breeders provide necessary veterinary care.

Animals can carry zoonotic diseases (diseases that can be transmitted between, or are shared by, animals and humans). The possibility of an animal carrying a zoonotic disease is reduced with adequate veterinary care, including vaccinations. To the extent that improved oversight reduces the likelihood of pet-to-human transmission of zoonotic diseases such as rabies, the public as a whole will benefit from the rule. The rule will also address the competitive disadvantage of retail breeders who incur certain costs by adhering to the AWA standards regulations while retail breeders who do not operate their facilities according to AWA standards may bear lower costs.

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are hundreds of distinct dog breeds, and correspondingly large numbers of dog breeders in the United States. Breeders with an online presence are those most likely to be selling the offspring sight unseen and thus are more likely to be affected by this rule. We estimate that there could be between 8,400 and 15,000 such dog breeders in the United States. This estimate is based on the assumption that for every five breeders identified by APHIS in online breeder registries there is one other breeder that has not been identified who also uses remote marketing methods.

However, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. When these conditions are taken into account, we estimate that there are between 2,600 and 4,640 dog breeders that may be

affected by this rule. The following table highlights the criteria used for identifying dog breeders potentially affected by this rule and the process used to calculate the number of such breeders.

*Potentially Affected Dog Breeder Calculations. A breeder must meet all criteria before licensing is required.*

Row	Category	Criteria for Inclusion <sup>(2)</sup>	Calculation	Range
( a )	Number of Listed Breeders <sup>(1)</sup>	All listed		7,000 to 12,500
( b )	Inclusion of breeders not listed	For every five breeders listed, we assume one more not listed who also has a remote marketing presence	( a ) * 1.2	8,400 to 15,000
( c )	Breeder sells pets	75% of breeders sell dogs as pets, i.e., not for hunting, security, breeding, etc.	( b ) * 0.75	6,300 to 11,250
( d )	<b>AND</b> Breeder has more than 4 breeding females	55% of breeders have more than 4 breeding females	( c ) * 0.55	3,465 to 6,188
( e )	<b>AND</b> Buyer purchases dog sight unseen	75% of breeders sell one or more dogs without the purchaser physically observing the dog before purchase and/or taking custody	( d ) * 0.75	<b>2,599 to 4,641</b>

(1) Two multi-breed breeder listings: [www.puppysites.com](http://www.puppysites.com) and [www.dogbreederregistry.com](http://www.dogbreederregistry.com), and individual breed breeder listings for 160 individual breeds.

(2) Expert judgment based on online breeder registries, public comments, and APHIS' knowledge of industry practices.

The rule will also affect cat breeders who maintain more than four breeding females at their facilities and sell the offspring as pets, sight unseen. Fewer than two percent of cats in the United States are purebred and raised by breeders. We estimate that about 325 cat breeders may be affected by this rule.

The rule will also affect rabbit breeders who sell the offspring as pets, sight unseen, which is not common. Rabbits are usually sold at auctions, exhibits, and fairs where the buyers are physically present. We estimate that no more than 75 rabbitries may be affected by this rule.

Newly regulated breeders will be subject to licensing, animal identification and recordkeeping requirements. In addition, affected entities will be subject to standards for facilities and operations, animal health and husbandry, and transportation. One set of costs attributable to the rule will be incurred annually by all newly regulated entities, such as licensing fees. Other costs will depend on the manner and extent to which entities are not complying with the basic standards of the AWA. Some of these costs will be one-time costs in the first year, such as providing adequate shelter; others will recur yearly, such as providing adequate veterinary care.

The cost of a license for breeders is based on 50 percent of gross sales during the preceding business year. As an example, if 50 percent of gross sales are more than \$500 but not more than \$2,000, the annual cost of a license is \$70. Identification tags for dogs and cats cost from \$1.12 to \$2.50 each. Other animals such as rabbits can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure. We estimate that the average licensed breeder requires about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All newly licensed breeders will incur these costs. We estimate these costs would be between about \$284 and \$550 for a typical dog breeder. Costs at the 3,000 to 5,000 newly licensed dog, cat, and rabbit breeders for animal licensing, animal identification and recordkeeping could range between \$853,000 and \$2.8 million annually.

The newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. However, as

acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, the vast majority of newly regulated breeders will only need to incur licensing, animal identification and recordkeeping costs and not need to make structural and/or operational changes in order to comply with the standards. Neither the number of entities that will need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that will be incurred due to this rule is also unknown. However, we can estimate the general magnitude of these costs by assuming the newly regulated entities exhibit patterns of noncompliance similar to those of currently regulated wholesale breeders.

APHIS currently provides outreach for prospective licensees, including prelicensing inspections and consultations. This outreach helps to provide newly regulated entities with the knowledge they need to identify and rectify compliance issues in order to avoid compliance violations in subsequent inspections. We anticipate that these outreach efforts will produce similar effects on compliance among newly regulated entities.

Based on our experience regulating wholesale breeders, the most common areas of regulatory noncompliance at prelicensing and compliance inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. We apply percentages of noncompliance for these areas, multiplied by likely unit costs or cost ranges, to the estimated number of affected breeders described above to arrive at a total cost range for the rule. We estimate that costs for coming into compliance for currently noncompliant breeders could range from \$2.9 million to \$12.1 million in the first year, when both one-time structural changes will occur and annual operational changes will start.

The rule will also affect some currently licensed wholesale breeders. Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could reduce the number of these licensees. We expect that the number of licensees that will fall below the exemption threshold following the implementation of this rule will be very small.

The majority of businesses affected are likely to be small entities. As explained, this wide range in total cost is mainly derived from the uncertainty surrounding the total number of breeders that will need to become licensed as a result of this rule and the number that will then need to make structural or operational changes. It derives to a lesser degree from the ranges in costs that are assumed will be incurred by the newly licensed facilities to remedy instances of noncompliance.

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## **Introduction**

APHIS is revising the definition of retail pet store and related regulations to ensure that the definition of retail pet store in the regulations is consistent with the Animal Welfare Act (AWA), thereby bringing more pet animals sold at retail under the protection of the AWA. The definition was established to ensure that the appropriate retail facilities were exempt from licensing and inspection requirements. Historically, such outlets included small-scale residential breeders, as well as traditional retail pet stores that are subject to a degree of oversight by persons who are physically present at their place of business to personally observe the animals offered for sale prior to purchase and/or to take custody of the animals after purchase.

With the increased use of the Internet in the 1990s, some retailers began to offer sight unseen sales to large numbers of customers and transport their animals nationwide. As a result, customers of these businesses are often unable to be physically present at the retailer's place of business to observe the animals before taking them home. APHIS recognizes that these entities lack sufficient public oversight to ensure the animals' humane treatment and care.

Retail pet stores are exempt from AWA provisions and are not required to obtain a license from APHIS. Because, prior to issuance of the final rule, the definition of retail pet store included all retail outlets with limited exceptions, retailers who sold animals sight unseen over the Internet or by mail, telephone, or any other means where customers are not physically present at a place of business, qualified as retail pet stores and were exempt from licensing requirements and inspection.

The definition of retail pet store in the regulations is being revised to ensure that it is consistent with the Animal Welfare Act (AWA), thereby bringing more pet animals sold at retail under the protection of the AWA. To ensure that animals sold at retail receive humane handling,

care, and treatment, we are revising the definition of retail pet store so that it only includes those places of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase. We are also increasing from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection requirements if he or she sells only the offspring of those animals born and raised on his or her premises, regardless if the offspring of those animals are sold at retail or wholesale. Our decision to propose to raise the exemption threshold to four breeding females was based on our experience with currently regulated entities that those who maintain four or fewer breeding females are capable of providing adequate care and treatment for the animals on his or her premises without Federal oversight. In addition, we are removing the limitation on the source of gross income from the licensing exemption in the regulations for any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year. This rule is necessary to ensure that animals sold at retail are monitored for their health and humane treatment.

This document provides a benefit-cost analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This document

also examines the potential economic effects of the rule on small entities, as required by the Regulatory Flexibility Act.

## **Overview of the Action and affected Entities**

Prior to issuance of this final rule, a wide range of entities were considered retail pet stores and therefore exempt from regulation. They included brick-and-mortar pet stores, virtual pet stores, and breeders of any size, from small-scale residential to high-volume, who raised pet animals for direct retail sale to the public, including over the Internet.

This rule narrows the definition of retail pet store to only those places of business or residence where the seller, buyer and the animal available for sale are physically present in order for every buyer to personally observe the animal available for sale prior to purchase and/or to taking custody of that animal after purchase. As a result of this change, entities that sell or intend to sell their animals to buyers who are not physically present at their place of business or residence to personally observe the animals offered for sale prior to purchase and/or to taking custody of those animals after purchase will have to obtain an AWA license and comply with the AWA regulations, unless otherwise exempted from the regulations. The AWA provisions to which regulated entities will become subject include identification of animals, recordkeeping, facility maintenance, periodic veterinary care, shelter construction, and sanitation, among others.

Prior to issuance of this final rule, APHIS' regulations in § 2.1(a)(3)(iii) provided an exemption from licensing requirements for persons who maintain a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals and who sell only the offspring of these dogs, cats, and/or small exotic or wild mammals that are born and raised on their premises, for pets or exhibition. This rule expands this exemption to persons who maintain a total of four or fewer breeding females. Persons who derive less than \$500 gross income from

the sale of animals, other than dogs, cats, or wild or exotic animals, will also be exempt from licensing and inspection requirements.

This rule will primarily affect dog breeders that maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. The rule may also affect some cat and rabbit breeders. While the scope of this rule applies to certain other animals, including some cavy and rat breeders, most retailers of these animals will meet the amended definition of retail pet store or other exemptions in the regulations and continue to be exempt from licensing.

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are 175 distinct dog breeds recognized by the American Kennel Club (AKC), as well as numerous mixed and designer breeds, and correspondingly large numbers of dog breeders in the United States. APHIS identified about 12,500 breeders utilizing available online breeder registries for 160 individual dog breeds, including a breeder registry list for each of the top 10 breeds and for 86 of the top 100 most popular AKC registered breeds in 2011. There are also about 7,000 breeders listed on one online consolidated dog breeder directory and about 8,200 on another. These latter registries include more than 300 breeds of dogs. Such listings do not cover all breeds, or all breeders of a particular breed. Some breeders are listed multiple times because they appear in registries for different breeds, and the lists do overlap with one another. The registries are, however, indicative of the number of breeders who use the Internet to market the dogs they breed to potential buyers in the United States.

Breeders who use advertising methods that reach remote buyers, such as the Internet, are more likely than breeders without an online presence to be selling sight unseen and thus are more likely to be affected by this rule. Because the above breeder lists do not include all breeders using remote advertising methods, we assume that for every five breeders identified on these lists, there is one other breeder not so identified who also uses remote marketing methods. Based on this assumption, there could be between 8,400 and 15,000 such breeders in the United States. However, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase.

In order to determine the number of dog breeders potentially affected by this rule, we relied on information gathered from various online breeder registries, public comments received on the proposed rule, and APHIS' knowledge of industry practices. We examined the websites of breeders, looking at the breed, stated characteristics of the dogs, and the stated purpose of selling dogs. Dog breeders may be exempted from licensing if they sell dogs for purposes other than as pets. We estimate based on these web sites that 75 percent of dog breeders sell dogs as pets. Of these breeders, we estimate that 55 percent may have more than 4 breeding females. Comments received on the proposed rule suggested that from 30 percent to 80 percent of all dog breeders maintain more than four breeding females. Of the breeders who sell dogs as pets and have more than 4 breeding females, we estimate that 75 percent engage in some sight-unseen sales. A number of commenters on the proposed rule suggested that all dog breeders have remote sales. However, some breeder websites specifically indicate that a breeder will not sell a dog without having first met the buyer, indicating that not all breeders sell dogs sight-

unseen. Additionally, some of these commenters considered remote sales to be any sales that do not occur specifically at their private residence or primary place of business, while others assumed that a remote sale occurs whenever the ultimate owner of the animal is not physically present to observe the animal prior to taking custody of it. As we discuss in the final rule, our understanding of what constitutes a remote sale is significantly less restrictive than these interpretations. Finally, a number of commenters who stated they engaged in remote sales also mentioned that they did not sell the animals as pets, but for breeding or working purposes. Given these considerations, we believe that the percentage is probably closer to 75 percent. Based on all of these factors, we estimate that there are between 2,600 and 4,640 dog breeders that may be affected by this rule. Table 1 highlights the criteria used for identifying dog breeders potentially affected by this rule and the process used to calculate the number of such breeders.

Table 1. Potentially Affected Dog Breeder Calculations. A breeder must meet all criteria before licensing is required.

Row	Category	Criteria for Inclusion <sup>(2)</sup>	Calculation	Range
( a )	Number of Listed Breeders <sup>(1)</sup>	All listed		7,000 to 12,500
( b )	Inclusion of breeders not listed	For every five breeders listed, we assume one more not listed who also has a remote marketing presence	( a ) * 1.2	8,400 to 15,000
( c )	Breeder sells pets	75% of breeders sell dogs as pets, i.e., not for hunting, security, breeding, etc.	( b ) * 0.75	6,300 to 11,250
( d )	<b>AND</b> Breeder has more than 4 breeding females	55% of breeders have more than 4 breeding females	( c ) * 0.55	3,465 to 6,188
( e )	<b>AND</b> Buyer purchases dog sight unseen	75% of breeders sell one or more dogs without the purchaser physically observing the dog before purchase and/or taking custody	( d ) * 0.75	<b>2,599 to 4,641</b>

(1) Two multi-breed breeder listings: [www.puppysites.com](http://www.puppysites.com) and [www.dogbreederregistry.com](http://www.dogbreederregistry.com), and individual breed breeder listings for 160 individual breeds.

(2) Expert judgment based on online breeder registries, public comments, and APHIS' knowledge of industry practices.

The rule may also affect cat breeders who maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to personally observe the animal prior to purchase and/or to take custody of the animal after purchase. Most pet cats in the United States are obtained other than from a breeder, such as from friends or from a shelter. As pointed out by commenters, a very small percentage of cats in the United States are purebred and are raised by breeders. We identified between 270 and 2,400

catteries in three different consolidated cat breeder listings available online.<sup>1</sup> The lists are indicative of the number of breeders who use the Internet to market cats for sale in the United States. Not all of these breeders will be affected by this rule. We estimate that about 325 cat breeders will be affected by this rule, if 90 percent of the higher number of listed breeders sell the offspring as pets, 20 percent maintain more than four breeding females, and 75 percent do not have buyers who are all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase.

The rule may also affect rabbit breeders who sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. We identified between 800 and 1,500 rabbitries in two online consolidated directories of rabbit breeders. The lists are indicative of the number of breeders who use the Internet to market rabbits for sale in the United States. Breeders who use advertising methods that reach remote buyers, such as the Internet, to market rabbits for sale are more likely than breeders without an online presence to be selling sight unseen and thus are more likely to be affected by this rule. However, most rabbitries do not sell rabbits as pets, but rather as food or fiber (including fur) or for breeding purposes, not covered by the AWA. Rabbitries that do sell rabbits as pets may have up to \$500 in rabbit pet sales and still be exempted from regulation. In addition, rabbits are rarely shipped. The cost of shipping easily exceeds the value of most pet rabbits, making shipment unlikely. High-value breeding rabbits are occasionally shipped, but sales for breeding purposes are not covered by the AWA. Rabbits are usually sold at auctions, exhibits, and fairs where buyers are physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. Therefore, we conclude that no

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<sup>1</sup>The Cat Fanciers Association, the International Cat Association, and Kittysites.com.

more than 5 percent of the higher number of listed breeders, or 75 rabbitries, will be affected by this rule.

## **Expected Benefits of the Rule**

The intrinsic benefit of this rule will be improved animal welfare because more pet animals sold at retail will be brought under the protection of the AWA. The rule will ensure that such animals are monitored for their health and humane treatment. Improved animal welfare will benefit buyers of pets and the general public in various ways. Monitoring the health and humane treatment of pet animals should reduce the number of pets receiving inadequate care and reduces the possibility of sick or injured pet animals being purchased sight unseen. When a buyer receives a sick or abused pet animal, sight unseen, the responsibility for correcting inadequate care has been effectively transferred from the seller to the buyer without the buyer's knowledge or consent. If that buyer is unable or unwilling to provide the pet animal with needed care, a shelter may become the default caregiver for that animal. A reduction in the number of sick or abused pet animals received by buyers may reduce the number of such animals sent to shelters. Public shelters provide for the care of these unwanted pet animals, usually at local taxpayer expense. Also, as noted by several commenters, neglected or abused pet animals confiscated from substandard breeding operations are often sent to shelters to provide for their care. Newly regulated commercial breeders working to comply with AWA regulations will increase the health and well-being of the pet animals under their care.

In addition, when breeding operations for which regulatory oversight is insufficient fail to adequately provide veterinary care of their animals, the buyer may subsequently incur greater costs associated with providing that care because needed care has been delayed. The rule will

benefit buyers of animals by providing regulatory oversight to ensure that breeders provide necessary veterinary care.

Animals can carry zoonotic diseases (diseases that can be transmitted between, or are shared by, animals and humans). The possibility of an animal carrying a zoonotic disease is reduced with adequate veterinary care, including vaccinations. To the extent that improved oversight reduces the likelihood of pet-to-human transmission of zoonotic diseases such as rabies, the public as a whole will benefit from the rule. The rule will also address the competitive disadvantage of retail breeders who incur certain costs by adhering to the AWA standards while retail breeders who do not operate their facilities according to AWA standards may bear lower costs.

## **Expected Costs of the Rule**

We describe in this section potential costs attributable to this rule that may be incurred by newly regulated retail breeders. Prior to receiving a license, these entities will incur costs in terms of time spent learning about the compliance requirements, such as through prelicensing inspections and consultations. They will then bear costs of complying with licensing, animal identification, and recordkeeping requirements. Some may also incur costs to comply with regulatory standards that address the following: Facilities and operations (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities); animal health and husbandry (including requirements for veterinary care, sanitation and feeding, watering, and separation of animals); and transportation (including specifications for primary enclosures, primary conveyances, terminal facilities, and feeding, watering, care, and handling of animals in transit).

One set of costs attributable to the rule will be incurred annually by all newly regulated entities, such as licensing fees. Other costs will depend on the manner and extent to which entities are not complying with the basic standards of the AWA. Some of these costs will be one-time costs in the first year, such as providing adequate shelter; others will recur yearly, such as providing adequate veterinary care. Costs that the retail breeders may incur because of these regulatory requirements are summarized in a concluding set of tables.

**Costs that will be incurred by all newly Regulated Entities**

**a) Participation in APHIS Outreach**

APHIS currently provides outreach for breeders as part of the licensing process, including scheduled prelicensing inspections and consultations. We intend to provide similar outreach efforts to newly regulated retail breeders. This outreach will help to provide newly regulated entities with the knowledge they need to identify and rectify any potential compliance issues in order to pass an inspection and become licensed. Estimates of the time that newly regulated entities would be expected to spend participating in APHIS outreach and preparation for inspection are shown below.

Initial phone call with inspector	½ - 3 hours
On-site discussion prior to inspection of facilities	1½ hours
Inspection of facilities	½ - 5 hours
<u>Exit briefing and additional discussions</u>	<u>1½ hours</u>
Total	4 – 11 hours

Newly regulated entities are allowed up to three prelicensing inspections to demonstrate compliance for licensing. If a second or third prelicensing inspection is required, APHIS estimates that each additional prelicensing inspection would be 1-3 hours in length.

We recognize that there will be a broad range in the size of retail breeding facilities as well as a wide variation in the opportunity cost of time spent by newly regulated retail breeders to understand compliance requirements. These factors of size and time will largely determine the costs of participating in the licensing outreach process. We note that the outreach process can benefit breeders by helping them identify and rectify compliance issues so that they may avoid violations in subsequent inspections.

### **b) Licensing**

Entities that maintain more than four breeding females and sell the offspring for use as pets where the seller, buyer, and the animal available for sale are not physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, such as through sight-unseen sales conducted over the Internet, will be required to be licensed. An annual license costs between \$40 and \$760, depending on the licensee's yearly income from the sale of regulated animals.<sup>2</sup> The cost of a license is based on 50 percent of gross sales during the preceding business year for Class "A" dealers and on gross sales minus the amount paid for the animals during the preceding business year for Class "B" dealers.<sup>3</sup> As an example, if 50 percent of a Class "A" dealer's gross sales, or gross sales minus the amount paid for the animals for a Class "B" dealer, totals more than \$500 but not more than \$2,000, the annual cost of a license is \$70. There is a \$10 application fee in addition to the license fee. The license fees for each income category are shown in table 2. Eighty-five percent of wholesale dog breeders paid between \$70 and \$235 in licensing fees in 2010. We expect that

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<sup>2</sup> Persons who maintain four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, or derive less than \$500 gross income from the sale of animals, other than dogs, cats, or exotic or wild animals, will be exempt from licensing requirements.

<sup>3</sup> A Class "A" licensee is a person who breeds the animals that are sold. A Class "B" licensee is a person whose business includes the purchase and/or resale of any animal.

the majority of newly licensed retail breeders, particularly those who are residential breeders, will pay \$130 or less annually.

*Table 2. License Fees for Class “A” and Class “B” Licensees*

Income Categories <sup>(1)</sup>		Initial License Fee	Annual or Changed Class of License Fee
Over	But Not Over		
\$0	\$500	\$30	\$40
500	2,000	60	70
2,000	10,000	120	130
10,000	25,000	225	235
25,000	50,000	350	360
50,000	100,000	475	485
100,000	-----	750	760

<sup>(1)</sup> Fifty percent of gross sales for Class “A” dealers and gross sales minus the amount paid for the animals for Class “B” dealers, as reported for the preceding business year.

### **c) Animal Identification and Recordkeeping**

In addition to obtaining a license, regulated entities must comply with animal identification and recordkeeping requirements. Dealers must individually identify regulated animals when those animals are delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of. The costs of complying with the identification requirements are relatively small. While tattooing is an acceptable form of identification, tags are more commonly used. Appropriate official identification tags for dogs or cats cost from 30 to 50 cents apiece in small volumes, and in larger quantities for as little as 12 cents each.<sup>4</sup> In addition, each dog or cat needs a collar, which can be purchased at retail for as little as \$1 to \$2.<sup>5</sup> Thus, the cost of a collar and tag ranges from \$1.12 to \$2.50 per dog or cat. We estimate that there are about 74 dogs at a typical breeder’s facility that require identification over the course of a year.<sup>6</sup> We

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<sup>4</sup> Internet search of official USDA identification tag providers.

<sup>5</sup> Internet search of pet supply retailers.

<sup>6</sup> This is based on 6 breeding females producing an average of 7.5 puppies per litter and 1.5 litters per year (6 x 7.5 x 1.5 = 68), and (6+68=74). We assume that there are 6 breeding females on the typical facility affected by this rule.

estimate that there are about 96 cats at a cat breeder's facility most likely to be affected by this rule that require identification over the course of a year.<sup>7</sup>

Rabbits can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure, including the number of animals, the species, and any distinctive physical features, identifying marks, marks or tattoos of each. The cost of time and materials involved in such labeling is negligible, at most one to two cents per animal.

Dealers also have to keep and maintain records or forms that disclose certain information concerning animals purchased or otherwise acquired, owned, held, leased, or otherwise in their possession or under their control, or that are transported, sold, euthanized, or otherwise disposed of. In addition, the AWA regulations require a dealer who employs a part-time attending veterinarian or has a consultant arrangement with a veterinarian to make formal arrangements that include a written program of veterinary care and regularly scheduled visits to the dealer's premises. For carriers and intermediate handlers, such records include a copy of the consignor's written guarantee of payment for transportation of C.O.D. shipments; a shipping document; and, if needed, an acclimation statement indicating that the animal being transported can withstand temperatures lower than those temperatures specified in the regulations. In addition, the AWA regulations may require that instructions for the administration of food and water be attached to the outside of the primary enclosure used in transportation. We estimate that a licensed breeder requires about 10 hours annually complying with the licensing paperwork and recordkeeping requirements. At a rate of \$13.07 per hour,<sup>8</sup> this cost is estimated to total about \$131 annually.

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<sup>7</sup> This is based on 6 breeding females producing 3 litters per year with 5 kittens in each litter ( $6 \times 3 \times 5 = 90$ ), and ( $6 + 90 = 96$ ). We assume that cat breeders most likely to be affected by this rule would have 6 breeding females.

<sup>8</sup> May 2011 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, 43-9061, Office Clerk, General, median hourly wage.

All newly licensed breeders will incur costs for licensing, identification and recordkeeping. We estimate these costs would be between about \$284 and \$550 for a typical dog breeder.

### **Potential Costs of Some Breeders not currently meeting the Standards of the AWA**

Newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. However, as acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, the vast majority of newly regulated breeders will only need to incur licensing, animal identification and recordkeeping costs and not need to make structural and/or operational changes in order to comply with the standards. Neither the number of entities that will need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that will need to be made because of this rule is also unknown. However, we can estimate the general magnitude of these costs assuming the newly regulated entities exhibit patterns of noncompliance similar to those of currently regulated wholesale breeders.

Based on our experience regulating wholesale breeders, a small percentage of the newly licensed breeders will need to make operational or structural changes to become or remain licensed. The most common areas of regulatory noncompliance at prelicensing and compliance inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation.<sup>9</sup> We have no data to suggest that the rate of noncompliance for newly regulated retail breeders will be significantly different from that of regulated wholesale breeders. A wide spectrum of commenters on the

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<sup>9</sup> Animal Care Information Systems Search Tool. USDA-APHIS Animal Care. <http://acisearch.aphis.usda.gov/LPASearch/faces/Warning.jspx;jsessionid=7f00000130d856915b8fee2645a4adefe8a2aa28123e.e380bx8Sb3yQby0LbN8SaxmSc38Ne0>

proposed rule acknowledged that most retail breeders maintain their facilities well above the minimum standards of the AWA.

### **a) Facilities**

A number of commenters expressed concern that breeders who raise animals in their private residences and are required to become licensed would have difficulty meeting the standards without significant structural changes to their homes based on their interpretation of the provisions of the regulations. Significant structural modifications at newly regulated facilities should be unnecessary in most cases. In the regulatory impact analysis that accompanied the proposed rule, we were not clear on the meaning of some of the existing provisions of 9 CFR part 3, and therefore the potential impact on newly regulated entities. As a result, a number of commenters expressed concern about their ability to meet the standards of part 3, in particular the standards in § 3.2 on impervious materials and in § 3.6 on whelping areas. The regulations are less prescriptive than many commenters indicated.

We have long interpreted paragraph (d) of § 3.2 that references impervious flooring and wall materials to refer to the material from which a foundation or subfloor must be constructed. This paragraph must be read in conjunction with paragraph (c)(2) of § 3.1 and paragraph (a)(2)(ix) of § 3.6, which more directly address carpeting and flooring of residential breeding facilities. Cleaning and disinfection are required for primary enclosures in § 3.11, but specific methods for sanitation are only required for hard surfaces and the regulations still allow for flexibility within these methods. Of particular note, (a)(2)(ix) of § 3.6 only requires that surfaces of housing facilities that cannot be readily cleaned and sanitized be replaced when worn or soiled. We also note that paragraph (c)(1)(ii) of § 3.6 requires nursing females to have space afforded to them that they would not otherwise need if they were not nursing, but does not

require this space to be segregated from the rest of a primary enclosure and does not specify the amount of space necessary for each breeding female.

As many commenters noted, the housing, cleaning and maintenance standards of the majority of breeders will exceed generally accepted minimum standards of animal care. These standards will also exceed minimums as set forth in the AWA, making significant structural changes unnecessary at the vast majority of potentially affected facilities.

### **b) Facility Maintenance and Construction**

If newly regulated entities exhibit similar patterns of noncompliance to that of currently regulated wholesale breeders, they could incur costs of coming into compliance as follows. Inadequate facility maintenance and construction was identified as a problem in about 16.5 percent of prelicensing inspections of wholesale dog breeders in 2010, and in about 36 percent and 33 percent of compliance inspections of wholesale cat breeders and rabbit breeders, respectively.<sup>10</sup> Housing facilities must be structurally sound and kept in good repair; for example, surfaces of housing facilities must be free of excessive rust, jagged edges or sharp points; floors, the foundation or subfloor must be impervious to moisture; and floors have to be constructed in a manner that protects the animals' feet and legs from injury.

Based on our experience with wholesale breeders, and because there are a number of ways that the standards can be met, most housing repairs necessary to meet the standards of the AWA are minor. We estimate that most repairs made to meet housing standards cost \$50 to \$100 or less in materials, and may require 8 to 10 hours to complete. Assuming that the breeder will need hired labor to complete this task, and assuming a labor rate of \$9.38 per hour,<sup>11</sup> this labor

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<sup>10</sup> Ibid.

<sup>11</sup> May 2011 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, 39-2021, Nonfarm animal caretakers, median hourly wage.

will cost a breeder about \$75 to \$95. Many breeders perform minor repairs themselves, often with inexpensive and already available or easily obtainable materials.

The additional ongoing facility maintenance needed at those facilities where the current level of maintenance is insufficient to meet the standards in the AWA is also likely to be relatively minor, 2 to 8 hours per week. Again at a rate of \$9.38 per hour, this labor costs about \$980 to \$3,900 annually.

### **c) Animal Health and Husbandry**

Insufficient veterinary care was identified as a problem in about 16 percent of prelicensing inspections of wholesale dog breeders in 2010, in about 27 percent of compliance inspections of wholesale cat breeders, and in about 20 percent of wholesale rabbit breeders.<sup>12</sup> Licensees are required to establish, maintain, and document a program of veterinary care in collaboration with their veterinarian, if the veterinarian is not a full-time employee of the licensee, or has a consultant agreement. Establishing such a program involves a site visit from the veterinarian. We estimate that such a site visit will cost those breeders who have not been providing adequate veterinary care between \$50 and \$150. In addition, any specific veterinary issues identified during the inspection must be addressed.

Based on APHIS' experience in regulating wholesale breeders, common veterinary care concerns include ear, eye, skin, toenail, dental issues, respiratory issues, and expired medication and vaccines. Typically, when veterinary care issues are identified on an inspection report, it involves a small number of animals. We estimate that addressing such issues costs from \$75 to

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<sup>12</sup> Animal Care Information Systems Search Tool. USDA-APHIS Animal Care. <http://acisearch.aphis.usda.gov/LPA/Search/faces/Warning.jspx;jsessionid=7f00000130d856915b8fee2645a4adefe8a2aa28123e.e380bx8Sb3yQby0LbN8SaxmSc38Ne0>.

\$300 per incident to resolve. One to three veterinary care issues therefore costs between \$75 and \$900 to resolve at those facilities that have not been providing adequate veterinary care.

Puppies and kittens need to be vaccinated. The American Animal Hospital Association (AAHA) and the American Veterinary Medical Association (AVMA) recommend core and noncore vaccinations, with all dogs needing core vaccines, while noncore vaccines are situation dependent. Distemper, hepatitis, parvovirus, and rabies are among the core vaccines. Rabies vaccinations are not given until a dog reaches at least 3 months of age. The cost of vaccinations varies widely in the United States depending on whether the vaccinations are done individually or in combination, and whether they are provided through a public city or county shelter, at a private practice, or by the breeders themselves. There are regional cost differences as well. For dogs, distemper, hepatitis, and parvovirus vaccinations are often combined with vaccinations for leptospirosis and parainfluenza (DHLPP). DHLPP is given to puppies at 6-8 weeks of age as an initial stimulus of antibodies and is given two more times at 2-3 week intervals for a complete series of 3 injections.<sup>13</sup> Prices for DHLPP vaccinations can range from \$16 to \$35.<sup>14</sup> The first vaccination in the series is typically administered by the breeder. While the typical series of vaccinations for cats includes a different variety of shots, the timing and cost of kitten vaccinations are similar. Rabbits do not receive a typical series of vaccinations as standard practice.

With an average of 72 puppies<sup>15</sup> per year for a typical dog breeder, the annual cost of vaccinations could be from \$1,152 to \$2,520 for those dog breeders that have not been providing

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<sup>13</sup> [www.buttecounty.net/publichealth/animal/Canine%20Distemper.pdf](http://www.buttecounty.net/publichealth/animal/Canine%20Distemper.pdf)

<sup>14</sup> An Internet search for DHLPP prices included the following results:  
[http://www.marvistavet.com/html/about\\_our\\_hospital.html](http://www.marvistavet.com/html/about_our_hospital.html); <http://www.luvmypet.com/prices.html>;  
[www.buttecounty.net/publichealth/animal/Canine%20Distemper.pdf](http://www.buttecounty.net/publichealth/animal/Canine%20Distemper.pdf); [http://mtinvet.com/plans\\_and\\_packages.htm](http://mtinvet.com/plans_and_packages.htm);  
<http://www.kaawscclinic.com/vaccinations-1539>.

<sup>15</sup> See footnote 6.

adequate vaccinations. With 90 kittens<sup>16</sup> per year, the annual cost of vaccinations could be from \$1,440 to \$3,150 at those cat breeders that have not been providing adequate vaccinations.

It should be noted providing adequate veterinary care and vaccinations are normal responsibilities of dog ownership and are not therefore new costs. Those breeders that are providing inadequate veterinary care or skipping vaccinations have simply shifted the cost of providing that care to the buyer.

#### **d) Cleaning and Sanitation**

Inadequate cleaning and sanitation was identified as a problem in about 13 percent of prelicensing inspections of wholesale dog breeders in 2010, and in about 27 percent and 40 percent of compliance inspections of wholesale cat breeders and rabbit breeders, respectively.<sup>17</sup> Excreta and food waste must be removed from primary enclosures daily; primary enclosures, food and water receptacles, and surfaces in contact with animals must be cleaned and sanitized; an effective program for the control of insects, external parasites, and birds and mammals that are pests, must be established and maintained; and the interior of the animal cargo space must be kept clean during transportation. We estimate that the routine sanitation and cleaning required for a typical breeder's facility can be accomplished in 1 to 2 hours daily. Assuming that the breeder will need hired labor to complete this task, and assuming a labor rate of \$9.38 per hour,<sup>18</sup> the annual labor cost for those facilities that have not been providing adequate routine sanitation and cleaning at their facilities totals about \$3,420 to \$6,850 per facility.

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<sup>16</sup> See footnote 7.

<sup>17</sup> Animal Care Information Systems Search Tool. USDA-APHIS Animal Care. <http://acissearch.aphis.usda.gov/LPASearch/faces/Warning.jspx;jsessionid=7f00000130d856915b8fee2645a4adefe8a2aa28123e.e380bx8Sb3yQby0LbN8SaxmSc38Ne0>

<sup>18</sup> May 2011 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, 39-2021, Nonfarm animal caretakers, median hourly wage.

## **e) Shelters and Primary Enclosures**

Inadequate shelter construction was identified as a problem in about 4 percent of the preclicensing inspections of wholesale dog breeders in 2010 and in about 36 percent of cat breeders.<sup>19</sup> Dog breeders must provide adequate shelter from the elements for all dogs under their care. This may be accomplished in a variety of ways, including in many cases through the provision of dog houses. A breeder providing dog houses for shelter from the elements would likely have up to 10 dog houses, if they have 6 breeding females and their offspring.<sup>20</sup> A facility deficient in this area could require 1 to 10 new shelters. An igloo-style dog house retails for \$80 to \$120.<sup>21</sup> Based on this unit cost range, breeders needing from 1 to 10 new shelters to come into compliance could incur costs from \$80 to \$1,200. Dog houses can also be constructed at a lower cost from less expensive materials such as plywood. For cat breeders this may be accomplished in a variety of ways, including through the provision of an exterior cat house. Assuming that each cat needs a separate shelter, a breeder with 6 breeding females would need 6 shelters, and a facility deficient in this area could require 1 to 6 new shelters. An exterior cat house retails from \$100 to \$150.<sup>22</sup> Based on this unit cost range, breeders needing from 1 to 6 new shelters to come into compliance could incur costs from \$100 to \$900.

Problems with primary enclosures were identified in about 1 percent of preclicensing inspections of wholesale dog breeders in 2010, in about 18 percent of compliance inspections of wholesale cat breeders, and in about 20 percent of wholesale rabbit breeders.<sup>23</sup> The primary

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<sup>19</sup> Animal Care Information Systems Search Tool. USDA-APHIS Animal Care. <http://acissearch.aphis.usda.gov/LPASearch/faces/Warning.jspx;jsessionid=7f00000130d856915b8fee2645a4adefe8a2aa28123e.e380bx8Sb3yQby0LbN8SaxmSc38Ne0>.

<sup>20</sup> We assume that the typical newly licensed dog breeder will have 6 breeding females.

<sup>21</sup> Internet search of pet supply retailers.

<sup>22</sup> Internet search of pet supply retailers.

<sup>23</sup> Animal Care Information Systems Search Tool. USDA-APHIS Animal Care. <http://acissearch.aphis.usda.gov/LPASearch/faces/Warning.jspx;jsessionid=7f00000130d856915b8fee2645a4adefe8a2aa28123e.e380bx8Sb3yQby0LbN8SaxmSc38Ne0>.

enclosures need to be in good repair and must meet a minimum space requirement that depends on the type (size) of the animal. For many residential dog breeders, their home is their dogs' primary enclosure, and as was discussed above, in the vast majority of cases their homes will meet the standards of the AWA. If a breeder does not use his/her home as the primary enclosure, they will often use a kennel run as that primary enclosure. For a breeder using such a kennel run as primary enclosures, they will likely have up to 10 runs if they have 6 breeding females and their offspring.<sup>24</sup> A breeder with inadequate primary enclosures may require 1 to 10 new enclosures. A commercially manufactured kennel (certainly not the only way to meet the AWA standards for an adequate primary enclosure) can cost from \$220 to \$260 for a 3-foot by 6-foot run.<sup>25</sup> Based on these estimates, a dog breeder needing new enclosures to come into compliance could spend from \$220 to \$2,600 on new commercial primary enclosures. However, adequate enclosures can vary widely in construction, materials, and size, with some made of basic construction materials.

The breeder's home is the primary enclosure for many residential cat breeders. However, many residential cat breeders use a large wire crate with space for a litter box and for the cat to move around as a primary enclosure within their home. A cat breeder with 6 breeding females could need up to 6 primary enclosures, and a facility deficient in this area could require 1 to 6 new enclosures. A commercially manufactured crate used this way can cost from \$150 to \$200.<sup>26</sup> Based on these estimates, a cat breeder needing new enclosures to come into compliance could spend from \$150 to \$1,200 on new commercial primary enclosures.

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<sup>24</sup> We assume that the typical newly licensed dog breeder will have 6 breeding females.

<sup>25</sup> Internet search of pet supply retailers.

<sup>26</sup> Internet search of pet supply retailers.

Rabbits are housed in a variety of ways, often in cages in another larger structure such as a barn to provide protection from the elements. Rabbit hutches are also used. Each rabbit requires its own enclosure. A rabbit breeder with 6 breeding females would need 6 primary enclosures, and a facility deficient in this area would require 1 to 6 new enclosures. A commercially manufactured outdoor rabbit hutch can cost from \$125 to \$200.<sup>27</sup> Based on these estimates, a rabbit breeder needing new enclosures to come into compliance could spend from \$125 to \$1,200 on new commercial rabbit hutches.

### **Cost Summaries**

There is a wide range in the total cost potentially associated with this rule. This wide range derives in large part from the uncertainty surrounding the total number of breeders that will need to become licensed as a result of this rule and the number that will then need to make structural or operational changes. It also depends to a smaller degree on the cost of correcting areas of noncompliance by newly licensed facilities.

All newly regulated breeders will incur costs for licensing fees, animal identification and recordkeeping. At the 3,000 and 5,000 newly licensed dog, cat, and rabbit breeders costs could range between \$853,000 and \$2.8 million annually in these areas. Table 3 summarizes the costs attributable to the rule that will be incurred by all newly regulated breeders. In addition, there would be time devoted to interpreting the regulations.

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<sup>27</sup> Internet search of pet supply retailers.

Table 3. Costs attributable to the rule that will be incurred by newly regulated breeders.

Category	Unit Cost	Newly Regulated Breeders	Total Cost Range (\$1,000)	
<b>Recordkeeping</b>	10 hours annually * 13.07/hour (BLS 43-9061)	3,000 to 5,000	392	654
<b>Identification</b>	\$1.12 to \$2.5 for dog collars and tags (assume 74 dogs per facility needing identification) <sup>(1)</sup>	2,600 to 4,640	215	858
	\$1.12 to \$2.5 for cat collars and tags (assume 96 cats per facility needing identification) <sup>(2)</sup>	325	35	78
	\$0.50 to \$1 per hutch. Paper identification of all rabbits in a particular enclosure <sup>(3)</sup>	75	0.2	0.5
<b>Licensing Fees</b>	\$10 application fee; \$30-750 license fee (assume \$70 to \$235) <sup>(4)</sup>	3,000 to 5,000	210	1,175
<b>Total</b>			<b>853</b>	<b>2,765</b>

(1) This is based on 6 breeding females producing an average of 7.5 puppies per litter and 1.5 litters per year (6 x 7.5 x 1.5 = 68), and (6+68=74). We assume that there are 6 breeding females on the typical facility affected by this rule.

(2) This is based on 6 breeding female cats. Each breeding female requires a separate primary enclosure. We assume that cat breeders most likely to be affected by this rule would have 6 breeding females.

(3) This is based on 6 breeding female rabbits. Each breeding female requires a separate primary enclosure. We assume that rabbit breeders most likely to be affected by this rule would have 6 breeding females.

(4) In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. We assume that newly regulated entities will fall within this range.

The newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. As acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, while some affected entities may need to make structural and/or operational changes in order to comply with the standards, the vast majority will not. We estimate that costs for coming into compliance at those currently noncompliant breeders could range from \$2.9 million to \$12.1 million in the first year.

Tables 4 and 5 summarize the costs described above that may be incurred by newly regulated retail breeders of dogs that have noncompliance issues. Table 6 summarizes the costs

described above that may be incurred by newly regulated retail breeders of cats that have noncompliance issues, and table 7 summarizes the costs described above that may be incurred by newly regulated retail breeders of rabbits that have noncompliance issues.

*Table 4. Costs attributable to the rule that may be incurred by newly regulated noncompliant dog breeders. (Low Estimate of Number Affected, portion of 2,600 total newly regulated dog breeders)*

Area of possible noncompliance	Unit Cost <sup>(1)</sup>	Noncompliant Dog Breeders <sup>(2)</sup>		Total Cost Range (\$1,000)	
		Number	Percent of new licensees		
Veterinary care	\$50 to \$150 for site visit	411	16%	21	62
	\$75 to \$300 per care issue (1 to 3 identified veterinary care issues)			31	370
	\$16 to \$35 vaccinations (68 puppies)			447	978
Facility Maintenance	8 - 10 hours for preliminary work * \$9.38/hour (BLS 39-2021)	430	17%	32	40
	\$50-100 for materials			22	43
	2-8 hours per week for ongoing maintenance * \$9.38/hour (BLS 39-2021)			419	1,678
Shelter Construction	\$80 to \$120 for a commercial igloo-style dog house (1 to 10 new shelters needed)	113	4%	9	136
Primary Enclosures	\$220 to \$260 for a commercial kennel run (1 to 10 new enclosures needed)	36	1%	8	94
Sanitation & Cleaning	1-2 hours daily for cleaning * \$9.38/hour (BLS 39-2021)	336	13%	1,150	2,301
<b>Total for Noncompliant Dog Breeders</b>				<b>2,139</b>	<b>5,701</b>

(1) Some of these costs may be overestimated. In general, they do not account for possible volume discounts, do-it-yourself labor, or construction using less expensive materials than normal.

(2) Low estimate of the number of newly licensed dog breeders. The number of facilities affected in each cost category is based on the number of newly licensed breeders multiplied by the percentage of 2010 precicensing inspections of wholesale breeders that had noncompliance issues in that category.

(3) This is based on 6 breeding females producing an average of 7.5 puppies per litter and 1.5 litters per year (6 x 7.5 x 1.5 = 68). We assume that there are 6 breeding females on the typical facility affected by this rule.

(4) In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. We assume that newly regulated entities will fall within this range.

Table 5. Costs attributable to the rule that may be incurred by newly regulated noncompliant dog breeders. (High Estimate of Number Affected, portion of 4,640 newly regulated dog breeders)

Area of possible noncompliance	Unit Cost <sup>(1)</sup>	Noncompliant Dog Breeders <sup>(2)</sup>		Total Cost Range (\$1,000)	
		Number	Percent of new licensees		
Veterinary care	\$50 to \$150 for site visit	733	16%	37	110
	\$75 to \$300 per care issue (1 to 3 identified veterinary care issues)			55	660
	\$16 to \$35 vaccinations (68 puppies)			798	1,745
Facility Maintenance	8 - 10 hours for preliminary work * \$9.38/hour (BLS 39-2021)	767	17%	58	72
	\$50-100 for materials			38	77
	2-8 hours per week for ongoing maintenance * \$9.38/hour (BLS 39-2021)			748	2,993
Shelter Construction	\$80 to \$120 for a commercial igloo-style dog house (1 to 10 new shelters needed)	201	4%	16	241
Primary Enclosures	\$220 to \$260 for a commercial kennel run (1 to 10 new enclosures needed)	65	1%	14	169
Sanitation & Cleaning	1-2 hours daily for cleaning * \$9.38/hour (BLS 39-2021)	600	13%	2,054	4,108
<b>Total for Noncompliant Dog Breeders</b>				<b>3,818</b>	<b>10,174</b>

(1) Some of these costs may be overestimated. In general, they do not account for possible volume discounts, do-it-yourself labor, or construction using less expensive materials than normal.

(2) High estimate of the number of newly licensed dog breeders. The number of facilities in each cost category is based on the number of newly licensed breeders multiplied by the percentage of 2010 precensing inspections of wholesale breeders that had noncompliance issues in that category.

(3) This is based on 6 breeding females producing an average of 7.5 puppies per litter and 1.5 litters per year ( $6 \times 7.5 \times 1.5 = 68$ ). We assume that there are 6 breeding females on the typical facility affected by this rule.

(4) In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. We assume that newly regulated entities will fall within this range.

Table 6. Costs attributable to the rule that may be incurred by newly regulated noncompliant cat breeders.

Area of possible noncompliance	Unit Cost <sup>(1)</sup>	Noncompliant Cat Breeders <sup>(2)</sup>		Total Cost Range (\$1,000)	
		Number	Percent of new licensees		
<b>Veterinary care</b>	\$50 to \$150 for site visit	88	27%	4	13
	\$75 to \$300 per care issue (1 to 3 identified veterinary care issues)			7	79
	\$16 to \$35 vaccinations (average of 90 kittens) <sup>(3)</sup>			127	277
<b>Facility Maintenance</b>	8 - 10 hours for preliminary work * \$9.38/hour (BLS 39-2021)	118	36%	9	11
	\$50-100 for materials			6	12
	2-8 hours per week for ongoing maintenance * \$9.38/hour (BLS 39-2021)			115	460
<b>Shelter Construction</b>	\$100 to \$150 for an exterior cat house (1 to 6 new shelters needed) <sup>(4)</sup>	118	36%	12	106
<b>Primary Enclosures</b>	\$150 to \$200 for an indoor cat kennel (1 to 6 new shelters needed) <sup>(5)</sup>	59	18%	9	71
<b>Sanitation &amp; Cleaning</b>	1-2 hours daily for cleaning * \$9.38/hour (BLS 39-2021)	88	27%	301	603
<b>Total for Noncompliant Cat Breeders</b>				<b>590</b>	<b>1,632</b>

(1) Some of these costs may be overestimated. In general, they do not account for possible volume discounts, do-it-yourself labor, or construction using less expensive materials than normal.

(2) The number of facilities in each cost category is based on the number of newly licensed breeders multiplied by the percentage of licensing inspections of wholesale breeders that had noncompliance issues in that category.

(3) This is based on 6 breeding females producing 3 litters per year with 5 kittens in each litter. We assume that cat breeders most likely to be affected by this rule would have 6 breeding females.

(4) One shelter per breeding female, internet search of cat houses designed for outdoor use.

(5) One primary enclosure per breeding female. Internet search for cat crates large enough to contain a litter box and room to move.

Table 7. Costs attributable to the rule that may be incurred by newly regulated noncompliant rabbit breeders.

Area of possible noncompliance	Unit Cost <sup>(1)</sup>	Noncompliant Rabbit Breeders <sup>(2)</sup>		Total Cost Range (\$1,000)	
		Number	Percent of new licensees		
<b>Veterinary care</b>	\$50 to \$150 for site visit	15	20%	1	2
	\$75 to \$300 (1 to 3 identified veterinary care issues)			1	14
<b>Facility Maintenance</b>	8 - 10 hours for preliminary work * \$9.38/hour (BLS 39-2021)	25	33%	2	2
	\$50-100 for materials			1	3
	2-8 hours per week for ongoing maintenance * \$9.38/hour (BLS 39-2021)			24	98
<b>Primary Enclosures</b>	\$125 to \$200 for a new outdoor rabbit hutch (1 to 6 new enclosures needed) <sup>(3)</sup>	15	20%	2	18
<b>Sanitation &amp; Cleaning</b>	1-2 hours daily for cleaning * \$9.38/hour (BLS 39-2021)	30	40%	103	205
<b>Total for Rabbit Breeders with noncompliance issues</b>				<b>134</b>	<b>342</b>

(1) Some of these costs may be overestimated. In general, they do not account for possible volume discounts, do-it-yourself labor, or construction using less expensive materials than normal.

(2) The number of facilities in each cost category is based on the number of newly licensed breeders multiplied by the percentage of licensing inspections of wholesale breeders that had noncompliance issues in that category.

(3) One shelter per breeding female, internet search for outdoor rabbit hutches.

The rule may also affect some current Class A licensees (wholesale breeders).

Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could reduce the number of these licensees. There are currently about 1,700 active wholesale dog breeders. APHIS inspection data suggest that a very small number of

currently licensed wholesale breeders will fall below the exemption threshold following the implementation of this rule.<sup>28</sup>

In addition to the costs incurred by newly regulated entities, APHIS will incur costs incorporating these entities into existing regulatory activities. We do not, however, expect these costs to be significant. Following APHIS policy, entities newly affected as a result of this rule will be incorporated into the regulatory structure using a phased-in approach. A variety of factors will be used to prioritize the activities necessary to identify entities that engage in regulated activity and to inspect and enforce the standards of the AWA. Factors we would consider when determining when and how frequently such inspections would take place include, but are not limited to: 1) whether an entity has applied for a USDA license; 2) whether an entity is already subject to some degree of State, county, or local oversight; and 3) whether an entity is the subject of a legitimate complaint and the nature or severity of that complaint. It should also be noted that we expect a small decline in the number of currently licensed wholesale breeders as a result of expanding the licensing exemption from three or fewer breeding females to four or fewer.

## **Final Regulatory Flexibility Analysis**

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. This final regulatory flexibility analysis describes expected impacts of this rule on small entities, as required by section 604 of the Act.

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<sup>28</sup> In the analysis for the proposed rule we estimated that as many as 638 of the 2,064 then active Class A dog breeders would fall below the exemption threshold for licensing following the implementation of this rule.

## **Need for and Objectives of the Rule**

The Animal Welfare Act authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to APHIS. This rule is necessary to ensure that covered animals are monitored for their overall health, humane handling, care, and treatment.

The definition of retail pet store was established to ensure that certain retail facilities were exempt from licensing requirements. Historically, such outlets included small-scale residential breeders, as well as traditional stores that are subject to a degree of oversight by persons who are physically present at their place of business to personally observe the animal offered for sale prior to purchase and/or to take custody of the animal after purchase. With the increased use of the Internet in the 1990s, many retailers who traditionally sold their animals to local customers began to offer their animals for sale sight unseen and sell and transport their animals nationwide. As a result, today's customers are often unable to be physically present at the retailer's place of business to observe the animal before taking them home. Because, prior to issuance of this final rule, the definition of retail pet store was very broad, businesses that sold animals sight unseen over the Internet or by mail, telephone, or any other means whereby the customers are not physically present at a place of business, qualified as retail pet stores and were exempt from the licensing requirements.

Therefore, APHIS is revising the definition of retail pet store so that it only includes those places of business where the seller, the buyer, and the animals for sale are all physically present so that every buyer can personally observe the animal available for sale prior to purchasing and/or to taking custody of that animal after purchase, and where only certain

animals are sold or offered for sale, at retail, for use as pets. Hobby breeders and other persons who maintain four or fewer breeding females on their premises will be exempt from the AWA regulations. In addition, a person who does not sell any wild or exotic animal, dog or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year will be exempt from licensing requirements regardless of their status or lack of status as a retail pet store.

### **Significant Issues raised by Public Comment**

Many commenters stated that our estimates in the regulatory impact analysis for the proposed rule regarding costs that may be incurred by newly regulated breeders and other dealers of dogs were too low. Issues discussed included the following.

**Shelter construction and primary enclosures:** Several commenters disagreed with our estimates of the costs of complying with our proposed changes to the AWA regulations. Many of those commenters cited provisions of the existing regulations in part 3, and argued that breeders who raise animals in their private residences would have difficulty meeting them without significant structural changes to their homes. Many of these commenters referred specifically to the difficulty they would have in complying with § 3.2(d) of the regulations, which calls for the floors, ceilings, and walls of animal housing to be impervious to moisture, without significant structural changes to their residences. Two commenters also cited § 3.6(c)(2), which, they stated, effectively requires whelping areas to be located in a geographically separated area of the premises, as requiring structural changes for most residences.

Response: The need for significant structural modifications at newly regulated facilities should be unnecessary in most cases. In the regulatory impact analysis that accompanied the proposed rule, we were not clear on the meaning of some of the existing provisions of 9 CFR

part 3, and therefore the potential impact on newly regulated facilities. The regulations are less prescriptive than many commenters indicated.

We have long interpreted paragraph (d) of § 3.2, which references impervious flooring and wall materials, to refer to the material from which a foundation or subfloor must be constructed. The paragraph must therefore be read in conjunction with paragraph (c)(2) of § 3.1 and paragraph (a)(2)(ix) of § 3.6, which more directly address carpeting and flooring of residential breeding facilities. Cleaning and disinfection are required for primary enclosures in § 3.11, but specific methods for sanitation are only required for hard surfaces and the regulations still allow for flexibility within these methods. Of particular note, (a)(2)(ix) of § 3.6 only requires that surfaces of housing facilities that cannot be readily cleaned and sanitized be replaced when worn or soiled. We also note that paragraph (c)(1)(ii) of § 3.6 requires nursing females to have space afforded to them that they would not otherwise need if they were not nursing, but does not require this space to be segregated from the rest of a primary enclosure and does not specify the amount of space necessary for each breeding female.

As many commenters noted, the housing, cleaning and maintenance standards of the majority of breeders well exceed generally accepted basic standards of animal care. These standards exceed minimums as set forth in the AWA, as well, making significant structural changes unnecessary at the vast majority of potentially affected facilities. It should also be noted that a number of currently licensed wholesale breeders operate in just the sort of residential setting described by many commenters.

**Time estimates for facility maintenance, sanitation and cleaning:** A number of commenters stated that our estimated average hours for facility maintenance were low. Several commenters stated that they spent 2 to 8 hours daily maintaining their premises. One of these

commenters did, however, acknowledge that such individuals may be outliers. Another commenter stated that our costs did not take into consideration that most small-scale residential breeders cannot perform do-it-yourself maintenance on a kennel.

Several commenters stated that they spent considerably more time than 1 to 2 hours daily cleaning their premises. Other commenters stated that cleaning and disinfection costs presuppose that a premises meets the facility standards in part 3, and the costs are often considerably higher for residential breeders.

Response: The time requirements and associated cost estimates included in the regulatory impact analysis that accompanied the proposed rule and in that which accompanies this final rule address a range of additional costs that may be incurred by entities that do not meet the basic standards of the AWA. For the necessary additional costs to be significantly higher than those we estimate, we would have to assume that many facilities have major maintenance deficiencies that would leave them far below the minimum maintenance standards of the AWA. This assumption would contradict comments we received from a wide spectrum of commenters on the proposed rule that acknowledged that most breeders maintain their facilities well above the basic standards of the AWA. In addition, the cost estimates were based on average labor costs from the Bureau of Labor Statistics. Performing one's own maintenance may reduce the costs of required maintenance but is not required.

The analysis does presuppose that most premises that may be affected by this rule already meet the facility standards of part 3, as discussed above in the response to comments on shelter construction and primary enclosures. Section 3.11 of the regulations requires cleaning, sanitation, housekeeping, and pest control in primary enclosures. Hard surfaces within the primary enclosure must be cleaned using one of the specified methods, however the regulations

do allow for flexibility. For example, washing all soiled surfaces may be accomplished with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose. Section 3.2 only requires surfaces of housing facilities that cannot be readily cleaned and sanitized be replaced when worn or soiled.

**Veterinary costs:** Other dog breeders noted that the costs of veterinary care for their animals were substantially higher than our estimate.

Response: The estimates of veterinary costs included in the regulatory impact analysis that accompanied the proposed rule and in that which accompanies this final rule address additional costs that may be incurred by entities that do not meet the basic AWA standards for veterinary care. We included cost estimates for an initial site visit and specific veterinary issues that our inspectors commonly see. Insufficient veterinary care was identified as a problem at about 16 percent of prelicensing inspections of wholesale dog breeders in 2010. Based on APHIS' experience in regulating wholesale breeders, common veterinary care concerns for adult dogs include ear, eye, skin, toenail, and dental issues, and expired medication and vaccines. Typically, when veterinary care issues are identified on an inspection report, it involves a small number of dogs; we estimate 1 to 3 cases for any single violation. We estimate veterinary care that costs from \$75 to \$300 to resolve a single incident.

It should also be noted providing adequate veterinary care and vaccinations are normal responsibilities of dog ownership. Breeders who provide their animals with inadequate veterinary care or skip vaccinations simply require the buyer to subsequently incur greater costs associated with providing that care.

**Additional Federal compliance costs:** Several commenters pointed out that one of the provisions in part 2, located in § 2.126, requires dealers to allow APHIS officials to enter their place of business during working hours. The commenters construed the requirement to mean that their residence must be available for unannounced inspections during all working hours. One of the commenters stated that this situation would effectively require small-scale breeders to work in proximity to their residences and never travel during weekdays, and that this opportunity cost should be taken into consideration in the final analysis.

Response: We do not consider it necessary to revise the economic analysis in response to this comment. The provisions of § 2.126 pertain to unannounced, or “spot,” inspections of licensed dealers. While conducting prelicensing inspections, we ask dealers about their hours of availability, and attempt to conduct “spot” inspections during those hours of availability. If unforeseen circumstances render the dealer unavailable for an unannounced inspection, we contact the dealer and afford him or her the opportunity to delegate a third party to allow the inspector entry and/or to revise his or her hours of availability.

**Additional State compliance costs:** As noted previously, a number of commenters stated that, by removing the “pet fancier” exemption in (a)(3)(vii) of § 2.1, we were effectively requiring small-scale residential breeders to identify themselves as retail pet stores. The commenters argued that such a designation would, in many instances, subject the breeders to State, county, and local regulations and ordinances that would either preclude them from selling animals or force them to make structural changes to their residences that are cost-prohibitive. As examples of the former, several commenters cited local zoning laws that prohibit retail stores from being located in an area zoned for residential use. As examples of the latter, one commenter stated that he lived in an area in which all retail pet stores must have facilities that

can withstand wind gusts of 120 mph or more, and that complying with this regulation would cost him approximately \$100,000 in facility upgrades.

Response: The term *dealer* in the AWA does not include retail pet stores. Thus, retail pet stores do not have to be licensed and subject to Federal oversight; this is the only exemption from licensing for retailers within the AWA. The AWA also leaves it to APHIS to determine what constitutes a retail pet store. Prior to issuance of this final rule, the regulations provided a blanket exemption from licensing to all retail pet stores, as well as any individuals who breed and raise domestic pet animals for retail sales. Although the regulations did not specify as much, this latter exemption existed solely because we considered such individuals to be retail pet stores only for the purposes of the regulations. Again, it is only by considering such persons to be retail pet stores that we are able to exempt them from licensing. APHIS considers such persons, who are often residential breeders, to be retail pet stores solely in order to exempt them from licensing pursuant to the AWA. In so doing, we are not claiming that they are retail establishments for the purposes of any other Federal, State, or local law, regulation, or ordinance; indeed, any attempt on our part to do so would exceed our authority under the AWA.

The need for significant structural modifications at newly regulated facilities as a result of this rule should be rare. Most premises that may be affected by this rule do already meet the facility standards of part 3, as was discussed above in the response to comments on shelter construction and primary enclosures. The existing provisions of 9 CFR part 3 are much less prescriptive than many commenters indicated. And as many commenters noted, the housing, cleaning and maintenance standards of the majority of breeders well exceed generally accepted basic standards of animal care. These standards exceed minimums as set forth in the AWA, as

well, making significant structural changes unnecessary at the vast majority of potentially affected facilities.

**Costs to APHIS:** One commenter pointed out that we did not include the likely costs to the Agency to implement the rule. The commenter asserted that there will need to be more Federal employees hired as inspectors in order to implement the rule, and stated that most inspectors are in a GS 7/9/11 series. Assuming that the average inspector is a GS 9, step 5, the commenter estimated that he or she earns approximately \$73,259.10 a year, in salary plus benefits. The commenter estimated that APHIS would need to hire at least 200 new inspectors to implement the rule, at an aggregate cost of \$14,651,820. The commenter also asserted that each new inspector would need a new government-owned vehicle in order to do his or her job, at an aggregate cost of \$4,000,000. Another commenter did not assign a dollar figure to the total cost to APHIS of implementing the rule, but did point out that the economic analysis prepared for the proposed rule did not take into consideration the workforce hours and opportunity costs to Animal Care to implement the rule. Both commenters asked that APHIS provide some idea of the cost to Animal Care to implement the rule, pointing out that any costs to APHIS were ultimately costs borne by taxpayers.

Response: We acknowledge that any potential costs to APHIS were not addressed in the regulatory impact analysis prepared for the proposed rule. APHIS will incur costs incorporating the newly regulated entities into existing regulatory activities. We do not, however, expect these costs to be significant.

Following APHIS policy, entities newly affected as a result of this rule will be incorporated into the regulatory structure using a phased-in approach. A variety of factors will be considered when determining when and how frequently such inspections will take place: 1) whether an entity has applied for a USDA license; 2) whether an entity is already subject to some degree of State, county, or local

oversight, and the nature of that oversight; and 3) whether an entity is the subject of a legitimate complaint and the nature or severity of that complaint.

**Likely indirect costs:** Many residential breeders stated that they already operated at a loss, and that any additional costs incurred as a result of the rule, even those associated with licensing, would cause them to stop breeding. Several commenters pointed out that, if this were to occur, it would adversely impact consumer choice, could lead to more widespread reliance on puppy mills in order to meet consumer demand, and could reduce the number of specialty breeds of dogs, cats, and rabbits bred in the United States. A number of the commenters stated that, if the rule actually results in increased reliance on puppy mills, the benefits to animal welfare stated in the initial economic analysis may not be realized, and the rule may actually contribute to animal abuse.

Response: This rule will not significantly restrict consumer choice or negatively impact animal welfare. The cost of a license is highly unlikely to cause breeders to change their normal business operations. Even at the high end of the range, the cost of a license is less than the sale price of a single purebred dog. The costs of complying with the AWA are small as well. Most premises that may be affected by this rule already meet the facility standards of part 3, as discussed above in the response to comments on shelter construction and primary enclosures. Significant structural changes will be unnecessary for the vast majority of potentially affected facilities. The housing, cleaning and maintenance standards of the majority of breeders well exceed generally accepted basic standards of animal care, and thus those of the AWA. In addition, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase.

A number of commenters stated that, even if residential breeders continue selling animals after the final rule goes into effect, they would face a competitive disadvantage in comparison to large-scale breeders, since they would have to incur substantial economic costs to become compliant with 9 CFR part 3 that large-scale kennels would not have to face, and because they would not be able to diffuse the cost over a large number of animals, as large-scale kennels could. In a similar manner, several commenters stated that the rule would place domestic small-scale residential breeders within the United States at a competitive disadvantage compared to sellers in foreign countries who will not be subject to the requirements of the rule.

Response: In general the costs of complying with the AWA are proportional to the size of the operation, or not greatly disproportional. In addition, most premises that may be affected by this rule already meet the facility standards of part 3, as discussed above in the response to comments on shelter construction and primary enclosures. Therefore, the need to make significant structural changes will be unnecessary at the vast majority of potentially affected facilities. Also, the housing, cleaning and maintenance standards of the majority of breeders already well exceed generally accepted basic standards of animal care, and thus those of the AWA, and therefore licensing would not greatly increase costs to breeders, large or small.

We do not attempt to comport our animal welfare standards in this country with those outside the United States. APHIS has, however, proposed to place health and minimum age restrictions on imported dogs.

Several residential breeders stated that they could meet the provisions of part 3, as they understood them, but that these standards are significantly lower than the care already provided the animals and would likely result in a net decrease to their welfare.

Response: The AWA provides basic standards. The time requirements and associated cost estimates that were included in the regulatory impact analysis that accompanied the proposed rule and in that which accompanies this final rule address the additional costs that may be incurred by those entities that are not currently meeting the basic standards of the AWA. As noted by many commenters, the housing, cleaning, and maintenance standards of the majority of breeders well exceed generally accepted basic standards of animal care, and thus those of the AWA. There is no reason to believe that breeders that have been providing more than adequate housing, cleaning, and maintenance would want to reduce the level of care they provide because of the basic standards of the rule.

Several breeders stated that any costs incurred because of this rule would force them to stop showing or exhibiting their animals, and cited the adverse impact that decreased attendance at these shows and exhibitions would have on the exhibition industry and on local economies. Several commenters cited a study demonstrating the amount of discretionary spending that occurs in local communities as a result of shows and exhibitions. Similarly, one commenter who runs two local cat shows stated that small-scale residential cat breeders spend, on average, \$500 to \$800 at each show at which they exhibit their animals, and there can be 100 exhibitors per show. The commenter stated that many people who show cats do it as a hobby, and stated that, if discretionary showing of cats decreases because of the rule and the shows are forced to cancel, the local economy could be deprived of as much as \$160,000 of revenue.

Response: We do not believe that the licensing requirement for someone who sells pet animals sight unseen should in any way impact animal shows or exhibitions. We do not expect this rule will negatively impact dog or cat shows or related businesses.

Similarly, several commenters stated that, if small-scale residential breeders were to stop selling animals because of the rule, the veterinarians for these breeders would be adversely impacted.

Response: It is unlikely that this rule will result in significant change in the number of dogs and cats needing veterinary care. Also, the rule includes provisions for adequate veterinary care by licensed breeders. To the extent that newly licensed breeders have been providing inadequate veterinary care, there could be an increase in the demand for veterinary care.

Several commenters stated that, by requiring sellers to make face-to-face transactions in order to be exempt from licensing, we were effectively requiring the buyer, seller, or both to travel to an agreed-upon location. The commenter stated that the economic analysis ignored the potential aggregate cost of such increased travel.

Response: The rule will not require breeders to become licensed, or require a face-to-face transaction. A breeder can still operate in ways that will not require licensure. However, licensed breeders can conduct remote sales without the buyer or seller having to travel, if that is how the transaction would have otherwise occurred and will add little to the overall cost of the transaction.

One commenter stated that Kansas derives, on average, \$206 per licensee because of State regulations that would be superseded by the regulations in the proposed rule. The commenter stated that APHIS should consider aggregate State revenue lost if the proposed rule is finalized.

Response: It is at a State's discretion whether to continue licensing for entities that are newly regulated at the Federal level as a result of this rule.

Another commenter stated that AKC and Cat Fanciers' Association derive significant income from enforcing industry standards that would become obsolete under this rule.

Response: This commenter did not cite specific standards or explain his rationale.

**Other cost comments:** One commenter stated that the costs of compliance estimated by APHIS in the economic analysis are highly conservative, in that they assume that many entities that would become subject to inspection are currently grossly out of compliance with existing regulations. The commenter added that APHIS' estimates include many expenses for shelter, veterinary care, sanitation, and related costs that are likely already part of most breeder operations' existing budgets and that many operations already exceed AWA requirements even though they are not currently subject to AWA regulation and inspection. The commenter concluded that while many newly regulated operations will face a few new requirements that create some small costs, and a few might face somewhat larger costs, the overall APHIS estimates are a very conservative estimate of the costs.

Response: In the regulatory impact analyses for the proposed and final rules, we address the range of additional costs that may be incurred by those entities that are not currently meeting the basic standards of the AWA. To arrive at an estimate of the total cost, we assumed that newly regulated entities exhibit similar patterns of noncompliance to that of currently regulated wholesale breeders and applied our range of cost estimates only to that percentage we assumed may be noncompliant. We agree with many comments we received that most breeders that may be affected by this rule are already substantially in compliance.

The same commenter stated that many small-scale residential breeders assumed the requirements in part 3 that are meant to be illustrative were prescriptive, and pointed out that most of the structural standards in part 3 do not require a "one-size-fits-all" solution. For this

reason, the commenter stated that many of the costs that small-scale residential breeders assumed they would face are not actual compliance costs. Several commenters echoed this point, stating that any residential breeders who have to assume substantial costs to comply with 9 CFR part 3 are likely already in violation of State or local animal cruelty regulations. Similarly, another commenter stated that residential breeders who bear substantial costs in order to comply with part 3 are likely to go bankrupt at some point because of poor reputation and word-of-mouth.

Response: Most breeders that may be affected by this rule already meet the facility standards of part 3, as discussed in the response to comments on shelter construction and primary enclosures. This understanding of the prevailing level of care provided by retail breeders was echoed in a number of comments. The need to make significant structural changes will be unnecessary at the vast majority of potentially affected facilities. In addition, the housing, cleaning and maintenance standards of the majority of breeders will exceed generally accepted basic standards of animal care, and thus those of the AWA.

One commenter stated that the proposed rule would have little or no impact on pet food manufacturers, groomers, dog shows, and pedigree registration income because there would be basically zero reduction in the total number of dogs sold. The commenter supported this point by noting that while low-cost substandard breeders pull down the price for all of the market, this price reduction is trivial when compared to the initial and lifetime costs of owning a dog and has little or no impact on total public demand for dogs.

Response: There is unlikely to be a significant change in the number of dogs sold as a result of this rule and no noticeable impact on pet food manufacturers, groomers, dog shows, or pedigree registration income.

Finally, one commenter stated that small-scale residential breeders who express concern regarding the cost of the rule are making an expression of ideology rather than a critique on the economics of the rule, and their arguments should not be considered pertinent to the economic analysis.

Response: We are making no changes in response to these comments.

In the analysis prepared for the proposed rule, we estimated that there may be around 1,500 dog breeders who are not currently subject to the AWA regulations but would be required to be licensed under the amended regulations. A substantial number of commenters, mostly dog small-scale residential breeders and organizations representing dog breeders, stated that the analysis accompanying the proposed rule greatly underestimated the number of breeders that would be affected by the rule.

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are hundreds of distinct dog breeds, and correspondingly large numbers of dog breeders in the United States. APHIS identified about 12,500 breeders utilizing available online breeder registries for 160 individual dog breeds, including a breeder registry list for each of the top 10 breeds and for 86 of the top 100 most popular AKC registered breeds in 2011. There are also about 8,200 breeders listed on one online consolidated dog breeder directory and about 8,500 on another. These registries include more than 300 breeds of dogs. Such listings do not cover all breeds, or all breeders of a particular breed. Some breeders are listed multiple times because they appear in registries for different breeds, and the lists overlap with one another. The lists are, however, indicative of the number of breeders who use the Internet to facilitate selling dogs in the United States.

Breeders with an online presence are those most likely to be selling sight unseen and thus most likely to be affected by this rule. If for every five breeders identified on these lists, there is one other breeder not so identified, there could be between 8,400 and 15,000 of these breeders in the United States. However, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase.

We examined the websites of breeders, looking at the breed, stated characteristics of the dogs, and the stated purpose of selling dogs. We estimate based on these websites that 25 percent of dog breeders may be exempted from licensing because they sell dogs for purposes other than as pets. Of these breeders, we estimate that 55 percent may have more than 4 breeding females. This is because comments received on the proposed rule suggest that from 30 percent to 80 percent of all dog breeders maintain more than four breeding females and because APHIS inspection data at currently regulated wholesale breeders show that wholesale breeders fall in between these rates. Of the breeders who sell dogs as pets and have more than 4 breeding females, we estimate that 75 percent engage in some sight-unseen sales. A number of commenters on the proposed rule suggested that all dog breeders have remote sales. However, some breeder websites specifically indicate that a breeder will not sell a dog without having first met the buyer, indicating that not all breeders sell dogs sight-unseen. Additionally, some of these commenters considered remote sales to be any sales that do not occur specifically at their private residence or primary place of business, while others assumed that a remote sale occurs whenever the ultimate owner of the animal is not physically present to observe the animal prior to taking custody of it. As we discuss in the final rule, our understanding of what constitutes a

remote sale is significantly less restrictive than these interpretations. Finally, a number of commenters who stated they engaged in remote sales also mentioned that they did not sell the animals as pets, but for breeding or working purposes. Given these considerations, we believe that the percentage is probably closer to 75 percent. Based on all of these factors, we estimate that there are between 2,600 and 4,640 dog breeders that may be affected by this rule

The rule may also affect cat breeders who maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to personally observe the animal prior to purchase and/or to take custody of the animal after purchase. Most pet cats in the United States are obtained other than from a breeder, such as from friends or from a shelter. As pointed out by commenters, a very small percentage of cats in the United States are purebred and are raised by breeders. We identified between 270 and 2,400 catteries in three different consolidated cat breeder listings available online.<sup>29</sup> The lists are indicative of the number of breeders who use the Internet to market cats for sale in the United States. Not all of these breeders will be affected by this rule. We estimate that about 325 cat breeders will be affected by this rule, if 90 percent of the higher number of listed breeders sell the offspring as pets, 20 percent maintain more than four breeding females, and 75 percent do not have buyers who are all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase.

The rule may also affect rabbit breeders who sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. We identified between 800 and 1,500 rabbitries in two online consolidated directories of rabbit breeders. The lists are indicative of the number of breeders

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<sup>29</sup>The Cat Fanciers Association, and the International Cat Association, and Kittysites.com.

who use the Internet to market rabbits for sale in the United States. Breeders who use marketing methods that reach remote buyers, such as the Internet, to market rabbits for sale are more likely than breeders without an online presence to be selling sight unseen and thus are more likely to be affected by this rule. However, most rabbitries do not sell rabbits as pets, but rather as food or fiber (including fur) or for breeding purposes, not covered by the AWA. Rabbitries that do sell rabbits as pets may have up to \$500 in rabbit pet sales and still be exempted from regulation. In addition, rabbits are rarely shipped. The cost of shipping easily exceeds the value of most pet rabbits, making shipment unlikely. High-value breeding rabbits are occasionally shipped, but sales for breeding purposes are not covered by the AWA. Rabbits are usually sold at auctions, exhibits, and fairs where buyers are physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. Therefore, we conclude that no more than 5 percent of the higher number of listed breeders, or 75 rabbitries, will be affected by this rule.

### **Comments filed by the Small Business Administration**

There were no comments filed by the Small Business Administration.

### **Potentially Affected Small Entities**

The entities affected by the rule are likely to be considered small. They are persons who sell their animals to any buyer who does not physically observe the animals prior to purchase and/or to take custody of the animals after purchase, such as sales conducted exclusively over the Internet. Persons who maintain four or fewer breeding female dogs, cats, and/or small exotic or wild mammals will be exempt from the new licensing requirements. Persons who derive less than \$500 gross income from the sale of animals, other than dogs, cats, or wild or exotic animals will also be exempt from the new licensing requirements. In addition, some current licensees will no longer be required to be licensed due to the increase of the exemption threshold from three to four breeding females.

The Small Business Administration (SBA) has established guidelines for determining which entities are to be considered small. Pet stores are identified in the North American Industry Classification System (NAICS) category 453910, Pet and Pet Supplies Stores. This industry comprises establishments primarily engaged in retailing pets, pet foods, and pet supplies. The small-entity standard for this industry is annual sales of not more than \$19 million. In 2007, there were about 8,880 pet and pet supply stores in the United States.

Establishments primarily engaged in retailing pets, pet foods, and pet supplies via electronic home shopping, mail-order, or direct sale are classified within NAICS subsector 454, Nonstore Retailers, and specifically, within NAICS category 4541112, Electronic Shopping, Specialized Merchandise. An entity in this category is considered small if it generates not more than \$30 million in annual sales.

In 2007, there were about 13,500 establishments in NAICS category 4541112, with average sales of \$5.4 million.<sup>30</sup> The Economic Census does not report the number of entities with more than \$30 million in annual sales, but less than 3 percent of the establishments in this category had more than \$10 million in annual sales in 2007. Because this category includes many other enterprises besides those that sell pets to buyers who are not physically present at their facility to observe the animal prior to purchase and/or to take custody of the animal after purchase, we do not have a precise estimate of the number or size of entities that will be affected by this rule. However, based on the above, the majority of establishments affected are likely to be considered small entities.

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<sup>30</sup> U.S. Department of Commerce. Bureau of the Census. 2007 Economic Census.

## **Projected Reporting, Recordkeeping, and Other Compliance Requirements**

Following implementation of this rule, some sellers of pets will need to become licensed and comply with animal identification and recordkeeping requirements, as well as meet standards of AWA regulations that address the following: Facilities and operations (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities); animal health and husbandry (including requirements for veterinary care, sanitation and feeding, watering, and separation of animals); and transportation (including specifications for primary enclosures, primary conveyances, terminal facilities, and feeding, watering, care, and handling of animals in transit).

This rule will primarily affect dog breeders that maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. The rule may also affect some cat and rabbit breeders. While the scope of this rule applies to certain other animals, as a practical matter, most retailers of animals other than dogs will meet the amended definition of retail pet store and continue to be exempt from regulation. Some affected entities will need to make structural and/or operational changes in order to comply with the standards.

The newly regulated breeders will incur licensing fees and be subject to animal identification and recordkeeping requirements. The cost of a license for breeders is based on 50 percent of gross sales during the preceding business year. As an example, if 50 percent of gross sales are more than \$500 but not more than \$2,000, the annual cost of a license is \$70.

Identification tags for dogs and cats cost from \$1.12 to \$2.50 each. Other animals such as rabbits

can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure. We estimate that the average licensed breeder requires about 10 hours annually complying with the licensing paperwork and recordkeeping requirements. All newly licensed breeders will incur these costs. We estimate these costs would be between about \$284 and \$550 for a typical dog breeder. Costs at the 3,000 and 5,000 newly licensed dog, cat, and rabbit breeders for animal licensing, identification and recordkeeping could range between \$853,000 and \$2.8 million annually.

The newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. However, as acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, the vast majority of newly regulated breeders will only need to incur licensing, animal identification and recordkeeping costs and not need to make structural and/or operational changes in order to comply with the standards. Neither the number of entities that will need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that will be incurred due to this rule is also unknown. However, we can estimate the general magnitude of these costs assuming the newly regulated entities exhibit patterns of noncompliance similar to those of currently regulated wholesale breeders.

Based on our experience regulating wholesale breeders, the most common areas of regulatory noncompliance at prelicensing and compliance inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. We apply percentages of noncompliance for these areas, multiplied by likely unit costs or cost ranges, to the estimated number of affected breeders

described above to arrive at a total cost range for the rule. We estimate that costs for coming into compliance at those currently noncompliant breeders could range from \$2.9 million to \$12.1 million in the first year.

The rule will also affect some current Class A licensees (wholesale breeders). Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females may reduce the number of these licensees. There are currently about 1,700 active wholesale dog breeders. APHIS inspection data suggest that a very small number of currently licensed wholesale breeders will fall below the exemption threshold following the implementation of this rule.

Reporting and recordkeeping requirements associated with the final rule are discussed in the rule under the heading "Paperwork Reduction Act."

### **Steps taken by APHIS to minimize Significant Economic Impacts on Small Entities**

In developing this rule, APHIS considered several alternatives. For the reasons discussed below, we believe the changes set forth in this rule represent the best alternative that will satisfactorily accomplish the stated objectives and minimize impacts on small entities.

Dealers will no longer qualify as retail pet stores under the amended definition if they sell covered animals (animals listed in the definition of retail pet store) at retail to a buyer who is not physically present to observe the animal prior to purchase and/or to take custody of the animal after purchase, unless otherwise exempted under the regulations. This will mean that if a person sells some pets through face-to-face means and some pets via sight-unseen sales, including over the Internet or by mail, telephone, or other non-face-to-face means, then that person will be considered a dealer under the AWA and subject to regulation under the Act unless otherwise exempted under the regulations.

We recognize that retailers who sell some animals through face-to-face means and some animals remotely may be subject to a certain degree of oversight by the customers who participate in the face-to-face sales or transfers. As a result, we considered establishing a regulatory threshold based on the percentage share of a retailer's sales that are sight-unseen. However, we decided that a mix of face-to face and sight-unseen sales cannot provide a basis for exemption from regulation. Persons who are exempted from licensing under the AWA itself cannot be required to keep records under the AWA regulations, which would be necessary to verify a retailer is operating within the established threshold, whatever that percentage might be. For this reason, we do not believe that it is possible to craft a threshold based on a percentage share of a retailer's sales that are sight-unseen that, if met, would enable a hybrid operation such as we have described to continue to be considered a retail pet store and thus remain exempt from AWA licensing and requirements.

A second alternative we considered in preparing this rule was to add an exception from licensing for retailers that are subject to oversight by State or local agencies or by breed and registry organizations that enforce standards of welfare comparable to those standards established under the AWA. However, to our knowledge, only 27 States and the District of Columbia have enacted laws that establish some form of humane welfare standards for animals kept at pet stores and sold at retail. While the State laws concerning the welfare of animals in retail pet stores vary by State, few States actually address all categories of welfare required under the AWA, including veterinary care, food and water, proper sanitation, and housing. Similarly, few breed and registry organizations have welfare standards that they require their members to meet that are comparable to those required under the AWA, and few of those organizations

conduct regular, unannounced inspections or have an adequately sized inspectorate to evaluate compliance with such welfare standards.

APHIS is continuing to look for ways to better collaborate with its State counterparts and other organizations. For example, APHIS works with State or local authorities in jurisdictions that have laws regarding animal cruelty. We are also working in collaboration with State regulatory groups to develop better educational tools and requirements for licensure under the AWA. With these considerations in mind, APHIS concluded that it would be premature to consider establishing an exemption from the licensing requirements for retailers that are subject to oversight by State or local agencies or breed and registry organizations.

A third alternative we considered during the development of this rule was to amend the definition of retail pet store so that only high-volume breeders would be subject to the AWA regulations and standards. While an objective standard for what constitutes a high-volume breeder has not been established, we note that the PUPS Act<sup>31</sup> would amend the AWA to define a “high volume retail breeder” as a person who, in commerce, for compensation or profit: (1) Has an ownership interest in or custody of one or more breeding female dogs; and (2) sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of the offspring of such dogs for use as pets in any 1-year period.

To compare our amended exemption for persons who maintain four or fewer breeding females to the PUPS Act standard of sale of not more than 50 dogs in a year, we note that the average number of puppies per litter varies by breed. For example, as noted in the fall 2009 edition of the AKC Breeder,<sup>32</sup> Labrador retrievers typically have 5 to 10 puppies per litter, with an average of 7.6, while Yorkshire terriers have 2 to 5 pups per litter, with an average of 3.3.

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<sup>31</sup> See footnote 15.

<sup>32</sup> [http://www.akc.org/enewsletter/akc\\_breeder/2009/fall/handbook.cfm](http://www.akc.org/enewsletter/akc_breeder/2009/fall/handbook.cfm).

The number of litters per year varies by breed as well, but generally average about 1.5 litters per dog per year. With that, 4 breeding Yorkshire terriers could produce as many as 30 puppies in a year, while 4 breeding Labrador retrievers might produce as many as 60 puppies over the same period.

We have elected in this rule to retain an exemption based on the number of breeding females, and not to propose a different exemption based on the number of animals sold in a given period, largely because of enforceability concerns. When an APHIS official visits a facility under the current regulations, he or she can quickly ascertain, through direct observation and discussion with the operator of that facility, if the number of breeding female animals that are present number more than four. In contrast, if there were an exemption based on the number of animals sold in a given period, it would be necessary for the APHIS official to review sales records and/or other documentation. As noted above, we do not have the authority to require retail pet stores to make or retain the records that would be necessary to verify the number of animals sold.

Finally, we note that the exemption applies to persons who maintain breeding female dogs, cats, and/or small exotic or wild mammals and who sell only the offspring of these dogs, cats, and/or small exotic or wild mammals that are born and raised on his or her premises, for pets or exhibition. Given that the change in the number of breeding females was motivated by primarily dog-specific considerations, we contemplated a fourth alternative option, which was to propose to increase the number of breeding females for dogs only and leave the threshold for cats and small exotic or wild mammals at three breeding females. Because we determined that an individual with four or fewer breeding female dogs, cats, and/or small exotic or wild mammals on his or her premises who sells only the offspring of these female animals is capable of

providing adequate care and treatment for the animals on his or her premises without Federal oversight, as a matter of fairness and consistency, we ultimately decided the increase in the exemption threshold should be applied to all categories of animals covered by the exemption.