

Questions and Answers: Retail Pet Store Final Rule

Q. What is the Animal Welfare Act?

A. Passed by Congress in 1966, the Animal Welfare Act (AWA) sets general standards for humane care and treatment that must be provided for certain animals that are bred for commercial sale, exhibited to the public, used in biomedical research, or transported commercially. The AWA does not apply to coldblooded animals or to farm animals used or exhibited for agricultural purposes. People licensed under the AWA must provide their animals with adequate housing, sanitation, nutrition, water, and veterinary care. They must also protect their animals from extreme weather and temperatures.

Q. Why are you changing the definition of a retail pet store in the regulations written to support enforcement of the AWA?

A. Over the years, APHIS has received increasing complaints from the public about the lack of monitoring and oversight of the health and humane treatment of dogs and other pets sold sight unseen—often over the Internet. Our primary goal is to ensure that people who sell pets at retail sight unseen are regulated under the AWA, so that these animals can be monitored by our Agency for their health and humane treatment. To do that, we revised the definition of “retail pet store” in our regulations to bring the animals involved in these “sight unseen” transactions under regulation so that they receive basic standards of care. We also provided greater regulatory latitude for certain types of small breeding operations consistent with this change.

Q. How many comments did you receive on the proposed rule?

A. The proposed rule to amend the definition of a retail pet store was published on May 16, 2012, and included a 60-day public comment period. At the request of stakeholders, the comment period was extended an additional 30 days and closed on August 15, 2012. During the 90-day comment period, we received more than 210,000 comments:

75,584 individual comments and 134,420 signed form letters. We also received 213,000 signatures on petitions submitted by organizations supporting or opposing the proposed rule. We reviewed every comment we received and, based on stakeholder feedback, we made a number of changes to the final rule.

BASICS OF FINAL RULE

Q. Under the final rule, what is the new definition of a retail pet store?

A. In the final rule, “retail pet store” means a place 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 it after purchase. By personally observing the animal, the buyer is exercising public oversight over the animal and in this way is helping to ensure its health and humane treatment. Retailers who sell their pet animals to customers in face-to-face transactions do not have to obtain an AWA license because their animals are subject to such public oversight.

Under the AWA regulations, a “retail pet store” is also a place where only the following animals are sold or offered for sale as pets: dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species.

Q. Why did APHIS revise the definition of a retail pet store?

A. Improving the welfare of animals is at the core of everything we do in our Animal Care program. This particular revision fulfills a commitment APHIS first made in response to an Office of Inspector General (OIG) audit recommendation. The OIG audit found that more than 80 percent of sampled breeders were not licensed under the AWA because they sold pets over the Internet and claimed “retail pet store” status. As a result, the OIG found that these breeders were not being monitored or inspected to ensure their animals’ overall health and humane treatment, which led to some buyers receiving unhealthy pets—especially dogs. In its 2010 report, the OIG recommended that such operations should not enjoy “retail pet store” status, and the resulting exemption from consumer oversight and APHIS inspection. This final rule achieves what the OIG suggested. It also fulfills APHIS’ commitment made in response to a “We

the People” petition to the White House.

The previous regulatory definition of “retail pet store” was developed more than 40 years ago. It was meant to include traditional pet stores, hobby breeders, and other retail businesses where customers could personally observe an animal for sale prior to purchasing and/or taking custody of it. Such establishments were not regulated under the AWA because it was assumed that customers were providing public oversight. By revising the definition of “retail pet store” to require retailers engaging in sight-unseen sales to be regulated, we are bringing more pet animals under the protection of the AWA. We are also ensuring that the definition of “retail pet store” within our regulations is consistent with the AWA.

Q. How will the final rule affect traditional retail pet stores?

A. The final rule will not affect traditional retail pet stores. These “brick and mortar” stores will continue to be exempt from Federal licensing and inspection under the AWA just as they have been. However, traditional retail pet stores that also sell animals sight unseen must be licensed and inspected.

Q. Why is it important for a buyer to observe an animal personally before taking custody of it?

A. Personal observation of an animal is an important way that a buyer can evaluate the health and humane treatment of the animal. This requirement is implicit in the AWA itself and was implicit in the original definition of “retail pet store” in our regulations; the final rule makes it explicit.

Q. If I require buyers to submit a nonrefundable deposit/payment on their puppy before they come and physically pick the puppy up, am I required to be licensed?

A. No. If the buyer is able to physically observe the puppy or animal prior to the sale or taking custody, you are not required to be licensed.

Q. If a person cannot personally observe an animal before buying it, can someone else stand in?

A. Yes. The intent of the rule is to ensure animals for sale are viewed by a USDA inspector or the buyer prior to purchase. We are aware that due to location, health or other issues, it may be difficult for some people to physically be able to take custody of their animal, and we understand the need for an intermediary buyer or agent to act in the stead of the final buyer. This may be a family member or

friend. This person may differ from the ultimate owner of the animal but cannot be a commercial carrier or intermediate handler.

Q. Does the use of video or other electronic means to view pets for sale constitute a “face-to-face” transaction?

A. No. The buyer, seller, and the pet available for sale must all be physically present at the time of purchase or before taking custody of the animal in order to meet the definition of a “face-to-face” transaction and remain exempt from licensing. Photos, webcam images, Skype sessions or other electronic means of communication are not a substitute for the buyer or their designee personally observing the animal.

Q. Do sellers who breed pets at their residences have to allow buyers into their homes in order to be considered a retail pet store?

A. No. The regulation allows for sales to take place at any location agreed upon by the seller and the buyer. This could be a home but it could also be another mutually agreeable location.

Q. Does this rule mean that no puppies/kittens/small exotic pets can be sold over the internet?

A. No. Breeders with five or more breeding females only need to obtain a USDA license in order to continue selling their animals sight unseen over the internet. These breeders may also advertise and sell their animals on the internet without a USDA license as long as the buyer is able to physically observe the animal prior to the sale or taking custody.

Finally, breeders with four or fewer breeding females selling their animals over the internet do not need to be licensed by USDA.

Q. Does this rule mean that no rabbits, guinea pigs, (domestic pocket pets) etc... can be sold over the internet?

A. No. Breeders of rabbits or small pocket pets who have less than \$500.00 in sales per year are not required to be licensed with the USDA and may sell their animals sight unseen. These same breeders who have more than \$500.00 in sales per year and choose to sell their animals sight unseen, may continue to do so as long as they obtain a USDA license.

Q. If I advertise on the Internet, but buyers pick up their pets in person, do I need to be licensed?

A. No. The final rule does not prevent breeders from advertising animals for sale over the Internet, as long

as the buyers see the animals face-to-face during the purchase or prior to taking custody of their pets. This model does not require a USDA license.

Q. Can I continue to ship my dogs under the new regulation?

A. Yes. The new regulation doesn't prevent anyone from shipping animals to buyers in other locations. It does, however, require breeders to become licensed if they maintain five or more breeding females (dogs, cats, or wild/exotic pocket pets), sell the offspring of these animals as pets, and ship the pets sight unseen. Breeders with four or fewer breeding females may continue to ship their animals sight unseen without a license.

RESCUE GROUPS AND POUNDS

Q. How will the final rule affect rescue groups that participate in off-site adoption events?

A. People who engage in face-to-face transactions at a place other than their premises, which include off-site adoption events, are considered to be subject to public oversight. As a result, they do not need to obtain a license.

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

A. The final rule has no effect on these entities. These agencies and organizations are not regulated under the AWA as long as all of their activities are under the jurisdiction of the municipality, township, city, county, or state.

WORKING DOGS

Q. Does this final rule bring working dogs sold at retail under regulation?

A. No. Working dogs are generally understood to be dogs that are not sold for use as pets but for purposes such as hunting, breeding, and security. Dogs sold at retail for these purposes do not come under regulation under the AWA.

Q. Does APHIS specifically define working dog in its regulations?

A. No. The term generally refers to a dog that is being sold for a specific purpose, such as herding, guarding, hunting, breeding, racing, sledding, security, service, therapy, etc. Dogs sold at retail to be used only for these types of purposes are exempt from regulation under the new rule, which applies to dogs sold and raised as pets. However, if a breeder

regularly sells some dogs as working animals and others as pets and they have five or more breeding females and engage in sight-unseen transactions, they will need to obtain a USDA license.

Dogs that participate in agility, flyball, and weight pull competitions are primarily marketed as pets and anyone selling these animals and meeting the criteria for breeding females and sight-unseen sales would need to obtain a USDA license.

Q. Will APHIS require working dog breeders to be regulated if they occasionally sell an animal as a pet that has proved unsuitable as a working dog due to birth defects, poor temperament, or other flaws?

A. Individuals who intend to breed and sell dogs at retail as working dogs may occasionally raise a dog that lacks the characteristics that would enable it to be sold or used for its intended working purpose. As long as the individual originally intended to raise and sell the dog at retail for that purpose and the individual continues to market his or her dogs for that purpose, the individual could sell the individual dog at retail without needing to be regulated by APHIS.

RABBITS, FARM ANIMALS, AND COLDBLOODED SPECIES

Q. How does the final rule affect rabbit breeders who raise rabbits for food, fur, or preservation of bloodlines?

A. The final rule does not change our regulation of breeders who sell rabbits or other animals for use as food or fiber (including fur). Anyone selling animals only for food or fiber is exempt under the AWA. People selling rabbits at retail for breeding purposes (such as preservation of bloodlines) are not regulated.

Q. Will children who raise rabbits as part of a 4-H project have to be licensed under the final rule?

A. No. 4-H participants who sell their rabbits for food or fiber (including fur) or in face-to-face transactions at county fairs, rabbit shows, and other agricultural exhibitions do not have to be licensed.

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

A. As is the case for rabbits, normal farm-type operations that raise, buy, and sell animals only for food and fiber (including fur)—as well as businesses that deal only with fish and other coldblooded animals—are exempt from regulation.

BREEDING FEMALES

Q. Why are you now allowing people to keep up to four breeding females without having to be licensed under the AWA?

A. Under our previous regulations, we considered breeders who owned up to three breeding females (dogs, cats, or small exotic or wild mammals) to be hobby breeders, who provide sufficient care to their animals without our oversight. Based on a recent review of compliance among facilities we regulate, we believe that even with the addition of another breeding female, these hobby breeders are likely to conform to minimum AWA standards.

Q. Under the final rule, what constitutes a breeding female?

A. Only female animals with the capacity to breed are considered “breeding females.” Females that an APHIS inspector decides cannot breed due to age, infirmity, illness, or other issues are not considered “breeding females.”

Q. How will the four-breeding-females rule apply to breeders with a partial ownership interest in a number of breeding animals?

A. Partial ownership of breeding females is a standard practice among small-scale residential breeders. Owners (even if they only partially own the animals) with five or more breeding females on one premises would need to obtain a USDA license.

EFFECTS ON BREEDERS

Q. How many breeders will be affected by this rule? How did you come up with these figures?

A. We estimate that between 2,600 and 4,640 dog breeders, about 325 cat breeders, and no more than 75 rabbit breeders will be affected by the rule. This represents a portion of the breeders we identified through online breeder registries and by assuming that there are some additional dog breeders using remote marketing methods not included in those registries. This does not include breeders who will not be affected by the rule because they do not sell pets, because they don’t have five or more breeding females, or because they sell pets face-to-face. Since a very small percentage of cats in the United States are purebred and raised by breeders—and even fewer appear to be marketed over the Internet—we assumed the number of affected cat breeders would be a small portion of those we identified. Similarly, it is uncommon for rabbit breeders to sell offspring as pets or sight unseen;

generally, rabbits are sold face-to-face at auctions, exhibits, and fairs where buyers are physically present.

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

Q. What will newly regulated breeders need to do to come into compliance with this final rule?

A. Commenters on the proposed rule expressed concern about the adjustments newly regulated breeders would need to make and the possible costs they would incur. We believe, however, that the vast majority of breeders affected by the rule already maintain standards of housing, cleanliness, and care that well exceed minimum AWA standards. Therefore, these newly regulated but otherwise compliant breeders will incur minimal costs only for licensing, identification tags, and recordkeeping.

Q. How much will it cost for newly regulated breeders for licensing, identification tags, and recordkeeping?

A. For a typical dog breeder with 6 breeding females and a total of 74 dogs on the property over the course of a year, we estimate that the typical annual cost for licensing, identification tags, and recordkeeping would be between about \$284 to \$550 or from about \$4 to \$7.50 per dog.

Q. What will the costs be for newly regulated breeders who need to upgrade their facilities or change their facilities to comply?

A. We recognize some breeders will need to upgrade their facilities and/or change their operations to meet the basic AWA standards of care. Breeders have a variety of ways in which they can meet the standards; they are not overly prescriptive, nor does a breeder in most cases need to spend a lot of money to do so. Agency inspectors and personnel can answer questions in this regard and work with breeders as they make decisions regarding enclosures and related issues.

In some cases, these upgrades and changes will cost them more than the minimal costs of licensing, identification tags, and recordkeeping. Such facility and structural improvements should be one-time investments in their operations. Again, we believe that the vast majority of breeders affected by the rule already maintain standards of housing, cleanliness, and care that well exceed minimum AWA standards.

Q. Did APHIS revise its analysis of how many breeders would be regulated?

A. Based on input from commenters, we were able to revise and strengthen our analysis of the number of businesses that would come under regulation and the likely financial impacts for them. Compared with our analysis in the proposed rule, we do expect more breeders will come under regulation. However, we believe the costs for the majority of those breeders will be relatively low, and only for licensing, identification tags, and recordkeeping.

Q: Will consumers pay more for pets as a result of the final rule?

A. We believe that even if breeders' total costs of compliance are passed on to buyers, they will generally be negligible, in keeping with our analysis above. Further, costs previously borne by some consumers may now be borne by producers. For example, breeders who previously provided inadequate veterinary care or skipped vaccinations for their animals will now bear those costs.

Q. Will regulated breeders who keep dogs and cats in their homes have to put them in outdoor kennels?

A. No. Breeders may continue to raise dogs and cats along with any puppies or kittens in their homes. The AWA regulations define a "primary enclosure" to mean any structure or device used to restrict animals to a limited amount of space—which means that a home can be considered an animal's primary enclosure. If a room of a house is used as an animal's primary enclosure (for instance, a whelping room or nursery), AWA regulations and standards apply to that room. If the breeder has a kennel or cages that the animals can stay in inside the home that meet AWA standards, the breeder has satisfied the primary enclosure requirements. However, if a breeder allows their animals to have free run of the entire house, we will need to determine whether the home can house the animals within AWA standards. A number of currently licensed wholesale breeders maintain animals in their homes and meet or exceed the basic standards of the AWA.

Q. How can breeders who work outside their homes comply with unannounced inspections?

A. All animal welfare inspections, with the exception of pre-licensing inspections, are unannounced. During the pre-licensing process, the inspector will ask the breeder when they are generally available during normal business hours and try to conduct unannounced inspections during those times. An attempted inspection occurs when an inspector arrives at a facility but no one with authorization is available to accompany the inspector. In order

to conduct an inspection, an inspector must have full access to all required records as well as areas where regulated animals are kept and be accompanied by a responsible adult. If no one is available, the inspector will attempt to contact the licensee and determine if an authorized individual (someone 18 years of age or older) can arrive at their facility or home within 30 minutes. If the inspection is unable to take place, the inspector will document on the report that no authorized individual was available. The inspector will then make every effort to consult with the licensee regarding their availability and conduct the next unannounced inspection at a time when an authorized individual is likely to be present.

Q. Is a USDA license required to breed or ship animals for the purpose of preserving bloodlines?

A. No. People who sell animals at retail for breeding purposes, such as preservation of bloodlines are exempt from regulation and do not need a USDA license.

Q. I show my dogs. Do I need a license?

A. No. You do not need a license to show your dogs.

Q. If I breed and sell dogs to be shown, do I need a license?

A. Maybe. If you breed and sell dogs to be shown, have 5 or more breeding females and conduct sight unseen sales, you will need to become licensed. However, dogs that are sold exclusively for the preservation of bloodlines (i.e., breeding purpose) are not required to be licensed regardless of your business model.

Q. Why are you removing limits on the source of gross income from the licensing exemption for people who breed certain species and derive no more than \$500 in annual sales?

A. This change gives breeders of rabbits, guinea pigs, and certain other animals the ability to sell those animals at retail (subject to the \$500 annual gross income limit written into the AWA) and still remain exempt from AWA licensing and inspection requirements.

Q. Why isn't the \$500 limit on gross income sales being adjusted for inflation?

A. A number of commenters said that given inflation, the \$500 limit on gross income sales is too low; others said it was too high. However, this limit on gross income is set in the AWA itself, and changing the limit would require Congressional action.

LICENSING INFORMATION

Q: How will USDA identify breeders who may need to be licensed?

A: APHIS will use various methods to access publicly-available information to identify and inform those individuals who may need an AWA commercial breeding license. These methods include evaluating customer complaints against breeders and Internet retailers, as well as reviewing the marketing and promotional materials of breeders and Internet retailers. In addition, we will review public information available online to identify sellers that potentially meet the definition of commercial breeder in the AWA. By viewing publicly available information, APHIS can educate individuals about the AWA, and if needed, assist them with obtaining licenses. This will ensure that all animals that should be covered by the AWA will receive humane care and treatment.

Q. What is the timeline for compliance?

A. The [final rule](#) took effect on Nov. 18, 2013, and we are encouraging all breeders who think they may need to be regulated to request and complete a license application. Once you have submitted a completed application, it may take some time before a pre-licensing inspection is conducted at your facility. Breeders who proactively complete applications for licensure may continue to conduct regulated activities while waiting for our inspectors to conduct the pre-licensing process.

Q. What happens if a breeder doesn't pass their initial pre-licensing inspection?

A. Once a breeder has submitted their completed application, they will be contacted by their assigned inspector. This in-depth phone conversation provides an opportunity for the applicant to discuss their facility or animal housing areas with their inspector. The inspector will then explain the entire pre-licensing process and help the applicant understand the AWA regulations and how to comply based on their individual situation. This will enable the applicant to make any needed changes to their facility or home in advance of their initial pre-licensing inspection.

The 1st pre-licensing inspection will be scheduled at a mutually agreed upon date and time. Once that inspection has occurred, the applicant will not be able to conduct regulated activities until their license is issued. If the inspector identifies areas requiring improvement, the applicant will have two more scheduled opportunities within a 90-day period to demonstrate compliance. Our inspectors will make

every effort to promptly re-inspect a facility or home once a breeder believes they have achieved full compliance with the AWA requirements. If a breeder fails to achieve compliance within the 90-day period, they must wait 6 months before re-applying for a license and cannot conduct regulated activities.

Q. If I am licensed by my State Department of Agriculture, do I still need to be licensed with USDA?

A. You are required to comply with the AWA as well as state and local laws.

Q. If I already have a USDA animal welfare license, but I also sell some animals sight unseen, do I need to get another USDA license?

A. No. If you already have a USDA license, you are already inspected by a USDA inspector.

Q. Does a breeder need to maintain their USDA license even if some years their activities don't meet the threshold for licensing?

A. USDA licenses are renewable on an annual basis. If a breeder is no longer conducting regulated activities, they can decide not to renew their license. However, if a breeder cancels or fails to renew their license and later needs to reapply, they will have to go through the full pre-licensing process again.

Q. What happens if USDA receives an animal welfare complaint about a facility?

A. If APHIS receives an animal welfare complaint from a concerned citizen or organization, an inspector will be assigned to follow up and will conduct an inspection to determine the validity of the complaint.

Q. How can I request a license application packet?

A. You may request a license application packet electronically at the following link:

https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_Regulated_Businesses.

Or, you can contact your respective regional office for assistance. (The Eastern Region's number is 919-855-7100; the Western Region's number is 970-494-7478.) A map of the states covered by each region is available at: http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_contact%2Fsa_animal_welfare.

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