

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 certain 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. It is important to note, however, that APHIS does not regulate domestic farm animals used for food and fiber, or coldblooded species.

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

A. This 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 simply by being able to observe the animals prior to purchasing or taking custody of them. 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 sold at retail 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. 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. If a person cannot personally observe an animal before buying it, can someone else stand in?

A. Yes. Some commenters to our proposed rule noted that it would be difficult for certain people—for instance, foreign, disabled, or elderly customers—to

personally observe the animals they wish to buy. We consider the buyer of a pet animal sold at retail to be the person who takes custody of the animal after purchase, even if this person is not the ultimate owner of the animal. This person cannot, however, be a commercial transporter or intermediate handler.

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 and do not fall under APHIS regulation.

WORKING DOGS

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

A. 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. 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.

RABBIT, 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. Hobby breeders should remain aware, however, that they are exempt from AWA regulation only if they sell the offspring born and raised on their premises for pets or exhibition. They may sell these animals at retail or wholesale without being regulated.

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 four or fewer breeding females on one premises do not need to be licensed by APHIS.

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.”

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 more than four 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: How will USDA identify breeders who may need to be regulated?

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. We plan to incorporate newly affected entities into our existing regulatory structure using a phased implementation for conducting initial precicensing inspections and compliance inspections. 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 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. We will conduct periodic compliance inspections based on a risk-based inspection system that calculates the level of risk of noncompliance.

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. We acknowledge that, in some cases, these upgrades and changes will cost them more than the minimal costs of licensing, identification tags, and recordkeeping. However, 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. Won't the costs for residential breeders lead them to stop breeding their animals?

A. The cost of a license is highly unlikely to cause affected breeders to change their normal business operations. Even at the highest end of the range—an estimated \$760 for a breeder with gross revenues in excess of \$200,000—the cost of a license is less than the sale price of many purebred dogs. The majority of the breeders that may be affected by this rule already meet facility standards and should incur few other costs.

Q. Will regulated breeders who keep their dogs in their homes have to put them in a kennel?

A. Generally not. 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 a dog's primary enclosure. If a room of a house is used as a dog's primary enclosure (for instance, a whelping room or nursery), AWA regulations and standards apply to that room.

However, if a dog breeder allows his or her dogs to have free run of the entire house, we have to determine whether the home can house the animals within AWA standards. If the breeder has a kennel or cages that the dogs can stay in inside the home that meet AWA standards, the breeder has satisfied the primary enclosure requirements. A number of currently licensed wholesale breeders maintain their animals in their homes.

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, not in our regulations. Therefore, APHIS is unable to make any changes to this provision.

Q. Will APHIS monitor the implementation of this rule?

A. APHIS seeks to protect these animals while also implementing the rule effectively and fairly. We will carefully monitor these efforts and are open to feedback.

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