

United States  
Department of  
Agriculture

Animal and  
Plant Health  
Inspection  
Service

April 2012



**Regulatory Impact Analysis &  
Initial Regulatory Flexibility Analysis**

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

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

Policy & Program Development

Policy Analysis & Development

## **Summary**

The current definition of retail pet store was established to ensure that the appropriate retail facilities were exempt from licensing requirements. Historically, such outlets included hobby breeders, as well as traditional “retail pet stores” that are subject to a degree of oversight by persons who physically enter 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 their animals for sale remotely over the Internet and selling and transporting their animals nationwide. As a result, customers of these businesses are often unable to enter the retailer’s place of business to observe the animals before taking them home. Thus, APHIS believes that they lack sufficient public oversight to ensure the humane treatment and care of these animals. Because the current definition of “retail pet store” includes all retail outlets, with the limited exceptions discussed above, retailers selling animals by any means, including remote sales conducted over the Internet or by mail, telephone, or any other means where the customers do not physically enter a physical storefront, qualify as retail pet stores and are exempt from the licensing requirements, even if they lack the public oversight.

To ensure that each animal sold at retail for use as pets are monitored for their health and humane treatment, the proposed rule would narrow the definition of “retail pet store” to only those places of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. As a result of this

proposed change, entities that sell or intend to sell their animals remotely would have to comply with the AWA regulations and standards and obtain an Animal Welfare Act (AWA) license, unless otherwise exempted from the regulations. The AWA provisions to which regulated entities would become subject include identification of animals, recordkeeping, facility maintenance, periodic veterinary care, shelter construction, and sanitation, among others.

APHIS' regulations in § 2.1(a)(3)(iii) currently provide 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, or small exotic or wild mammals, which were born and raised on the premises, for pets or exhibition. The proposed rule would expand this exemption to persons who maintain a total of four or fewer breeding females, regardless if those animals are sold at retail or wholesale. Persons who derive less than \$500 gross income from the sale of animals, other than dogs, cats, and exotic or wild animals, would continue to be exempt from licensing requirements.

Should this rule be adopted, persons who sell covered animals to any buyer who does not enter their facility to observe the animals prior to purchase and/or to take custody of the animals after purchase, such as remote sales conducted over the Internet where the customer does not enter a storefront at any point in time, would need to obtain a license in accordance with AWA regulations and would become subject to other AWA provisions as described below. APHIS expects that this rule would primarily affect dog breeders that maintain more than four breeding females at their facilities. While the scope of this rule applies to certain other animals, as a practical matter, most of retailers of animals other than dogs would meet the proposed definition of "retail pet store" and continue to be exempt from regulation. APHIS estimates 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 as a result of this proposed rule. We base this estimate on the ratio of retail dog breeders to wholesale dog breeders, and the percentage of licensed wholesale breeders with more than four breeding females. There are currently about 1,020 retail breeders regulated by the States of Iowa, Kansas, and Missouri.<sup>1</sup> In 2011, 48 percent of wholesale breeders regulated by USDA were located in those three States.<sup>2</sup> We assume a similar percentage for retail breeders to arrive at a nationwide total ( $1,020/0.48 = 2,125$ ). Current USDA and State data cover breeders with more than three breeding females. Our inspection data suggests that about 69 percent of currently regulated wholesale breeders have more than four breeding females, based on a rough estimate of the average number of puppies across breeds at those facilities. Using these factors, we extrapolate that there are about 1,500 U.S. retail breeders who would be newly subject to regulation ( $2,125*0.69=1,466$ ). This figure is likely overly inclusive, as it assumes that all retail breeders, except for traditional retail pet stores and hobby breeders, would be regulated. However, those retailers for which each buyer visits their place of business prior to purchase or taking custody would continue to be exempt from regulation.

In addition to obtaining a license, regulated entities must comply with animal identification and recordkeeping requirements. Licensed entities are also subject to 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);

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<sup>1</sup> Internal APHIS communication.

<sup>2</sup> 2011 APHIS, Animal Care, data on licensed Class A breeders.

and transportation (including specifications for primary enclosures, primary conveyances, terminal facilities, and feeding, watering, care, and handling of animals in transit).

Some affected entities may need to make infrastructural and/or operational changes in order to comply with the standards. Based on our experience with regulating wholesale breeders, the most common areas of regulatory non-compliance at pre-licensing inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. Assuming patterns of non-compliance by retail breeders newly regulated by this rule would be similar to those observed in pre-licensing inspection of wholesale breeders, we estimate that the total cost attributable to the proposed rule may range from \$2.2 million to \$5.5 million. The majority of businesses that would be affected are likely to be small entities.

Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could substantially reduce the number of Class A licensees (breeders). APHIS inspection data suggest that the number of current Class A licensees, 2,064, could be reduced by about 638 facilities (31 percent) due to this increase in the exemption threshold. Licensing fees range from \$40 to \$760 annually, depending on a facility's yearly income from the sale of regulated animals. In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. Assuming that the entities no longer required to be licensed fall in this range, total cost savings by these entities could range from about \$45,000 to about \$150,000 per year.

Although we have attempted to estimate the impact of this proposed rule, we do not currently have enough information to fully assess it, particularly information on the number of entities that may be affected or breadth of operational changes that may result. We encourage

public comment on the number of entities that may be affected and the degree to which operations would be altered to comply with the rule.

We believe that the benefits of this rule, primarily enhanced animal welfare, would justify the costs. The rule would help ensure that animals sold at retail, but lacking public oversight receive humane handling, care and treatment in keeping with the requirements of the AWA. It would also address the competitive disadvantage of retail breeders who adhere to the AWA regulations, when compared to those retailers who do not operate their facilities according to AWA standards and may therefore bear lower costs. These benefits are not quantified.

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## **Introduction**

APHIS is proposing to revise the definition of retail pet store and related regulations to bring more pet animals sold at retail under the protection of the Animal Welfare Act (AWA). The current definition of retail pet store was established to ensure that the appropriate retail facilities were exempt from licensing requirements. Historically, such outlets included hobby breeders, as well as traditional “retail pet stores” that are subject to a degree of oversight by persons who physically enter 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 their animals for sale remotely over the Internet and selling and transporting their animals nationwide. As a result, customers of these businesses are often unable to enter the retailer’s place of business to observe the animals before taking them home. Thus, APHIS believes that they lack sufficient public oversight to ensure the humane treatment and care of these animals. Retail pet stores are exempt from the provisions of the Animal Welfare Act and are not required to obtain a license from APHIS. Because the current definition of “retail pet store” includes all retail outlets, with the limited exceptions discussed above, retailers selling animals by any means, including remote sales conducted over the Internet or by mail, telephone, or any other means where the customers do not physically enter a physical storefront, qualify as retail pet stores and are exempt from the licensing requirements, even if they lack the public oversight.

To ensure that animals at retail pet stores receive humane handling, care, and treatment, we are proposing to revise the definition of retail pet store so that it only includes those places of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and

where only certain animals are sold or offered for sale, at retail, for use as pets. Retail pet stores are not required to be licensed and inspected under the AWA. We are also proposing to increase 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, regardless if those animals are sold at retail or wholesale. This proposed rule is necessary to ensure that animals sold at retail are monitored for their health and humane treatment and to concentrate our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.

Benefits and costs of the rule are examined in accordance with 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. The benefits of the rule are expected to justify the costs overall. Possible impacts on small entities are considered in accordance with the Regulatory Flexibility Act.

## **Affected Entities and Potential Effects of the Action**

Currently, entities that qualify as “retail pet store,” and are therefore exempt from regulation, include any entity whose entire business consists of reselling pet animals to pet owners, for example, retail chain pet stores and virtual pet stores engaging in retail sales. In addition, any entity whose entire business consists of breeding and raising pet animals for direct retail sale to pet owners is also currently exempt, including breeders of pet animals of any size, from hobby to high volume, who sell their animals over the Internet.

The proposed rule would narrow the definition of “retail pet store” to only those places of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only certain animals are sold or offered for sale, at retail, for use as pets. As a result of this proposed change, entities that sell or intend to sell their animals to buyers who do not enter their facility would have to obtain an Animal Welfare Act (AWA) license and comply with the AWA regulations, unless otherwise exempted from the regulations. The AWA provisions to which regulated entities would become subject include identification of animals, recordkeeping, facility maintenance, periodic veterinary care, shelter construction, and sanitation, among others.

APHIS’ regulations in § 2.1(a)(3)(iii) currently provide 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, or small exotic or wild mammals, which were born and raised on their premises, for pets or exhibition. The proposed rule would expand 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, and exotic or wild animals, would continue to be exempt from licensing requirements.

Although we have attempted to estimate the impact of this proposed rule, we do not currently have enough information to fully assess it, particularly information on the number of entities that may be affected, or the breadth of operational changes that may occur at affected entities as a result. We encourage public comment on the number of entities that may be affected and the degree to which operations would be altered to comply with the rule.

APHIS expects that this rule would primarily affect dog breeders that maintain more than four breeding females at their facilities. While the scope of this rule applies to certain other animals, as a practical matter, most retailers of animals other than dogs would meet the proposed definition of “retail pet store” and continue to be exempt from regulation. APHIS estimates 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 as a result of this proposed rule. We base this estimate on the ratio of retail dog breeders to wholesale dog breeders, and the percentage of licensed wholesale breeders with more than four breeding females. There are currently about 1,020 retail breeders regulated by the States of Iowa, Kansas, and Missouri.<sup>3</sup> In 2011, 48 percent of wholesale breeders regulated by USDA were located in those three States.<sup>4</sup> We assume a similar percentage for retail breeders to arrive at a nationwide total ( $1,020/0.48 = 2,125$ ). Current USDA and State data cover breeders with more than three breeding females. Our inspection data suggests that about 69 percent of currently regulated wholesale breeders have more than four breeding females, based on a rough estimate of the average number of puppies across breeds at those facilities. Using these factors, we extrapolate that there are about 1,500 U.S. retail breeders who would be newly subject to regulation ( $2,125*0.69=1,466$ ). This figure is likely overly inclusive, as it assumes that all retail breeders, except for traditional retail pet stores and hobby breeders, would be regulated. But those retailers for which each buyer visits their place of business prior to taking the purchased animal home would continue to be exempt. Below, we describe potential costs attributable to the proposed rule that may be incurred by newly regulated retail breeders. The costs are summarized in a concluding table.

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<sup>3</sup> Internal APHIS communication.

<sup>4</sup> 2011 APHIS, Animal Care, data on licensed Class A breeders.

Should this rule be adopted, entities who sell pets to any buyer who does not enter their facility to observe the animals prior to purchase and/or to take custody of the animals after purchase, such as remote sales conducted over the Internet where the customer does not enter the storefront at any point in time, would need to acquire a license in accordance with AWA regulations and would become subject to other AWA provisions as described below. An annual license costs between \$40 and \$760, depending on the licensee’s yearly income from the sale of regulated animals.<sup>5</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>6</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. For an initial license, there is a \$10 application fee in addition to the initial license fee. The license fees for each income category are shown in Table 1.

*Table 1. 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.

<sup>5</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, and exotic or wild animals, would be exempt from licensing requirements.

<sup>6</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.

as reported for the preceding business year.

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 cost from 30 to 50 cents apiece in small volumes, and in larger quantities for as little as 12 cents each.<sup>7</sup> In addition, each dog needs a collar, which can be purchased at retail for as little as \$1 to \$2.<sup>8</sup> Thus, the cost of a collar and tag ranges from \$1.12 to \$2.50 per dog. We estimate that there are about 246 dogs at a typical breeder's facility that require identification over the course of a year.<sup>9</sup>

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 that employs a part-time attending veterinarian or has a consultant arrangement with a veterinarian 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

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<sup>7</sup> Internet search of official USDA identification tag providers.

<sup>8</sup> Internet search of pet supply retailers.

<sup>9</sup> In 2010, there were an average of 106 adults and 93 puppies at APHIS licensed wholesale breeders at one time. We assume, based on litter sizes, frequency of litters, and puppy sales, that there would be about 1.5 times this number of puppies at the average facility over the course of a year.

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 it requires a licensed breeder about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. At a rate of \$13.07 per hour,<sup>10</sup> this cost is estimated to total about \$131 annually.

Licensed dealers are also subject to 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).

Some affected entities may need to make infrastructural and/or operational changes in order to comply with the standards. Neither the number of entities that would need to make changes, nor the extent of those changes is known. Therefore, the cost associated with any alterations is also unknown. However, based on our experience with regulating wholesale breeders, the most common areas of regulatory non-compliance at pre-licensing inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. If newly regulated entities were to exhibit similar patterns of non-compliance, they could incur costs of coming into compliance as follows.

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<sup>10</sup> May 2011 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, 43-9061, Office Clerk, General, median hourly wage.

Inadequate facility maintenance and construction was identified as a problem in about 16.5 percent of pre-licensing inspections of wholesale breeders in 2010. Housing facilities must be structurally sound and kept in good repair; surfaces of housing facilities must be free of excessive rust, jagged edges or sharp points; floors, walls and other surfaces in housing facilities must be impervious to moisture; and floors have to be constructed in a manner that protects the dogs' feet and legs from injury. We estimate that most repairs made to meet housing standards cost \$50 to \$100 or less in materials, and require 8 to 10 hours to complete. At a rate of \$9.38 per hour,<sup>11</sup> this labor would cost a breeder about \$75 to \$95. Ongoing, routine facility maintenance likely takes from 2 to 8 hours per week. Again at a rate of \$9.38 per hour, this labor costs about \$980 to \$3,900 annually. Most breeders perform necessary repairs themselves, often with inexpensive and already available or easily obtainable materials.

Insufficient veterinary care was identified as a problem at about 16 percent of pre-licensing inspections of wholesale breeders in 2010. 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 costs 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 for adult dogs include ear issues, (injuries, infections, foreign bodies, ticks); eye issues (discoloration of the cornea, discharge, injuries, "cherry eye"); skin issues (hair loss, severe

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<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.

scratching, wounds, inflamed reddened skin, hair mats); toenail issues (overgrowth or injuries); dental issues (tooth infections, loose teeth, painful mouth, drooling); and expired medication and vaccines (improper labeling, improper storage, etc.). Typically, when veterinary care issues are identified on an inspection report, it involves a small number of dogs. We estimate that addressing such issues costs from \$75 to \$300 per incident to resolve. One to three veterinary care issues therefore costs between \$75 and \$900 to resolve.

Puppies 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. Distemper, hepatitis, and parvovirus vaccinations are often combined with vaccinations for leptospirosis and parainfluenza (DHLPP). Prices for DHLPP vaccinations can range from \$16 to \$35.<sup>12</sup> 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> The first vaccination in the series is typically administered by the breeder. With an average of 140

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<sup>12</sup> A limited 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>; <http://www.buttecounty.net/publichealth/animal/Canine%20Distemper.pdf>; [http://mtnvvet.com/plans\\_and\\_packages.htm](http://mtnvvet.com/plans_and_packages.htm); <http://www.kaawscliclinic.com/vaccinations-1539>.

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

puppies<sup>14</sup> per year at a facility, the annual cost of these vaccinations could be from \$2,240 to \$4,900.

Inadequate cleaning and sanitation was identified as a problem in about 13 percent of pre-licensing inspections of wholesale breeders in 2010. Excreta and food waste must be removed from primary enclosures daily; primary enclosures, food and water receptacles, and surfaces in contact with dogs must be cleaned and sanitized; an effective program for the control of insects, external parasites affecting dogs, 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 routine sanitation and cleaning for a typical breeder's facility can be accomplished in 1 to 2 hours daily. At a rate of \$9.38 per hour,<sup>15</sup> this labor cost totals about \$3,420 to \$6,850 annually. Many breeders perform necessary sanitation and cleaning themselves.

Inadequate shelter construction was identified as a problem in about 4 percent of the pre-licensing inspections of wholesale breeders in 2010. Breeders must provide adequate shelter from the elements for all dogs under care. This may be accomplished in a variety of ways, including through the provision of dog houses. We estimate that there are 20 to 30 shelters on a typical facility, and a facility with a problem in this area could require 1 to 20 new shelters. An igloo style dog house retails for \$80 to \$120.<sup>16</sup> Based on this unit cost range, breeders needing from 1 to 20 new shelters to come into compliance could incur costs from \$80 to \$2,400. Dog houses can also be constructed at a lower cost from less expensive materials such as plywood.

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<sup>14</sup> See footnote 5.

<sup>15</sup> May 2011 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, 39-2021, Nonfarm animal caretakers, median hourly wage.

<sup>16</sup> Internet search of pet supply retailers.

Problems with the primary enclosures for the dogs were identified in about 1 percent of pre-licensing inspections of wholesale breeders in 2010. The primary enclosures need to be in good repair and must meet a minimum space requirement that depends on the type (size) of dog. We estimate that the typical breeder has 30 to 40 primary enclosures, and a breeder with a problem in this area may require 1 to 30 new enclosures. A commercially manufactured kennel can cost from \$220 to \$260 for a 3-foot by 6-foot run.<sup>17</sup> Based on these estimates, a breeder needing new enclosures to come into compliance could spend from \$220 to \$7,800. However, these enclosures vary widely in construction, materials, and size. Some are made of basic construction materials, and could cost much less if the breeder were to make them himself.

Table 2 summarizes the costs as described above that may be incurred by newly regulated breeders and other dealers of dogs.

*Table 2.* Costs attributable to the proposed rule that may be incurred by newly regulated breeders and other dealers of dogs.

Area of Possible Non-compliance	Unit Cost <sup>(1)</sup>	Number of Affected Facilities <sup>(2)</sup>	Total Cost Range(\$1,000)	
Licensing fees	\$10 application fee \$30-\$750 licensing fee (assume \$70 to \$235) <sup>(3)</sup>	1,500	\$105	\$353
Identification	\$1.12-\$2.50 for collars & tags (246 dogs per facility need identification) <sup>(4)</sup>	1,500	\$413	\$923
Recordkeeping	10 hrs annually * \$13.07/hour (BLS 43-9061)	1,500	\$196	\$196
Facility Maintenance	8-10 hrs (preliminary) * \$9.38/hr (BLS 39-2021)	248	\$19	\$23
	\$50 to \$100 (materials) 2-8 hrs per week		\$12	\$25
	(ongoing) * \$9.38/hr (BLS 39-2021)		\$242	\$968
Veterinary care	\$50 to \$150 (site visit)	237	\$12	\$36

<sup>17</sup> Internet search of pet supply retailers.

	\$75 to 300 (1 to 3 veterinary care issues) \$16 to \$35 for puppy vaccinations		\$18 \$531	\$213 \$1,161
Shelter Construction	\$80 - \$120 for a commercial igloo style dog house (1 to 20 new shelters)	65	\$5	\$156
Primary Enclosures	\$220 -\$260 for a commercial 3'x6' kennel (1 to 30 new enclosures)	21	\$5	\$164
Daily Sanitation & Cleaning per Year	1-2 hrs daily * \$9.38/hr (BLS 39-2021)	194	\$664	\$1,328
<b>Total</b>			<b>\$2,222</b>	<b>\$5,545</b>
<sup>(1)</sup> These costs may be overestimated. In general, they do not account for volume discounts, do-it-yourself labor or construction out of inexpensive materials that may be more likely in some cases.				
<sup>(2)</sup> We estimate that there may be about 1,500 dog breeders that could be affected by this rule. The number of facilities for each area of possible non-compliance is based on 1,500 multiplied by the percentage of wholesale breeders found to be non-compliant for that category in pre-licensing inspections in 2010.				
<sup>(3)</sup> In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. Therefore, we assume that newly regulated entities would fall in this range.				
<sup>(4)</sup> In 2010, there were an average of 106 adults and 93 puppies at licensed wholesale breeders at one time. We assume, based on litter sizes, frequency of litters, and puppy sales, that there would be about 1.5 times this number of puppies at the average facility over the course of a year.				

The proposed rule would also potentially affect current Class A licensees (wholesale breeders). Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could substantially reduce the number of these licensees. APHIS inspection data suggest that the number of current Class A licensees, 2,064, could be reduced by about 638 facilities (31 percent) due to this increase in the exemption threshold. Licensing fees range from \$40 to \$760 annually, depending on a facility's yearly income from the sale of regulated animals. In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. Assuming that the entities no longer required to be licensed fall in this range, total cost savings by these entities could range from about \$45,000 to about \$150,000 per year.

We believe that the benefits of this proposed rule, especially enhanced animal welfare, would justify the costs. A benefit of the rule is in assuring that animals sold at retail receive humane handling, care and treatment in keeping with the requirements of the AWA. Without public oversight or licensing and inspection by APHIS, there is no assurance that animals sold at retail for use as pets are monitored for their health and humane treatment nationwide. In fact, in recent years, APHIS has noted a number of reports and complaints concerning the welfare of such animals. During a program audit that was completed in 2010, USDA's Office of Inspector General found consumers who purchased dogs over the Internet had encountered health problems with their dogs.<sup>18</sup> In addition, APHIS has received complaints directly from members of the public concerning the welfare of dogs and other pet animals sold at retail. Members of Congress have also introduced legislation intended to address the issue of dogs raised by high-volume breeders that sell directly to the public, including sales over the Internet.<sup>19</sup>

The proposed rule would also address the competitive disadvantage of retail breeders who adhere to the AWA regulations, when compared to those retailers who do not operate their facilities according to AWA standards and may therefore bear lower costs. These benefits are not quantified.

## **Initial 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. Section 603 of the Act requires agencies to prepare and make available for public

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<sup>18</sup> USDA, Office of Inspector General, "Animal and Plant Health Inspection Service, Animal Care Program, Inspections of Problematic Dealers" (Report No: 33002-4-SF, Issued May 2010), p. 37.

<sup>19</sup> See, for example, H.R. 835/S. 707, the Puppy Uniform Protection and Safety (PUPS) Act, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.835>:

comment an initial regulatory flexibility analysis that describes expected impacts of a proposed rule on small entities.

### **Reasons Action is Being Considered**

The current definition of retail pet store was established to ensure that the appropriate retail facilities were exempt from licensing requirements. Historically, such outlets included hobby breeders, as well as traditional “stores” that are subject to a degree of oversight by persons who physically enter 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, many retailers who traditionally sold their animals to local customers began to offer their animals for sale remotely over the Internet and sell and transport their animals nationwide. As a result, today’s customers are often unable to enter the retailer’s place of business to observe the animals before taking them home. Because the current definition of “retail pet store” includes all retail outlets, with the limited exceptions discussed above, retailers selling animals by any means, including remote sales conducted over the Internet or by mail, telephone, or any other means where the customers do not physically enter a physical storefront, qualify as retail pet stores and are exempt from the licensing requirements, even if they lack the public oversight.

Therefore, APHIS is proposing to revise the definition of retail pet store so that it only includes those places of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only certain animals are sold or offered for sale, at retail, for use as pets. Retail pet stores are not required to be licensed and inspected under the AWA. Hobby breeders and other persons who engage in the *de minimis* activities involving such

animals would continue to be exempt from licensing requirements regardless of their status or lack of status as a retail pet store.

### **Objectives of and Legal Basis for 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 the Animal and Plant Health Inspection Service. This proposed rule is necessary to ensure that animals at retail pet stores are monitored for their overall health, humane handling, care and treatment.

### **Potentially Affected Small Entities**

The entities affected by the proposed rule are likely to be considered small. They are persons who sell their animals to any buyer who does not enter their facility to 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, or small exotic or wild mammals, or derive less than \$500 gross income from the sale of animals, other than dogs, cats, and exotic or wild animals, would be exempt from the proposed new licensing requirements. In addition, some current licensees would 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>20</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 do not enter their facility to observe the animals prior to purchase and/or to take custody of the animals after purchase, we do not have a precise estimate of the number or size of entities that would be affected by this proposed rule. However, based on the above, the majority of establishments affected are likely to be considered small entities.

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

Should this rule be adopted, some sellers of pets may 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

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<sup>20</sup> U.S. Department of Commerce. Bureau of the Census. 2007 Economic Census.

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).

Some affected entities may need to make infrastructural and/or operational changes in order to comply with the standards. Based on our experience with regulating wholesale breeders, the most common areas of non-compliance with the regulations at pre-licensing inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. If entities newly regulated under the proposed rule were to exhibit similar patterns of non-compliance, we estimate that they could incur costs that would total from \$2.2 million to \$5.5 million.

The proposed rule would also potentially affect current Class A licensees (wholesale breeders). Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could substantially reduce the number of these licensees. APHIS inspection data suggest that the number of current Class A licensees, 2,064, could be reduced by about 638 facilities (31 percent) due to this increase in the exemption threshold. Licensing fees range from \$40 to \$760 annually, depending on a facility's yearly income from the sale of regulated animals. In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. Assuming that the entities no longer required to be licensed fall in this range, total cost savings by these entities could range from about \$45,000 to about \$150,000 per year.

We do not currently have enough information to fully assess the potential impact of this proposed rule, particularly information on the number of entities that may be affected or the breadth of operational changes that may occur at affected entities. We encourage public comment on the number of small entities that may be affected and the degree to which operations at those entities would be altered to comply with the rule.

### **Duplication, Overlap, or Conflict with Existing Rules and Regulations**

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

### **Alternatives to minimize Significant Economic Impacts of the Rule**

In developing the proposed rule, APHIS considered several alternatives to this proposed action. For the reasons discussed below, we believe the changes proposed in this document represented the best alternative option that would satisfactorily accomplish the stated objectives and minimize impacts on small entities.

As written, some dealers would no longer qualify as retail pet stores under our proposed definition if they sold covered animals at retail to a buyer who did not physically enter the seller's place of business or residence, unless otherwise exempted under the regulations. This would mean that if a person sold some pets to walk-in customers from a physical storefront and some pets via remote sales, including over the Internet or by mail, telephone, or other non-face-to-face means, then that person would 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 to walk-in customers and some animals remotely may be subject to a certain degree of oversight by the customers who enter their place of business or residence. As a result, we considered establishing a regulatory threshold based on the percentage of such a retailer's remote sales. However, we did not include

this alternative in our proposed change for two reasons. First, we do not have the authority to require that retail pet stores make and retain sales records under the AWA, which are necessary to verify the retailer is operating within the established threshold, whatever that percentage might be. Second, it would also be difficult to confirm that all the animals that the entity sells at retail were available to be observed by its walk-in customers. If the animals sold to walk-ins were kept in one location or part of a location where they could be seen by the public and the animals sold remotely were kept at another location, then those latter animals would not receive the public oversight that forms the basis for the retail pet store exemption. For these reasons, we do not believe that it is possible to craft a threshold based on a percentage of a retailer's remote sales 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 the licensing and requirements under the Act.

A second alternative we considered in preparing this proposed 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. However, 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 proposed 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>21</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 proposed exemption for persons who maintain four or fewer breeding females to the standard of 50 dogs sold that is provided in the PUPS Act, we note that the number of puppies that could be produced by 3 breeding female dogs varies according to the breed of the dog. For example, as noted in the Fall 2009 edition of the AKC Breeder,<sup>22</sup> Labrador retrievers had a typical range of 5 to 10 puppies per litter, with an average of 7.6, while

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<sup>21</sup> See footnote 15.

<sup>22</sup> [http://www.akc.org/enewsletter/akc\\_breeder/2009/fall/handbook.cfm](http://www.akc.org/enewsletter/akc_breeder/2009/fall/handbook.cfm).

Yorkshire terriers showed a range of 2 to 5 pups, with an average of 3.3. The number of litters per year varies as well, but we are aware of estimates of an average of 1.5 litters per dog per year. With that, 3 Yorkshire terriers could produce as many as 22 puppies in a year, while 3 Labrador retrievers might produce as many as 45 puppies over the same period. Adding a fourth breeding female as proposed above would bring that average to 30 to 60 puppies in a year, which is a figure that brings our exemption into closer alignment with the standard of 50 dogs sold per year provided in the PUPS Act.

We have elected in this proposed 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 inspector 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 falls within the exemption. In contrast, if there were an exemption based on the number of animals sold in a given period, it would be necessary for the inspector to review sales records and/or other documentation. However, 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 in § 2.1(a)(3)(iii) 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, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition. Given that our proposed 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 leaving the threshold for cats and small exotic or wild mammals at three breeding females. We ultimately decided that as a matter of fairness and consistency, the increase in the number of breeding females should be applied to all three categories of animals covered by the exemption.