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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. APHIS–2011–0003]

RIN 0579–AD57

Animal Welfare; Retail Pet Stores and Licensing Exemptions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the definition of *retail pet store* and related regulations in order to ensure that the definition of *retail pet store* in the regulations is consistent with the Animal Welfare Act (AWA), thereby bringing more pet animals sold at retail under the protection of the AWA. Specifically, we are narrowing the definition of *retail pet store* to mean 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 that animal 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. In addition, we are removing the limitation on the source of gross income from the licensing exemption in the regulations for any person who does not sell or negotiate the sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of the animals other than wild or exotic animals, dogs, or cats during any calendar year. We are also increasing from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from the licensing and inspection requirements if he or she sells only the offspring of those animals born and raised on his or her premises, for pets or exhibition. This exemption applies regardless of whether those animals are sold at retail or wholesale. These actions are necessary so that all animals sold at retail for use as pets are monitored for their health and humane treatment.

DATES: *Effective Date:* November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1236; (301) 851–3751.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

Need for the Regulatory Action

The Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), seeks to ensure the humane handling, care, treatment, and transportation of certain animals that are sold at wholesale and retail for use in research facilities, for exhibition purposes, or for use as pets by means of Federal licensing and inspection. When Congress passed the AWA in 1966, it specifically exempted retail pet stores from such licensing and inspection. At that time, retailers of pets covered under the exemption consisted mostly of traditional ''brick-and-mortar'' pet stores, as well as small-scale breeders whose place of business was typically their residence. Both types of retail outlets were exempted by the AWA as ''retail pet stores'' because, despite the many dissimilarities in how pet shops and small-scale residential breeders conduct business, they share in common a business model in which buyers visit their places of business and personally observe the animals available for sale prior to purchasing and/or taking custody of them.

Enforcement of the Act has been delegated by the Secretary of Agriculture to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). APHIS has issued regulations pursuant to the Act; these regulations, which we refer to below as the AWA regulations, are found in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA.

Part 2 requires most dealers to be licensed by APHIS; classes of individuals who are exempt from such licensing are listed in paragraph (a)(3) of § 2.1.

Since the AWA regulations were issued, most retailers of pet animals have been exempt from licensing by virtue of our considering them to be ''retail pet stores'' as defined in § 1.1 of the AWA regulations.

Because the previous definition of *retail pet store* in the AWA regulations covered nearly all retail outlets, retailers selling animals by any means, including sight unseen sales conducted over the Internet or by mail, telephone, or any other method where customers do not personally observe the animals available for sale prior to purchasing and/or taking custody of them, were considered to be retail pet stores and as such had been exempt from licensing and inspection under § 2.1(a)(3)(i) and § 2.1(a)(3)(vii).[1]

With the growth of the Internet in the 1990s, technology brought with it new and unforeseen opportunities to buy and sell pets. More retailers began offering pets for sale sight unseen and to sell and ship them nationwide. While pet animals were sometimes sold sight unseen via telephone and mail order decades before passage of the AWA, the Internet has made it possible for many more persons throughout the United States to buy pets online from retailers without ever having to be physically present at the seller's place of business or residence and personally observe the animals offered for sale as the AWA intended. With the dramatic rise in sight unseen sales have come increasing complaints from the public about the lack of monitoring and oversight of the health and humane treatment of those animals.

In order to ensure that the definition of *retail pet store* in the AWA regulations is consistent with the AWA and that all animals sold at retail for use

[1] Both the retail pet store exemption in § 2.1(a)(3)(i) and the direct retail sales exemption in § 2.1(a)(3)(vii) derive their authority from the AWA exemption for retail pet stores. We discuss this at greater length later in this document.

as pets are monitored for their health and humane treatment, we published in the **Federal Register** (77 FR 28799–28805, Docket No. APHIS–2011–0003), on May 16, 2012, a proposal [2] to revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the AWA. This rule finalizes that proposed rule while also making changes to its provisions based on the comments we received (see the section below titled ''Summary of the Major Provisions of the Regulatory Action'').

Legal Authority for the Regulatory Action

Under the AWA, the Secretary of Agriculture is authorized 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. As we mentioned previously in this document, the Secretary has delegated responsibility for administering the AWA to the Administrator of APHIS. Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care.

II. Summary of the Major Provisions of the Regulatory Action

Key Changes to the Proposed Rule

Based on the comments we received and our own reevaluation of the proposed rule, we are finalizing the proposed rule with the following key changes to its provisions:

- Revising our proposed definition of *retail pet store* so that it means a place of business or residence (not necessarily that of the seller's) at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal available for sale prior to purchasing and/or taking custody of that animal after purchase and where only certain animals are sold or offered for sale, at retail, for use as pets.
- Amending the exemption from licensing for persons maintaining four or fewer breeding females in § 2.1(a)(3)(iii) to apply only to wholesalers (for whom the exemption was originally intended).
- Restoring and amending the exemption in § 2.1(a)(3)(vii) so that any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, and who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license, is also considered a retail pet store for regulatory purposes.
- Explaining in detail the effects of the proposed provisions on cat and rabbit breeders.

III. Costs and Benefits

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

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

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

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

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

The rule will also affect cat breeders who maintain more than four breeding females at their facilities and sell the offspring as pets, sight unseen. Fewer than 2 percent of cats in the United States are purebred and raised by breeders. We estimate that about 325 cat breeders may be affected by this rule.

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

Newly regulated breeders will be subject to licensing, animal identification and recordkeeping requirements. In addition, affected entities will be subject to standards for

[2] To view the proposed rule, its supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0003.*

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

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

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

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

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

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

IV. Discussion of Comments

We solicited comments on the proposed rule for 60 days ending July 16, 2012. On July 16, 2012, we published in the **Federal Register** (77 FR 41716, Docket No. APHIS–2011–0003) a document [3] announcing a 30-day extension of the comment period to give the public more time to submit comments. We also announced in that document the availability of a factsheet [4] regarding the provisions of the proposed rule.

We received 75,584 individual comments, 134,420 signed form letters, and 213,000 signatures on petitions submitted by organizations supporting or opposing the proposed rule. The comments were from animal welfare organizations, kennel clubs, breed registries, organizations representing owners and trainers of working dogs, not-for-profit animal rescue and sheltering organizations, animal transporters, purebred dog and cat fanciers, residential breeders of dogs, cats, rabbits, rats, and other animals, USDA-licensed breeders, pet and pet supply stores, pet owners, farmers, veterinarians and veterinary organizations, horse and livestock owners and producers, raptor propagators, State governments, elected officials, including U.S. Senators and Representatives, and members of the public. The issues raised by the commenters are discussed below by topic. We address the issues in the order that they pertain to the regulatory text of the proposed rule, then address comments pertaining to oversight and enforcement, constitutionality and legality, and other topics.

Dealer Definition

We proposed to amend the definition of *dealer* in § 1.1 of the AWA regulations to mean: ''Any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet, or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of the animals other than wild or exotic animals, dogs, or cats during any calendar year.'' This proposed amendment to the definition of *dealer* was necessary in order to eliminate inconsistencies between that definition and our proposed definition of *retail pet store.*

In the paragraphs that follow, we use discrete portions of the proposed definition as section headings to organize our discussion of the comments we received on various aspects of the proposed definition. Later in this document we take the same approach in our discussion of the

[3] To view this document, go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003-8841.*

[4] To view the factsheet, go to *http://www.aphis.usda.gov/publications/animal_welfare/2012/retail_pets_faq.pdf.*

comments received on the proposed definition of *retail pet store* and the proposed revisions to the exemptions from licensing contained in the AWA regulations.

Dealer: ''Any person who, in *commerce,* for *compensation* or *profit* . . .''

A number of commenters stated that APHIS had failed to define the terms ''commerce'' and ''compensation'' as the terms are used in the definition of *dealer.* Specifically, they noted that private animal rescues and shelters that suggest a self-determined donation are not operating in commerce or attempting to obtain compensation or profit and thus do not fall under the definition of *dealer* (see also the section below titled ''Requests for Additional Exemptions''). Likewise, many commenters stated that the business model of rescue and shelter organizations is clearly different from that of dealers in that it involves neither compensation nor profit, and for that reason all rescues and shelters should be exempt from licensing. Several commenters stated that it is illegal for 501(c)(3)s to require compensation or to attempt to profit from any services that they provide; one of these commenters expressed concern that, if requests for donations by private animal rescues or shelters are considered to be commerce or compensation, those organizations would be forced to pay Federal, State, and/or local taxes on every sale of a rescued or abandoned animal.

On the other hand, some commenters noted that animal shelter and rescue organizations that transport and offer for adoption rescued dogs and cats employ a business model that does not significantly differ from those of many dealers. The commenters also noted that rescues often request substantial adoption fees for their services and that those fees constitute compensation. Many of these commenters concluded that such organizations should therefore be regulated as dealers.

We consider private rescues and shelters that perform any of the activities listed in the definition of *dealer,* including transporting or offering animals for compensation, to be dealers. We consider acts of compensation to include any remuneration for the animal, regardless of whether it is for profit or not for profit. Remuneration thus includes, but is not limited to, sales, adoption fees, and donations.

We note, however, that dealers are only required to be licensed if they do not meet any of the exemptions in the regulations. Many private rescues and shelters operate under a business model in which representatives for the rescue or shelter and the animals available for sale or adoption are physically present at a location where the public is encouraged to personally observe the animals; this business model is consistent with our definition of *retail pet store.* As a result, private rescues and shelters with this business model have historically been exempted under the retail pet store exemption in § 2.1(a)(3)(i) and will continue to be exempted.

Finally, we consider such rescues and shelters to be retail pet stores only for the purposes of our regulations. Whether any other Agency or jurisdiction defines such an organization as a retail pet store for taxation or any other purpose is beyond our purview.

One commenter asked whether the proposed rule establishes a new class of licensee to be categorized in the same manner as existing dealers, and if so, it is unclear how APHIS could treat the new dealers differently from those existing licensees.

We are not establishing a new class of licensee. All newly licensed dealers would be subject to the same requirements as dealers who are currently licensed.

Dealer: ''Including *unborn animals,* organs, limbs, blood, serum, or *other parts.* . . .''

One commenter stated that she frequently purchases semen in order to impregnate female dogs that cannot travel to stud because of distance or risk to health. The commenter added that she does not sell the female dogs or their offspring and for that reason should not be considered a dealer.

Unless an individual buys or sells, at retail, or transports semen or unborn animals for one of the six purposes listed in the definition of *dealer* (research, teaching, testing, experimentation, exhibition, or use as a pet), the individual is not a dealer. The activities described by the commenter do not fall under any of the listed purposes.

The same commenter asked whether individuals involved in transporting a female dog back from a stud after breeding would be considered dealers, since the female dog is presumed to be carrying an unborn animal within it at that time.

We consider persons transporting pregnant female dogs in retail commerce for breeding purposes to be exempted from licensing, as this purpose is not one of the six purposes listed in the definition of *dealer.*

Dealer: ''For research, teaching, testing, experimentation, exhibition, or for use as a pet…''

Several commenters stated that they sold animals at retail for purposes other than the six specified in the definition of *dealer.* These commenters stated that they believed themselves to be outside of the scope of dealers and thus not subject to licensing but asked for clarification. Some of these commenters, including dog, cat, and rabbit dealers, stated that they sold or transported animals only in order to preserve bloodlines. The commenters who mentioned rabbits also stated that most rabbit breeders sell rabbits for one of three purposes: Food, fur, or preservation of bloodlines.

One commenter stated that, if APHIS were to indicate that all individuals who buy, sell, or transport animals for the preservation of bloodlines (i.e., breeding purposes) are not within the scope of *dealer,* it could provide a loophole for dealers to evade regulatory oversight. That being said, the commenter suggested that individuals who buy, sell, or transport a dog for which there are fewer than 100 registered litters in the United States should be allowed to state that they are acting solely to preserve rare bloodlines.

If an individual is selling animals at retail for breeding purposes, that individual is not a dealer. We do, however, share the commenter's concern that claiming breeding purposes as the purpose for an animal's retail sale could be subject to abuse. Therefore, if we were to receive word that individuals making such claims are, in fact, marketing their animals as pets, we would consider this to be grounds for initiating an investigation to resolve the matter.

Another commenter stated that he bred and sold dogs for participation in agility competitions and asked if he would be considered a dealer.

We are making no changes in response to this comment. It has been our experience that dogs that participate in agility competitions are primarily marketed as personal or family pets. An individual selling dogs at retail for use as pets would be considered a dealer.

Dealer: ''Any retail outlet where dogs are sold for *hunting, security, or breeding purposes* . . .''

Many commenters stated that if the purpose of this clause is to exempt sellers and buyers of working dogs from being dealers, its description is too limited in scope. The commenters cited a number of different uses for a dog—a companion animal for individuals with disabilities, a guide dog, a herd or livestock dog, a sled dog, or a rescue

dog—that do not fall within the scope of these uses but that require a dog to be trained to perform a specific function. The commenters urged us to expand the exemption to cover additional uses or to amend it to specify that it covers dogs sold at retail for work purposes.

Individuals who sell or buy dogs at retail for any purpose other than the six listed in the definition of *dealer* are not dealers. The examples cited in the exemption (hunting, security, or breeding purposes) are only intended to illustrate other purposes for buying or selling a dog at retail. As commenters pointed out, those examples are not exhaustive, and there are many other purposes that a dog can be used or trained for that are not included under the definition of *dealer.*

Finally, we note that persons selling dogs at the wholesale level for hunting, security, or breeding purposes are considered to be dealers.

Several commenters stated that they sold dogs at retail only for hunting, security, or breeding purposes but that sometimes birth defects, genetic anomalies, poor temperament, or other flaws preclude them from selling some of the offspring for those purposes. Other commenters stated that they imported and maintained dogs for use in working dog programs, but occasionally if a dog did not work out as a working animal, it would be sold at retail as a pet. The commenters asked whether they were covered by the exemption.

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 that dog at retail and remain exempt.

Another commenter asked whether a person operating a multi-use retail facility, in which some dogs were sold at retail for hunting or security and others were sold for other purposes, would be considered a dealer.

Any person selling dogs at retail for one of the six purposes stated in the definition of *dealer,* including as pets, would be considered a dealer. If the dogs intended to be sold as pets at a multi-use retail facility are commingled with dogs intended to be sold for purposes other than one of the six in the definition of *dealer,* all parts of the multi-use facility would be subject to regulation.

One commenter stated that he sold dogs at retail for hunting, but did so from his home rather than from an outlet. The commenter asked whether he was still exempt from being considered a dealer.

An individual selling dogs at retail solely for hunting purposes is not a dealer.

One commenter asked how APHIS determines from a seller that a dog sold for hunting, herding, or other work will not also be used as a pet.

In making such a determination, we consider the manner in which the seller markets his or her animals and gather feedback from buyers and State, county, and local authorities.

Dealer: ''Who does not sell or negotiate the sale of any wild or exotic animal, dog, or cat and who derives no more than *$500 gross income from the sale* of [such animals] during any calendar year.''

Excluded under the definition of *dealer* is any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year. A number of sellers stated that the costs of animal breeding have risen significantly in recent years and a $500 limit for this exemption is too low. They asked that it be adjusted upwards to compensate for inflation. On the other hand, several commenters stated that the $500 *de minimis* exemption is too high.

The gross income limit is set by the AWA. However, it is important to note that, under the proposed rule, there are a number of other ways that persons who sell animals covered by this exemption (including rabbits, guinea pigs (cavies), and rats) can be exempted from licensing, either by not meeting the definition of *dealer* in § 1.1 or through one or more of the licensing exemptions in § 2.1 (see the section below titled ''Retail Pet Store: ''. . . rabbits, guinea pigs . . .'').

Several commenters asked why sales of dogs or cats are not covered by this exemption, and suggested it be amended to exempt individuals who derive no more than $500 gross income from the sale of any animals listed in the definition of *dealer.*

The AWA does not include dogs and cats under this particular exemption.

Dealer: Discrepancy with the definition of ''pet animal''

One commenter noted a discrepancy between the list of animals covered under the definition of *pet animal* and animals listed in the definition of *dealer* in § 1.1. The commenter stated that this discrepancy was likely to result in a degree of confusion among breeders regarding whether they fell under the regulations as a dealer. In order to clarify the definition of *pet animal,* the commenter suggested amending the definition to read as follows: ''Pet animal'' means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes: (1) Any wild or exotic or other non-pet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, ocelots, foxes, coyotes, etc.; and (2) animals sold at retail in commerce for any of the following purposes: hunting, security, breeding, food, or fiber (including fur).''

We are making no change in response to this comment. Animals listed under the definition of *dealer* are there for the purpose of indicating which persons are subject to regulation and focus on the type of animal and how it is bought, sold, or transported in commerce. Animals listed under the definition of *pet animal* provide examples of ''pets'' as that term is used in the definition of *dealer.*

Retail Pet Store Definition

We proposed to revise the definition of *retail pet store* so that it would mean ''a place 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, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species.'' We also proposed to specify that persons who meet the criteria for an exemption from licensing in § 2.1(a)(3)(iii) of the AWA regulations are *retail pet stores.*

Retail Pet Store: ''A *place of business or residence . . .*''

Several commenters wanted to know why, in revising the definition of *retail pet store,* we had removed the word ''outlet'' and added the words ''place of business or residence.''

''Outlet'' as used in the definition has always referred simply to the activity of retailing animals, not necessarily within the confines of a ''brick-and-mortar'' pet store or even a physical location. Accordingly, ''outlet'' in this context can include the sale of animals sight unseen, which is the retail activity that we proposed to regulate. For this reason, we proposed removing the word

''outlet'' and replacing it with ''place of business or residence.''

A commenter stated that, by removing the word ''outlet'' and thus removing sight unseen sales from the scope of the *retail pet store* definition, we had fundamentally reinterpreted the implicit meaning of ''retail'' within the AWA. The commenter stated that ''retail'' has always been understood to mean sale directly to the consumer and added that the method of delivery does not change the underlying structure of the retail transaction. Similarly, several commenters pointed out that sight unseen sales were fairly common during the time period when Congress passed the AWA, but are not mentioned within the Act as an activity that contributes to animal neglect or abuse; these commenters concluded that the AWA must therefore consider retail sales of pets to include sight unseen sales.

We disagree with the commenters that we reinterpreted the meaning of ''retail'' in relation to the AWA, or that the AWA includes sight unseen sales within the scope of retail sales. It is our contention that the AWA envisioned a retail pet store as a business in which the seller, buyer, and animal are physically present so that every buyer can personally observe the animal for sale prior to purchasing and/or taking custody of that animal, thus ensuring that the animals were monitored for humane care and treatment.

In the factsheet,[5] we clarified our proposed change to the retail pet store definition by noting that pet animal retailers who sell their animals to customers in face-to-face transactions at a location other than their premises are also subject to some degree of public oversight, and therefore we would not regulate them for that activity.

Several commenters stated that the factsheet is inconsistent with the proposed rule because a face-to-face transaction at any location other than a fixed residence or place of business is substantively different from going to that residence or place of business to observe animals offered for sale.

Although the AWA does not define ''retail pet store,'' the Act exempted retail sellers of pets from licensing pursuant to the Act. As we mentioned above, it is our contention that it did so because sellers, buyers, and animals are physically present at retail pet stores so that buyers can personally observe the animals before taking custody of those animals, thus ensuring that the animals are monitored for humane care and treatment. Personal observation of an animal offered for sale can and does take place at locations other than a ''brick-and-mortar'' pet store, so restricting the definition of *retail pet store* to ''brick-and-mortar'' stores is unnecessary and not in keeping with the intent of the AWA.

A few commenters asked for a definition of a ''face-to-face'' transaction.

We consider a face-to-face transaction as one in which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal. While the seller's presence at this transaction was implicit in our proposed definition of *retail pet store,* we are amending the definition to actually include the word ''seller'' in order to underscore his or her presence.

Several commenters stated that, while the intent of our proposed changes was likely to exempt small-scale residential breeders from licensing, labeling such breeders as a retail pet store has unintended adverse effects. Many commenters pointed out that local zoning codes often prohibit retail stores in areas designated for residential use, while others stated that State and local tax codes often require retail stores to file differently from ''hobby businesses'' and asked whether APHIS had considered these implications. One breeder asked whether, pursuant to Internal Revenue Service Code Section 183, being considered a retail pet store by APHIS would allow him to claim ''for profit'' status and increase the number of itemized deductions he could claim on his tax form.

We used the term *retail pet store* only for the specific purpose of defining certain persons who sell pets at retail as retail pet stores, thus exempting them from licensing pursuant to the AWA.

One commenter suggested that we should remove the words ''or residence'' and the reference to § 2.1(a)(3)(iii) from the *retail pet store* definition and instead specify that hobby breeders fall under the definition of *retail pet store*. The commenter stated that we could define the term ''hobby breeder'' in the manner specified in current USDA Animal Care guidance for dealers, transporters, and researchers: ''Small-scale breeders with gross sales under $500 per year, provided that such sales do not include wild or exotic animals, dogs, or cats; and/or small-scale breeders with four or fewer breeding cats and dogs who sell the offspring.''

The definition of ''hobby breeder'' provided by the commenter is our longstanding understanding of that term. However, we are retaining the word ''residence'' in the definition of *retail pet store* because we established in *Doris Day Animal League (DDAL)* v. *Veneman* [6] that we consider residential breeders selling pets at retail to be included under the exemption of ''retail pet stores'' in the AWA.

Retail Pet Store: ''That *each* buyer physically enters. . . .''

Many commenters objected to the provision that each buyer be required to enter the premises where animals are offered for sale. Some of them presented a number of different scenarios in which, they stated, it would be impracticable to have each buyer personally observe the animal prior to purchasing and/or taking custody of it after purchase. Suggested scenarios included sales to foreign customers; sales to disabled or elderly customers for whom travel to the buyer is a health risk; and sales of a rare breed, with a handful of geographically dispersed owners, for preservation of bloodlines. Many of these commenters added that personally delivering animals to buyers would also be impractical and costly.

We proposed this provision because it is our contention that the AWA considers a retail pet store to be one in which the buyer, seller, and animal are physically present so that every buyer can personally observe the animal available for sale prior to purchasing and/or taking custody of that animal. Animals that are sold at retail sight unseen are not personally observed by buyers prior to purchase. However, it is important to note that 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. Bearing this in mind, we consider many of the scenarios presented by commenters to pertain to issues that would preclude the ultimate owner of the animal, not the buyer, from being physically present to observe the animals. However, a carrier or intermediate handler cannot be designated as the buyer.

Retailers who, for whatever reason, do not consider it possible for each buyer to personally observe their animals prior to purchasing them and/or taking

[5] See footnote 4.

[6] *Doris Day Animal League* v. *Veneman,* 01–5351: published 1/23/2003. Doris Day Animal League filed a rulemaking petition with the Agriculture Department, urging a change in the regulatory definition of ''retail pet store'' so that residential operations would not be exempted. On March 25, 1997, the Secretary published the petition in the **Federal Register** (62 FR 14044) and received more than 36,000 comments. On July 19, 1999, when the Secretary announced in the **Federal Register** that he would retain the definition, and stated the reasons why (64 FR 38546), Doris Day Animal League and other organizations and individuals concerned about the mistreatment of dogs brought this action for judicial review.

custody of them may still be exempt from licensing if they do not sell the animals at retail for one of the six purposes covered under the definition of *dealer.* If they sell the animals at retail for one of those six purposes, but maintain four or fewer breeding females and sell only the offspring born and raised on their premises, they are also exempt from licensing.

Those who own more than four breeding females and wish to continue selling the offspring as pets, sight unseen, can do so by obtaining a license and allowing APHIS inspectors to inspect their facility. As explained in the economic analysis prepared for this final rule, the costs associated with being licensed will be relatively low for all but that small percentage of newly licensed breeders who are not currently compliant with the AWA standards.

Commenters who cited the need to engage in sight unseen sales to preserve a bloodline often cited animal health risks associated with not doing so. An organization representing a rare dog breed, for example, stated that sight-unseen sales of its breed for breeding purposes are necessary in order to keep the breed from becoming extinct. The commenter stated that when the breed is deprived of a wide genetic pool, fatal heritable conditions can begin to appear within the breed. Several other breeders of rare dogs, cats, and rabbits made similar claims. Several small-scale residential breeders stated that their practice of occasionally shipping animals to each other for stud services will no longer be possible and result in less genetic diversity for their breed.

We do not expect licensing of some breeders to result in the extinction of rare breeds, an increase in health issues, or a decrease in genetic diversity. A person who sells and ships animals at retail for breeding purposes is not considered a dealer and thus not subject to licensing. Such persons could continue selling at retail and shipping animals sight unseen as long as the animal is used for breeding purposes and not for any of the six purposes listed under the definition of *dealer* in § 1.1.

One commenter asked how recently buyers must have visited a facility before a seller can sell them a pup remotely. As an example, the commenter wanted to know whether, if buyers visited her facility 2 years earlier to buy a pup, she could remain exempt if she shipped them a second pup without them visiting her a second time.

As indicated in our revised definition of *retail pet store,* each purchase of a pet animal requires that the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase. Accordingly, if the buyers observed this second pup during their visit, this condition is fulfilled. If they did not (e.g., if the pup was not yet born when the prior transaction took place), this condition is not fulfilled.

Several commenters opposed to the rule questioned APHIS' basis in assuming that sight unseen sales of pet animals necessarily constitute a potential risk to animal welfare. To support their point, many of these commenters stated that they regularly buy healthy animals sight unseen or sell healthy animals sight unseen to satisfied customers. The commenters pointed out that in the proposed rule, APHIS had failed to quantify the number of complaints that had arisen regarding sight unseen sales of animals, the percentage of complaints that came from unique customers, and the relative severity of the complaints. The commenters also noted that APHIS did not conduct a survey of all individuals who buy animals sight unseen to see what percentage of them were satisfied with the welfare of the animals they purchased.

On the other hand, several commenters supporting the rule provided accounts of sick and injured pet animals that they had bought sight unseen or had been bought by others known to them. Several veterinarians commented that pet animals bought sight unseen by their owners were often brought to their clinics with a wide range of health problems.

The primary purpose of the proposed rule was to revise the definition of *retail pet store* so that it is consistent with the AWA. It is our contention that the AWA exempted pet retailers from licensing because the seller, buyer, and animal are physically present in the same place so that the buyer can personally observe the animal available for sale prior to purchasing and/or taking custody of that animal, thus monitoring them for humane care and treatment. This physical presence and personal observation does not occur when retailers sell and ship pets sight unseen.

A few commenters stated that they had sold animals sight unseen in the past but no longer did so, and asked that, if the proposed rule is finalized, whether the scope of this definition should not be retroactively applied to them.

The effect of this rulemaking and its enforcement would not be retroactive to any prior actions.

A number of commenters expressed concern that using the Internet or news media to generate customers would result in a loss of the exemption from licensing. Many commenters also expressed uncertainty whether any remote sales completed over the Internet will automatically subject them to licensing requirements, even if the buyer picks up the animal in person after buying it online. One commenter expressed concern that she would be considered an Internet seller because she has posted sales ads online in the past.

We are not regulating the use of the Internet (or any other method of sale). Sellers are free to use the Internet to advertise or sell pet animals, provide information to buyers, and conduct other related activities. Indeed, a seller who sells over the Internet could still be considered a retail pet store provided that, before the buyer takes custody of the animals purchased, the seller, buyer, and animals have been physically present in one location so that the buyer may personally observe the animals.

A number of commenters stated that they preferred the alternative set forth in the proposed rule that considered a regulatory threshold based on percentage of sight unseen sales. The commenters challenged APHIS' assertion that it has no authority under the AWA to require retail pet stores to make and retain sales records, and asked, if this is the case, how APHIS currently determines that a person meets the exemption from licensing in § 2.1(a)(3)(iv) of the regulations.

Persons who are exempt from licensing under the AWA cannot be required under the AWA regulations to keep records. The commenter's question about § 2.1(a)(3)(iv) addresses how we determine a person's eligibility for an exemption without requiring them to keep records. This exemption applies to persons selling fewer than 25 dogs and/or cats each year for research, teaching, or testing purposes. We determine a person's exemption eligibility by inspecting records kept by the research, teaching, and testing facilities that buy these animals. These facilities are required under the AWA to document when and from whom the animals are purchased.

The same commenters pointed out that APHIS' stated second reason for not establishing a threshold, that animals sold sight unseen could be kept under conditions different from those sold to walk-ins, is not resolved by eliminating sight unseen sales from the exemption. The commenters pointed out that a large-scale breeder could appear to be in compliance with the regulations by

establishing a ''brick-and-mortar'' facility for walk-ins while engaging surreptitiously in sight unseen sales of animals bred at another location. The commenters stated that an exemption based on percentage of retail sales would be likely to dissuade such abuses. Another commenter noted that, for many small-scale residential dog breeders, sight unseen sales constitute 20 percent of annual sales. The commenter stated that APHIS should therefore adopt an ''80/20'' threshold of face-to-face to sight unseen sales.

We have no evidence to indicate that allowing retail pet stores to conduct a percentage of their sales sight unseen would discourage large-scale breeders from engaging in fraudulent practices, nor do we have information to indicate why an 80/20 ratio of face-to-face to sight unseen sales would be appropriate.

A few commenters asked that the final rule ''grandfather in'' existing relationships with remote customers, and specify that after the effective date of the rule each new buyer would have to physically enter a place of business or residence.

We are making no changes in response to the comments. As noted above, persons who are exempt from licensing under the AWA cannot be required under the AWA regulations to maintain the records necessary to monitor and enforce such an approach.

Retail Pet Store: ''That each *buyer* physically enters. . . .''

A few commenters asked whether a buyer could use an agent to serve in his or her place.

As we mentioned above, for purposes of our definition of *retail pet store,* we consider the buyer to be the person who takes custody of the animal after purchase. This person may differ from the ultimate owner of the animal but cannot be acting as a carrier or intermediate handler.

Retail Pet Store: ''That each buyer *physically* enters. . . . ''

A number of commenters asked why a buyer's physical presence at a place of business or residence was necessary to protect animal welfare. The commenters pointed out that Web-based technologies allow buyers to ''virtually'' observe animals that are for sale. On the other hand, several commenters pointed out that virtual technologies can be manipulated to provide an inaccurate depiction of animal care at a seller's premises.

While many breeders use Web-based technologies to provide buyers with visual and other information about the animals they sell, we agree with the commenters' point that such technologies can be used to inaccurately depict the health and condition of the animal for sale.

Several commenters suggested amending the definition to allow buyers the option to waive the requirement to physically enter the seller's place of business or residence to observe the animals offered for sale. The commenters stated that this would prevent buyers who have an existing relationship with a seller from having to travel long distances to view animals when they felt confident about the care standards provided by the seller. A few commenters stated that this waiver should be in writing as documentary proof.

One commenter suggested that the regulations should require that the seller have a return policy and that language requiring physical entry of the business or place of residence be removed from the definition of *retail pet store.* The commenter suggested that we define *return policy* as ''a written policy provided to a purchaser in a sales contract that contains provisions for returning the animal, reimbursing the purchaser, and adjudicating disputes.'' The commenter stated that return policies ultimately foster animal welfare, since sellers that provide poor care for their animals are subject to frequent returns and less able to turn a profit.

We are making no change in response to these comments. Waivers and return policies used in place of requiring buyers to observe the animals face-to-face would be appropriate for a rule focused on consumer protection, not animal welfare, and could result in instances in which retail pet stores sold animals to buyers without the buyers being physically present to personally observe the animals prior to purchasing and/or taking custody of them. This would be inconsistent with the AWA.

Some commenters noted that the proposed rule provides no evidence that purchasing or shipping animals sight unseen jeopardizes animal welfare and treatment. Several of these commenters pointed to various scenarios as examples in which such sales could be conducted sight unseen and without significant risk, such as when the buyer is a repeat customer with whom the seller has previously done business, when the buyer and seller are relatives or close friends for whom a preexisting relationship exists, or when the breed is so rare that each breeder is personally known within the community of potential buyers. One commenter, a State association of dog owners, cited the results of an informal survey showing that most of its members buying dogs sight unseen over the Internet saw few or no health problems in the dogs they purchased. Conversely, a veterinary medical association cited a study concluding that breeders who advertise on large-scale puppy sales Web sites and sell to customers sight unseen are less knowledgeable about breed-specific health issues compared to national parent club breeders, and that such breeders are often less likely to perform screening tests on their breeding dogs to detect undesirable heritable health risks.

We are making no changes in response to these comments. Retail sales that are entirely sight unseen do not require the buyer to be physically present in order to personally observe the animal available for sale prior to purchasing and/or taking custody of that animal. It is our contention that this concept of physical presence for the purposes of personal observation is consistent with the AWA's use of the term *retail pet store.*

Retail Pet Store: ''That each buyer physically *enters*. . . . ''

A significant number of residential breeders objected to this provision. Many of the commenters cited human health and safety concerns and others cited animal health risks associated with opening their residence to buyers. They pointed out that many diseases of dogs, in particular, are zoonotic, and that buyers who are ill may transmit diseases to animals at their residences. Several of these commenters also stated that they had no way of knowing the disease status of any animals with which a buyer has recently come in contact, and expressed concern that clothing could serve as fomites (inanimate objects or substances capable of transmitting infectious organisms from one individual to another) for diseases of dogs. A few commenters stated that their animals become agitated when strangers enter their premises and stated that requiring buyers or inspectors to enter could therefore adversely impact animal welfare.

A place of business can be any location in which the seller, the buyer, and the animal are physically present so that every buyer can personally observe the animal offered for sale prior to purchasing and/or taking custody of that animal(s) after purchase.

On the other hand, several commenters stated that, for the sake of animal welfare, buyers need to personally observe the breeding and living conditions of animals available for sale prior to purchasing and/or taking custody of those animals. The commenters suggested that we amend

the definition of *retail pet store* to specify that buyers must be able to see these conditions.

Such an amendment would make the definition of *retail pet store* in our regulations significantly more restrictive than its meaning in the AWA. The AWA neither authorizes nor requires public oversight of breeding stock or the premises on which animals for sale at retail are maintained.

Several commenters stated, both before and after issuance of the APHIS factsheet, that face-to-face sales at a mutually agreed-upon location should suffice in lieu of physically entering a fixed place of business or residence. Animal rescue organizations, in particular, supported this point by noting that buyers seldom visit their primary location, but that they always have face-to-face interaction with buyers at adoption events or when delivering the animal to the buyer.

Such a face-to-face interaction is consistent with the AWA.

One commenter suggested that we require a seller to have face-to-face interaction with the buyer at some point prior to purchase and/or taking custody of an animal, but suggested that we decouple this from personal observation of the animal. The commenter stated that this would allow breeders who had developed long-standing relationships with existing buyers to ship dogs sight unseen while meeting the intent of the rule as they understood it. Another commenter agreed and pointed out a number of scenarios in which the breeder would be known to the buyer, but may not visually inspect the animals before purchase (buying from a blood relative or close friend, buying from a breeder with whom one has previously done business, and buying under time constraints that do not allow for visual inspection of the animal).

We are making no changes in response to these comments. The definition of *retail pet store* is consistent with the AWA in that it requires that the seller, buyer, and the animal available for sale be physically present so that every buyer can personally observe the animal prior to purchasing and/or taking custody of that animal.

A few commenters stated that, instead of requiring the buyer to enter the premises to observe the animal before purchase and/or taking custody, we should require all animals sold at a place of business or residence to be accompanied by a certificate of veterinary inspection attesting to their health and freedom from genetic disorders in order for that place of business or residence to meet the definition of *retail pet store.* Other commenters similarly noted that the required health certificate currently issued by a veterinarian for animals being shipped should be sufficient proof that the animal is in good health and that therefore entering the premises to observe the animal before purchase is unnecessary. Similarly, another commenter asked that if a dog is shipped internationally whether the requirements for shipping the dog (airline health certificate, USDA endorsed certificate, shot records) could be used in lieu of a face-to-face transaction.

On the other hand, several commenters questioned the efficacy of veterinary certificates generally, stating that they had bought a pet that was accompanied by a veterinary certificate only to later discover the animal had a genetic condition or longstanding malady. For this reason, the commenters stated APHIS should review its policing of health certificates issued for dogs in transit to ensure that certificates are valid.

We are making no changes in response to these comments. Persons exempted from licensing under the AWA, such as retail pet stores, are not required to obtain a veterinary health certificate when shipping an animal via commercial transport. For those licensees required to obtain such a certificate from a licensed veterinarian, the certificate only affirms that transport of the animal is not likely to pose a health risk to that animal or to other animals in transit. No relationship exists between issuance of a health certificate for an animal and the standard of care provided by the seller receiving the certificate. Finally, regardless of a certificate, any retail transaction that does not include the element of public oversight is inconsistent with the AWA.

Several commenters stated that persons operating foster homes for abused or rescued animals should be exempted from having buyers/adopters physically enter their premises. They stated that requiring such entrance would likely dissuade both foster persons and potential adopters from accepting dogs and cats and would ultimately adversely impact animal welfare.

Persons who engage solely in face-to-face retail transactions are retail pet stores, regardless of whether these transactions occur at a residence or at some other location; as we noted above, most animal rescues engage solely in such types of retail transactions. Persons who foster pet animals in their homes on behalf of these rescues may conduct these face-to-face transactions at an alternative location and therefore would not be required to allow adopters to enter their premises.

Several commenters stated that many of the reasons that render it difficult for a buyer to physically enter a seller's place of business or residence also apply to completing face-to-face transactions (e.g., age, health, or physical capacities of the buyer, distance between the seller and buyer, geographical isolation of seller).

The commenters assumed that the buyer of an animal sold at retail is the ultimate owner of the animal. However, as noted above, we consider the buyer of an animal sold at retail to be the person who takes custody of that animal after purchase; this might not be the ultimate owner. For purposes of the definition of *retail pet store,* it is this person, not necessarily the ultimate owner, who must be physically present to observe animals available for sale. However, a carrier or intermediate handler cannot be designated as the buyer.

One commenter objected to face-to-face transactions off-site on the grounds that they would put animal rescues and shelters at a competitive advantage over commercial retailers, since the former would be able to conduct face-to-face transactions of animals through networks of transport volunteers rather than by any employee of the rescue group or shelter actually meeting the buyer, while commercial retailers would be restricted to having only their employees conduct the sale.

As is the case with commercial pet retailers, representatives of rescue groups also must be physically present at a place of business so that potential buyers/adoptees can personally observe their animals before purchasing and/or taking custody of them.

A commenter noted that substandard Internet sellers could shift their model of business to selling animals face-to-face at a location off their premises to avoid licensing, as the proposed rule will not impact such activities.

We carefully considered this comment when we decided to allow the seller, buyer, and animal available for sale be physically present at the same place, but not necessarily the seller's premises. This does not create an incentive for and a means of avoiding licensing for the types of dealers the AWA encompasses.

Internet sellers who shift their model of business in such a manner would have to provide buyers with the opportunity to personally observe animals for sale prior to purchasing and/or taking custody of them, and thus will engage in a retail model that is consistent with the AWA. Our analysis

of the industry is that dealers who currently use an Internet sales business model would not find it economically viable to shift their business model in such a manner and would instead opt for licensing and inspection by USDA. As noted in our economic analysis, we believe that between 2,600 and 4,640 dog breeders who currently claim retail pet store status will no longer be able to do so under this rule. However, USDA will monitor the rule's implementation and consider proposing new rules should we determine that the AWA's intent is not being served.

Another commenter suggested that, if sellers who have face-to-face transactions at shows, flea markets, and auctions are exempt from licensing, then the shows, flea markets, and auctions themselves should have to be licensed. (The commenter stated that events that solely serve non-profits should not have to be licensed.)

If a seller is selling regulated animals to buyers at a show or event solely in retail, face-to-face transactions, that seller meets the definition of a retail pet store and is exempt from licensing regardless of the physical venue in which the animals are offered for sale. Auctions and other events in which regulated animals are sold at wholesale must be licensed.

One commenter stated that both APHIS and other commenters may have understated the difficulty of meeting in public to purchase dogs or cats face-to-face. The commenter pointed to several State and local regulations that forbid or restrict sales or commercial transactions in public areas. The commenter concluded that, because of these difficulties, APHIS should revise the definition of *retail pet store* to allow some sight unseen sales to take place.

We are making no changes in response to this comment. If local or State ordinances prohibit the sale of dogs or other pet animals in public areas, roadsides, or other locations, retailers of pet animals residing in the States or locales affected would retain the option of conducting business in any other location that is not prohibited by law.

One commenter asked what sort of documentation APHIS would ask from sellers that a face-to-face transaction had occurred between them and the buyer of a pet. The commenter stated that this would almost certainly require recordkeeping if the buyer and seller offer differing accounts of the transaction.

In instances where there is some question about the method of sale, APHIS will conduct an investigation and determine whether a sight unseen sale has occurred.

Retail Pet Store: ''In order to personally observe the animals . . .''

Several commenters stated that APHIS provided no evidence that having individuals personally observe pet animals prior to purchase will result in more humane treatment and healthier pets. A number of commenters stated that, while personally observing an animal prior to purchase and/or taking custody will allow a buyer to visually inspect the animal for signs of neglect or symptoms of certain diseases, a simple visual inspection will not reveal to the buyer whether the animal has genetic conditions or other maladies; several commenters pointed out that a number of genetic conditions of dogs and cats have a significant latency period. Another commenter pointed out that personal testimonials from animal welfare organizations received during the comment period have provided evidence that animals sold at retail often have genetic conditions that can only result from inbreeding or overbreeding.

Our focus in this rule is to ensure that our definition of *retail pet store* is consistent with the AWA. It is our contention that the AWA exempted retail pet stores from Federal licensing and inspection requirements because, at such establishments, buyers are physically present in order to personally observe the animal available for sale prior to purchasing and/or taking custody of that animal, thus monitoring them for humane care and treatment.

As an alternative to requiring buyers to personally observe the animals for sale, face-to-face, several commenters stated that all retail breeders should have to be licensed pursuant to the AWA regulations. On the other hand, a number of commenters pointed out that licensing of all such breeders would expand the scope of regulated entities far beyond APHIS' capacity to enforce the AWA regulations.

We are making no change in response to these comments. The AWA exempts certain breeders from licensing.

One commenter asserted that the blind are incapable of personal observation of animals.

As long as the buyer is physically present with the animals prior to purchasing them and/or taking custody of them after purchase, it is considered an acceptable transaction for the purposes of maintaining the status of a retail pet store.

Retail Pet Store: ''Where only the following animals are sold or offered for sale . . .''

One commenter stated that this phrase is ambiguous because there is no distinguishing factor defining the difference between which animals are sold and which are offered for sale.

Animals offered for sale are the property of the seller, while animals that are sold are the property of the buyer.

Retail Pet Store: ''cats . . .''

Several commenters noted that most pet cats come from sources other than small-scale cat breeders and that regulating such breeders is not necessary. A cat club representative cited a 2010 survey by the American Pet Products Association revealing that fewer than 1 percent of cats are obtained through Internet/online contact and only 2 percent of owned cats are obtained from breeders of pedigreed cats. The commenter stated that there is no need for Federal regulation of small or moderate scale home-based breeders of cats who have more than four breeding females, regardless of whether or not pet buyers come to their places of business.

Given the presence of commercial cat breeders selling and shipping cats sight unseen, we consider some degree of Federal regulation to be necessary to ensure adequate oversight.

Retail Pet Store: ''. . . rabbits, guinea pigs . . .''

Several commenters asked APHIS to clarify for those who own rabbits and guinea pigs (cavies) the conditions under which they are required to obtain a USDA license.

Only a very small number of persons selling rabbits and guinea pigs will be affected by this rule. Such persons may be required to obtain a license if the following applies to their situation: (1) They sell animals sight unseen; (2) They sell the animals as pets and not for purposes of food or fiber (including fur) or agricultural purposes; and (3) They do not qualify for the $500 gross income limit from licensing.

Several commenters noted that the regulations were vague on when rabbits are to be considered livestock or pets for regulatory purposes.

If a person sells rabbits only for the purposes of food or fiber (including fur), those animals are considered to be farm animals and the person is exempt from licensing.

Some commenters were concerned that the rule would require licensing of National and State Future Farmers of America (FFA) organizations and 4–H participants who sell their rabbits and limit the ability of youth to breed and show rabbits at county fairs and other exhibitions.

FFA and 4–H participants who sell their rabbits for the purposes of food or fiber (including fur) or in face-to-face

transactions at county fairs, rabbit shows, and other agricultural exhibitions are exempt from licensing regardless of the number sold.

One commenter concerned about the sale of rabbits asked whether this proposal has any provisions that would stop some rabbit rescue organizations from buying rabbits from commercial sources and reselling them as ''rescues'' for a substantial profit.

APHIS investigates all credible reports we receive of unlicensed activities involving sales of covered pets.

A few commenters stated that we should entirely exempt guinea pig (cavy) breeders from licensing.

Guinea pigs (cavies) are under the authority of the AWA, and APHIS is tasked with ensuring that all guinea pigs sold as pets are monitored for their humane care and treatment.

Retail Pet Store: ''. . . rats . . .''

Some commenters asked APHIS to clarify for those who own rats the conditions under which they would have to obtain a USDA license.

Under the regulations, we currently cover rats other than those of the genus *Rattus* bred for use in research. Therefore, persons retailing covered rats would need to obtain a license if they are not otherwise exempt.

Retail Pet Store: ''. . . gophers . . .''

One commenter stated that gophers should be removed from the list of pets that can be sold without licensing in the definition of *retail pet store.* The commenter noted that while the other animals listed in that definition have historically been sold as pets, gophers have not and should more accurately be classified as ''wild animals.''

We are making no changes in response to this comment. Our research shows that gophers have been bought and sold as pets in the United States for at least a decade.

Retail Pet Store: ''. . . domestic farm animals . . .''

Some commenters were uncertain about how the proposed rule would affect the ownership, breeding, and sale of farm animals.

One commenter stated that the regulations are unclear with respect to livestock which may either be reared for utility purposes or kept as pets. The commenter noted that transfer of ownership of equids, bovids, caprids, lagomorphs, and domestic fowl is regularly conducted sight unseen both for utility purposes and as pets, and that sellers are sometimes not aware of the buyer's intended use of the animals. The commenter asked that APHIS add clarifying language to the regulations that allows the free exchange of domestic livestock and clarifies that livestock are, in most instances, not pets.

Farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation. Farm animals intended to be used as pets, for biomedical research, or other nonagricultural research are regulated under the AWA. Persons exhibiting farm animals at agricultural shows, fairs, and exhibits are exempt from licensing. However, persons exhibiting farm animals for nonagricultural purposes (such as petting zoos) are required to be licensed.

A national livestock organization asked that we include language allowing face-to-face transactions of farm animals.

As noted above, farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation, regardless of whether those animals are sold face-to-face or sight unseen. Farm animals sold specifically as pets in face-to-face transactions are also exempt from licensing. On the other hand, farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition, are regulated under the AWA and require licensing.

One commenter suggested that we specifically exempt horses not used for research purposes from the retail pet store definition.

In § 1.1, the term *animal* excludes horses not used for research purposes, which specifically exempts them from regulation.

One commenter expressed concern that if a breeder maintains both farm animals and regulated animals on his residence, and the farm animals are deemed responsible for the breeder failing to meet the regulatory standards for the regulated animals, the breeder could be penalized and APHIS could remove the farm animals from the premises.

Farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation, and therefore cannot be removed from a premises due to failure to meet the AWA regulations.

Another commenter asked if any livestock sold to a buyer who does not have a ''farm plan'' on file with USDA would be considered as pets.

The commenter is referring to a type of business plan required for certain Farm Service Agency loans. As noted above, animals sold and intended for use as food, fiber, or other purposes under the definition of *farm animal* in § 1.1 are exempt from regulation regardless of whether the buyer has such a plan on file.

Retail Pet Store: ''. . . birds . . .''

A few commenters requested that APHIS create an exemption in the regulations for raptors. One commenter requested that we include specific exemptions from licensing and all other regulations promulgated under the AWA for falconers, raptor propagators, those that conduct education of the public regarding raptors, and raptor permittees. The commenter stated that these persons are already subject to other stringent Federal regulations designed to ensure the welfare of these raptors, including licensing, facility inspections, reporting requirements, and permit fees. Another commenter asserted that raptors are not pets, and thus do not fall under the scope of the AWA; hence their owners do not need to be licensed.

Another commenter stated that we should exempt parrot breeders from licensing on the grounds that subjecting them to licensing will promote smuggling of parrots from other countries. Similarly, a commenter expressed concern that waterfowl could be affected by the proposed rule and requested that we include in our regulations an exemption for birds already regulated under the Migratory Bird Treaty Act of 1918.

Finally, one commenter noted that there is no clear definition of ''bird(s)'' in part 1. Because of this, the commenter wondered about the extent to which the regulations in parts 2 and 3 pertain to birds.

On June 4, 2004, we published a final rule in the **Federal Register** (69 FR 31513–31514, Docket No. 98–106–3) that amended the definition of *animal* in the AWA regulations to include birds, other than those bred for use in research. However, APHIS has not established standards specific to birds.

Retail Pet Store: ''. . . coldblooded species''

A number of reptile breeders stated that the industry is highly self-regulated, and that sight unseen sales of reptiles tend to be of high-end, extremely valuable animals where animal welfare is paramount for the sake of the sale. The commenter suggested that sellers of cold-blooded animals should be exempt from licensing, whether their sales are face-to-face or sight unseen. Another commenter asked how APHIS could require licensing of individuals who sell reptiles sight unseen, when the reptiles do not fall under the definition of *animal.*

As the commenter noted, cold-blooded species do not fall under the definition of *animal* in § 1.1 and are therefore not regulated.

Retail Pet Store: ''A retail pet store also includes any person who meets the criteria in § 2.1(a)(3)(iii) of this subchapter.''

A number of commenters raised questions regarding the reference to § 2.1(a)(3)(iii) that we proposed adding to the definition of *retail pet store.* Many of these commenters were unsure why persons meeting these criteria were considered retail pet stores. A few of these commenters asked whether being considered a retail pet store because of these criteria allows a person to claim the exemption in § 2.1(a)(3)(i). One commenter, who met the criteria in § 2.1(a)(3)(iii), asked why he would need two separate exemptions from licensing.

Several commenters surmised that we included this criterion within the scope of the proposed definition of *retail pet store* because we proposed to remove the exemption in § 2.1(a)(3)(vii); many of these commenters referred to § 2.1(a)(3)(vii) as the ''hobby breeder'' exemption, and suggested that our intent was to provide some hobby breeders an exemption from licensing.

However, many of these commenters pointed out that the criteria in § 2.1(a)(3)(iii) are significantly more restrictive than those in § 2.1(a)(3)(vii). Although a number of these commenters agreed with APHIS that retaining the exemption unchanged in § 2.1(a)(3)(vii) would continue to allow commercial Internet retailers of dogs and cats to remain exempt from licensing, the commenters stated that we had failed to provide a rationale for removing the exemption from licensing in § 2.1(a)(3)(vii) for certain dog and cat fanciers.

A number of self-described dog and cat fanciers stated that they did not meet any of the criteria in our proposed definition of *retail pet store,* but offered various reasons why they should be exempt from licensing. These reasons included: Because their animals are maintained in private residences; because dog and cat fanciers provide adequate care and treatment for their animals; and because dog and cat fanciers are ''known commodities'' among their clientele and that failing to provide adequate care for animals they offer for sale would ruin their reputations. Several of these commenters suggested that, in the final rule, we should specify that all dog and cat fanciers, rather than all individuals who meet the criteria in § 2.1(a)(3)(iii), are exempt from licensing; a number of these commenters suggested that we keep the exemption in § 2.1(a)(3)(vii) in the regulations, but specify that it pertains solely to dog and cat fanciers.

The commenters who surmised that we proposed to include persons meeting the criteria of § 2.1(a)(3)(iii) in the definition of *retail pet store* because we proposed to remove § 2.1(a)(3)(vii) from the regulations are correct. The AWA exempts retail pet stores from licensing pursuant to the Act; this is the only exemption from licensing that is specified for retailers within the AWA. The exemptions from licensing that had existed in § 2.1(a)(3)(i) and § 2.1(a)(3)(vii) were in the AWA regulations because we had considered individuals who met the criteria in those paragraphs to be retail pet stores.

In the proposed rule, we proposed to revise the definition of *retail pet store* to make it more restrictive than it had previously been; this is because, as we noted above, the existing definition had begun to be interpreted in a manner that was inconsistent with the AWA.

Our proposed revisions to the definition of *retail pet store* conflicted with the criteria in § 2.1(a)(3)(vii). However, as we mentioned above, that paragraph of the AWA regulations only could exist if we consider all persons who meet the criteria in the paragraph to be *retail pet stores.* Thus, we proposed to remove § 2.1(a)(3)(vii) from the regulations, since it would have otherwise provided an exemption from licensing for people who did not meet our proposed revision to the definition of *retail pet store.*

However, we recognized that if we were to remove § 2.1(a)(3)(vii) from the regulations, we would expose to licensing a subcategory of individuals, those with four or fewer breeding female dogs, cats, and/or small exotic or wild mammals who sell at least some of the offspring of these animals sight unseen, that we consider to present a low risk of noncompliance with the AWA. It has been our experience that such individuals maintain few enough breeding females on their premises to offer adequate care and treatment to each animal. To continue to exempt these individuals from licensing, we included the ''breeding females'' exemption in § 2.1(a)(3)(iii) within the scope of the definition of *retail pet store.*

During preparation of this final rule, we then realized that § 2.1(a)(3)(iii), as written, applied both to retailers and to wholesalers with regard to breeding females. If we were to finalize the proposed definition of *retail pet store* to include persons who meet the criteria in § 2.1(a)(3)(iii), this could mistakenly allow wholesalers to consider themselves to be retail pet stores, although they do not engage in retail sales. For these reasons, we are not removing § 2.1(a)(3)(vii) from the regulations in this final rule. Instead, we are revising that exemption so that it duplicates the criteria contained in § 2.1(a)(3)(iii) but specifies that those criteria moved into § 2.1(a)(3)(vii) pertain only to retailers. Conversely, we are amending the exemption in § 2.1(a)(3)(iii) to specify that it pertains only to wholesalers. Because of these amendments, we are in turn amending our proposed definition of *retail pet store* so that it includes individuals who meet the criteria in § 2.1(a)(3)(vii) under the definition of *retail pet store.* We are also making a nonsubstantive change to the definition of *retail pet store* based on our inclusion under that definition of persons who meet the criteria in § 2.1(a)(3)(vii). (These revisions are set forth in the regulatory text at the end of this rule.)

Finally, it is not possible under the AWA to exempt a purebred dog or cat fancier from licensing solely because he or she is a purebred dog or cat fancier. However, dog and cat fanciers who meet the criteria in § 2.1(a)(3)(vii) will be exempt from licensing because we consider them to be retail pet stores for the purposes of the AWA regulations.

$500 Gross Income Limit

We also proposed to remove the limitation concerning the source of gross income in § 2.1(a)(3)(ii) of the regulations, which exempts from licensing ''any person who sells or negotiates the sale of or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of any animal except wild or exotic animals, dogs, or cats to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license.'' We proposed removing the limitation on the source of sales so that such persons could also sell their animals at retail if they wish and remain exempt under the $500 limit.

Several commenters stated that the $500 gross income limit should be much higher because of inflation and the rising costs of animal breeding. Conversely, some commenters stated that the $500 limit for the exemption is too high because no animal breeder selling his or her animals should be exempt from licensing.

We are making no changes in response to these comments. The $500 gross income limit was mandated by Congress within the AWA. However, it is important to note that under the

proposed rule, there are a number of ways that persons who sell animals covered by this exemption (including rabbits, guinea pigs (cavies), and rats) can be exempted from licensing, either by not meeting the definition of *dealer* in § 1.1 or through one or more of the licensing exemptions in § 2.1 (see the section below titled ''Retail Pet Store: ''. . . rabbits, guinea pigs . . .'').

A number of dog and cat breeders stated that the $500 gross income limit was too low for such animals.

The $500 gross income limit exemption does not apply to dogs or cats.

Breeding Females and Offspring

Section 2.1(a)(3) of the AWA regulations exempts certain persons from licensing requirements. Prior to this final rule, paragraph (a)(3)(iii) had exempted ''any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells 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, and is not otherwise required to obtain a license.'' The paragraph further provided that the exemption did not extend to anyone in a household who collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals, on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding females, cats, and/or small exotic or wild mammals, regardless of ownership. In the proposed rule, we increased the number of breeding females that may be maintained to four.

(As noted earlier, we have revised our proposed definition of *retail pet store* so that it no longer includes individuals who meet the criteria in § 2.1(a)(3)(iii). However, we are revising and retaining the direct retail exemption in § 2.1(a)(3)(vii), linking it to the *retail pet store* definition, and adding to the direct retail exemption the criteria in § 2.1(a)(3)(iii). In other words, the requirement regarding the number of breeding females remains part of the *retail pet store* definition.)

In the proposed rule, we solicited comments on our proposed change to the exemption limit. We also invited comments regarding the variability of litter size by breed and the impact that variability may have on the setting of size thresholds, as well as comments on whether to regulate breeders by number of offspring sold or by number of breeding females.

A few commenters stated that we should substantially revise the exemption. One commenter stated that the exemption should cover only those breeders who breed their animals no more than once annually; other commenters suggested breeding intervals of 12, 18, and 24 months. Another commenter stated that the exemption should specify the conditions under which breeding females must be raised on their premises in order to qualify for an exemption from licensing, rather than set a limit on the number of breeding females on the premises.

As we discuss at greater length below, this exemption is based upon our determination that individuals who maintain four or fewer breeding females on their premises and sell only the offspring of these females are likely to provide adequate care for these animals. Breeding Females and Offspring: ''Any person who *maintains* a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals. . . .''

A number of commenters asked what constitutes maintaining a breeding female on a premises. Several commenters asked if breeding females that stay temporarily at a residence are considered to be maintained at the residence. A few of the commenters stated that breeders should only be considered to maintain a breeding female at their residence when the breeding female's stay at the residence does not have a fixed end date. All of these commenters asked APHIS to define or otherwise explain ''maintain'' in the final rule.

A breeding female is considered to be maintained at their premises if it resides at that premises, even if temporarily. That being said, as we discuss below, the threshold in this exemption applies only to dogs, cats, and/or small exotic or wild mammals that an APHIS inspector has determined to be breeding females, and only applies to such females if their offspring are sold as pets.

Breeding Females and Offspring: ''Any person who maintains a *total of four or fewer* breeding female dogs, cats, and/or small exotic or wild mammals. . . .''

A number of commenters asked whether, by ''total,'' we meant four or fewer breeding female dogs, in total, four or fewer breeding female cats, in total, and four or fewer breeding female small exotic or wild mammals, in total, or the total number of breeding female dogs, cats, and small exotic or wild mammals on the premises that is four or fewer. In the latter case, the commenters stated that this exemption was too stringent for many 4–H, FFA, and rural families, particularly given our decision to remove § 2.1(a)(3)(vii), which exempted any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale. The commenters stated that APHIS should engage in dialog with FFA and 4–H families and set a more reasonable number based on that dialog.

Another commenter asked whether we meant four breeding female dogs of each breed on the premises, or four breeding female dogs, total, regardless of breed.

A number of commenters suggested that, if the term ''total'' is meant in a partitive sense (i.e., four or fewer breeding female dogs, four or fewer breeding female cats, four or fewer breeding female small exotic or wild mammals), the sentence should be amended to make this clear.

The exemption refers to the aggregate number of female dogs, cats, and/or small exotic or wild mammals on the premises who are bred and whose offspring are sold as pets. As we stated in the proposed rule, we consider someone who maintains four or fewer such females to be a low-risk facility. What we meant by this was that, based on our experience, an individual who maintains four or fewer such females on his or her premises has demonstrated that they are capable of providing adequate care and treatment for the animals on their premises, so we do not consider Federal oversight to be necessary.

Furthermore, interpreting the exemption in such a manner is not likely to adversely impact rural families or anyone participating in FFA or 4–H activities. Most FFA and 4–H exhibitors sell their animals for agricultural purposes and/or in face-to-face transactions and thus are not dealers. They therefore do not need to claim an exemption from licensing.

A number of commenters stated that litter sizes for hobby breeds and small breeds are considerably smaller than those for larger breeds, that four breeding females are therefore too few to maintain a viable breeding program, and that setting the exemption at four would accordingly encourage overbreeding of the animals. They also stated that a lack

of genetic diversity from having four or fewer breeding females would result in offspring that would be less desirable to buyers seeking strong breed characteristics. Others noted that small-scale breeders typically do not breed their dogs every estrus cycle. As a female will produce offspring with the same strengths and weaknesses each time, such breeders will often wait until her female pups mature and then breed the best of them in order to further improve the breed line. For these reasons, several breeders stated that 6 breeding females is the minimum necessary to have a viable breeding program for their breed; other breeders stated that it should be 10, 12, or 20 for their breed. One commenter stated that USDA has historically acknowledged a ''tipping point'' at 60 breeding females after which animal welfare violations become disproportionately common. The commenter asked why 60 had not been selected as the cut-off.

On the other hand, a few commenters opposed our proposal to increase the maximum number of breeding females allowed under the licensing exemptions in § 2.1(a)(3)(iii) from three to four. Most of those commenters stated that this change would allow breeders to produce greater numbers of pets that could potentially be abandoned or sent to shelters and euthanized. One commenter opposed the changes because the current number was put in place years ago for a reason, and that reason, the commenter stated, has not changed.

Rather than simply raising the number of breeding females allowed under the exemption to one of the numbers suggested by commenters, a number of commenters suggested alternate amendments that, they stated, would better serve the needs of the regulated community. One commenter supporting this approach stated that raising the number from three to four or fewer breeding females for pet fanciers is irrelevant, because numbers change within fancier practices in ways that are different from a wholesale operation. Similarly, a commenter stated that one set of regulations for all breeds of cats fails to consider the differences in growth rates and breeding ages among breeds. These commenters stated that we should establish breed-specific thresholds, or, at least, breed categories with various thresholds (e.g., ''Breeders of a Category A dog may have no more than four breeding females; Category B, six breeding females,'' and so on).

Another commenter stated that we should set the exemption from licensing at 4, but should create subclasses of licensees, set at thresholds based on the total number of breeding females, and should specify the standards in part 3 that apply to each class, e.g., ''A class A–1 breeder has between 5 and 10 breeding females, and must meet the requirements of §§ 3.7–11.''

We are making no changes based on these comments. The number of offspring that breeding females are likely to produce annually did not factor into our determination to propose raising the threshold in the exemption to four breeding females. Rather, this decision was based on our experience that an individual with four or fewer breeding females can generally be considered a low-risk facility with regard to animal welfare, so we do not consider Federal oversight to be necessary.

In addition, we recognize that depending on the species and the breeds within the species, animals can mature at different rates. In determining the number of eligible breeding females maintained by a breeder, an APHIS inspector would consider each animal's age, health, and fitness for breeding. We consider it impractical and unnecessary to establish specific growth rate and breeding age standards for every breed and every species of pet animal.

Breeding Females and Offspring: ''Any person who maintains a total of four or *fewer breeding female* dogs, cats, and/or small exotic or wild mammals. . . .''

A considerable number of commenters expressed uncertainty about what APHIS considers to be a breeding female and asked us to define the term in the final rule. Many of these commenters stated that ''breeding'' should not be considered equivalent to ''sexually mature and sexually intact.'' Several commenters cited health concerns with having their dogs breed. One of the commenters pointed out that her female dogs become sexually mature at 6 months of age, but that breeding them at that age would pose a serious health risk to the female dog and had little possibility of resulting in a live litter. Other commenters raised a similar point regarding older female dogs. A number of these commenters stated that ''retired'' female dogs should not count towards the total; many of these commenters cited peer-reviewed articles [7] stating that keeping a retired female sexually intact is conducive to animal health and welfare. A number of commenters stated that a female dog should be considered a breeding female only when it is an age at which it is generally agreed her breed is capable of producing a live litter.

A few commenters stated that most breeders do not breed their female dogs until they are old enough to have a viable litter and have passed all relevant health inspections, and stated that a female should not be considered a breeding female until both of these conditions have been fulfilled.

Other commenters agreed that a female dog that is sexually mature and intact should not necessarily be considered a breeding female, but did so for different reasons. Breeders of female show dogs stated that many competitions require the animals to be sexually intact in order to be shown, but that few show breeders breed their animals during the time period that they are exhibiting them. Other commenters pointed out that a female dog may be retired for any number of reasons (age, number of litters produced to date, producing offspring with undesirable characteristics), but still reside on a residence. These commenters stated that a female dog should be considered a breeding female only when it is actually being bred.

However, a number of commenters pointed out the limitations of such an interpretation of ''breeding female'': Just because a breeding female is not currently being bred does not mean that she will never be bred. The commenters also noted that this interpretation could result in enforceability issues for APHIS: A breeder could qualify for an exemption one year, need to be licensed the next, and again qualify for an exemption the third. Another commenter pointed out that breeders do have ''accident'' litters from time to time, so a breeder's intent to not breed a female in a certain year may not actually mean that the female dog is not bred.

While we recognize that breeders have several reasons for not breeding an intact female, for the purposes of enforcement, APHIS has to assume that a female that is capable of breeding may be bred. However, in determining whether an animal is capable of breeding, an APHIS inspector will take into consideration a variety of factors, including the animal's age, health, and fitness for breeding.

A few commenters pointed out that any definition of ''breeding female'' would likely exclude animals that should fall within its scope and include animals that should not. They stated that the determination that an animal is a breeding female should ultimately be at an inspector's discretion. Other

[7] The documents cited were: (1) Parvene Farhoody and M. Christine Zink. *Behavioral and Physical Effects of Spaying and Neutering Domestic Dogs (Canis familiaris).* (2) Laura J. Sanborn, M.S. *Health Risks and Benefits Associated with Spay/Neuter in Dogs.*

commenters agreed that the determination must be the inspector's, but stated that APHIS should provide certain considerations that factor into this determination, at the risk of otherwise appearing arbitrary and capricious. One commenter stated that these considerations should include frequency of estrous cycles and the age at which the female could bear a litter. Two other commenters stated that tests, such as the OFA, Penn Hip, thyroid, and recognized breed-related tests, should factor into our determination regarding whether an animal has the capacity to breed.

It is ultimately an APHIS inspector's responsibility to decide whether an animal is a breeding female, and this decision must rely on a variety of factors. Inspectors currently rely on factors such as the animal's age, health, and fitness for breeding in deciding whether an animal is a breeding female. Moreover, in determining the animal's health status, inspectors may have recourse to recognized breed-related tests.

However, inspectors do not rely on the frequency of estrous cycles, which are variable and influenced by many factors.

One commenter stated that, since the decision that an animal is a breeding female is ultimately an inspector's, this exemption presupposes that all breeding females will be inspected by APHIS, which the commenter stated cannot be done.

APHIS does not intend to conduct inspections of all potentially regulated entities and their breeding females all at once. We discuss this matter in greater detail below.

Another commenter asked how APHIS is able to determine that a female dog has been spayed based on visual inspection.

APHIS inspectors rely on a variety of means to determine whether a female has been spayed. One means is visual inspection. Other options include reviewing veterinary records or other documentary evidence, such as sales receipts.

Some commenters stated that certain types of animals should not be considered breeding females for purposes of determining the total number of breeding females on their premises. One commenter stated that purebred dogs and show dogs should not count towards the total number, since the medical care and husbandry provided to such animals exceed the standards set forth in the regulations. Similarly, other commenters stated that, if the breeder belongs to a registry or breeding organization for a particular breed, breeding females of that breed that reside on his or her premises should not be considered breeding females for purposes of this exemption, since the codes of ethics and guidance for those registries and organizations already provide adequate assurances of animal welfare.

We are making no changes in response to these comments. Sexually mature and intact show dogs can always be used as breeding females at some point after they are no longer shown. Additionally, breed registries vary widely in how they oversee and inspect breeders within their organizations.

Several commenters suggested that sexually intact working dogs should not count towards the total number of breeding females.

If sellers of such dogs also sell dogs at retail for pets, any female dogs bred to produce puppies for sale would be counted as breeding females.

A cat breeder stated that, because only 2 percent of owned cats are obtained from pedigree breeders, breeding female cats should not count towards the number of total breeding females on the premises for purposes of the regulations.

As we mentioned above, this exemption is intended for certain breeders who maintain few enough breeding females on their premises that we consider them capable of providing adequate care and oversight for all animals on their premises. We have determined that this threshold is four breeding female dogs, cats, and/or small exotic or wild mammals. We have no evidence suggesting that cats should not factor into the threshold, nor do we consider the percentage of cats obtained from pedigree breeders to be relevant to determining the threshold.

One commenter stated that she intended to have several of her dogs spayed in order to qualify for the exemption, but would need some time in order to accomplish this. She asked how much time APHIS would afford breeders to spay their dogs following publication of a final rule before we began enforcing the ''four breeding female'' limit.

The revisions to the exemption will be effective when this final rule becomes effective.

A number of commenters stated that all breeders with sexually intact females on their premises should have to be licensed, and the exemption should therefore be removed from the regulations.

We conclude from our experience with currently regulated entities that breeders who maintain four or fewer breeding females can generally be considered low-risk facilities with regard to animal welfare.

Several commenters stated that purebred breeders and breeders of ''custom'' mixed breeds (e.g., cockapoos) should be required to be licensed, regardless of the number of breeding females on their premises, stating that these breeders were most likely to overbreed their animals.

Our data suggests that it is the total number of breeding female dogs maintained on the premises, rather than the breed of dogs maintained, that is the primary determinant in whether the premises is a low-risk facility.

Several commenters suggested that we consider the number of puppies sold per year instead of counting the breeding females at a premises. Most of the commenters suggested that this number should be 50 puppies produced per year; a few commenters suggested adjusting this number up or down, depending on the breed. Two commenters suggested that the exemption be based on number of litters and puppies sold; one of the commenters suggested setting the exemption at 10 litters and 50 puppies, the other at 15 and 50. One commenter suggested, instead of the proposed amendments to exemptions in § 2.1(a)(3)(iii) in the proposed rule, that we amend (a)(3)(iv) to read as follows: ''Any person who sells fewer than 50 dogs and/or cats per year, which were born and raised on the premises of a co-owner of the breeding female or at a facility owned by a licensed veterinarian in the jurisdiction either as pets or for research, teaching or testing purposes and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 50 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others, where they collectively sell 50 or more dogs and/or cats from a single property. The sale of any dog or cat not born and raised on the premises for research purposes requires a license.'' The commenter stated that this would effectively return the number of regulated entities to that of the time period before the Internet.

As we explained in the proposed rule, we have enforceability concerns regarding an exemption based on number of puppies sold: We cannot require individuals who are exempt from licensing to keep records regarding animal sales, but would need such recordkeeping in order to enforce the exemption. No commenters suggested that such recordkeeping was unnecessary for enforcement purposes, nor did commenters suggest alternate

means of obtaining the necessary information.

Breeding Females and Offspring: ''And who sells *only the offspring* of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises. . . .''

Several commenters stated that it is common for a breeder to receive a puppy as compensation for lending an animal out for stud services and then sell that puppy at a later date. The commenters pointed out that, in order to qualify for the exemption in § 2.1(a)(3)(iii), these breeders could not resell such puppies, and suggested that, if breeders stopped engaging in this practice in order to qualify for the exemption, this would ultimately impact genetic diversity in several breeds.

While such individuals cannot qualify for the exemption in § 2.1(a)(3)(iii), this does not necessarily mean that they need to stop engaging in this practice in order to be exempt from licensing. The stud services may constitute brokering or breeding purposes and we would need more information to determine the purpose for licensing purposes. They may be exempt from licensing under another exemption in the AWA regulations.

Several commenters stated that breeders often sell a breeding female to individuals who are aspiring breeders or who wish to add new bloodlines to their breeding program; one commenter stated that the occasional addition of such bloodlines is necessary in order to preserve genetic diversity in his breed. Other commenters stated that they occasionally sold ''retired'' breeding females to friends or acquaintances as pets. A number of commenters suggested that we amend the paragraph so that both the breeding females and their offspring may be sold.

We are not amending the paragraph in the manner suggested by the commenter. The paragraph pertains to a distinct category of breeders that APHIS has evaluated and determined to be low risk for noncompliance with the AWA. The amendments requested by the commenters would expand the paragraph's scope to include breeders that APHIS has not evaluated.

We note, however, that the commenters who stated that they sold breeding females as pets did not specify where the breeding females were born and raised. The exemption allowance on the number of breeding females only applies when dogs are sold that are born and raised on the seller's premises. If the breeding females were not born and raised on the premises, the seller does not qualify for this exemption regardless of the number of breeding females they maintain, but may still be exempt from licensing as a retail pet store depending on the manner in which they sell the animals (i.e., face-to-face). Breeders who sell breeding females for purposes other than the six uses listed in the definition of *dealer* may also be exempt under this rule.

Several commenters stated that the requirement that breeders can only sell the offspring of dogs, cats, and other small mammals born and raised on their premises for pets or exhibition is vague or unclear. One commenter, a dog breeding club, asked APHIS to provide a clear statement of the meaning of ''born and raised on his or her premises.'' Several commenters were uncertain how to apply the requirement for puppies or other animals that were born at a veterinarian's office, off premises, and then returned with their mother to the premises.

''Born and raised on his or her premises'' means that a breeding female gives birth on the premises and that the offspring are raised on that premises. When enforcing this requirement, we consider the ownership of the animal and the ability to maintain control over the animal. This would include medical contingencies that may require a female animal to deliver its offspring at a veterinarian's office. In such cases, APHIS may request additional information to determine where the animals are born and raised.

Breeding Females and Offspring: ''This exemption does not apply . . . to any person *acting in concert with others* where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership. . . .''

Several commenters stated that co-ownership is common in the hobby and show dog breeding community. Many small-scale residential breeders co-own animals with people who live in other locations. One commenter, a dog breeding club, asked APHIS to explain the meaning of ''acting in concert with'' and whether the term applies to co-ownership of breeding females. One commenter noted that when puppies are raised for show or breeding, the breeder will sometimes co-own a puppy with its new owner and mentor the owner on how to breed or show the dog. Another commenter noted that when a show dog is sold, breeding rights for the dog are often part of the sale, so that an animal that is owned by the buyer remains on the breeder's property until it produces a litter.

One commenter noted that to deprive retail breeders of a feasible exemption for co-ownership would not only significantly affect for-profit breeding operations, but would disrupt and change longstanding, useful practices among pet fanciers that actually ensure welfare through educating newcomers and sharing expertise in the long-term interest of better breeding. The commenter added that the proposed rule would leave fanciers and all retail-sale breeders the options of selling only to on-premises buyers or limiting themselves to four breeding females.

One commenter asked whether, if a breeder has multiple premises but has no more than four breeding females at any one location, he or she would be required to be licensed. Another commenter pointed out that, if this exemption applies to each premises rather than to each breeder, regardless of the number of premises on which the breeding females are maintained, this could create a significant loophole that would allow puppy mills and other mass-producers to retain an exemption from licensing by distributing their breeding females among multiple premises. Several of these commenters asked us to specify in the final rule that co-ownership does not constitute acting in concert with another person to maintain a breeding female.

We acknowledge that co-ownership of breeding females is a standard practice among small-scale residential breeders. Provided that no more than four breeding females are maintained on his or her premises, these individuals would qualify for the exemption in § 2.1(a)(3)(iii).

Comments on Removing § 2.1(a)(3)(vii)

As noted above, we proposed to remove § 2.1(a)(3)(vii), which exempted from licensing any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., ''dog and cat fanciers''), on the grounds that it was inconsistent with our proposed revision to the definition of *retail pet store.*

One commenter stated that we should state in the final rule that removing the exemption in § 2.1(a)(3)(vii) will subject dog and cat fanciers to licensing and the possibility of inspections, but will not force them to comply with the standards in 9 CFR part 3. Several commenters suggested that we require dog and cat fanciers to follow the standards in part 3 that pertain to grouping, exercise, feeding, watering, and cleaning, but that we exempt them from the facility standards of that part, which are

impracticable for breeders who raise animals in their homes. Specifically, a number of commenters cited the standards in § 3.2 regarding impervious materials and § 3.6 regarding whelping areas as being cost-prohibitive for most residential breeders. Several of these commenters suggested that we amend part 3 in the final rule to establish alternate, performance-based standards for dog and cat fanciers and other small-scale residential breeders.

We are making no changes in response to these comments. The comments were predicated on an assumption that it will be cost-prohibitive for most residential breeders who are regulated as a result of this rule to meet the standards in part 3; we do not consider that to be the case. We discuss this at greater length in the economic analysis that accompanies this final rule.

One commenter suggested that we should delay the effective date for removing the exemption until we consult with residential breeders and explain what structural modifications they will need to make to their residences so that they comply with the regulations in part 3.

We are not delaying the effective date. As we note in the economic analysis, many residential breeders will continue to be exempt from the regulations, and as noted by several commenters, many who are not exempt are already operating in a manner that is consistent with the AWA. Accordingly, they will likely need to make only minor structural changes to their facilities to be in compliance with AWA standards.

One commenter suggested that we ''grandfather in'' all existing residential breeders as retail pet stores, and require licensing only for new residential breeders.

We are making no change in response to this comment. The commenter's suggestion would privilege existing breeders over new breeders.

A number of commenters stated that, if APHIS needed to require them to be regulated and licensed in order to ensure animal welfare, APHIS should take measures to ensure that the impact of such licensing has as minimal an effect on such breeders as possible. One commenter suggested that we limit the licensing fee for purebred dog and cat fanciers and other small-scale breeders to $10 yearly.

We expect that many small-scale breeders will remain exempt from licensing and will therefore not need to pay a licensing fee. However, we note in the economic analysis prepared for this rule that the costs of licensing are likely to be lower than most breeders figure them to be.

Finally, a commenter stated that the rollout of the final rule should be accompanied by a supporting document or educational campaign for small-scale residential dog and cat breeders in best practices for breeding and care. The commenter said that many breeders will want to comply with the regulations, but, because of unfamiliarity with the AWA, will need instruction.

APHIS already provides such education as part of its prelicensing process and existing stakeholder outreach.

Requests for Additional Exemptions

A few commenters stated that we needed to add additional exemptions to paragraph (a)(3) of § 2.1.

Many commenters stated that we should amend the regulations to specify that animal rescue groups should be exempt from licensing because such groups have business models that are vastly different from those of retail dealers. They pointed out that the goal of such groups is to preserve animal welfare rather than to breed animals for profit. A few commenters stated that we should make a distinction between non-profit and for-profit rescue groups, and exempt the former from licensing.

On the other hand, several commenters stated that rescue groups should not be exempt from licensing solely because of their mission. Some of these commenters pointed out that both profit and non-profit rescue groups often request substantial adoption fees to recoup the costs of maintaining the group. Several other commenters acknowledged the good intentions of rescue groups, but stated that many groups overreach and end up overcrowded with rescued animals. The commenters also pointed out that many rescues rely on volunteers to provide care for the animals and that reliance on volunteer efforts could result in gaps or significant disparities in the care provided.

Some commenters suggested alternatives. One commenter suggested that we require rescue groups to be licensed, but that we waive licensing fees for such groups. Another commenter suggested exempting them from the facility standards of part 3. A third commenter suggested that we amend the regulations so that all ''Class A'' breeders have to enter into a trust fund agreement with APHIS at licensing and renewal, with the money in the agreement dedicated to licensing for non-profit rescue groups and other non-profits. Another commenter suggested that we define *non-profit organization* in the final rule, include rescue groups within the definition, and exempt all non-profit organizations from licensing.

As we noted earlier, private rescues and shelters tend to operate under a business model in which animals available for sale or adoption are physically present at a predetermined location where the public is encouraged to meet and inspect the animals; this business model is consistent with what we consider a retail pet store to be, and fits within the scope of our definition of a *retail pet store.* As a result, most private rescues and shelters have historically been exempted under the retail pet store exemption and will continue to be exempted as long as they meet the amended definition of *retail pet store.*

However, private rescues or shelters that are operating in a manner that requires them to be licensed as dealers must be treated in a manner that is consistent with our regulation of all other licensed dealers. This includes paying licensing fees and adhering to the standards in part 3 of the AWA regulations.

Oversight and Enforcement

A number of commenters believed that we had greatly underestimated the number of newly regulated entities in our initial regulatory impact assessment and questioned whether we had sufficient personnel to enforce the provisions of the proposed rule. A number of commenters stated that, before conducting all the inspections necessary to enforce the proposed rule, APHIS would have to hire additional inspectors. One commenter stated that our ability to enforce the proposed rule is hampered by our restrictive definition of *inspector* in § 1.1, and that we should expand the definition to include State employees and third parties authorized by APHIS. Other commenters noted that APHIS had provided no indication of how it will fund expenditures for additional personnel.

On the other hand, a commenter supporting the proposed rule commented that APHIS is capable of handling the enforcement responsibility of the proposed rule without hiring large numbers of additional personnel. The commenter acknowledged that the number of additional facilities that would be subject to licensing under this rule would be difficult to determine. They noted, however, that even if the new regulation doubled the number of operations subject to USDA regulation, the inspection burden would merely return to approximately the level that was handled by USDA in 2008.

APHIS' plan is to incorporate newly affected entities into our existing regulatory structure using a phased implementation for conducting initial prelicensing 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.

Because of this phased implementation, we do not consider it necessary to amend the definition of *inspector* to allow APHIS to use non-APHIS employees to serve as inspectors.

A number of commenters asked how we would identify newly regulated entities. One commenter suggested that we conduct spot checks of advertised breeders to confirm that they are either licensed or qualify for an exemption. Several commenters suggested that we develop a dealer registry and require all sellers or breeders to submit contact information, along with the appropriate licensing fee or a written statement explaining why they were exempt from licensing. However, a commenter warned that adding newly regulated entities to our database will take a sizable investment of Animal Care workforce hours and asked if APHIS considered the costs of doing so.

We will identify newly regulated entities using our current methods, which include reviewing marketing or promotional material in the public domain, self-identification, and complaints. Implementation of this rule will take into consideration the workforce hours that it will take to add newly regulated entities to our database.

A commenter requested that we investigate unlicensed ''puppy brokers'' who transport and sell puppies for commercial breeders who raise puppies in rural, remote areas. The commenter stated that such brokers are transporting puppies to more populated areas so that they can be sold out of private homes, for which the residents receive a percentage of the profit.

APHIS investigates all credible reports we receive of unlicensed activities involving sales of covered pets.

One commenter suggested that APHIS require breeders to maintain a record of whenever they move interstate and to allow spot audits of those records to determine which breeders to inspect. Another commenter stated that breeders should have to report any land or storage spaces they maintain and go through a background check and provide references in order to maintain a license.

APHIS does not require exempted breeders to report such information cited by the commenters. However, we are authorized to inspect the records of licensed entities.

Several commenters supporting the rule asked why pet stores are not subject to licensing and inspection under the regulations. Some of those commenters expressed concern about inhumane conditions in pet stores and recommended that they be subject to monitoring and inspection. Some commenters stated that pet stores should be prohibited from selling puppies and adult dogs, and to lesser extent cats, as a means to reduce the demand for animals from commercial breeders.

Under the AWA, retail pet stores are exempt from regulation.

Another commenter stated that all locations in which pet animals are sold should be required to have a licensee on-site at all times, and that this licensee should have all veterinary records of the animals on the premises available for review at all times; the records maintained by this licensee would facilitate traceback in the event of possible animal welfare abuses.

Under the AWA, APHIS already requires licensed breeders to maintain such records, but we only require that a licensee be available to present records during business hours. Breeders exempted from licensing have no such recordkeeping requirements.

One commenter suggested that APHIS pilot a voluntary inspection program for newly regulated dealers, in which dealers would agree to be inspected in exchange for assurances from APHIS that violations discovered during this inspection would not result in fines or penalties. Other dealers would be inspected based on complaints of abuse, and would not be exempt from penalties.

We have no plans to institute a voluntary inspection program. APHIS will provide information upon request to persons to help them assess whether they need to apply for licensing and to offer guidance on complying with AWA regulations.

A number of commenters suggested that the need for inspections would be greatly reduced if APHIS increased penalties for dealers who violate existing AWA regulations. One commenter pointed out that the 2010 USDA OIG audit [8] (referred to below as the OIG audit) referenced in the proposed rule found that few, if any, first-time violators of the AWA were subject to an enforcement action, even for those found to be in direct violation of the Act. The commenter suggested that penalizing all first-time offenders would decrease recidivism, would further animal welfare within the United States, and could obviate the need for the proposed rule.

We continue to review and improve the manner in which we assess penalties, consistent with our response to the OIG audit. However, we continue to maintain that this rulemaking is necessary in order to ensure that our definition of *retail pet store* is consistent with the AWA.

We invited comments on an alternative regulatory scheme presented in the proposed rule that would minimize APHIS oversight of entities already subject to State, local, or industry oversight. A number of commenters, including several State agricultural officials, noted that many States already require licensing of commercial dog and cat breeders. The commenters stated that Federal oversight of breeders would likely be duplicative, contradictory, and confusing. Several commenters stated that APHIS should withdraw the rule in favor of establishing a cooperative Federal-State program that relies primarily on State officials to provide oversight of dealers and breeders, with APHIS providing guidance and coordination at the Federal level. However, a number of commenters disagreed, noting that State regulations are in many cases insufficient to provide for the welfare of animals sold as pets. Many of these commenters pointed out that withdrawing the proposed rule and deferring to States would simply maintain the status quo, and that the OIG audit clearly indicates that the status quo does not adequately provide for animal welfare. For this reason, a number of the commenters stated that State animal welfare officials should not be used as inspectors for purposes of enforcing APHIS regulations.

A few breeders stated that, while they were not regulated stringently at the State level, they were subject to very stringent city or local regulations, and

[8] To view this audit, go to *http://www.usda.gov/oig/webdocs/33002-4-SF.pdf.* The major objectives of the OIG audit were to examine Animal Care's enforcement process against dealers that violated the AWA and to review the impact of recent changes that APHIS made to the penalty assessment process.

that these regulations obviated the need for further Federal regulation. The breeders suggested a locality-by-locality review of existing regulations prior to issuance of a Federal rule, and also encouraged us to claim selective preemption.

As we noted in the proposed rule, to our knowledge 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. We have provided many of these States with guidance on developing and enforcing their animal welfare regulations. But while these States and several municipalities have such laws, none actually address all categories of welfare required under the AWA, including veterinary care, food and water, proper sanitation, and housing. As a consequence, Federal oversight is necessary to ensure that AWA regulations are consistently applied across all States.

We should add, however, that if a State has issued and is enforcing several of its regulations under a category of welfare required under the AWA, we can adjust our own inspection frequency and procedures in that category in ways that will reduce the burden of duplicative regulations on breeders in that State.

In the proposed rule, we also invited comments from the public regarding the idea of an exemption based on oversight from private organizations. Many commenters stated that industry-run programs provide adequate oversight of certain breeders and dealers, and that licensing and oversight by APHIS is therefore unnecessary for these entities. One commenter, a national dog breeder and fancier organization, noted that they maintain a purebred dog registry, that members of that registry are subject to routine inspections, and that ongoing enrollment in the registry requires continued adherence to a comprehensive care and conditions policy. Several commenters noted that they belonged to the registry or a similar breed-specific registry, and that inclusion on the registries is in fact dependent on agreeing to regular inspections, recordkeeping requirements, and other welfare safeguards.

However, a number of commenters disagreed, stating that private organizations are not always capable of adequate oversight of breeders. One commenter conducted a study on oversight by pet registry organizations and concluded that self-regulation attempts have been largely ineffective. They also noted that registry organizations only monitor breeders of purebred dogs, while mixed-breed and ''designer'' dogs such as yorkie-poos, puggles, and labradoodles, which are among the most popular varieties sold online, appear to have no self-policing registries.

We are making no changes in response to the comments. While some breed registries and other organizations maintain programs for oversight of breeders, few, if any, have requirements that address all categories of animal welfare required under the AWA. Furthermore, as the one commenter noted, many mixed-breed dog breeders appear to have no self-policing registries.

Other commenters pointed out that a number of States have puppy ''lemon laws'' that protect consumers from the financial losses incurred when buying a sick dog, and stated that these consumer protection laws have the effect of securing animal welfare through market forces. Similarly, a few other commenters pointed out that, while not all States have puppy ''lemon laws,'' all States have laws that protect consumers from fraud and deceptive marketing practices, and that these laws could be enforced at the State level in a manner that results in State inspections of dealers and breeders and imposes civil and criminal penalties for those dealers and breeders who do not provide adequate care for their animals. Several of these commenters suggested that APHIS conduct a State-by-State review of animal welfare and consumer protection laws prior to issuing a final rule, and should claim preemption of State laws only for those States that have less stringent standards than those that dealers would have to adhere to under the provisions of the proposed rule. On the other hand, a few commenters stated that consumer protection laws do not provide assurances that animals are bred and raised humanely, but solely provide remedies for consumers when they purchase animals that turn out to be unhealthy or are otherwise not what they were portrayed to be.

We are making no changes in response to the comments. ''Lemon laws'' protect the economic interests of the buyer and do not meet the goals of the AWA.

Finally, one commenter suggested that APHIS petition Congress to amend the AWA so that private entities could bring suit against breeders, brokers, and handlers for AWA violations. The commenter stated that any damages awarded in a lawsuit could far exceed the penalties under the AWA, and would serve as a strong incentive to follow the regulations. However, a few commenters disagreed, pointing out that APHIS has limited ability to petition Congress to enact legislation.

APHIS does not consider it necessary to amend the AWA in order to meet the request of the commenter.

Constitutionality and Legal Authority

Several commenters expressed concerns about the constitutionality of the proposed rule. One commenter stated that Congress is not permitted to delegate authority to Agencies to issue rules with the force of law, and that the rule therefore violates Section 1 of the Constitution.

Congress is permitted to delegate authority to Agencies to issue rules.

Another commenter stated that, because APHIS has no evidence that all individuals engaged in Internet or sight unseen sales are guilty of violations of the AWA, subjecting those who are not guilty to licensing amounts to a tax. The commenter pointed out that, as an Agency of the Executive Branch, APHIS has no authority under the Constitution to impose or collect taxes.

The AWA specifically authorizes the assessment of licensing fees, which do not constitute a tax.

A number of commenters stated that any change to the definition of *retail pet store* that subjects their homes to possible unannounced government inspections for AWA compliance violates their Fourth Amendment rights against unlawful search and seizure.

Section 2146 of the AWA explicitly authorizes inspections of licensees to determine compliance with the AWA. However, such inspections are limited to only those areas that impact the well-being of the animals, such as areas where food and medicine for the animals are stored.

One commenter stated that most animals sold as pets are born and moved within State boundaries. The commenter suggested that, since interstate commerce does not occur in those instances, attending to the welfare of those animals is outside of Federal jurisdiction under the Tenth Amendment and solely a State prerogative.

In issuing the AWA, Congress found that such intrastate commerce often substantially affects interstate commerce.

One commenter stated that the AWA does not address privately owned property, nor does it provide that a retail business must permit customers to personally visit the seller's property to be considered a retail pet store. The commenter also stated that there is no assumption in the AWA that animal welfare entails customers visiting a

seller's property and monitoring the property for compliance with the AWA.

The AWA does not require retail pet sellers to allow customers to enter their property. A seller exempted as a retail pet store can indicate a place of business separate from his or her premises at which to sell pet animals at retail.

One commenter stated that the rule essentially restricts the ability to advertise the availability of animals for sale by rendering it difficult to use the Internet to engage in such sales, and that APHIS had failed to provide a compelling reason for such restrictions. The commenter stated that using the Internet to sell the animal constitutes commercial speech and concluded that the rule violated the First Amendment right to free speech.

The rule does not restrict the use of the Internet as a marketing or communications tool. Rather, it revises the definition of *retail pet store* to ensure that it stays consistent with the AWA.

A few commenters noted that that the 2010 OIG audit mentioned in the proposed rule focused on large-scale, AWA-licensed problematic dealers and not on small-scale breeders, and that APHIS inappropriately extrapolated from the report that breeders of all sizes should be under Federal oversight for the purpose of animal welfare. One commenter noted that the USDA OIG's finding regarding remote, Internet sales (Finding 5) was that ''some large breeders circumvented [the] AWA by selling animals over the Internet,'' and stated that the OIG audit had broadly referred to these large-scale breeders as ''Internet breeders'' later in the report for the sake of brevity. The commenter stated that, in the proposed rule, APHIS had construed the term ''Internet breeder'' in an unqualified sense that is at odds with the meaning of the term in the OIG audit.

In the proposed rule, we used the term ''Internet breeders'' only for the purpose of passing along factual information regarding the OIG audit's findings and were not attempting to assign a specialized meaning to the term.

The same commenter stated that the OIG audit had heavily redacted statements made by former Secretary of Agriculture Ann Veneman in *DDAL v. Veneman* in order to suggest that Internet sellers need to be licensed. The commenter provided Secretary Veneman's full transcript, which stated that oversight is necessary but is already being exercised by breed and registry organizations. The commenter concluded that APHIS had either taken these statements in the report out of context or relied on statements that were taken out of context in order to justify the proposed rule, and that this was tantamount to legal dishonesty.

APHIS drafted the proposed rule because the term *retail pet store* was being understood and applied in a manner that was inconsistent with the AWA, in order to ensure that the definition of *retail pet store* in our regulations was consistent with the AWA.

A commenter noted that the proposed rule makes references and comparisons to the Puppy Uniform Protection and Safety (PUPS) Act. The commenter stated that APHIS had assumed that the bill represents the will of Congress, and pointed out that the bill has not been signed into law and should not be considered to have the force of law for the sake of issuing regulations.

The proposed rule made no statements suggesting the PUPS Act had the force of law.

Two commenters stated that APHIS had failed to comply with the National Environmental Policy Act (NEPA) in issuing the proposed rule. The first commenter stated that we had failed to examine the aggregate effects on the environment that may occur if many breeders throughout the United States have to significantly alter their residences in order to meet AWA standards. In a similar manner, the other commenter stated that we had failed to consider the environmental impacts on local communities that may occur because of the proposed rule.

We followed NEPA and determined the proposed rule was categorically exempt from preparation of NEPA documentation because it outlined routine measures. The commenters who stated that the rule would have such environmental effects believed that most residential breeders would have to make significant structural changes to their homes in order to comply with 9 CFR part 3; for reasons specified above and in the economic analysis that accompanies this rule, we do not consider that to be the case.

Similarly, a few commenters stated that APHIS failed to fulfill a statutory duty to ensure full compliance with the Small Business Act, including a determination of impact under zoning laws presented by federalizing a hobby and converting small-scale breeders to home-based businesses, and submitting certification to the Small Business Administration (SBA) with a detailed statement on the impact of the proposed rule on the affected ''Small Businesses.''

APHIS submitted the proposed rule and its accompanying regulatory impact analysis, which included an initial regulatory flexibility analysis produced in accordance with the Regulatory Flexibility Act, to SBA prior to the publication of the proposed rule.

A number of commenters stated that the factsheet [9] contained several responses that contradicted the provisions of the proposed rule. Many of these commenters stated that the average person would not interpret the ''physical entry'' provision of the definition of *retail pet store* to allow face to face off-site transactions to occur. One of these commenters also asserted that the factsheet appears to grant a blanket exemption from licensing to all rescue groups, and that this exemption was neither explicit nor inferred within the proposed rule.

In a similar manner, a number of commenters stated that the factsheet interprets the facility construction standards of 9 CFR part 3 in a performance-based manner that the regulations themselves, which are highly prescriptive, do not support. Several commenters concluded that the factsheet materially contradicts both existing regulations and the provisions of the proposed rule. The commenters added that APHIS had made no attempt, in issuing the factsheet, to specify that it is a ''pararegulatory'' document which, by definition, cannot have the force of law. The commenters further stated that the factsheet provides evidence that APHIS' interpretation of the proposed rule will be arbitrary and capricious. For these reasons, the commenters stated that the proposed rule cannot be finalized and must be withdrawn.

The factsheet was simply intended to provide additional explanation about the provisions of the proposed rule for the public. It did not contradict the provisions of the proposed rule.

Several commenters cited *DDAL* v. *Veneman* as supporting an exemption from licensing for all small-scale residential breeders. The commenters asserted that APHIS had stated in *DDAL* v. *Veneman* that hobby breeders do not need to be licensed.

As we state elsewhere in this document, we do not consider the term ''hobby breeder'' to be equivalent to a small-scale residential breeder, nor was it used in such a manner in *DDAL* v. *Veneman*.

One commenter stated that Congress has amended the AWA several times since its promulgation, but never sought to define ''retail pet store'' or otherwise restrict certain entities from considering themselves to be retail pet stores.

[9] See footnote 4.

It is our contention that our proposed definition of the term *retail pet store* is consistent with the AWA.

One commenter stated that the rule had not been issued in accordance with Executive Order 13563. The commenter stated that APHIS failed to provide the scientific and technical basis for the rule and allow for a critique and evaluation of these bases. The commenter stated that it would be reasonable for someone to infer that the proposed rule was based on anecdotal evidence. The commenter also stated that this failure to provide the technical and scientific basis for the rule, and to apparently rely on anecdotal evidence, was in violation of Section (2)(b) of the Executive Order.

Executive Order 13563 only requires regulatory Agencies such as APHIS to state the scientific and technical basis for a rule if that basis exists. The proposed rule was based on our determination that certain parties were construing the definition of *retail pet store* in the AWA regulations in a manner inconsistent with the AWA.

The commenter further stated that, by failing to engage in dialog with those who would be potentially regulated by the rule, we failed to meet the objectives of Section (2)(c) of the Executive Order, which suggests that, where feasible and appropriate, Agencies should seek the views of entities likely to be affected. The commenter stated that he was not aware that we had engaged in any meaningful dialog with potentially regulated entities prior to issuance of the rule, and certainly not in a manner proportionate to the scope of the rule.

APHIS engaged the potentially regulated industries at length before issuing the proposed rule. Our outreach activities included personal communications by telephone and in person.

Other Comments

We received many comments on subjects that are outside the scope of this rulemaking. Several of the comments also requested changes that are also outside the scope of the AWA, among them a ban on the sale of pets, mandatory spaying or neutering and microchipping of all pets sold at retail, regulation of the Internet as a marketing tool for pets, licensing of individuals who buy animals as pets and imposing minimum requirements on those individuals, and titling for animals used in agility competitions.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 also emphasizes the need for retrospective analysis of rulemaking. Accordingly, USDA will carefully monitor the implementation of this rule and will propose any changes that may be necessary to both protect the welfare of covered animals and to minimize undue burdens on the public. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 2 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are hundreds of distinct dog breeds, and correspondingly large numbers of dog breeders in the United States. Breeders with an online presence are those most likely to be selling the offspring sight unseen and thus are more likely to be affected by this rule. We estimate that there could be between 8,400 and 15,000 such dog breeders in

the United States. This estimate is based on the assumption that for every five breeders identified by APHIS in online breeder registries there is one other breeder that has not been identified who also uses remote marketing methods.

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

POTENTIALLY AFFECTED DOG BREEDER CALCULATIONS—A BREEDER MUST MEET ALL CRITERIA BEFORE LICENSING IS REQUIRED

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

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

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

The rule will also affect cat breeders who maintain more than four breeding females at their facilities and sell the offspring as pets, sight unseen. Fewer than 2 percent of cats in the United States are purebred and raised by breeders. We estimate that about 325 cat breeders may be affected by this rule.

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

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

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

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

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

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

exemption threshold following the implementation of this rule will be very small.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0392, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Parts 1 and 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we are amending 9 CFR parts 1 and 2 as follows:

PART 1—DEFINITION OF TERMS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. In § 1.1, the definitions of *dealer* and *retail pet store* are revised to read as follows:

§ 1.1 Definitions.

* * * * *

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

* * * * *

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 that animal 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, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species. In addition to persons that meet these criteria, *retail pet store* also includes any person who meets the criteria in § 2.1(a)(3)(vii) of this subchapter. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons, except those that meet the criteria in § 2.1(a)(3)(vii), exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes;

(4) Any establishment wholesaling any animals (except birds, rats, and mice); and

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

* * * * *

PART 2—REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:
■ a. By revising paragraph (a)(3)(i);
■ b. In paragraph (a)(3)(ii), by removing the words ''to a research facility, an exhibitor, a dealer, or a pet store'';
■ c. By revising paragraphs (a)(3)(iii) and (a)(3)(vii); and
■ d. In the OMB citation at the end of the section, by removing the words ''number 0579–0254'' and adding the words ''numbers 0579–0254 and 0579–0392'' in their place.

The revisions read as follows:

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(i) Retail pet stores as defined in part 1 of this subchapter;

* * * * *

(iii) Any person who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at wholesale, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than four breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more

than four breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

* * * * *

(vii) Any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than four breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership.

* * * * *

Done in Washington, DC, this 11th day of September 2013.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2013–22616 Filed 9–17–13; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE05

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulation governing federal credit union (FCU) ownership of fixed assets to help FCUs better understand and comply with its requirements. The final rule does not make any substantive changes to those regulatory requirements. Rather, the amendments only clarify the regulation by improving its organization, structure, and ease of use.

DATES: This rule is effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6593.

SUPPLEMENTARY INFORMATION:

I. Background and Proposal

A. Background

The Federal Credit Union Act (FCU Act) authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.[1] NCUA's fixed assets rule interprets and implements this provision of the FCU Act.[2] In general, an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or serves its members.[3] NCUA's fixed assets rule: (1) Limits FCU investments in fixed assets; (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions.[4]

For purposes of the rule, fixed assets are premises, furniture, fixtures, and equipment, including any office, branch office, suboffice, service center, parking lot, facility, real estate where an FCU transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.[5]

B. March 2013 Proposal

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing regulations to make their programs more effective and less burdensome. Additionally, the Board has a policy of continually reviewing NCUA's regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' [6] To carry out this policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA reviewed its fixed assets rule as part of this process.

In March 2013, the Board proposed amendments to the fixed assets rule to make it easier for FCUs to understand.[7] NCUA has continually received questions about the fixed assets rule, indicating there is some confusion about its application. For example, FCUs have asked for clarification regarding the waiver process, and the provision that requires an FCU to partially occupy unimproved property acquired for future expansion. Accordingly, the Board proposed amendments to the fixed assets rule to clarify the waiver and partial occupation requirements and to improve the rule overall. The proposed amendments did not make any substantive changes to the regulatory requirements. Rather, they only clarified the rule and improved its overall organization, structure, and readability.

II. Final Rule

A. Summary of the Public Comments on the March 2013 Proposal

NCUA received 9 comments on the proposed rule: 2 from credit union trade associations, 6 from state credit union leagues, and 1 from an FCU. All of the commenters supported the proposal and indicated the amendments make the fixed assets rule easier to understand. Specifically, commenters noted that the plain language revisions and structural reorganization improve the readability of the rule and the newly added definitions enhance clarity and flexibility. Commenters also expressed support for the revised waiver provisions, noting the revisions improve consistency within the regulation and allow FCUs to better understand the waiver process. Several commenters, however, offered suggestions for substantive changes to the regulatory requirements in the current rule.

For example, a number of commenters urged the Board to consider increasing or eliminating the current 5 percent aggregate limit on fixed assets. One commenter asserted that computers, automated terminals, and other equipment should no longer be treated as fixed assets subject to the 5 percent cap. Several commenters suggested the current requirement to fully occupy premises acquired for future expansion should be eliminated from the rule. Also, one commenter asked that the Board revise and extend the time frames for partially occupying improved premises and unimproved premises acquired for future expansion, which

[1] 12 U.S.C. 1757(4).

[2] 12 CFR 701.36.

[3] 12 CFR 721.3(d).

[4] 12 CFR 701.36.

[5] 12 CFR 701.36(c).

[6] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, Developing and Reviewing Government Regulations.

[7] 78 FR 17136 (Mar. 20, 2013).