

be maintained throughout the export process, from the place of production until the tomatoes are released for entry into the continental United States. The means of identification that allows the lot to be traced back to the place of production in which it was produced, and the packinghouse in which it was packed, must be described in the operational workplan.

(6) *Commercial consignments.* Tree tomatoes from Ecuador may be imported in commercial consignments only.

(7) *Safeguarding.* Lots of tree tomatoes destined for export to the continental United States must be safeguarded during movement from registered places of production to registered packinghouses, and from registered packinghouses to arrival at the port of entry into the continental United States, as specified by the operational workplan.

(b) *Places of production requirements.* (1) Registered places of production of tree tomatoes destined for export to the continental United States must be determined by APHIS and the NPPO of Ecuador to be free from *A. fraterculus* and *C. capitata* based on trapping conducted in accordance with the operational workplan. If the flies per trap per day exceed levels specified in the operational workplan, the place of production will be prohibited from exporting tree tomatoes to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated. The NPPO must keep records regarding the placement and monitoring of all traps, as well as records of all pest detections in these traps, for at least 1 year and provide the records to APHIS, upon request.

(2) Places of production must remove fallen tree tomato fruit in accordance with the operational workplan. Fallen fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(3) The NPPO of Ecuador must inspect fields at registered places of production at least once during the growing season for Tamarillo mosaic virus. Sites must be determined by the NPPO to be free of the virus as a result of these inspections.

(4) Starting 60 days before harvest and continuing throughout the shipping season, the NPPO of Ecuador must visit and inspect registered places of production monthly for signs of infestation. The NPPO of Ecuador must allow APHIS to monitor these inspections. The NPPO of Ecuador must also certify to APHIS that registered places of production have effective fruit fly trapping programs and control

guidelines in place to reduce pest populations.

(5) If APHIS or the NPPO of Ecuador determines that a registered place of production has failed to follow the requirements in this paragraph (b), the place of production will be excluded from the export program until APHIS and the NPPO of Ecuador jointly agree that the place of production has taken appropriate remedial measures to address the plant pest risk.

(c) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing tree tomatoes for export to the continental United States, the packinghouse can only accept tree tomatoes that are from registered places of production and that are produced in accordance with this section.

(2) Tree tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, within 24 hours of harvest. These safeguards must remain intact until the tree tomatoes arrive in the United States, or the consignment will not be allowed to enter the United States.

(3) All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the tree tomatoes are packed.

(d) *Phytosanitary inspections.* A biometric sample of tree tomato fruit jointly agreed upon by the NPPO of Ecuador and APHIS must be inspected in Ecuador by the NPPO of Ecuador or officials authorized by the NPPO of Ecuador following post-harvest processing. The sample must be visually inspected for *N. elegantalis* and Tamarillo mosaic virus. A portion of the fruit must then be cut open and inspected for *A. fraterculus* and *C. capitata*.

(1) If *N. elegantalis* is found, the entire lot of fruit will be prohibited from import into the United States unless it is treated with an approved quarantine treatment monitored by APHIS.

(2) If Tamarillo mosaic virus is found, the entire lot of fruit will be prohibited from importation into the United States.

(3) If a single larva of *A. fraterculus* and *C. capitata* is found, the entire lot of fruit will be prohibited from importation to the United States and the place of production producing that fruit will be suspended from the export program until appropriate measures, as agreed upon by the NPPO of Ecuador and APHIS, have been taken.

(e) *Phytosanitary certificate.* Each consignment of fresh tree tomato fruit from Ecuador must be accompanied by a phytosanitary certificate, issued by the NPPO of Ecuador, that contains an additional declaration that the tomatoes were produced in accordance with the requirements of this section, and have been inspected and found free of *A. fraterculus*, *C. capitata*, *N. elegantalis*, and the Tamarillo mosaic virus.

(Approved by the Office of Management and Budget under control number 0579-0464)

Done in Washington, DC, this 29th day of May 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018-11890 Filed 6-1-18; 8:45 am]

**BILLING CODE 3410-34-P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 1, 2, and 3

[Docket No. APHIS-2014-0059]

RIN 0579-AD99

#### Thresholds for De Minimis Activity and Exemptions From Licensing Under the Animal Welfare Act

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Animal Welfare Act (AWA) regulations to implement amendments to the Act that broadened the scope of the exemptions from the licensing requirements for dealers and exhibitors. Specifically, we are broadening the licensing exemption for any person who maintains four or fewer breeding female dogs, cats, and/or small exotic or wild mammals and only sells the offspring of these animals for pets or exhibition to include additional types of pet animals and domesticated farm-type animals. In addition, we are adding a new licensing exemption for any person who maintains eight or fewer pet animals, small exotic or wild animals, and/or domesticated farm-type animals for exhibition. These actions will allow the Agency to focus its limited resources on situations that pose a higher risk to animal welfare and public safety. Finally, we are making conforming changes to the definitions of *dealer* and *exhibitor* to reflect the amendments to the Act and making several miscellaneous changes to the

regulations for consistency and to remove redundant and obsolete requirements.

**DATES:** Effective June 4, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kay Carter-Corker, DVM, Director, National Policy Staff, USDA-APHIS-Animal Care, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851-3748.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the Animal Welfare Act (AWA, or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain warm-blooded animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated authority for administering the AWA to the Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3 (referred to below as the regulations).

The AWA and regulations seek to ensure the humane handling, care, treatment, and transportation of certain warm-blooded animals<sup>1</sup> used or intended for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. Dealers and exhibitors of such animals must obtain licenses and comply with AWA regulations and standards, and their facilities are inspected by APHIS for compliance, unless they are otherwise exempt from the licensing requirements.

On August 4, 2016, we published in the **Federal Register** (81 FR 51386–51394, Docket No. APHIS–2014–0059) a

<sup>1</sup> Under the regulations, an *animal* is defined as “any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.”

proposal<sup>2</sup> to amend the regulations to conform with amendments to the Act that broadened the scope of the exemptions from the licensing requirements for dealers and exhibitors whose size of AWA-related business activities is determined by the Secretary to be *de minimis*. We also proposed other changes for consistency and to eliminate redundant and obsolete requirements.

We solicited comments concerning our proposal for 90 days ending November 2, 2016. We received 29 comments on the proposal during the comment period. They were from exhibitors, animal welfare organizations, biomedical research organizations, an organization representing zoos and aquariums, an animal trainer, and the general public. We reviewed each of the comments carefully. We respond below, by topic, to those comments that address specific provisions of the proposal.

**Definitions**

We proposed to amend the definitions of *dealer* and *exhibitor* in § 1.1 of the regulations to align them with the amendments to those definitions in the AWA.

**“Exhibitor”**

Under the AWA, an *exhibitor* is defined as “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary.” The definition goes on to identify specific inclusions, such as circuses and zoos, and exclusions, such as livestock shows and purebred dog and cat shows, and fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary. In addition, the regulations list additional examples of included and excluded activities.

In 2013, an amendment<sup>3</sup> to the AWA added a new exclusion to the definition of *exhibitor* for owners of common, domesticated household pets who derive less than a substantial portion of income from a nonprimary source for exhibiting an animal that exclusively resides at the residence of the pet owner. We proposed to add this exclusion to the definition of *exhibitor* in the regulations for consistency with

<sup>2</sup> To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#1docketDetail;D=APHIS-2014-0059>.

<sup>3</sup> <https://www.gpo.gov/fdsys/pkg/BILLS-112s3666enr/pdf/BILLS-112s3666enr.pdf>.

the amended Act. We also sought comment on whether to add an explanation of “substantial portion of income” to the regulations to make clear it would not include exhibitions that generate a minimal amount of money and do not constitute a main source of the person’s income.

One commenter observed that the proposed rule removed animal acts, educational exhibits, field trials, and coursing events from the list of activities in the regulatory definition of *exhibitor* and disagreed with their removal.

The removal of these and other activities from the definition of *exhibitor* was inadvertent and they have been retained in this final rule.

One commenter stated that the meaning of “substantial portion of income” within the definition of *exhibitor* is unclear and that it should not be described as the main source of income. The commenter recommended that we define “substantial portion of income” to mean “a percentage of income, the loss of which would negatively affect the person’s standard of living,” because a main source of income earned by exhibiting the animals (51 percent or higher) is too high of a percentage to ensure the welfare of animals exhibited by persons earning poverty-level wages. Another commenter similarly recommended that USDA more clearly define the term “substantial” as the proposed language in the definition provides insufficient guidance for regulated parties and law enforcement. The commenter suggested that USDA define “substantial portion of income” as more than 50 percent of the person’s income.

We are making no changes in response to the commenters. As a practical matter, we anticipate that owners of common, domesticated household pets that fall under this particular exclusion will also be exempt under the licensing exemptions for exhibitors established in this final rule, which is broader in scope than this exclusion. However, if such an owner has questions, we encourage them to contact the appropriate Animal Care office<sup>4</sup> and we will assess the situation and make a determination at that time.

**“Dealer”**

Under the AWA, a dealer is defined as 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 animal whether alive or dead for research, teaching,

<sup>4</sup> [https://www.aphis.usda.gov/aphis/banner/contactus/sa\\_animal\\_welfare](https://www.aphis.usda.gov/aphis/banner/contactus/sa_animal_welfare).

exhibition, or use as a pet, as well as any dog at the wholesale level for hunting, security or breeding purposes. This definition also lists certain exclusions, such as retail pet stores.

The Agricultural Act of 2014 (referred to as the 2014 Farm Bill)<sup>5</sup> amended this definition by removing an exclusion for any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year. At the same time, the 2014 Farm Bill removed an exemption from licensing in § 2133 of the AWA for any person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs and cats on his own premises and sells such dog or cat to a dealer or research facility and replaced it with a broader exemption for any dealers and exhibitors whose size of AWA-related business activities is determined by the Secretary to be *de minimis*.

In the proposed rule, we intended to make the regulations consistent with the 2014 Farm Bill by removing the exemption from the definition of *dealer* for any person who does not sell or negotiate the sale or purchase 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. In addition, we proposed to remove a parallel exemption from licensing in § 2.1(a)(3)(ii) of the regulations and add in its place an exemption for any person whose size of AWA-related business activities is determined by APHIS to be *de minimis* in accordance with the regulations.

One commenter disagreed with the proposed change, stating that it will create a loophole for animal operations that are not in compliance with the AWA. As an example, the commenter stated that persons were buying three females and one male animal, breeding them in the absence of care standards, and selling the offspring cheaply to brokers. The commenter stated that these exceptions will create unfair competition by diminishing the ability of licensed breeders to compete for market share.

We are making no changes in response to this comment. The commenter appears to be making reference to a different provision, contained in § 2.1(a)(3)(iii) of the

current regulations, that exempts from licensing any person that maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals and who sells, at wholesale, only their offspring, which were born and raised on his or her premises, for pets or exhibition. The proposed changes to the \$500 gross income exemption do not change the licensing exemptions for dogs, cats, and/or small exotic or wild mammals. As we noted above, the AWA was amended to broaden exemptions from the licensing requirements for small-scale dealers and exhibitors, which allows APHIS to focus its limited resources on situations that pose a higher risk to animal welfare and public safety.

Another commenter asked if the removal of the \$500 gross income exemption meant that APHIS would now be exempting persons exhibiting exotic animals from the licensing requirements.

The \$500 gross income exemption only applies to persons selling or negotiating the sale or purchase of animals other than dogs, cats, and wild or exotic animals. It does not apply to the exhibition of exotic animals.

After reviewing these comments and the scope of the \$500 gross income exemption, we are amending the definition of *dealer* in this final rule to conform with the amendment to the Act, but will retain and make no changes to the existing licensing exemption in § 2.1(a)(3)(ii) for any person who sells or negotiates the sale 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 such animals during any calendar year and is not otherwise required to obtain a license. This long-standing, *de minimis* licensing exemption applies to persons, such as certain small-scale pet animal resellers, who are not covered by any other licensing exemption and do not pose a high risk to animal welfare or public safety. Although removed as an exclusion from the definition of *dealer*, this licensing exemption continues to be authorized by § 2133 of the AWA.

#### Four Breeding Female Licensing Exemptions

The current regulations in § 2.1(a)(3)(iii) and (vii) exempt from licensing any person who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals and who sells only the offspring of those animals, which were born and raised on his or her premises, for pets or exhibition. In the proposed rule, we proposed a “four breeding

female” exemption for additional types and combinations of animals, specifically, dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep.

One commenter stated that the proposed exemption is inconsistent with the exemptions currently in paragraphs (a)(3)(iii) and (vii) of § 2.1. The commenter noted that the current exemptions apply to breeders of small exotic or wild species with four or fewer breeding females under the assumption that such breeders can adequately care for their animals. The commenter suggested replacing the list of animals in the proposed *de minimis* exemption with the list in current § 2.1(a)(3)(iii) so that small exotic or wild species will be included under the *de minimis* exemption. Another commenter expressed similar concerns about having three exemptions for dealers and recommended that we consolidate them.

We agree with the commenters’ suggestions and are making conforming changes in this final rule. Specifically, we are combining the three exemptions (current § 2.1(a)(3)(iii) and (vii) and proposed § 2.1(a)(3)(ix)) into one exemption in revised paragraph § 2.1(a)(3)(iii). We have also harmonized the list of animals, grouped them into categories (pet animals, small exotic and wild mammals, and domesticated farm-type animals) and added additional examples of animals (such as llamas and alpacas) that fall under this exemption for clarity. “Domesticated farm-type animals” are animals that have historically been kept and raised on farms in the United States. This consolidated exemption continues to apply to any person, including, but not limited to, purebred dog and cat fanciers, who meet the criteria in revised paragraph § 2.1(a)(3)(iii), and applies to retail sales and wholesales alike. Finally, we made conforming edits to the definition of *retail pet store*. Specifically, we removed references to previous paragraph § 2.1(a)(3)(vii) because that provision has been consolidated in revised paragraph § 2.1(a)(3)(iii), which is authorized by the 2014 Farm Bill amendments. In addition, we updated references to “domestic ferrets” and “farm animals” to “domesticated ferrets” and “domesticated farm-type animals” for consistency with modern usage and the terminology used in this final rule.

A commenter stated that if the proposal is finalized, small breeders currently maintaining exotic animals under a USDA license may qualify as *de minimis* businesses and find themselves exempt from USDA licensing. The commenter expressed concern that

<sup>5</sup> <https://www.gpo.gov/fdsys/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf>.

persons operating such businesses will face confiscation of their animals in States that prohibit ownership of exotic animals by businesses lacking a USDA license and proposed a “grandfather clause” to allow *de minimis* businesses in such States to keep their exotic animals.

The four breeding female exemption for small exotic and wild mammals has been in place since 2004. Neither the proposed rule nor this final rule makes changes to it, other than to add additional examples of such animals and to combine the exemptions for retail sales and wholesales into one paragraph. We also note that States requiring a USDA license or that reduce requirements for persons with a USDA license primarily focus on potentially dangerous animals, not the types of small exotic and wild mammals that fall under this exemption, which are pocket pets such as chinchillas and jerboas being sold for use as pets or exhibition. Larger exotic or wild animals, such as lions, tigers, wolves, or bears, do not fall into this category.

#### Exhibitor Licensing Exemptions

In the proposed rule, we also proposed *de minimis* exemptions from the licensing requirements for exhibitors based on the size of their AWA-related business activity as measured by the total number of animals maintained, the type of exhibitor activity, and/or the duration of the exhibition. Specifically, for persons who exhibit four or fewer eligible animals in permanent facilities, we proposed a *de minimis* exemption under § 2.1(a)(3)(x). For seasonal exhibitors, we proposed an exemption in § 2.1(a)(3)(xi) for any person who maintains a total of eight or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for seasonal exhibition and exhibits any or all of the animals for no more than 30 days per calendar year. We also proposed an exhibitor licensing exemption in § 2.1(a)(3)(xii) for any person who maintains a total of four or fewer common, domesticated, non-dangerous household pet animals for infrequent or intermittent exhibition for no more than 30 days per calendar year, who derives less than a substantial portion of income from a nonprimary source for exhibiting such animals, whose animals reside exclusively at the residence of the owner, and who is not otherwise required to obtain a license.

One commenter stated that the proposal was unclear with respect to what animal species are eligible for the proposed *de minimis* exhibitor exemptions and asked us to clarify. With respect to the proposed *de*

*de minimis* exemption for infrequent or intermittent exhibitors, two commenters asked us to either define what species is meant by “common, domesticated, non-dangerous household pet animal” or provide a list of species that meet this criteria. One commenter stated that paragraph (a)(3)(xii) should reflect the *de minimis* exemptions in proposed paragraphs (a)(3)(ix) through (a)(3)(xi) that list “dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep.” The commenter stated that the proposed description is open to interpretation and could lead to confusion as to what animal species are eligible for the exemption.

In response to this comment, and consistent with our approach to the four breeding female exemption discussed above, we are harmonizing the lists of non-dangerous animals eligible for exemption and grouping them into categories (pet animals, small exotic and wild mammals, and domesticated farm-type animals). We are also adding more examples of animals that fall under this exhibitor exemption for clarity.

Two commenters disagreed with the proposed numeric thresholds, noting that seasonal exhibitors are allowed to work up to eight animals while infrequent or intermittent (mainly film and theatrical) exhibitors are only allowed to work four animals. One of these commenters stated that both types of exhibition require off-site housing and frequent transport, putting animals at greater potential risk regardless of the number exhibited, yet under § 2.1(a)(3)(xii) an infrequent or intermittent exhibitor would require a license with five to eight animals while seasonal exhibitors with the same number of animals exhibited would not require a license. Similarly, another commenter stated that regardless of whether animals are used for seasonal or infrequent exhibition, the potential impact on the animal’s welfare is the same. For this reason, the commenter recommended that the seasonal exemption be limited to four or fewer animals.

Two other commenters disagreed with the limit of days we placed on the seasonal exhibit exemption and said that the duration should be longer. One such commenter stated that many spring and fall exhibits run between specific weekends and are often weather dependent, and stated that at least 6 to 8 weeks would be better for the seasonal *de minimis* exemption. On the other hand, one commenter stated that seasonal exhibitions should not have a duration of more than 10 days per year.

Another commenter stated that allowing infrequent or intermittent

exhibitors up to 30 days a year to work their animals is far too high. The commenter, a professional pet trainer, was concerned that untrained pet owners would lack the knowledge necessary to keep their pets and other people safe on film sets and at other worksites. The commenter suggested that we limit the proposed exemption in § 2.1(a)(3)(xii) to 1 or 2 days of exhibition per year, as any person working their animals for more days are likely generating a substantial amount of income while remaining exempt from licensing. The commenter said that a trainer can make \$500 to \$1,000 per day with an animal in a TV or film production, and that a pet working 30 days in a starring role can make a profit of tens of thousands of dollars. The commenter stated that anyone profiting by more than \$100 per day from exhibiting an animal should be required to be licensed or work under the guidance of a licensed USDA trainer.

Finally, one commenter disagreed with our use of the term “infrequent exhibition.” The commenter asked who would monitor such exhibitors for compliance with the regulations and stated that allowing infrequent exhibitors to go unlicensed is not fair to licensed exhibitors who have to conduct recordkeeping and be inspected.

We have reconsidered this matter and agree with the commenters that the animals pose similar potential risks and will likely experience similar treatment and care, regardless of the duration or frequency of the exhibition. We have concluded that individuals and businesses exhibiting eight or fewer pet animals, small exotic or wild animals, and/or domesticated farm-type animals have a *de minimis* size of business based on the number of animals maintained, capability of providing adequate care and treatment of such animals, and public oversight. Accordingly, we are revising § 2.1(a)(3)(vii) to establish a single exemption from the licensing requirements for persons who maintain a total of eight or fewer pet animals, small exotic or wild animals, and/or domesticated farm-type animals for exhibition, and are not otherwise required to obtain a license. This *de minimis* threshold applies without regard to the frequency of exhibition and will allow the Agency to focus its limited resources on situations that pose a higher risk to animal welfare and public safety.

One commenter stated that the seasonal exhibition threshold for exemption should be raised from 30 to 45 days, noting that apple orchards, corn mazes, and Christmas tree farms

usually display small numbers of farm animals and are open at least 45 days. The commenter recommended that if such facilities are only exhibiting farm animals and are only open seasonally for 30 to 45 days, they should not be regulated.

As noted in the proposed rule, the Act contains a number of exclusions for domesticated farm-type animals and agricultural practices. For example, the definition of *animal* excludes farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. In addition, we wish to highlight that the definition of *exhibitor* also contains exclusions for organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, and other fairs and exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary. Exhibitions of exclusively domesticated farm-type animals, exhibitions of traditional farming and agricultural practices, and exhibitions of art portraying traditional farming and agricultural settings, are accordingly exempt from the definition of *exhibitor*. Examples of exhibitions that may fall in this category include exhibition of exclusively domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas), nativity scenes with a camel and domesticated farm-type animals displayed in a barn or other traditional farm-type setting, and traditional agricultural displays of working animals, such as reindeer pulling a sled or working on a farm. Exhibitions displaying other types of animals (such as lions, tigers, elephants, and bears) or animals other than exclusively farm-type animals in non-agricultural settings (such as camel rides for the public at a carnival), require licensure. Although the kinds of exhibits noted by the commenter may not all be exempt under the exhibitor licensing exemption, we wish to clarify that they may already be excluded from regulation pursuant to the definition of *exhibitor*.

#### Proposed Changes to § 3.28 and § 3.53

We proposed to remove §§ 3.28(b), 3.53(b), and 3.80(b)(1), which contain obsolete sheltering and minimum space requirements for hamsters, guinea pigs, rabbits, and nonhuman primates, and to revise § 3.6(a)(2)(xii) to remove phase-in dates which are no longer needed regarding primary enclosures for dogs

and cats. We explained in the proposed rule that removal of these requirements will remove any confusion with the current regulatory requirements and will have no impact on facilities and animal welfare.

Four commenters raised questions about our proposed removal of obsolete sheltering and minimum space requirements. One commenter asked if APHIS was certain that no entities were still maintaining animals under these requirements. Three of the commenters stated that some facilities may still be using primary enclosures acquired before August 15, 1990, and asserted that they would therefore still be subject to the requirements we are proposing to remove. These commenters asked that we remove these changes from the proposed rulemaking and reissue the changes in a separate rulemaking so that affected facilities receive adequate notice and opportunity to comment.

We have reconsidered these proposed changes in light of these comments and agree that some entities may still maintain hamsters, guinea pigs, and rabbits in enclosures acquired prior to August 15, 1990. Therefore, we will retain §§ 3.28(b) and 3.53(b) in the regulations and will consider removing them in a separate rulemaking. However, we are adopting the proposed revisions to §§ 3.6(a)(2)(xii) and 3.80(b)(1) in this final rule.

#### Other Comments

One commenter encouraged APHIS to investigate sanctuaries and private collections holding dangerous animals, as such facilities appear to be exhibiting animals for purposes that affect commerce for compensation in the absence of USDA oversight.

APHIS looks into any credible complaints or information it receives regarding individuals or businesses that may be engaging in regulated activity without the required license. To report a concern about an animal covered under the AWA, the public may submit a complaint online at: <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/complaint-form>, or by contacting one of our Animal Care offices.<sup>6</sup>

One commenter asked that we lift the stay imposed on the disaster contingency plan rulemaking as soon as possible.

As we noted in the proposed rule, the Secretary is reviewing the impact of the 2014 Farm Bill amendment on the contingency plan rulemaking and will decide whether to lift the stay once the review is concluded.

Another commenter stated concerns about how APHIS decides which current license holders meet the exemption threshold, citing inconsistent data in the APHIS database regarding the number of animals reported at the premises of licensees. Given these inconsistencies, the commenter asked whether APHIS can reliably determine who qualifies for the exemption and who does not.

We will continue to use the information submitted to APHIS by current license holders and the number of animals observed during the inspection process to determine if they meet the exemption thresholds. We consider our process for determining exemptions to be accurate and reliable.

We also received a number of general comments that were outside the scope of the rulemaking.

Finally, we are also making several nonsubstantive miscellaneous changes for consistency.

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.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves regulatory responsibilities for some currently licensed entities and reduces the cost of business for those entities. Those currently licensed exhibitors and dealers (including breeders meeting the definition of dealer) who are under the proposed *de minimis* thresholds will no longer be subject to licensing, animal identification, and recordkeeping requirements under the AWA. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action relieves regulatory responsibilities for some currently

<sup>6</sup> See Footnote 4.

licensed entities and reduces the cost of business for those entities.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the *Regulations.gov* website (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 relieves regulatory responsibilities for some currently licensed entities and reduces the cost of business for those entities. Those currently licensed exhibitors and dealers (including breeders meeting the definition of *dealer*) who are under the proposed *de minimis* thresholds will no longer be subject to licensing, animal identification, and recordkeeping requirements under the AWA.

The cost of a license for the smallest entities is between \$40 and \$85 annually. Identification tags for dogs and cats cost from \$1.12 to \$2.50 each. Other covered animals can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure at negligible cost. We estimate that the average currently licensed entity potentially affected by this rule spends about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All of the currently licensed entities that will be considered *de minimis* under this rule benefit from reduced costs for licensing, identification, and recordkeeping.

We estimate that about 323 currently licensed exhibitors and breeders with a total of 1,106 animals operating at or below the thresholds for their particular AWA-related business activity will be considered *de minimis* and will no longer need to be licensed. We estimate that the cost savings for all these entities could total between about \$62,000 and \$68,500 annually. Our estimate of cost savings is based on agency experience and data from the APHIS Animal Care database on current licensees. We used information from the database on the type of animals and number of each type of animal at a current licensee, and their most recent inspection reports to determine the number of current licensees who could potentially be exempt based on the criteria established in this rule.

Based on our review of available information, APHIS does not expect the rule to have a significant economic impact on a substantial number of small entities. We did not receive information concerning affected entities during the

public comment period on the proposed rule that would alter this assessment. In the absence of apparent significant economic impacts, we have not identified steps that would minimize such impacts.

#### 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 2 CFR chapter IV.)

#### 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.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Animal and Plant Health Inspection Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. We did not receive any requests from tribes for consultation regarding the proposed 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 requirements included in this final rule are approved under Office of Management and Budget control number 0579-0036.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment 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 Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

#### List of Subjects in 9 CFR Parts 1, 2, and 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we are amending 9 CFR parts 1, 2, and 3 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. Section 1.1 is amended by revising the definitions of *Dealer*, *Exhibitor*, and *Retail pet store* 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 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; and any retail outlet where dogs are sold for hunting, breeding, or security purposes.

\* \* \* \* \*

*Exhibitor* means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and

country fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

\* \* \* \* \*

*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, domesticated ferrets, domesticated farm-type animals, birds, and coldblooded species. Such definition excludes—

- (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;
- (2) Establishments or persons 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 by revising paragraphs (a)(3)(iii), (a)(3)(vii), and (c)(2) to read as follows:

**§ 2.1 Requirements and application.**

- (a) \* \* \*
- (3) \* \* \*

(iii) Any person who maintains a total of four or fewer breeding female pet animals as defined in part 1 of this subchapter, small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such

as cows, goats, pigs, sheep, llamas, and alpacas) and sells only the offspring of these animals, 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 of these breeding female animals, regardless of ownership, or to any person maintaining such breeding female animals on premises on which more than four of these breeding female animals are maintained, or to any person acting in concert with others where they collectively maintain a total of more than four of these breeding female animals, regardless of ownership;

\* \* \* \* \*

(vii) Any person who maintains a total of eight or fewer pet animals as defined in part 1 of this subchapter, small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas) for exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person acting in concert with others where they collectively maintain a total of more than eight of these animals for exhibition, regardless of possession and/or ownership;

\* \* \* \* \*

(2) The applicant has paid the application fee of \$10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license.

\* \* \* \* \*

**PART 3—STANDARDS**

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

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

■ 6. Section 3.6 is amended:

- a. By revising paragraph (a)(2)(xii);
- b. By removing paragraph (b)(1)(i);
- c. By removing paragraph (b)(1)(ii) introductory text;
- d. By redesignating paragraphs (b)(1)(iii) and (b)(1)(iv) as paragraphs (b)(1)(iv) and (b)(1)(v) respectively; and
- e. By redesignating paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(1)(ii)(C) as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

The revision reads as follows:

**§ 3.6 Primary enclosures.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*

(xii) If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

\* \* \* \* \*

**§ 3.80 [Amended]**

■ 7. Section 3.80 is amended:

- a. By removing paragraph (b)(1);
- b. By removing paragraph (b)(2) introductory text;
- c. By redesignating paragraphs (b)(2)(i) through (iv) as paragraphs (b)(1) through (4), respectively;
- d. In newly redesignated paragraph (b)(1), footnote 4, by removing the words “paragraph (b)(2)(ii)” and adding the words “paragraph (b)(2)” in their place;
- e. In newly redesignated paragraphs (b)(2) and (b)(4) by removing the words “paragraph (b)(2)(i)” and adding the words “paragraph (b)(1)” in their place; and
- f. In paragraph (c), by removing the words “paragraphs (b)(1) and (b)(2)” and adding the words “paragraph (b)” in their place.

**§ 3.127 [Amended]**

■ 8. In § 3.127, paragraph (d)(5) is amended by removing the words “farm animals” and adding the words “domesticated farm-type animals” in their place.

Done in Washington, DC, this 29th day of May 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–11892 Filed 6–1–18; 8:45 am]

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