

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule.

**SUMMARY:** We are proposing to revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the Animal Welfare Act (AWA). Specifically, we would narrow the definition of *retail pet store* so that it means 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 certain animals are sold or offered for sale, at retail, for use as pets. Retail pet stores are not required to be licensed and inspected under the AWA. We are also proposing to increase from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from 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 would apply regardless of whether those animals are sold at retail or wholesale. This proposed rule is necessary to ensure that animals sold at retail are monitored for their health and humane treatment and to concentrate our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.

**DATES:** We will consider all comments that we receive on or before July 16, 2012.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!x0docketDetail;D=APHIS-2011-0003> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 851–3740.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

###### *I. Purpose of Regulatory Action*

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is taking this action pursuant to its authority 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 animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of APHIS. Regulations and standards established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. APHIS is undertaking this action to ensure that animals sold at retail are monitored for their health and humane treatment.

###### *II. Summary of Major Provisions*

“Retail pet stores” are not required to obtain a license under the AWA or comply with the AWA regulations and standards. Currently, anyone selling, at retail, the following animals for use as pets are considered retail pet stores: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species.

This proposed rule would rescind the “retail pet store” status of anyone selling, at retail for use as pets, the animals listed above to buyers who do not physically enter his or her place of business or residence in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase. Unless otherwise exempt under the regulations, these entities would be required to obtain a license from APHIS and would become subject to the requirements of the AWA, which include identification of animals and recordkeeping requirements, as well as the following standards: Facilities and operations (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities); animal health and husbandry (including requirements for veterinary care, sanitation and feeding, watering, and separation of animals); and transportation (including specifications for primary enclosures, primary conveyances, terminal facilities, and feeding, watering, care, and handling of animals in transit).

In addition to retail pet stores, the proposed rule would exempt from regulation anyone 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. In addition, the proposed rule would increase from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection if he or she sells only the offspring of those animals born and raised on his or her premises for use as pets or exhibition, regardless of whether those animals are sold at retail or wholesale.

III. Costs and Benefits

The benefits of the rule, primarily expected improvements in animal welfare, are expected to justify the costs.

These benefits are not quantified. As detailed in the RIA, total costs are expected to total from \$2.2 million to \$5.5 million, while total cost savings could range from about \$45,000 to about

\$150,000 per year. An estimate of the primary costs that may be incurred by entities in connection with this proposed rule is provided below:

Area of possible non-compliance	Unit cost <sup>1</sup>	Number of affected facilities <sup>2</sup>	Total cost range (\$1,000)	
Licensing fees .....	\$10 application fee; \$30–\$750 licensing fee (assume \$70 to \$235) <sup>3</sup> .	1,500	\$105	\$353
Identification .....	\$1.12–\$2.50 for collars & tags (246 dogs per facility need identification) <sup>4</sup> .	1,500	413	923
Recordkeeping .....	10 hrs annually * \$13.07/hour (BLS 43–9061) .....	1,500	196	196
Facility Maintenance .....	8–10 hrs (preliminary) *; \$9.38/hr (BLS 39–2021) .....	248	19	23
	\$50 to \$100 (materials) .....		12	25
Veterinary care .....	2–8 hrs per week (ongoing) *; \$9.38/hr (BLS 39–2021) .....	237	242	968
	\$50 to \$150 (site visit) .....		12	36
Shelter Construction .....	\$75 to \$300 (1 to 3 veterinary care issues) .....	65	18	213
	\$16 to \$35 for puppy vaccinations .....		531	1,161
Primary Enclosures .....	\$80–\$120 for a commercial igloo style dog house (1 to 20 new shelters).	21	5	164
Daily Sanitation & Cleaning per Year .....	\$220–\$260 for a commercial 3' x 6' kennel (1 to 30 new enclosures).	194	664	1,328
Total .....	1–2 hrs daily * \$9.38/hr (BLS 39–2021) .....		2,222	5,545

<sup>1</sup> These costs may be overestimated. In general, they do not account for volume discounts, do-it-yourself labor or construction out of inexpensive materials that may be more likely in some cases.

<sup>2</sup> We estimate that there may be about 1,500 dog breeders that could be affected by this rule. The number of facilities for each area of possible non-compliance is based on 1,500 multiplied by the percentage of wholesale breeders found to be non-compliant for that category in pre-licensing inspections in 2010.

<sup>3</sup> In 2010, more than 85 percent of Class A licensees had gross income associated with license fees of between \$70 and \$235. Therefore, we assume that newly regulated entities would fall in this range.

<sup>4</sup> In 2010, there were an average of 106 adults and 93 puppies at licensed wholesale breeders at one time. We assume, based on litter sizes, frequency of litters, and puppy sales, that there would be about 1.5 times this number of puppies at the average facility over the course of a year.

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 animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of U.S. Department of Agriculture's (USDA) 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). 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.

The AWA 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. Dealers of animals must obtain licenses, they must comply with the AWA regulations and standards, and their facilities may be inspected for compliance. The Act defines the term *dealer* to exclude "a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer." However, the Act does not define the term "retail pet store."

Pursuant to its rulemaking authority, the USDA amended the AWA regulations in 1971 by adding a definition of *retail pet store*. A *retail pet store* is defined in § 1.1 of the regulations to mean "any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species." The definition of *retail pet store* goes on to describe certain

establishments that do not qualify as retail pet stores, even if they sell animals at retail. Those establishments that do not qualify as retail pet stores are:

- Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;
- 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.;
- Establishments or persons selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes;
- Establishments wholesaling any animals (except birds, rats, and mice); and
- Establishments 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.

In accordance with the AWA, retail pet stores are exempt from the licensing requirements in § 2.1(a)(3) of the regulations. Other retail and wholesale dealers must be licensed, unless

otherwise exempt under the regulations. The exemptions most relevant to this proposed rule are discussed in greater detail later in this document.

The current definition of the term *retail pet store* was established over 40 years ago to ensure that the appropriate retail facilities were exempt from the licensing requirements. At that time, such outlets were primarily hobby breeders, whose small facilities usually pose less risk to the welfare of animals than do large facilities, and traditional “brick and mortar” stores that were subject to a degree of oversight by persons who physically entered their place of business to personally observe the animals offered for sale prior to purchase and/or to take custody of the animals after purchase. In this way, animals sold by such traditional retail pet stores can be monitored by the public for their health and humane treatment. However, with the increased use of the Internet in the 1990s, many retailers began to offer their animals for sale remotely over the Internet and to sell and transport their animals nationwide. As a result, today’s customers are often unable to enter the retailer’s place of business to observe the animals before taking them home. Because the current definition of *retail pet store* includes all retail outlets, with the limited exceptions discussed above, retailers selling animals by any means, including remote sales conducted over the Internet or by mail, telephone, or any other means where the customers do not physically enter a physical premises, qualify as retail pet stores and are exempt from the licensing requirements, even if they lack the public oversight provided by customers entering their place of business.

Without that public oversight or licensing and inspections by APHIS, there is no assurance that animals sold at retail for use as pets are monitored for their health and humane treatment nationwide. In fact, in recent years, APHIS has noted a number of reports and complaints concerning the welfare of such animals. During a program audit that was completed in 2010, the USDA’s Office of Inspector General found that some consumers who purchased dogs over the Internet had encountered health problems with their dogs.<sup>1</sup> The report did not discuss whether animals purchased over the Internet suffer from health problems at a greater rate than those sold in traditional, brick-and-mortar retail pet stores. In addition,

APHIS has received complaints directly from members of the public concerning the welfare of dogs and other pet animals sold at retail. Members of Congress have also introduced legislation intended to address the issue of dogs raised by high-volume breeders that sell directly to the public, including sales over the Internet.<sup>2</sup>

To address these issues and ensure that animals sold at retail for use as pets are monitored for their health and humane treatment, we are proposing to revise the definition of *retail pet store* in order to bring more pet animal retailers under the AWA licensing requirements. Specifically, we are proposing to amend the definition of *retail pet store* to limit the applicability of the term to only those places of business or residences 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. Because animals sold by such stores can be monitored by the buyers for their health and humane treatment, we have determined that the risk to the welfare of animals posed by these stores does not warrant our inspection or require the issuance of a license.

We are also proposing that the revised definition of *retail pet store* include any person who meets the criteria in § 2.1(a)(3)(iii) of the regulations. That paragraph currently provides an exemption from licensing requirements for persons who maintain a total of three or fewer breeding female dogs, cats, and/or small exotic or wild mammals and who sell only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition. This licensing exemption does not include: (1) Any person residing in a household that collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, (2) 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, or (3) 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.

In addition to adding persons meeting the criteria in § 2.1(a)(3)(iii) to the definition of *retail pet store*, we are also proposing to increase the number of

breeding females found in that exemption from three to four. That proposed change is discussed in the next section.

#### Licensing Exemptions

The current licensing exemption for retail pet stores is found in two paragraphs in § 2.1 of the regulations:

- Paragraph (a)(3)(i) exempts from licensing “retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only: Provided, That, Anyone wholesaling any animals, selling any animals for research or exhibition, or selling any wild, exotic, or nonpet animals retail, must have a license;” and
- Paragraph (a)(3)(vii) exempts 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., a purebred dog or cat fancier) and is not otherwise required to obtain a license.”

We are proposing to simplify the exemption presented in paragraph (a)(3)(i) so that it states simply that “retail pet stores as defined in part 1 of this subchapter” are exempt from the licensing requirements. The definition of *retail pet store* already lists the types of animals sold at such stores and excludes persons who sell animals at wholesale, who sell warmblooded animals for research or exhibition, and who sell wild, exotic, or nonpet animals from the scope of the definition, so the exemption and exclusions detailed in that paragraph are unnecessary. This change would also ensure that the licensing exemption for retail pet stores is consistent with our proposed definition. Similarly, we are proposing to remove paragraph (a)(3)(vii) in its entirety. Retaining the exemption for the entities addressed under that paragraph—essentially all retail breeders—would be inconsistent with our proposed definition of *retail pet store*.

In addition to these proposed changes to the licensing exemptions for retail pet stores, we would also revise the licensing exemption in § 2.1(a)(3)(ii) of the regulations. Paragraph (a)(3)(ii) exempts from licensing “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 to a research facility, an exhibitor, a dealer, or a pet store during any calendar year

<sup>1</sup> USDA, Office of Inspector General, “Animal and Plant Health Inspection Service, Animal Care Program, Inspections of Problematic Dealers” (Report No: 33002-4-SF, Issued May 2010), p. 37.

<sup>2</sup> See, for example, H.R. 835/S. 707, the Puppy Uniform Protection and Safety (PUPS) Act, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.835>.

and is not otherwise required to obtain a license.” While this exemption is based on a similar provision found in the definition of *dealer* in the AWA and § 1.1 of the regulations, it differs from that provision by limiting the source of gross income to sales to research facilities, exhibitors, dealers, and pet stores only. We believe that this exemption should apply to all animals. Therefore, we are proposing to remove the limitation concerning the source of gross income in § 2.1(a)(3)(ii) of the regulations.

Finally, as noted previously, we are proposing to amend § 2.1(a)(3)(iii) to increase from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection requirements. In proposing to increase this number, we are taking into account the fact that some dealers who currently qualify as retail pet stores would no longer be exempt from licensing and inspection requirements as a result of our proposed change to the definition of *retail pet store*. By increasing the number of breeding females, some dealers with small facilities who would not otherwise qualify as retail pet stores under the revised definition of that term would continue to be exempt from licensing and inspection requirements and some pet wholesalers with small facilities who are currently required to be licensed would no longer have to be licensed. Based on a recent review of compliance among currently regulated facilities, we believe that a facility that maintains four breeding females, one more than the current limit of three, can be considered a low-risk facility, so this proposed change would allow us to continue to concentrate our regulatory resources on those facilities that present the greatest risk of noncompliance and thereby ensure the welfare of animals.

#### Other Changes

Currently, the definition of *dealer* in § 1.1 of the regulations states that this term does not include “retail pet stores as defined in this section, unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale)”. The phrase “unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale)” is redundant given the exclusions contained in the definition of *retail pet store*. We are proposing to revise the definition of *dealer* by removing this phrase in order to eliminate this redundancy.

#### Alternatives Considered

APHIS believes that compliance with the requirements of the AWA is important for these potentially affected entities for the reasons discussed above, but should not be regarded as unreasonably onerous. Entities subject to the AWA must purchase a license, which ranges in cost from \$40–\$760, depending on the size of the establishment. Further, breeders who sell animals over the Internet will be subject to the other provisions of the AWA, including identification of animals, recordkeeping, facility maintenance, periodic vet care, shelter construction standards, and sanitation requirements. APHIS believes that these requirements are not excessively burdensome, but we also recognize that many of the regulated entities are likely to be small businesses.

Consistent with Executive Orders 12866 and 13563, which emphasize determining the least costly regulatory option, and with the President’s January 12, 2011, Memorandum on Small Businesses and Job Creation, APHIS has considered several alternatives to this proposed action. For the reasons discussed below, we believe the changes proposed in this document represented the best alternative option that would satisfactorily accomplish the stated objectives and minimize impacts on small entities. However, we welcome comments from the public on these and other alternative options.

As written, some dealers would no longer qualify as retail pet stores under our proposed definition if they sold covered animals at retail to a buyer who did not physically enter the seller’s place of business or residence, unless the dealer is otherwise exempted under the regulations. This would mean that if a person sold some pets to walk-in customers from a physical storefront and some pets via remote sales, including over the Internet or by mail, telephone, or other non-face-to-face means, then that person would be considered a *dealer* under the AWA and subject to regulation under the Act unless otherwise exempted under the regulations.

We recognize that retailers who sell some animals to walk-in customers and some animals remotely may be subject to a certain degree of oversight by the customers who enter their place of business or residence. As a result, we considered establishing a regulatory threshold based on the percentage of such a retailer’s remote sales. However, we did not include this alternative in our proposed changes for two reasons. First, we do not have the authority to

require that retail pet stores make and retain sales records under the AWA, which are necessary to verify the retailer is operating within the established threshold, whatever that percentage might be. Second, it would also be difficult to confirm that all the animals that the entity sells at retail were available to be observed by its walk-in customers. If the animals sold to walk-ins were kept in one location or part of a location where they could be seen by the public and the animals sold remotely were kept at another location, then those latter animals would not receive the public oversight that forms the basis for the retail pet store exemption. For these reasons, we do not believe that it is possible to craft a threshold based on a percentage of a retailer’s remote sales that, if met, would enable a hybrid operation such as we have described to continue to be considered a retail pet store and thus remain exempt from the licensing and requirements under the Act. We are, however, interested in receiving comments from the public on this alternative. Are there currently retailers who sell some animals from a storefront and some animals remotely and, if so, are there specific ways that they do business that provide assurance that all the covered animals they sell at retail are subject to public oversight? Are there alternatives to verifying compliance that we may not have considered? We welcome comments from the public on these questions.

A second alternative we considered in preparing this proposed rule was to add an exception from licensing for retailers that are subject to oversight by State or local agencies or by breed and registry organizations that enforce standards of welfare comparable to those standards established under the AWA. 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. While the State laws concerning the welfare of animals in retail pet stores vary by State, few States actually address all categories of welfare required under the AWA, including veterinary care, food and water, proper sanitation, and housing. Similarly, few breed and registry organizations have welfare standards that they require their members to meet that are comparable to those required under the AWA, and few of those organizations conduct regular, unannounced inspections or have an adequately sized inspectorate to evaluate compliance with such welfare standards. However, APHIS is continuing to look for ways to better

collaborate with its State counterparts and other organizations. For example, APHIS works with State or local authorities in jurisdictions that have laws regarding animal cruelty. We are also working in collaboration with State regulatory groups to develop better educational tools and requirements for licensure under the AWA. With these considerations in mind, APHIS concluded that it would be premature to consider establishing an exemption from the licensing requirements for retailers that are subject to oversight by State or local agencies or breed and registry organizations. We certainly wish to avoid imposing duplicative regulatory requirements on establishments where the welfare of the animals is being assured through alternative means, so we welcome information or comments from the public regarding the idea of an exemption based on oversight from other agencies or organizations. We request comment on whether any State or local laws establish standards that would assure the humane handling, care, treatment, and transportation of animals sold remotely, such as over the Internet. We also request comment on whether any private organizations have certification programs that verify compliance with animal welfare standards comparable to those promulgated under the AWA. Finally, we request comment on the appropriateness of APHIS providing an exemption for entities that are so regulated at the State or local level, or who are otherwise certified.

A third alternative we considered during the development of this proposed rule was to amend the definition of *retail pet store* so that only high-volume breeders would be subject to the AWA regulations and standards. While an objective standard for what constitutes a high-volume breeder has not been established, we note that the PUPS Act legislation referenced in footnote 2 would amend the AWA to define a "high volume retail breeder" as a person who, in commerce, for compensation or profit: (1) Has an ownership interest in or custody of one or more breeding female dogs; and (2) sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of the offspring of such dogs for use as pets in any 1-year period.

To compare our proposed exemption for persons who maintain four or fewer breeding females to the standard of 50 dogs sold that is provided in the PUPS Act, we note that the number of puppies that could be produced by 3 breeding female dogs is going to vary according

to the breed of the dog. For example, as noted in the Fall 2009 edition of the AKC Breeder,<sup>3</sup> Labrador retrievers had a typical range of 5 to 10 puppies per litter, with an average of 7.6, while Yorkshire terriers showed a range of 2 to 5 pups, with an average of 3.3. The number of litters per year varies as well, but we are aware of estimates of an average of 1.5 litters per dog per year. With that, 3 Yorkshire terriers could produce as many as 22 puppies in a year, while 3 Labrador retrievers might produce as many as 45 puppies over the same period. Adding a fourth breeding female as proposed above would bring that average to 30 to 60 puppies in a year, which is a figure that brings our exemption into closer alignment with the standard of 50 dogs sold per year provided in the PUPS Act. We welcome comments regarding the variability of litter size by breed and the impact that variability may have on the setting of size thresholds for the types of entities discussed in this proposed rule.

We have elected in this proposed rule to retain an exemption based on the number of breeding females, and not to propose a different exemption based on the number of animals sold in a given period, largely because of enforceability concerns. When an inspector visits a facility under the current regulations, he or she can quickly ascertain, through direct observation and discussion with the operator of that facility, if the number of breeding female animals that are present falls within the exemption. In contrast, if there were an exemption based on the number of animals sold in a given period, it would be necessary for the inspector to review sales records and/or other documentation, which could create compliance burdens, especially for smaller facilities. Moreover, though, as noted above, we do not have the authority to require retail pet stores to make or retain the records that would be necessary to verify the number of animals sold. We encourage the submission of comments on this topic, however, and will consider all suggestions regarding exemptions based on number of breeding females, number of animals sold, or alternative numerical or other thresholds that we may not have considered.

Finally, we note that the exemption in § 2.1(a)(3)(iii) applies to persons who maintain breeding female dogs, cats, and/or small exotic or wild mammals and who sell only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised

<sup>3</sup> [http://www.akc.org/ewnewsletter/akc\\_breeder/2009/fall/handbook.cfm](http://www.akc.org/ewnewsletter/akc_breeder/2009/fall/handbook.cfm).

on his or her premises, for pets or exhibition. Given that our proposed change in the number of breeding females was motivated by primarily dog-specific considerations, we contemplated a fourth alternative, which was to propose to increase the number of breeding females for dogs only and to leave the threshold for cats and small exotic or wild mammals at three breeding females. We ultimately decided that as a matter of fairness and consistency, the increase in the number of breeding females should be applied to all three categories of animals covered by the exemption. We welcome comment on this alternative.

#### **Executive Orders 12866 and 13563 and Regulatory Flexibility Act**

This proposed 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, and an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Should this proposed rule be adopted, persons who sell covered animals to any buyer who does not enter their facility to observe the animals prior to purchase and/or to take custody of the animals after purchase, such as remote sales conducted over the Internet where the customer does not enter a storefront at any point in time, would need to obtain a license in accordance with AWA regulations. APHIS expects that this rule would primarily affect dog breeders that maintain more than four breeding females at their facilities. While the scope of this rule applies to certain other animals, as a practical matter, most of retailers of animals other than dogs would meet the proposed definition of *retail pet store* and continue to be exempt from regulation. APHIS estimates that there may be around 1,500 dog breeders who are not currently subject to the AWA regulations but would be required to be licensed as a result of this proposed rule. We base this estimate on the ratio of the number of wholesale breeders

regulated by USDA in Iowa, Kansas, and Missouri to the number of retail breeders currently regulated by these three States and that are likely to have more than four breeding females. Assuming this ratio between the numbers of wholesale and retail breeders in the three States is similar to that for the United States as a whole, we extrapolate that there are about 1,500 U.S. retail breeders who would be newly subject to regulation. This figure is likely overly inclusive, as it assumes that all retail breeders, except for traditional retail pet stores and hobby breeders, would be regulated. However, those retailers for which each buyer visits their place of business prior to purchase or taking custody would continue to be exempt from regulation.

In addition to obtaining a license, regulated entities must comply with animal identification and recordkeeping requirements. Licensed entities are also subject to standards that address the following: Facilities and operations (including space, structure and construction, waste disposal, heating, ventilation, lighting, and interior surface requirements for indoor and outdoor primary enclosures and housing facilities); animal health and husbandry (including requirements for veterinary care, sanitation and feeding, watering, and separation of animals); and transportation (including specifications for primary enclosures, primary conveyances, terminal facilities, and feeding, watering, care, and handling of animals in transit).

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

Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could substantially reduce the number of Class A licensees (breeders). APHIS inspection data suggest that the number of current Class A licensees, 2,064,

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

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

#### **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 proposed 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 proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### **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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments

to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2011-0003. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the AWA. Specifically, we would narrow the definition of *retail pet store* so that it means 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 certain animals are sold or offered for sale, at retail, for use as pets. We are also proposing to increase from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection requirements, regardless if those animals are sold at retail or wholesale. This proposed rule is necessary to ensure that animals sold at retail are monitored for their health and humane treatment and to concentrate our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.355921499 hours per response.

*Respondents:* Retailers and wholesalers of pet animals.

*Estimated annual number of respondents:* 1,500.

*Estimated annual number of responses per respondent:* 28.50066667.

*Estimated annual number of responses:* 42,751.

*Estimated total annual burden on respondents:* 15,216 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from 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 propose to amend 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 definition of *dealer* and the introductory text of the definition of *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 that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. A retail pet store also includes any person who meets the criteria in § 2.1(a)(3)(iii) of this subchapter. Such definition excludes—

\* \* \* \* \*

**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) to read as set forth below.

b. In paragraph (a)(3)(ii), by removing the words “to a research facility, an exhibitor, a dealer, or a pet store”.

c. In paragraph (a)(3)(iii), in the first sentence, by removing the words “three (3)” and adding the word “four” in their place, and in the second sentence, by removing the word “three” each of the three times it appears and adding the word “four” in its place.

d. By removing paragraph (a)(3)(vii) and redesignating paragraph (a)(3)(viii) as paragraph (a)(3)(vii).

**§ 2.1 Requirements and application.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

Done in Washington, DC, this 10th day of May 2012.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2012-11839 Filed 5-15-12; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 430**

[Docket No. EERE-2008-BT-TP-0011]

RIN 1904-AB78

**Energy Conservation Program: Test Procedures for Microwave Ovens**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** On November 23, 2011, the U.S. Department of Energy (DOE) issued a supplemental notice of proposed rulemaking (SNOPR) to amend the test procedures for microwave ovens. That SNOPR proposed amendments to the DOE test procedure to incorporate provisions from the International Electrotechnical Commission (IEC) Standard 62301, “Household electrical appliances—Measurement of standby power,” Edition 2.0 2011-01 (IEC Standard 62301 (Second Edition)). Today’s SNOPR proposes additional provisions for measuring the standby mode and off mode energy use of products that combine a microwave oven with other appliance functionality, as well as minor technical clarifications.

**DATES:** DOE will accept comments, data, and information regarding this SNOPR submitted no later than June 15, 2012. See section V, “Public Participation,” for details.

**ADDRESSES:** Any comments submitted must identify the SNOPR on Test Procedures for Microwave Ovens, and provide docket number EERE-2008-BT-TP-0011 and/or regulatory information number (RIN) 1904-AB78. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email:* [MicroOven-2008-TP-0011@ee.doe.gov](mailto:MicroOven-2008-TP-0011@ee.doe.gov). Include docket number EERE-2008-BT-TP-0011 and/or RIN 1904-AB78 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L’Enfant Plaza SW., Washington, DC 20024. *Telephone:*