

## Legislation – What’s Hot . . . . .

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### ***The USDA/APHIS Final Rule – an Exemption CHART to help navigate the storm!***

All of us who have been keeping up with the USDA and Animal and Plant Health Inspection Service (APHIS) Final Rule discussions continue to have numerous questions and concerns. Ever since the rulemaking decision was announced in September dog and cat fanciers have expressed anger, frustration and confusion concerning the Rule’s definitions of terms and the uncertainty of how it may impact the future of pedigreed cats/purebred dogs and those who are dedicated to preserving their chosen breed. For background and other information on the Final Rule, go to the Cat Fanciers’ Association (CFA) website Legislative Alert Page. The article, “Don’t Panic”, describes the ways in which pedigreed cat breeders can be exempt from federal licensing. The new rule goes into effect on November 18th, however APHIS has stated this will be a gradual process to include education and phased-in enforcement.

The CFA Legislative Group, in collaboration with The International Cat Association (TICA), has prepared a simple-to-understand flow chart for breeders of pedigreed cats and cat rescuers to help them determine whether they need to be licensed and regulated by APHIS, based on their current selling activities.

#### **To see this Flow CHART - TICA/CFA APHIS flowchart**

Go to the CFA web site Legislative Alert page.

**The Animal Welfare Act** authorizes the Secretary of Agriculture to promulgate standards and other requirements to ensure the humane care and treatment of animals by research facilities, transporters, intermediate handlers, exhibitors and sellers of animals. Administration of the AWA is delegated to APHIS. Dealer licensing is required by the AWA for persons who sell animals for any of the six purposes shown on the chart.

Research Teaching Testing Experimentation Exhibition Use as a PET

(“Exhibition” means circuses or other animal entertainment, not cat/dog shows.)

**Breeders and others who sell kittens/cats for use as pets are considered Dealers unless exempted.** For over 40 years everyone who sold pets directly at retail, whether from a store front or from their residence, has been exempted through the broad “retail pet store” definition. APHIS in 2012 decided, because of concerns for an increase in “Internet” selling, to narrow the definition of “retail pet store” so that buyers would be able to see the pet before purchase. Breeders selling at retail would no longer all be necessarily exempt. In spite of CFA’s objections and thousands of comments submitted from other organizations and individuals opposing the proposed rule in 2012, APHIS decided to revise and narrow the Retail Pet Store definition. They announced and published the Final Rule in the Federal Register on September 18, 2013.

**The chart shows breeders/sellers and rescuers the two ways in which they can be exempt from becoming a federally licensed dealer:**

**Exemption One is the “Retail Pet Store Exemption”.**

All sales of **pets** must be **at retail**, and all must be sold **“face-to-face**. The buyer, or an allowed representative, must be present with the seller and the kitten/cat before or at the time of transfer.

This exemption, though restrictive, is aligned with the general cat fancy culture and will most likely be the best exemption for most breeders. Cat breeders tend to meet with pet buyers, either prior to placing a kitten or at the time of purchase/transfer. According to APHIS, the place where the selling takes place can be at a mutually convenient location, not necessarily the seller’s home. A show hall or airport, for example, would be acceptable. There is no limit on the number of breeding females a person may maintain in their home. The buyer can have a representative meet with the seller to take possession of their pet. See more information below.

**Exemption Two is the “Fanciers/Low Risk Exemption”.**

For persons who **maintain** four or fewer “breeding females” of any species on their premises this may be a good option. There is no **“face to face”** selling requirement. However, all kittens/cats **sold as pets** must be the offspring of these females and they must have been **“born and raised”** on the premises. No collaboration is allowed (i.e. a spouse who also has several females). See more information below.

When we review CFA litter registration data for the last three years, it is apparent that the vast majority of breeders submit 4 to 6 litter registrations, or fewer, per year. These breeders would probably have 4 or fewer breeding females in their home and could find this exemption to be preferable since there are no restrictions on shipping of pets. Drawbacks however would include the fact are that there is no opportunity to sell a retired stud cat as neutered pet or an older female as a spayed pet if they had originally come from another breeder. If one receives a kitten, who does not turn out to be a good show cat or queen, there is no possibility to spay her and sell her as a pet. We assume these cats could be placed with no compensation.

The chart shows the basics for exemption. There are breeders, possibly already used to regulation by State agencies, who will accept federal licensing. They can sell pets in any way they choose if they are willing to have unannounced inspections and can comply with the APHIS standards of care.

**Uncertainties and questions:**

We realize that there are still numerous questions concerning these exemptions and no ideal process for response. Some of the uncertainties will probably be resolved by the Agency eventually; and APHIS could modify their interpretations or policies in the future. As the federal inspectors become more familiar with enforcement situations, inherent within the cat/dog fancier culture, which is certain to be quite foreign to them, we may see policy changes.

I will answer a few questions by quoting directly from the APHIS Federal Register Final Rule, Vol. 78, No. 181, published September 18, 2013. These APHIS statements are

not official regulation language, but anything published in the Federal Register is considered to be as good as the “law”.

**One - Retail Pet Store Exemption:**

1. What if a breeder wants to ship a cat to another breeder friend? This is often necessary for genetic diversity in order to preserve any of our breeds, and especially a rare breed. It may not be feasible for the breeder or buyer to fly across the country for a face-to-face meeting.

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

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

2. Who might be considered an “allowed representative” for the buyer?

**APHIS** - “Animals that are sold at retail sight unseen are not personally observed by buyers prior to purchase. However, it is important to note that **we consider the buyer of a pet animal sold at retail to be the person who takes custody of the animal after purchase, even if this person is not the ultimate owner of the animal.** Bearing this in mind, we consider many of the scenarios presented by commenters to pertain to issues that would preclude the ultimate owner of the animal, not the buyer, from being physically present to observe the animals. However, a carrier or intermediate handler cannot be designated as the buyer. Retailers who, for whatever reason, do not consider it possible for each buyer to personally observe their animals prior to purchasing them and/or taking custody of them may still be exempt from licensing if they do not sell the animals at retail for one of the six purposes covered under the definition of *dealer*.” (*Use as a PET*)

3. Can a breeder participate in rescue? It is sometimes necessary to transport cats to other parts of the country in order to find good homes?

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

We note, however, that dealers are only required to be licensed if they do not meet any of the exemptions in the regulations. Many private rescues and shelters operate under a business model in which representatives for the rescue or shelter and the animals available for sale or adoption are physically present at a location where the public is

encouraged to personally observe the animals; this business model is consistent with our definition of *retail pet store*. As a result, private rescues and shelters with this business model have historically been exempted under the retail pet store exemption .....and will continue to be exempted.”

### **Two - Fanciers/Low Risk Exemption:**

1. What is the definition of a “breeding female”; and how can an inspector know if a cat is spayed or intact?

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

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

2. What exactly is the meaning of “born and raised on his or her premises”? What if a female delivers kittens at a veterinary clinic and they are then returned to the premises?

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

3. How is a “person acting in concert with others” or collaborating to be interpreted? We often have co-ownerships of cats - will the females count for each owner?

**APHIS** - “Several commenters asked us to specify in the final rule that co-ownership does not constitute acting in concert with another person to maintain a breeding female. We acknowledge that co-ownership of breeding females is a standard practice among small-scale residential breeders. Provided that no more than four breeding females are **maintained on his or her premises**, these individuals would qualify for the exemption. “

4. Many breeders have females they do not own come for stud service for a couple of days or even months. Would visiting females be counted for the “four or fewer” threshold that can be “maintained”?

**APHIS** - “A few of the commenters stated that breeders should only be considered to maintain a breeding female at their residence when the breeding female’s stay at the residence does not have a fixed end date. All of these commenters asked APHIS to define or otherwise explain “maintain” in the final rule. A breeding female is considered to be maintained at their premises if it resides at that premises, **even if temporarily**.

That being said, as we discuss below, the threshold in this exemption applies only to dogs, cats, and/or small exotic or wild mammals that **an APHIS inspector has determined to be breeding females, and only applies to such females if their offspring are sold as pets.**”

5. Some cat breeds require out-cross matings, which means maintaining several breeds. Is it possible to maintain more than 4 breeding females in this case?

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

Breeders who expect they can be eligible for either one of the two exemptions will be wise to keep good records, spay certificates and evidence that their breeding efforts are for the purpose of preserving their breed with pet selling as an inevitable aside. We believe it may be OK to sell cats for showing in Premiership. This is a way for a cattery to build reputation. Success in cat shows benefits breeding programs even if the cats cannot be bred. However, APHIS has stated that dogs sold for agility competition are considered to be sold as pets.

There are still many gray areas. On teleconferences, when the APHIS representatives are pressed to answer they have either been unclear or have said they do not know.

There will be responsible breeders who must ship some kittens they sell as pets, especially if their breed is very rare, and they may want to keep more than 4 breeding females for a viable breeding program. It will be difficult or impossible for breeders whose breed relies on out-crossing to other breeds to meet the fanciers/low-risk exemption requirements. These and others may decide to become licensed.

In future articles we expect to discuss situations in which a breeder cannot or will not comply with either of the two exemptions. We will address the APHIS plan to implement the regulatory structure and how they will identify persons they believe should be licensed. We plan to cover topics, such as what USDA licensing entails - the costs, enforcement policies, standards of care, record keeping requirements, identification of animals, inspection procedures and other issues.

Thank you for continuing to send your questions. The CFA Legislative Group will attempt to answer as many as we can. Contact us at [Legislation@cfa.org](mailto:Legislation@cfa.org)