

# Legislation. . . . .

## ***DON'T PANIC – Living within the new USDA/APHIS Rule.***

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With many thanks to George Eigenhauser and Sharon Coleman*

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On September 10, 2013 the USDA and Animal and Plant Health Inspection Service (APHIS) announced their final rulemaking decision under the Animal Welfare Act (AWA). The Rule reflects, in part, an attempt to regulate the selling of pets over the Internet or any other means in which the buyer does not see the pet in person before purchase and/or taking custody of the animal. The final Rule was published in the Federal Register on September 18, 2013 and will be effective on November 18, 2013. <http://tinyurl.com/FEDreg-APHIS>

Our comments, along with tens of thousands of others, were reviewed and considered by the USDA, APHIS unit. *There are some noteworthy changes* between the Rule as proposed in May 2012 and the final version. The proposed Rule would have required each buyer visit your cattery when purchasing a pet or you would need a dealer license. We objected because this raised significant privacy and security concerns. **We won.** The final Rule now allows offsite sales of pet cats by fanciers otherwise excluded from licensing as "retail pet stores" as long as the buyer (or their representative), seller and cat are all physically present together in person before the buyer purchases the pet and takes possession.

**There are two basic ways** a hobby breeder can sell cats as pets to consumers without being considered a "dealer" and obtaining a federal license. Please note that the analysis for other species of animals, or animals sold for purposes other than pets (such as breeding stock) will be different.

1. **"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, ..."** Retail pet stores are exempted from the requirement that the seller obtain a federal "dealer" license. So in simple terms, if you sell **all** your pets face to face with you, the cat and the buyer present, you are considered a "retail pet store" and may continue as you have done in the past and the Rule does not impact you. Note that the sale does not have to be at your home/cattery. It could be in a show hall, or at another mutually arranged meeting place to allow the buyer (or possibly their representative) to see you and the kitten/cat. *If you meet the requirements for the retail pet store exemption you may sell pets who were not born or raised on your premises.*

OR

2. Also exempted from dealer licensing is: **"Any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding**

**female dogs, cats, and/or small exotic or wild mammals... AND who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license..."** A cattery which meets the requirements of the fancier exemption does not need to obtain a federal dealer license and has no restrictions on sales methods. *If you meet the requirements for the purebred fancier exemption you may still sell pets sight unseen over the Internet.*

Note that the Rule is an attempt to limit the sales of pets "sight unseen." Transactions between breeders for breeding stock are not restricted by the Rule.

So why are so many people confused about the new Rule? One reason is that the AWA and the Rule cover situations not usually encountered by the average hobby breeder. The term "dealer" includes people or businesses who sell certain animals for "research, teaching, testing, experimentation, exhibition, or for use as a pet..." For dogs there are also provisions regarding dogs sold for hunting, security or breeding. If you also sell pets for any other purpose, or other species, or at wholesale, things may become complicated.

Another problem causing confusion is that some of the terms used in the Rule are ill-defined or not defined at all. The USDA/APHIS has indicated they will deal with many of these issues on a case by case basis, providing very little guidance. For example, there is no clear definition of the difference between a "pet" cat and breeding stock. For the limit of four breeding females under the fancier exemption it is likely that the USDA/APHIS will treat almost any intact female capable of being bred as a breeding cat. This evidently will be up to each individual inspector. Since the "face to face" sales requirement refers to sales of pets (as opposed to breeding stock) it is likely that the USDA/APHIS will be more restrictive in their analysis. So the same term may have different meanings depending on the circumstances. It may take years of experience with the implementation of the Rule before we have a clear understanding of the grey areas. But for the vast majority of cat fanciers you should be able avoid federal licensing as a "dealer" if you only sell cats as pets at retail, face to face **OR** if you meet the requirements for the fancier exemption.

**What can I do now?** There are a few common sense things you can do to make life easier under the new Rule:

1. **Don't panic or make drastic changes!** Dr. Rushin at the USDA has stated the transition is expected to be gradual. They will implement the Rule by responding to complaints and be watching for signs of Internet selling of pets. They also expect some breeders to request licensing...
2. **Be fair and honest in your dealings with others.** The USDA/APHIS is overworked and understaffed. Their inspectors are unable to properly inspect the large commercial breeders and face an influx of new dealers as the Rule goes into effect. To some extent their enforcement must be complaint driven. If you are fair and honest in all your dealings you will be less likely to become the subject of a complaint.
3. **Review how you conduct sales and be consistent.** If you state on your web site "we ship pets anywhere" don't try to claim you only sell face to face. Don't list 6 litters born the same time for sale on FaceBook if you are using the fancier exemption and claim you only have four breeding females. If you

- sell an animal "sight unseen" but claim it was not a "pet" but a breeding cat, don't include registration papers marked "not for breeding."
4. **But don't lie.** If you sell pets, sell pets. Don't call your pet sales "adoptions" and the cost a "donation." You are not fooling anyone. And don't try to claim it's not a sale because you lose money on your cattery operation. Losing money on a sale is still a sale.
  5. **Rescues count.** But since the "retail pet store" exemption does not restrict the source of the pet, only the method of sale, you can place rescues without a problem as long as you follow the face to face limitation. Persons using the fancier exemption, however, can only sell pets born and raised on the premises.
  6. **If you need to get a dealer license, get a dealer license.** The two exemptions should be sufficient for most hobby breeders to avoid licensing as a dealer. If your cattery practices can not be modified to fit within one of the exemptions, you should obtain a dealer license.
  7. **The time for comments ended in 2012. Questions are still welcome.** CFA and others voiced strong opposition in 2012. The Animal Welfare Act, for over 40 years, provided cat and dog breeders exemption from federal licensing by including all breeders selling at retail in the "pet store" definition. There were over 423,000 individual comments, form letters and signatures on petitions received both for and against the change in the "pet store" definition. We can now ask for clarification but any further changes would mean the USDA must start all over again with a comment period.
  8. **Go to the CFA website legislative Alert page.** Many of your questions will be answered by APHIS in the Federal Register Docket. Look carefully at the actual language of the Rule, since APHIS policies can change.

This rulemaking will have great impact for many of you as breeders, and it continues to be a learning experience for all of us. Updates will be on the [Legislative Alert page](#) and announced through the [CFA News](#). We anticipate a more detailed article in the December Issue of Cat Talk Magazine. For information and to submit your questions contact George, Sharon and me at [legislation@cfa.org](mailto:legislation@cfa.org)