



USDA-APHIS and You

WHAT IS APHIS?

APHIS is the

Animal and **P**lant Health **I**nspection
Service

(A Sub-Division of USDA)

Why do I need to know about this?

- ▣ Because APHIS has revised standards which go into effect November 18, 2013.
- ▣ Depending on interpretation and application of these new standards, a dog breeder who has more than 4 breedable females, and sells even a single animal “sight unseen”, would be subject to USDA licensure, and required to meet the standards and requirements of the Animal Welfare Act.

Why do I need to know about this?

- ▣ This could be interpreted to require anyone with a website or advertising in a newspaper with online classifieds to demonstrate that they are not subject to this rule. The burden of proof is on the breeder.

What has changed and why?

- ▣ Most of us, previously exempt as retail establishments, may no longer be exempt from USDA licensure and compliance with the Animal Welfare Act.
- ▣ Concerns about internet sales of animals duping buyers, and according to some, pressure from HSUS and the efforts of Sarah Conant, former litigator for HSUS, and current Director of Enforcement for APHIS, have prompted the change.

But I am not a commercial breeder...

- ▣ This CAN be applied to hobby breeders!
- ▣ The requirements are costly and so restrictive that almost no hobby breeder would be able to comply.
- ▣ Reputable hobby breeders have prided themselves, not on ID tags or where their animal's tattoos are displayed, or on how shiny their stainless steel cages are, but rather on the quality, temperament, health, care, and socialization given to every one of the animals they breed and raise.
- ▣ This could change all that.

But I am not a commercial breeder...

- ▣ These requirements are the opposite of what we want for well-socialized animals.
- ▣ Likely you would need commercial zoning to meet the requirements.

But, I Raise My Pups In My Home...

- ▣ In spite of what APHIS has said, Breeders CANNOT raise animals within their home in a family environment and meet USDA licensing requirements.
- ▣ Standards designed for research labs and commercial breeding facilities will be applied to your home.
- ▣ Examples:
 - Sealed floors
 - Drains
 - Impervious walls
 - Separate rooms for adults and puppies

How do I know if I can be compliant with APHIS ruling?

- ▣ Well actually you don't.
- ▣ If you have less than 5 “breedable” bitches (and APHIS inspectors determine if they are and if other female animals count as well) **or** if you have only face to face sales on your premises, you would be exempt (APHIS says they will allow exemptions to premises sales, subject to their interpretation, and changeable at any time. This exemption is not binding in any way, but the rule as stated is binding).

How do I know if I can be compliant with APHIS ruling?

- ▣ If you are breeding working dogs or dogs for breeding you **may** be exempt , but again this is subject to APHIS interpretation and judgment.
 - What happens if you sell some puppies as “breeding” and some as “pets?”

- ▣ Many of the “exemptions” reported to the fancy are based on statements made by APHIS that they are not bound to follow, and there is no recourse if they do not follow through on these exemptions.

So what if I meet the standards and get a license?

- ▣ A license can cost you \$750 per year.
- ▣ Record-keeping burden is onerous.
- ▣ You will be subject to inspection during business hours. You have diminished protection from being inspected by police, etc.
- ▣ APHIS can pretty much do as it wants. While there is an agency appeal process, it is immensely complicated.

So what if I meet the standards and get a license?

- ▣ If not conducted exactingly, all future appeals become impossible.
- ▣ You don't get to go to court to prove your innocence -- this is administrative law . You have to prove your innocence to APHIS. If not, your recourse is federal court -- immensely expensive.
- ▣ Fines can run tens of thousands of dollars PER DAY and you can lose your dogs and be criminally prosecuted for any violations.

Are you over-reacting?

- ▣ Sometimes chicken little is right...the sky really is falling.
- ▣ Are you comfortable with APHIS interpreting this on a “case by case basis”, as they have repeatedly emphasized they would do? This is administrative law, they can do what they want.
- ▣ The fox is in the hen house. Sarah Conant’s past history and track record speaks for itself.

Please be sure you receive a handout

- ▣ We have provided two flow charts which can be of assistance in understanding the APHIS final rule.
- ▣ One is the letter of the law.
- ▣ The other is based on APHIS's promises, which they are not legally compelled to follow.
- ▣ The APHIS final rule will be enforced by a former HSUS attorney.

End

Does the New USDA Rule Affect Me?

Answer the questions below to determine whether you satisfy the most common conditions subject to the new USDA/APHIS Pet Seller Rule.*

Do you sell pets, including dogs, cats, hamsters, etc., or any combination of these?

If you are selling a dog solely as a breeding prospect, to maintain bloodlines, or for hunting, working, or security, you may be exempt. If you are selling the dog as a pet, you are likely not exempt. It is important that the seller be able to clearly demonstrate their intent in selling the dog at the time of sale. If you sell animals for a combination of purposes, contact USDA for more information.

If YES, go to next question.

If NO, then...

Do you require all buyers to physically observe the animal before taking custody of it?

Face-to-face transactions are those in which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of the animal. Buyers include certain agents/proxies. Sales may take place at any location agreed upon by the seller and the buyer.

If NO, go to next question.

If YES, then...

Do you maintain more than four "breeding females" on your premises?

USDA has not defined "breeding female" in writing; this is currently determined on a case-by-case basis. "Breeding female" appears to mean female animals with the capacity to breed. Females that an APHIS inspector decides cannot breed due to age, infirmity, illness, or other issues are not included. All breeding females on a premises will be considered, regardless of ownership.

If YES, then...

If NO, then...

You may need to be licensed by the USDA.

For more information, contact:

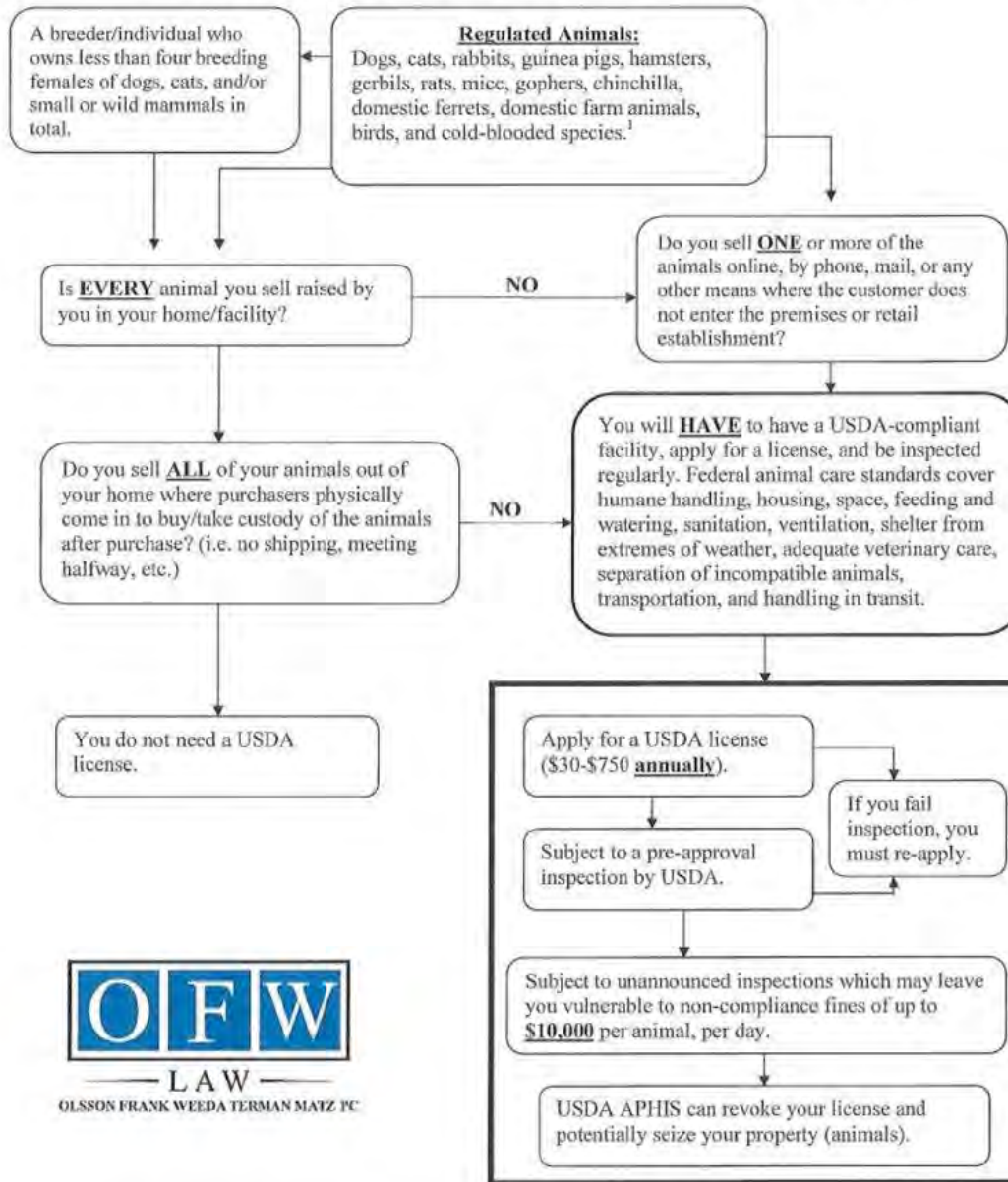
Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS
4700 River Road, Unit 84, Riverdale, MD 20737-1236
(301) 851-3751

You may be EXEMPT from the new USDA/APHIS rule.

You are expected to remain knowledgeable of all applicable laws and regulations dealing with the keeping and maintenance of dogs, and to comply with them as required.

*For informational purposes only. This is designed as a guide to the most common circumstances for breeders. Other exemptions and requirements exist. If you are uncertain about your status, contact USDA/APHIS to discuss your specific case.

USDA Proposed Redefinition of "Retail Pet Store" = NO sales for shipment of all covered animals without license, inspection, and recordkeeping!



LAW
OLSSON FRANK WEEDA TERMAN MATZ PC

¹ The recitation of non AWA-regulated animals (i.e., cold-blooded) and other regulated animals unnecessarily confuses regulatory language and raises the specter that further legislative initiatives could easily add cold blooded species such as fish and reptiles to AWA coverage

▣ Unused slides follow

But they revised it so it no longer will apply to me...

- ▣ The **interpretation** of the new rule was softened to placate and avoid legal challenge. But do not be fooled. This is a very common negotiation strategy. Come in with a radical position, pretend to be responsive to compromise and collaboration while still profoundly impacting the situation with a “revised” position which only appears less extreme because of the original starting point .
- ▣ YOU likely will be subject to the requirements.

But I read I would be exempt...

- ▣ The exemptions that APHIS are claiming, can be rewritten at any time at the sole discretion of APHIS
- ▣ Many informed parties feel that APHIS is being disingenuous with regard to their intentions as to how they will apply the rule, and are trying to placate opponents to prevent a legal challenge during the 60 day window to file for an injunction, after which virtually nothing can be done.

Oh come on, how can they possibly enforce this?

- ▣ The limited number of inspectors they have is irrelevant -- you can't fly below the radar.
- ▣ With a complaint driven process, all it would take would be a disgruntled buyer, a vindictive ex, or a nasty neighbor, and you could be hit with fines which could ruin you, and the loss of your dogs.
- ▣ The principle of shooting every 10th person will work here. The argument that APHIS has a poor track record for enforcement is a bad one.

What about local ordinances?

- ▣ Any ordinary violation of state/local dog laws or ordinances can result in being denied a license or having it revoked – even if you meet USDA standards, if there is a limit law in your community you are out of luck.
- ▣ Further, rest assured that these standards will become the template for state and municipal animal laws as well.

What is AKC doing?

- ▣ AKC is a registry and it does not have standing as an aggrieved party. You are not a “member” and the question must be asked whether AKC really cares about whether their registrations come from hobby breeders or USDA commercial breeders.
- ▣ AKC has been waffling on their position. Do they have the “will” to act in the interests of the hobby breeder?
- ▣ If you want the AKC to champion the hobby breeder you need to directly contact them with your concerns and urge them to support an injunction to block the law going into effect.

What needs to be done?

- ▣ Some entity needs to file for a federal injunction before this goes into effect Nov. 18
- ▣ While it should be pursued, congressional action is not promising. Even if it succeeds, the nature of what we do as breeders will be transformed before the rule is revised.
- ▣ AKC needs to financially and legally support efforts to combat this, much as the ACLU supports civil rights in situations where they do not have legal standing as an aggrieved party.