

Legislation - What's Hot

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Update –USDA/APHIS Webinar.

November has been extremely busy for the CFA Legislative Group. On the Federal front we continue to analyze materials put out by the Animal and Plant Health Inspection Service (APHIS) and respond to questions and concerns from cat fanciers about the USDA and Final Rule changing the definition of “Retail Pet Store”, which goes into effect on Monday November 18th.

Watch for a comprehensive article in the December Issue of CAT Talk Magazine. This covers background on the Animal Welfare Act (AWA) and details about what a breeder can expect should they choose to be USDA licensed or find they must become licensed, including costs for fees, record keeping, animal identification, veterinary plan, facility construction and cleaning needs. Information was obtained from the Animal Welfare Act, The AWA Regulations, the Federal Register, the APHIS Regulatory Impact Analysis, the APHIS Regulatory Flexibility Analysis, the Compliance for Commercial Breeders PowerPoint Series, the USDA/APHIS Policy Manual (as of 3/11) and the 371 page Animal Care Inspection Guide. The CFA Minimum Cattery Standards are based on USDA standards. However, several examples of differences are outlined. Parts of the AWA, regulations and policies are clear but there are many unknowns. There are policy gray areas that will be determined later or through individual assessment by inspectors.

The Agency has now presented two of four planned webinars to answer submitted questions by concerned dog, cat and rabbit breeders who may be licensed depending on how many “breeding females” they maintain on their premises or their method of selling animals. The schedule is as follows:

- November 7 - Am I regulated under USDA's Retail Pet Store Rule?
- November 14 - How will USDA implement the Retail Pet Store Rule?
- November 21 - What is USDA's inspection process in a home?
- December 5 - How will USDA enforce the Retail Pet Store Rule?

The webinars start at 11:00 am pac/2:00 pm eastern and go for one hour. Registration for each webinar opens following the end of the previous week's webinar. To register for the next webinar go to the Animal Care website at -

http://www.aphis.usda.gov/animal_welfare/retail_pet_stores.shtml

The topic discussed on November 7th had no new information that is not already on the CFA website Legislative Alert page in articles and the TICA/CFA flowchart. On November 14 there were several notable comments made by the two APHIS representatives, Drs. Gerald Rushin and Kay Carter-Corker. There will be official transcripts available eventually. *My personal comments are in italics.*

- The Agency has more than 120 inspectors nationwide and they receive extensive training. They are fair, consistent and accurate. APHIS also employs experts in various species.

- They are encouraging breeders to apply voluntarily for licensing. They will have packages ready to be sent on November 18th. Breeders may continue to operate as they have been until their application process is complete.
- Non-incorporated rescues are exempt as long as all pets are placed face-to-face.
- How will retail breeders who should be licensed be identified? They will reach out with press releases, check newspaper ads, magazine ads, Internet, websites, etc. *They also will follow up on complaints. APHIS does allow anonymous complaints made by telephone, letter or email. The potential for vigilantism is huge.*
- What about the definition of “breeding female” for those who want to be exempt as a “low risk/fancier” with a threshold of 4 or fewer? This will be determined through an inspector and breeder conversation. *This is a gray area that concerns many breeders who would prefer a firm definition. In many ways it is better to have some flexibility and input from the individual breeder rather than a fixed definition, such as “every intact female over 6 months”. A breeder can argue that their breed is not mature and ready for mating until later; or they must have DNA testing before deciding if a cat will be added to their breeding program or the cat must be shown/titled first before being sold as a show cat.*
- There is an appeal process if an inspection is done and the breeder disagrees. If the person writes to one of the two APHIS regional offices the inspection report will be evaluated.
- If a breeder decides to become exempt through the “low risk/fancier” method and they maintain four or fewer breeding females, then all offspring sold as pets must be “born and raised on the premises. What if they acquired a cat from another breeder as a kitten and then decide to sell her/him later as a retired animal to be a pet? The answer was that this would not necessarily require licensing. The primary basis for licensing is the sale of offspring as pets. An “occasional sale” like this would “probably not require a license”. *It appears that the overall intent of a breeder is the overriding factor.*
- What happens to those who work and are not home for unannounced inspections? APHIS “business hours are from 7 am to 7Pm. They will work with those who work elsewhere and determine a reasonable timeframe or allow the breeder to find a person who can be there within 30 minutes. *APHIS does require a person 18 years or older to accompany the inspector. Also the inspector will not enter any property with a “no trespassing sign” or a locked gate (per the Inspectors Guidance document).*
- If a person is breeding to improve their bloodline, what happens if, for some reason, an entire litter is not suitable for breeding/show and will be sold as pets and some will be shipped? APHIS will have to consider what the breeder’s main goal or intent is. They will then decide if the breeder must be licensed. *This is still not at all clear and it seems as if APHIS is not sure about the bloodline preservation “intent” and “business plan” aspects related to licensing. The answer contradicts previous responses.*
- May a breeder put a logo on their website showing that they are licensed and in compliance? The reply was that the licensee will receive a certificate and how it is displayed is up to them.
- If a breeder sells and ships a pet out of the country does this require a license? The answer was yes because it doesn’t matter where the pet goes; it is the method of sales “sight-unseen” that requires a license.
- Will APHIS obtain records from AKC or similar registries? The reply was no.

Dr. Carter-Corker said breeders should look at the Inspection Guide on their website. <http://tinyurl.com/inspectGuide2> A revised version will be completed some time in December. Also the Compliance for Commercial Breeders PowerPoint series is helpful. They said if individuals have other questions you can call APHIS headquarters: 301-851-3751. The APHIS website has resources as well. http://www.aphis.usda.gov/animal_welfare/retail_pet_stores.shtml

There are those who have insisted that filing an injunction to stop the implementation of the New Rule is imperative, while others have had reservations about taking this approach. The issue has caused considerable divisiveness among dog breeders and some cat fanciers. CFA and AKC have maintained a neutral stance respecting the opinions of several experienced lawyers who have presented reasons why a legal challenge to a federal agency's authority for rulemaking is not likely to succeed. The cost and time involved are beyond CFA's resources. We have instead focused on helping breeders understand the new Rule and how you can be exempt. However, we are keeping our options open and are always seeking reasonable alternatives. Check the CFA website for updates. For more information, contact legislation@cfa.org.