

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene (the “Department”) is proposing to add a new Chapter 5 (“Pet Shops”) to Title 24 of the Rules of the City of New York to implement the new requirements set forth in Subchapter 9 of Chapter 3, Chapter 8 and Chapter 17 of Title 17 of the Administrative Code of the City of New York.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 2 p.m. to 4 p.m. on March 2, 2017. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, Room 3-32
Long Island City, NY 11101-4132
(This is an accessible location.)

How do I comment on the proposal? Anyone can comment on the proposal by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Office of General Counsel
Attn: Svetlana Burdeynik
42-09 28th Street, 14th Floor
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposal at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on March 2, 2017. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on March 2, 2017.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by February 16, 2017.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at

<http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make these amendments? Section 556 of the Charter broadly authorizes the Department of Health and Mental Hygiene ("the Department") to regulate all matters pertaining to the health of the City. Section 1043 grants the Department rule-making authority. Moreover, Local Laws 5, 7 and 8 of 2015, as amended by Local Laws 53 and 55 of 2015, added a new Chapter 17 and amended Chapters 3 and 8 of Title 17 of the Administrative Code regarding the sale of dogs and cats in pet shops. The Department is authorized to promulgate rules necessary for implementation of these local laws, including the form and manner for required records. These rules were not included in the Department's FY '17 regulatory agenda because of an administrative oversight.

Where can I find the Department's rules? The rules of the Department of Health and Mental Hygiene can be found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

Local Laws 5, 7 and 8 of 2015, as amended by Local Laws 53 and 55 of 2015, added a new Chapter 17 and amended Chapters 3 and 8 of Title 17 of the Administrative Code regarding the sale of dogs and cats in pet shops. The Administrative Code now requires that pet shops selling dogs or cats acquire them only from holders of USDA Class A licenses. Additionally, pet shops must document and maintain information about the sources, sales, health and breeding histories of the dogs and cats they sell. The shops must sterilize dogs and cats that are at least eight weeks old and two pounds in weight, and dogs and cats must have microchips implanted before being sold.

Proposed Changes

The Department is proposing to add a new Chapter 5 to Title 24 of the Rules of the City of New York to implement these recently enacted provisions of the Administrative Code. To implement the recordkeeping and consumer disclosure requirements of the Administrative Code, the proposed rules require pet shops to collect and maintain required information, and to provide it to prospective purchasers as mandated, using only forms provided by the Department. The forms are listed on the checklist below. Requiring standardized forms promotes compliance by assuring that pet shops completing the documents will have collected all of the information required by the Administrative Code, and facilitates Department review and pet owners' understanding of records.

The Administrative Code directs the Department to set fees that the pet shop may collect for providing prospective purchasers with USDA inspection reports. The proposed rules set nominal copying fees of up to \$.25 per page.

To enable the Department to promptly issue dog license tags to people purchasing dogs at pet shops, the proposed rules require that the pet shop submit any dog license application completed in paper copy to the Department within 10 days of the sale. Pet shops enrolled in the Department's online dog licensing system may avoid this paperwork.

Dogs and cats offered for adoption at pet shops by permitted animal shelters and incorporated not-for-profit animal rescue groups are exempt from these new laws. To assist enforcement officers in

determining when this is the case, the proposed rules require the pet shop to maintain, on site and available for inspection, a copy of the animal shelter's permit issued by the Commissioner or the rescue group's proof of not-for-profit status, for as long as these organizations are using the pet shop's space.

Finally, these provisions do not apply when a cat or dog is sold by a person who breeds and sells fewer than a total of 25 dogs and cats per calendar year directly to where such dogs and cats are born and raised on the breeders residential premises.

The Administrative Code establishes penalties of \$500 per violation per day.

Below is a summary of the documents that would satisfy the requirements of the proposed rule.

Checklist of Required Documents

DOHMH Form Number	Document	Recordkeeping, Subject to Inspection (Maintain for 5 years unless otherwise noted)	Provide to Purchaser
	USDA, Animal and Plant Health Inspection Service (APHIS)		
201-D-USDA 7001	Form 7001	√	√
201-D-USDA 7006	Form 7006	√	
n/a	Copy of source's USDA APHIS inspection reports from last 3 years	√	√
	NYS Agriculture and Markets, Division of Animal Industry		
204-D-AGMKT-Form A	Veterinary Health Certificate	√ Pet shop to keep original	
205-D-AGMKT-Form C	Receipt	√	√
206-D-AGMKT-Form E	Information Statement	√	√
207-D-AGMKT-Form H	Pedigree (for animal capable of being registered)	√ (if applicable)	√ (if applicable)
208-D-AGMKT-Form I	Consumer Rights/NYS Article 35-D	√	√
	New York City-Only Documents		
209-D-VPHS-Purchaser Statement	Purchaser Statement	√ Maintain statement for 10 years and attachments for 5 years	√
n/a	Microchip usage instructions provided by the manufacturer or registration company	√	√
n/a	Sterilization Certification (Record from the veterinarian of sterilization procedure performed on dog or cat)	√	√
n/a	Receipt log showing sale of dog license (if the pet shop does not use the online dog license system and the dog will live in NYC)	√	
213-D-VPHS-Source Affidavit	Affidavit from source	√	
214-D-VPHS-38	Self-inspection of Animal Holding Facilities	√	
203-D-AGMKT-Vet Care Plan	Veterinary Care Plan	√	

The proposed changes are as follows:

Underlined matter is new.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 5 (“Pet Shops”) to read as follows:

CHAPTER 5

PET SHOPS

§5-01 Scope and applicability. This Chapter applies to any retail sale of a dog or a cat by a pet shop located in New York City that is subject to Subchapter 9 of Chapter 3, Chapter 8 and Chapter 17 of Title 17 of the Administrative Code. It does not apply to the sale of a cat or dog by a person who breeds and sells directly to consumers fewer than a total of 25 dogs and cats per calendar year where such dogs and cats are born and raised on the breeder’s residential premises. It also does not apply to the sale of any other animal by a pet shop operated in accordance with a permit issued by the Commissioner pursuant to New York City Health Code (“Health Code”) §§ 5.07 and 161.09. Nothing in this Chapter exempts a pet shop from also complying with any applicable provisions of the Health Code.

§5-02 Definitions. When used in this Chapter, the following terms have the following meanings:

Class A license. “Class A license” means a license issued to a dog or cat breeder by the United States Department of Agriculture (USDA) under the federal Animal Welfare Act (7 USC §§ 2131-2159) and USDA regulations (9 CFR Chapter 1, Subchapter A).

Permittee. “Permittee” means a person operating a pet shop in the City of New York where dogs or cats are sold with a permit issued by the Commissioner pursuant to § 17-372 of the Administrative Code.

Pet shop. “Pet shop” has the same meaning as in §17-371 of the Administrative Code.

§5-03 Records.

(a) *Form and manner of records required to document information about dogs and cats sold.* For each dog or cat sold, a permittee must collect and maintain the information required by §§17-804(c), 17-815, and 17-1704 of the Administrative Code on forms provided by the Department. The forms may be kept in hard copy or as an electronic record and must be held for five years, except that the signed purchaser

statement must be kept for 10 years. Records must be made available to the Department or New York City Police Department (NYPD) officers authorized to enforce New York humane laws.

(b) Statements required to be provided to purchasers of dogs and cats. A pet shop selling a dog or cat must provide a purchaser with the information required by §§ 17-815 and 17-1703 of the Administrative Code, on forms made available by the Department.

(c) Source affidavit. A permittee must obtain a sworn and notarized affidavit from every USDA Class A licensed breeder supplying a cat or dog to the permittee, stating :

(1) that the USDA licensee has not received a finally determined order from the USDA during the prior five years, in connection with its USDA class A license, to cease and desist or to pay a civil penalty;

(2) that its class A license has not been suspended during the prior five years;

(3) that the USDA licensee has never been convicted in any jurisdiction of an animal abuse crime and

(4) and that the USDA licensee has not been convicted in the last five years of a violation of the minimum standards of animal care provided for in New York Agriculture and Markets Law §401.

(d) Copying charges. When a prospective purchaser requests a paper copy of the USDA inspection report(s) related to the breeder-source of a specific dog or cat, a permittee must provide the two most recent USDA inspection reports, as such reports were available from the USDA when the pet shop received the animal, and may charge the requester up to \$.25 per page. A permittee may not charge a purchaser for providing statements or any other document that must be provided to a purchaser or to the Department or NYPD.

§5-04 Dog licenses. Before selling any dog, a pet shop must obtain from the prospective purchaser an application and the appropriate fee for a dog license or a written statement from the purchaser that the dog will live outside of the City of New York, and a copy of a document establishing that the residence is outside the City. Such documentation may include a copy of a utility bill, driver's license, or tax bill, or another official government document. The pet shop may send the application and fee or statement and proof of out-of-City residence to the Department electronically, in person or by mail, so long as the Department receives the application and fee within ten days of the sale of the dog to the purchaser.

§5-05 Adoption promotions at pet shops. (a) A pet shop that allows an animal shelter or non-profit animal rescue group to use its facilities to offer animals for adoption must obtain a copy of either the permit issued to the animal shelter by the Commissioner pursuant to Health Code §161.09 , or proof of the animal rescue group's incorporated not-for-profit status. The pet shop must have the shelter permit or animal rescue group's proof of not-for-profit status on site and available for inspection whenever the shelter or rescue group is offering animals for adoption at the pet shop.

(b) A pet shop will not be required to comply with the requirements of §§5-03 and 5-04 of this Chapter regarding any dog or cat offered for adoption by an animal shelter or animal rescue group using such pet shop's facilities under this section.

§5-07. **Enforcement.** Employees and agents of the Department and officers of the New York City Police Department are authorized to enforce the provisions of this Chapter.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Sale of Dogs and Cats in Pet Shops

REFERENCE NUMBER: DOHM-74

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because a cure period is not practicable under the circumstances.

/s/ Francisco X. Navarro
Mayor's Office of Operations

January 23, 2017
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Sale of Dogs and Cats in Pet Shops

REFERENCE NUMBER: 2016 RG 092

RULEMAKING AGENCY: Department of Health Mental and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: January 20, 2017