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**REPORT BY THE
ANIMAL LAW COMMITTEE**

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
ON PROPOSED PESHOP RULE
(NEW CHAPTER 5 IN TITLE 24 OF THE RCNY)**

THESE RULES ARE APPROVED WITH RECOMMENDATIONS

I. SUMMARY OF THE PROPOSED RULES

The proposed rules would amend Title 24 of the Rules of the City of New York by adding a new Chapter 5, entitled “Pet Shops.” This chapter would implement the requirements of local laws enacted in 2015 regarding the sale of animals in pet shops, including, in particular, provisions that require that cats and dogs sold in pet shops be obtained only from holders of valid Class A licenses from the United States Department of Agriculture who have a record of substantial compliance with the Animal Welfare Act.

II. BACKGROUND

In 2015, the New York City Council passed Local Laws 5, 7 and 8, as amended by Local Laws 53 and 55. The laws, now codified in Subchapter 9 of Chapters 3, 8 and 17 of Title 17 of the Administrative Code of the City of New York, require, among other things, that pet shops selling dogs or cats acquire them only from United States Department of Agriculture (“USDA”) Class A licensees with strong records of compliance with the Animal Welfare Act (the “AWA”) (7 U.S.C. 2131-2159).¹ Additionally, pet shops must document and maintain information about the sources, sales, health and breeding histories of the dogs and cats they sell.² Dogs and cats weighing at least two pounds and at least eight weeks of age must be spayed or neutered before being sold by a pet shop.³

To implement the requirements of these laws, New York City’s Department of Health and Mental Hygiene (the “Department”) proposes to add a new Chapter 5 (“Pet Shops”) to Title 24 of the Rules of the City of New York.⁴ The laws’ sourcing provision restricts pet stores to obtaining dogs and cats from Class A licensees who have not had certain specified violations or

¹ N.Y.C. Admin. Code §§ 17-1702(2)(a) and 17-1703(4).

² N.Y.C. Admin. Code § 17-1704.

³ N.Y.C. Admin. Code § 17-802(i).

⁴ N.Y.C. Dep’t 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, Nov. 1, 2017 (the “Proposed Rules”).

specified combinations of violations. And, with respect to some of the items, it expressly requires verification of compliance “*as such information is available from the United States department of agriculture.*”⁵ Thus, USDA inspection reports for these licensees are critical for pet shops to ensure compliance with laws.

Yet, in February 2017, the USDA removed from its website thousands of inspection reports that previously had been available for public review and also stopped posting new inspection reports.⁶ As a result, pet shops seeking to obtain dogs and cats from lawful sources no longer had easy access to inspection reports in order to verify that they were obtaining dogs and cats from compliant sources.

In light of this, the Department has revised its proposed rules to provide pet shops with a mechanism to document their efforts to comply with the laws requiring purchase of dogs and cats only from Class A licensees who meet the specifications set forth in the laws.⁷ Specifically, while the sourcing law requires verification of compliance “as such information is available from the [USDA]”⁸—that is, from the department generally—the proposed rules specify that compliance must be verified “from the USDA website,” and only “to the extent that [records] are available on such website.”⁹ To the extent that records are *not* available from the USDA website, the proposed rules require the pet shop to provide a statement about its efforts to obtain documents from the website, and to obtain an affidavit from the USDA Class A licensed breeder that the breeder has not received any citations or orders specified in the Administrative Code.¹⁰ The proposed rules also require that the USDA Class A licensee provide various other documentation to the pet shop—including information about the licensee’s license suspensions or animal crime convictions—which documentation must, in turn, be maintained by the pet shop.¹¹

⁵ See, e.g., N.Y.C. Admin. Code § 17-1702.

⁶ USDA, APHIS, Updates to APHIS’ Website Involving Animal Welfare Act and Horse Protection Act Compliance Information, Feb. 15, 2017, https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2017/sa-02/awa-hpa-compliance. APHIS has since restored access to redacted versions of certain past records, though has been posting few records since the original takedown. USDA, APHIS, AWA Inspection and Annual Reports, Aug. 18, 2017, https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/awa-inspection-and-annual-reports; USDA, APHIS, Animal Care Information System Website Review Chart, Aug. 18, 2017, https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_AWA/acis-table; Meredith Wadman, *Few U.S. Animal Inspections Are Being Posted*, SCIENCE, March 31, 2017 <http://www.sciencemag.org/news/2017/03/few-us-animal-inspections-are-being-posted>; ASPCA, ASPCA Denounces Suppression of Vital Data in Diminished USDA Dog Breeder Database, Aug. 22, 2017, <https://www.prnewswire.com/news-releases/aspca-denounces-suppression-of-vital-data-in-diminished-usda-dog-breeder-database-300508198.html>. (All websites cited in this letter were last visited on December 3, 2017.)

⁷ N.Y.C. Dep’t 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, Nov. 1, 2017, *available at* <https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2017/new-chapter5-pet-shops.pdf>.

⁸ See, e.g., N.Y.C. Admin. Code § 17-1702.

⁹ See, e.g., Proposed Rules, § 5-03(a)(2).

¹⁰ Proposed Rules, § 5-03(b)(2).

¹¹ Proposed Rules, § 5-03(c).

III. RECOMMENDATIONS

The USDA's removal of records from its website potentially hurts consumers and animals alike.¹² Individuals considering buying a dog can no longer check a breeder's latest inspection reports on the USDA website to see whether the breeder maintains at least basic humane conditions by complying with the AWA. However, pet shops do not need to rely on the USDA website exclusively, because every Class A breeder can provide the pet shop with copies of *all* the inspection reports that he or she has received during the relevant time period (which varies depending on the violation).

The Committee accordingly recommends that the Proposed Rules require Class A licensees to provide all inspection reports for the relevant time period and certify that it has done so. Similarly, every pet shop should be required to certify that it requested from the Class A breeder all inspection reports for the relevant time period and, after exercising due diligence—including checking the USDA website—to its knowledge has reviewed all of the inspection reports for that licensee during the relevant time period.

IV. CONCLUSION

For the aforementioned reasons, the Committee supports the proposed rules and recommends that the Department of Health and Mental Hygiene take into consideration the above recommendations.

Animal Law Committee
Christopher Wlach, Secretary

December 2017

¹² See, e.g., Meredith Wadman, *Few U.S. Animal Inspections Are Being Posted*, SCIENCE, *supra*.