

Title 17 Subchapter 9 [effective January 1, 2016 except as otherwise noted]

PET SHOPS

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§17-371 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

a. "Arm's length transaction" means a sale of a business for consideration that reflects the fair market value of such business or its assets, between two informed and willing parties, that is not made, wholly or in part, for the purpose of enabling the seller to avoid liability for violations issued by the department. A sale shall be presumed not to be an arm's length transaction if it is:

1. A sale to an individual, or to a corporation or other business that is owned by the spouse, domestic partner, parent, grandparent, child or stepchild of any of any of the sellers, or is the direct descendent of a grandparent, the spouse or domestic partner of any of the sellers;

2. A sale to an individual or entity that has a business or financial interest in the seller; or

3. A sale to an entity in which any of the sellers has a business or financial relationship.

b. "Permit" means a written license and authorization to carry on specified activities as regulated by this subchapter or other applicable law enforced by the department.

c. "Permittee" means a natural person or other entity who holds a valid permit issued by the commissioner pursuant to this subchapter or other applicable law enforced by the department.

d. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

e. "Pet shop" means a facility other than an animal shelter where live animals are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit. Such definition shall not include breeders who sell or offer to sell directly to consumers fewer than twenty-five dogs or cats per year that are born and raised on the breeder's residential premises. Such definition shall not include duly incorporated humane societies dedicated to the care of unwanted animals that make such animals available for adoption, whether or not a fee for such adoption is charged. A person who allows an animal shelter or animal rescue group, as such terms are defined in section 17-802 of chapter eight of this title, to use such person's premises for the purpose of making animals available for adoption shall not be deemed a pet shop as a result of such activity so long as such person does not have an ownership interest in any of the animals being made available for adoption, and does not derive a fee for providing such adoption services.

§17-372 Pet shop permits required. a. No person shall operate a pet shop without a permit issued by the commissioner pursuant to this subchapter.

b. Operating a business or conducting an activity regulated by this subchapter without the permit therefor is hereby declared a nuisance.

1. No person may operate a business or conduct an activity regulated by this subchapter without the permit required by this subchapter.

2. No person may allow the operation of a business or the conduct of an activity regulated by this subchapter in any property owned by such person unless the person operating such business or conducting such activity has a permit as required by this section.

3. When the department determines that a business or activity regulated by this subchapter is being operated or conducted without the permit required by this section, the commissioner or his or her designee may order the person operating the business or conducting the activity to cease and desist from such business or activity. The department may also order the person who owns the premises in which the business is operated or activity is conducted to take whatever action may be necessary to prohibit such business or activity from continuing on such premises.

4. If the business or activity ordered to cease and desist continues without the required permit, the commissioner or his or her designee may, after providing an opportunity for the person operating such business or conducting such activity to be heard at the environmental control board or any tribunal established within the office of administrative trials and hearings as designated by the commissioner, take any measure authorized by applicable law to enforce an order to cease and desist. Such measures may include, but are not limited to, ordering and arranging for the premises to be sealed and padlocked.

5. If the commissioner determines that exigent circumstances exist such that the continued operation of the business or activity would pose a danger to the public or the health and welfare of the animals in the custody of the business, the commissioner may take any measure authorized by applicable law to enforce an order to cease and desist, subject to a prompt post-enforcement hearing at the environmental control board or any tribunal established within the office of administrative trials and hearings as designated by the commissioner.

§17-373 Permit applications. a. An application for a permit required pursuant to section 17-372 of this title or for the renewal of such a permit shall be made and submitted on forms furnished by the department.

b. The applicant shall be eighteen years of age or older.

c. The application shall contain all information required by the department. If the applicant for the permit is a sole proprietorship, the application shall be signed by the individual who would be the permittee. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited partnership, the application shall be signed by the managing or general partner. If the applicant is a corporation, the application shall be signed by an officer or director of the corporation or by any member, if management is vested in members. If the applicant is a limited liability company, the application shall be signed by any manager of the limited liability company. Such signature shall constitute an agreement that the permittee assumes responsibility for the conduct of the business, occupation or other activity concerned in accordance with the requirements of this subchapter or other applicable law.

d. In addition to the following information, the application shall be accompanied by such other information, evidence or documentation as the department may require or as may be provided for in this subchapter or other applicable law or rule applicable to the department. The application shall, at a minimum, include:

1. The name, age, gender, residence and business address, and telephone numbers of the applicant, each member of the partnership, limited liability company or group, and each officer of the corporation, as applicable;

2. To the extent that such information is relevant to the conduct of the business, trade, occupation or other activity under permit, information concerning the applicant, its individual members or officers, relating to education, training or experience, moral character, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, history of mental illness, and record of insolvency or bankruptcy;

3. Proof of current workers' compensation and disability benefits insurance coverage for all employees, or of a certificate of exemption filed with the workers' compensation board;

4. The e-mail address of (i) the individual owner of the business, (ii) the person exercising daily management and control of the business, or (iii) the person who is authorized by law to accept service of process on behalf of the applicant; and

5. A certification, executed under penalty of perjury, that the applicant has not knowingly sold any animal obtained from a source prohibited pursuant to section 17-1702 of this title. For an application submitted prior to June 1, 2017, such certification shall be made with respect to animals sold on or after June 1, 2015. For applications submitted on or after June 1, 2017, such certification shall be made with respect to animals sold during the two years preceding the date of the application.

(a) A certification made by a pet shop pursuant to this paragraph shall be made in a form and manner determined by the department and shall include the following information:

(i) The name, address and United States department of agriculture license number of every source from which such pet shop obtained a dog or cat during the relevant period;

(ii) The total number of dogs and cats obtained from each source; and

(iii) The individual identifying tag, tattoo, or collar number of each dog or cat obtained from such dealer.

(b) The department may promulgate rules for the production, receipt, acceptance, acquisition, recording, filing, transmission, forwarding, and storage of such certifications by use of electronic means.

(c) The department may inspect the records maintained pursuant to section 17-1704 of this title.

6. Any information that the department determines may be necessary in order to contact the permittee in the event of an emergency.

e. The commissioner shall not issue or renew a permit unless department records show there are no finally determined uncorrected violations or unpaid outstanding fines, penalties or forfeitures imposed by any court, administrative tribunal established within the office of administrative trials and hearings or administrative tribunal established in accordance with the administrative code or the charter, which are due and payable by the applicant or the permittee.

f. The commissioner shall not issue a new permit or renewal of an existing permit to any person listed on the animal abuse registry created pursuant to chapter sixteen of this title.

g. The commissioner shall not issue a new permit to any entity based on a sale or change of ownership of a permitted business or activity regulated by laws or rules enforced by the department, where department or other records show any finally determined uncorrected violations or unpaid fines and penalties, unless the applicant submits proof satisfactory to the department that the transfer of the business was the result of an arm's length transaction. Such proof shall consist of documents showing that:

1. The applicant has assumed complete management, control and operation of the permitted business or activity from the prior permittee;

2. The applicant has paid market value consideration for the material assets of the permitted business; and

3. Neither the applicant nor any member or officer of a partnership or corporation is related by blood or marriage to the owner(s) or manager(s) of the entity holding the permit prior to the transfer of the permitted business.

The commissioner's denial of an application pursuant to this subdivision shall be a final agency determination not subject to administrative appeal.

h. The acceptance of an application and fee for a new permit or the renewal of a permit shall not preclude the commissioner from taking any action that he or she deems necessary, including, but not limited to, the denial of a new permit or renewal permit if department or other investigatory or pre-permit inspections disclose

conditions or circumstances indicating that a permit should not be issued or renewed. If an application for a new permit or renewal of an existing permit is denied, the application fee shall not be refunded.

§17-374 Permit expiration dates; fees. a. An application for a permit or for the renewal thereof shall be accompanied by the payment of a fee of three hundred dollars. Permits shall expire biennially and be eligible for renewal.

b. If a permit application is made when more than one-half of the fee period has expired, one-half of the prescribed fee shall be paid. This requirement shall not apply, however, if application is being made for renewal of a permit which has expired.

c. The fees provided for herein shall be reduced by the amount of any fee paid for a permit to operate a pet shop pursuant to the New York city health code within the same fee period.

§17-375 Permits not transferable; exception. Any purported or attempted transfer of a permit to a person not named therein as permittee or any change in the place of business stated in a permit shall void such permit. When a permit is issued to two or more individuals, to a partnership or to a group other than a partnership, and one or more of the individuals concerned ceases to be active in the conduct of the business or activity or otherwise ceases to be a permittee, the commissioner may approve in writing the continuation of the business or activity by the remaining permittees during the unexpired period of such permit. The permittee shall notify the department in writing within ten business days of any change in the owner(s), officers, directors, shareholders, partners or members of a permitted entity that is owned by a sole proprietor, or that is a closely held corporation or small limited liability company, or a partnership, consisting of fewer than five shareholders, members or partners, who directly operate and manage the business, and serve as directors or officers of the corporation, with no outside investors. Notice of such changes shall not be required if the permittee is a publicly held corporation or limited liability company whose shareholders or members do not manage or control the entity or participate in its business activities.

§17-376 Conditions of permit and health code to be observed. a. A person holding a permit, including the officers and directors of a corporation holding a permit, shall comply with the conditions contained in his or her permit as well as all applicable provisions of the New York city health code, administrative code or other law or rule enforced by the department.

b. A person holding a permit, including the officers and directors of a corporation holding a permit, shall be jointly and severally liable for violations of the conditions

of the permit or of the New York city health code, administrative code or other applicable law enforced by the department that are committed by employees or agents of the person or corporation when such acts are committed in the regular course of the permitted business of such person or corporation, or on the premises subject to the permit, or in the course of using the permit.

§17-377 Permit to be kept on premises; mutilation prohibited. A permit shall be kept on the premises designated on the permit. It shall be placed in a clean, transparent cover or frame and displayed in such a manner as to be clearly visible to the public. It shall be available for inspection at all times by the department. No person shall mutilate, obstruct or tear down a permit.

§17-378 Permit suspension and revocation. a. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or this title, the rules promulgated thereunder, or the New York city health code, the commissioner, after due notice and an opportunity to be heard by the environmental control board or any tribunal established within the office of administrative trials and hearings as designated by the commissioner, may suspend or revoke a pet shop permit upon the occurrence of any one or more of the following conditions:

1. Willful or continued violation of the provisions of title seventeen of this code, the rules promulgated thereunder or the New York city health code, or for such other reason as the commissioner determines, is sufficient grounds for suspension or revocation;

2. The giving or offering to an employee or agent of the department or other government agency, engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the department or such agency, a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, or drink;

3. Submission or display by a permittee of a forged document or other document that contains false or misleading statements, or making a false or misleading statement to the department; or

4. Poor moral character that adversely reflects on the permittee's fitness to conduct work regulated by this title.

b. Notwithstanding subdivision a of this section, if the commissioner determines that exigent circumstances exist such that the continued operation of a permittee's pet shop would pose a danger to the public or the health and welfare of the animals in the permittee's custody, the commissioner may suspend such permittee's permit subject to a prompt post-suspension hearing before the environmental control board or any

tribunal established within the office of administrative trials and hearings as designated by the commissioner.

c. Following a hearing required pursuant to this section and the receipt of a copy of the report and recommendations of the tribunal before which such hearing was held, the commissioner may take such action as may be necessary, adopting all or part of the report and recommendations, and may issue an order revoking the permit, further suspending the permit, or reinstating the permit subject to whatever conditions the commissioner deems necessary for the continued safe operation of the permitted business.

d. All permits revoked pursuant to this section or in accordance with other applicable law shall be surrendered to the department upon receipt of the order. Permits or licenses that are not surrendered in accordance with this section may be seized by any authorized employee or agent of the department or officer of the police department.

§17-379 Denial of issuance or renewal, suspension and revocation; when effective; service of order or notice. a. Effective date. The action of the commissioner denying issuance or renewal of a permit, or suspending or revoking a permit, shall become final five days after service of an order or other notice thereof, exclusive of the day of service, on the applicant or permittee concerned.

b. Service of an order or notice shall be made as follows:

1. Enclosing the order or notice in a postpaid envelope directed to the applicant or permittee at the address listed in the application or permit and depositing such envelope at a United States post office or in a mail box or mail chute maintained by the United States post office; or,

2. Leaving the order or notice with the applicant or permittee or, if the permittee is not an individual, with a member of the partnership or other group concerned or with an officer of the corporation; or,

3. Posting the order or notice at the entrance door of the premises listed in the application or permit.

§17-380 Forfeiture and seizure. a. The commissioner or his or her designee may seize any animal in a pet shop operating without a permit required pursuant to section 17-372 of this subchapter.

b. Any animal in a pet shop operating without a permit required pursuant to section 17-372 of this subchapter or seized pursuant to subdivision a of this section shall be subject to forfeiture upon notice and hearing.

c. The commissioner shall provide for the appropriate disposition of each animal seized pursuant to this section. Such disposition may include impoundment at an animal shelter or animal rescue group as such terms are defined in section 17-802 of chapter eight of this title.

d. The commissioner may impose upon the owner of a pet shop from which an animal is seized pursuant to this section a fee representing expenses incurred in connection with impounding such animal.

§17-381 Penalties. Any person found in violation of any provision of this subchapter or any provision of any rule promulgated thereunder shall be subject to a civil penalty of five hundred dollars per day for each such violation. Each violation in connection with the sale of more than one animal shall be deemed a separate violation with respect to each animal offered for sale. A notice of violation served pursuant to this section shall be returnable at the environmental control board or any tribunal established within the office of administrative trials and hearings as designated by the commissioner.

§17-382 Rules. The commissioner may promulgate such rules and prescribe such forms as are necessary to carry out the provisions of this subchapter.

CHAPTER 8 -- ANIMAL SHELTERS, STERILIZATION, AND LICENSING

[As amended, each of the following sections is deemed effective June 1, 2015]

§ 17-802 Definitions. For the purposes of this chapter, the following terms shall be defined as follows:

a. "Adoption" means the delivery of a dog or cat deemed appropriate and suitable by an animal shelter to an individual at least eighteen years of age who has been approved to own, care and provide for the animal by the animal shelter.

b. "Animal rescue group" means a duly incorporated not-for-profit organization that accepts homeless, lost, stray, abandoned, seized, surrendered or unwanted animals from an animal shelter or other place and attempts to find homes for, and promote adoption of, such animals by the general public.

c. "Animal shelter" means a not-for-profit facility holding a permit in accordance with §161.09 of the New York city health code where homeless, lost, stray, abandoned, seized, surrendered or unwanted animals are received, harbored, maintained and made available for adoption to the general public, redemption by their owners or other lawful disposition, and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other organization devoted to the welfare, protection or humane treatment of animals.

d. "Consumer" means any individual purchasing an animal from a pet shop. A pet shop shall not be considered a consumer.

e. "Feral cat" means an animal of the species felis catus who has no owner, is unsocialized to humans and has a temperament of extreme fear of and resistance to contact with humans.

f. "Full-service shelter" means a person required to have a permit issued pursuant to subdivision (b) of section 161.09 of the New York city health code that houses lost, stray or homeless animals and:

(1) accepts dogs and cats twelve hours per day, seven days per week;

(2) has an adoption program available seven days per week; and

(3) provides sterilization services for dogs and cats and any other veterinary services deemed necessary by a licensed veterinarian at such shelter or at a veterinary facility.

g. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

h. "Pet shop" has the same meaning as such term is defined in section 17-371 of this title.

i. "Sterilization" means rendering a dog or cat that is at least eight weeks of age and that weighs at least two pounds unable to reproduce, by surgically altering such animal's reproductive organs as set forth in the rules of the department or by non-surgical methods or technologies approved by the United States food and drug administration or the United States department of agriculture and acceptable to the department. Such definition shall include the spaying of a female dog or cat or the neutering of a male dog or cat.

j. "Trap-neuter-return" means a program to trap, vaccinate for rabies, sterilize and identify feral cats and return them to the locations where they were found.

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§ 17-804 Sterilization required. a. No full-service shelter or other shelter for homeless animals required to have a permit issued pursuant to subdivision (b) of section 161.09 of the New York city health code shall release a dog or cat to a person claiming ownership thereof, or to a person adopting such dog or cat, unless such dog or cat has been sterilized by a licensed veterinarian; provided, however, that such requirement shall not apply:

(1) if a licensed veterinarian certifies to such shelter that he or she has examined such dog or cat and found that because of a medical reason, the life of such dog or cat would be endangered by sterilization; provided, however, that such reason shall not consist solely of the youth of such dog or cat, if such dog or cat is at least eight weeks of age;

(2) in the case of a dog, if such dog, within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of the shelter that such dog has a breed ring show record from the American Kennel Club or United Kennel Club or other similar, registry association, dated no more than twelve months prior to the date such dog entered such shelter, or such person claiming ownership is able to provide proof that such dog has successfully completed the requirements of the American Kennel Club or United Kennel Club or other similar, registry association, for the title Champion or its equivalent, at any time prior to the arrival of the dog at the shelter;

(3) in the case of a dog, if such dog, within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of the shelter that such dog is a guide dog, hearing dog, service dog or police work dog; or

(4) in the case of a cat, if such cat within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of such shelter that such cat has a breed show record from the Cat Fancier Association or other similar, registry association dated no more than twelve months prior to the date such cat entered such shelter or such person claiming ownership is able to provide proof that such cat has successfully completed the requirements of the Cat Fancier Association or other similar, registry association for the title Champion, Grand Champion or its equivalent, at any time prior to the arrival of the cat at the shelter.

b. No pet shop shall release to a consumer a dog or cat that has not been sterilized by a licensed veterinarian. Such veterinarian shall provide to the pet shop a certificate, in such form and manner as determined by rules promulgated by the department, stating the date on which such sterilization was performed.

c. Every pet shop, in accordance with rules promulgated by the department, shall maintain records of all sales of dogs and cats, sterilization procedures performed at the request of the pet shop, and veterinarian letters and certificates received, and shall retain such records, letters and certificates for a period of five years. Such records, letters and certificates shall be made available to the department according to rules promulgated by the department. The department may require that such documents be submitted by electronic means.

d. Every owner of a cat who permits such cat to roam outside the interior of the owner's dwelling shall have such cat sterilized. At the request of employees or authorized agents of the department, owners shall provide proof satisfactory to the department that a cat found roaming has been sterilized. The Department shall not seize a cat solely on the ground that the cat has not been sterilized.

e. The department shall post and maintain on its website a regularly updated list of organizations in New York city that offer trap-neuter-return information and conduct trap-neuter-return activities.

f. A pet shop that allows an animal shelter or animal rescue group to use such pet shop's premises for the purpose of making animals available for adoption shall be exempt from the requirements of subdivisions b and c of this section with respect to such animals, provided such pet shop does not have an ownership interest in any of the animals that are made available for adoption.

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§ 17-806 Violations. Any person found to be in violation of subdivision (b), (c) or (d) of section 17-804, section 17-814, or section 17-815 of this chapter or any of the rules promulgated thereunder shall be liable for a civil penalty of five hundred dollars for each violation. A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal authorized to adjudicate violations of the health code or the administrative code.

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§ 17-814 Licensing of dogs required. a. No pet shop or animal rescue group shall sell or release a dog to a purchaser or adopter unless such purchaser or adopter first completes an application for a license and tenders the license fees required by law. If such application is completed in connection with the purchase of a dog from a pet shop, such application shall include the following information: the date of purchase, the name and address of the pet shop, and if such pet shop has an operating permit issued by the department, such pet shop's permit number. Such pet shop or animal rescue group shall forward such completed application and license fees to the department in such manner as may be specified by the department.

b. A pet shop or animal rescue group shall be exempt from the requirements of subdivision a of this section for any sale or adoption of a dog to a purchaser or adopter who executes and submits to such pet shop or animal rescue group a written statement that the dog to be purchased or adopted is to be harbored outside of the city and proof in a form determined by the department that the purchaser or adopter resides outside the city.

c. Every pet shop shall, on at least a monthly basis, report to the department on a form furnished by the department all dogs which have been sold and adopted, indicating for each such dog whether or not the pet shop submitted to the department a license application. Such form shall include the name and address of each such dog's purchaser or adopter, the license or license application number if known, as well as any other descriptive information regarding such dog as may be required by the department.

d. A pet shop that allows an animal shelter or animal rescue group to use such pet shop's premises for the purpose of making animals available for adoption shall be exempt from the requirements of this section with respect to such animals, provided such pet shop does not have an ownership interest in any of the animals that are being made available for adoption, and the pet shop does not derive a fee for providing such adoption services.

Chapter 17

[Amendments effective June 1, 2015]

Pet Shops

§17-1701 Definitions.

§17-1702 Prohibited sales.

§17-1703 Required information for the purchaser.

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§17-1706 Exemptions for shelter and rescue partners.

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§17-1709 Rules.

§17-1701 Definitions. For the purposes of this chapter, the following terms have the following meanings:

a. "Animal abuse crime" has the same meaning as set forth in section 17-1601 of this title.

b. "Animal shelter" has the same meaning as such term is defined in section 17-802 of chapter eight of this title.

c. "Animal rescue group" has the same meaning as such term is defined in section 17-802 of chapter eight of this title.

d. "Class A license" means a a¹ class A license issued by the United States department of agriculture pursuant to the animal welfare act, 7 U.S.C. § 2131, et seq., or successor provision of law, and regulations promulgated thereunder.

e. "Class B dealer" means a person required to hold a class B license issued by the United States department of agriculture pursuant to the animal welfare act, 7 U.S.C. § 2131, et seq., or successor provision of law, and regulations promulgated thereunder.

f. "Convicted" means an adjudication of guilt by any court or administrative tribunal of competent jurisdiction, whether upon a verdict, a plea of guilty or an order of adjudication withheld by reason of a plea of nolo contendere. For the purposes of this chapter, "convicted" shall also mean a plea of guilty on a charge of any crime in satisfaction of an accusatory instrument charging a defendant with an animal abuse crime where dismissal of such charge was not on the merits.

g. "Dealer" means a person required to have a license issued by the United States department of agriculture pursuant to the animal welfare act, 7 U.S.C. § 2131, et seq., or successor provision of law.

h. "Federal identification number" means a license or registration number issued by the United States department of agriculture pursuant to the animal welfare act, 7

¹ Publisher's error.

U.S.C. § 2131, et seq., or successor provision of law, and regulations promulgated thereunder.

i. "Finally determined" means a determination of a federal, state or local government agency, where all rights to challenge such determination at available administrative tribunals and courts of law have been exhausted, or the time period within which such challenge may be filed has expired.

j. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

k. "Pet shop" has the same meaning as such term is defined in section 17-371 of subchapter nine of this title.

§17-1702 Prohibited sales. a. Any pet shop that displays, offers for sale, delivers, barter, auctions, gives away, transfers or sells any dog or cat shall obtain such dog or cat from a source that, as of the date such pet shop receives such animal:

1. holds a valid and active class A license that has not been suspended at any time during the prior five years, as such information is available from the United States department of agriculture; and

2. has not received any of the following in connection with such license, as such information is available from the United States department of agriculture:

(a) a finally determined "direct" non-compliant item citation pursuant to 7 U.S.C. §2131, et seq., and regulations promulgated thereunder, as indicated on any United States department of agriculture inspection report at any time during the prior three years; or

(b) a finally determined citation for failure to provide inspectors access to property or records as required pursuant to 9 C.F.R. §2.126, or successor regulations, as indicated on either of the two most recent United States department of agriculture inspection reports; or

(c) three or more distinct finally determined non-compliant item citations pursuant to 7 U.S.C. §2131, et seq., and regulations promulgated thereunder, other than citations for failure to provide inspectors access to property or records as required pursuant to 9 C.F.R. §2.126, or successor regulations, as indicated on the most recent United States department of agriculture inspection report; or

(d) one or more finally determined repeat non-compliant item citations pursuant to 7 U.S.C. §2131, et seq., and regulations promulgated thereunder, as indicated on the most recent United States department of agriculture inspection report; or

(e) a finally determined order to cease and desist, issued by an administrative law judge, at any time during the prior five years; or

(f) a finally determined order to pay a civil penalty, issued by an administrative law judge, at any time during the prior five years; and

3. provides to such pet shop a sworn affidavit attesting that such source has not been convicted of a violation of the minimum standards of animal care provided for in section four hundred one of the agriculture and markets law at any time during the prior five years; and

4. provides to such pet shop a sworn affidavit attesting that prior to delivering such animal or animals into the custody of such pet shop such source has never been convicted of an animal abuse crime.

b. Notwithstanding subdivision a of this section, it shall be unlawful for any pet shop to display, offer for sale, deliver, barter, auction, give away, transfer or sell any dog or cat knowingly obtained from a class B dealer.

c. It shall be unlawful for any pet shop to display, offer for sale, deliver, barter, auction, give away, transfer or sell any rabbit.

d. A pet shop that allows an animal shelter or animal rescue group to use such pet shop's premises for the purpose of making animals available for adoption shall not be deemed to be engaged in any conduct otherwise prohibited pursuant to this section with respect to such animals, provided such pet shop does not have an ownership interest in such animals. A pet shop shall not be deemed to be engaged in any conduct otherwise prohibited pursuant to this section with respect to animals it surrenders to a non-profit shelter or animal rescue group, so long as such pet shop does not derive a fee therefor.

§17-1703 Required information for the purchaser. a. Every pet shop shall deliver to the purchaser of a cat or dog, at the time of sale, or to the prospective purchaser of a cat or dog upon request, in a standardized form prescribed by the commissioner, a written statement containing the following information:

1. The animal's breed, sex, color, identifying marks, individual identifying tag, tattoo or collar number and if microchipped, the microchip manufacturer's registration

instructions. If the breed is unknown or mixed, the record shall so indicate. If the animal is being sold as being capable of registration, the names and registration numbers of the sire and dam, and the litter number, if known;

2. The breeder's name, address, and federal identification number;

3. The date of such animal's birth and the date the pet shop received such animal. The date of birth may be approximated if not known by the seller if:

(a) such animal is a cat; or

(b) such animal is a dog, and such dog is not advertised or sold as a purebred, registered or registerable;

4. A written statement that the breeder has not received any finally determined "direct" non-compliant item citations pursuant to 7 U.S.C. § 2131, et seq., and regulations promulgated thereunder, as indicated on any United States department of agriculture inspection report in connection with such breeder's license at any time during the prior three years, as such information is available from the United States department of agriculture at the time of sale;

5. If the animal is a dog, notification that dogs residing in New York state must be licensed, and that a license may be obtained from the municipality in which the dog resides;

6. A record, as of the time of sale, of immunizations and worming treatments, if any, administered to the animal while the animal was in the possession of the pet shop, including the dates of administration and the type of vaccines or worming treatments administered;

7. A record of any known disease, sickness, or congenital condition that adversely affects the health of the animal at the time of sale;

8. A copy of such animal's United States interstate and international certificate of health examination for small animals and the breeder's United States department of agriculture inspection reports for the last three years;

9. A record of any veterinary treatment or medication received by the animal while in the pet shop's possession and either of the following:

(a) A statement, signed by the pet shop at the time of sale, indicating that, to the pet shop's knowledge: (i) the animal has no disease or illness; and (ii) the animal has no

congenital or hereditary condition that adversely affects the health of the animal at the time of sale; or

(b) A record of any known congenital or hereditary condition, disease, or illness that adversely affects the health of the animal at the time of sale, along with a statement signed by a licensed veterinarian that authorizes the sale of the animal, recommends necessary treatment, if any, and verifies that the condition, disease or illness does not require hospitalization or non-elective surgical procedures, and is not likely to require hospitalization or non-elective surgical procedures in the future. A veterinarian statement is not required for intestinal or external parasites unless their presence makes or is likely to make the animal clinically ill. The statement shall be valid for fourteen business days following examination of the animal by the veterinarian; and

10. A statement of the purchaser's rights under article thirty-five-D of the New York state general business law in a form prescribed pursuant to rules promulgated by the department.

b. A disclosure made to a purchaser pursuant to subdivision a of this section shall be signed by both the pet shop certifying the accuracy of the statement, and the purchaser acknowledging receipt of the statement.

c. Every pet shop shall post conspicuously, within close proximity to the cages of dogs and cats offered for sale, notices containing the following language in one hundred-point type: "Information on the source of these dogs and cats and the veterinary treatments received by these dogs and cats is available for review by prospective purchasers. United States Department of Agriculture inspection reports are available upon request."

d. Any pet shop offering a dog or cat for sale, barter, auction, give away or transfer shall, upon request by a prospective purchaser, make available to such prospective purchaser the two most recent United States department of agriculture inspection reports for the breeder of such dog or cat, as such reports were available from the United States department of agriculture at the time such pet shop obtained such animal. At the request of such prospective purchaser, such pet shop shall provide physical copies of such inspection reports, provided however, that such pet shop may require reimbursement for copying expenses pursuant to rules promulgated by the department.

§17-1704 Recordkeeping. a. Each pet shop shall keep and maintain records and documentation for each dog or cat purchased, acquired, held, sold, or otherwise disposed of with respect to the purchase, sale, dealers, transportation, breeding,

medical care and condition, identification, and previous ownership of such animal. Each pet shop shall keep and maintain such records and documentation for a period of five years from the date such pet shop acquired each such dog or cat.

b. Such documentation and records shall be made available upon request for inspection and copying by the department or other persons authorized by law to enforce the provisions of this chapter. Consistent with the New York state technology law, the department may promulgate rules for the production, receipt, acceptance, acquisition, recording, filing, transmission, forwarding, and storage of such records and documentation by use of electronic means. Such records and documentation shall include the following information:

1. Proof of purchase, adoption, or acceptance of such animal evincing the source from which such pet shop obtained such animal;
2. The breeder's name, address, and federal identification number;
3. Such animal's individual identifying tag, tattoo, or collar number;
4. The date of the animal's birth, the date the pet shop received the animal, and the location where the animal was received. If the animal is not advertised or sold as a purebred, registered or registerable, the date of birth may be approximated if not known by the seller;
5. The animal's breed, sex, color and identifying marks at the time of sale. If the breed is unknown or mixed, the record shall so indicate;
6. A copy of any written statement provided to the purchaser pursuant to section 17-1703 of this title; and
7. The name and address of the person to whom the animal was sold or given for adoption.
8. Any statement or certification provided to the pet store by the source from which it obtained the animal stating that such animal has been implanted with a microchip for permanent identification.
9. A copy of any statement or certificate of registration relating to microchip identification provided to the purchaser pursuant to section 17-815 of this title.

10. A copy of any record a dealer is required to include with the shipment of an animal pursuant to the animal welfare act, 7 U.S.C. § 2131, et seq., or successor provision of law, and the rules promulgated thereunder.

11. Such other records and documentation as deemed necessary by the commissioner in accordance with rules promulgated by the department.

c. In addition to the documentation and records required under subdivision a of this section, every pet shop shall keep and maintain the following records for transactions involving one or more dogs:

1. If such a dog is being sold as registered or capable of being registered with an animal pedigree registry organization, the names and registration numbers of the sire and dam, and the litter number, if known;

2. If the pet shop has released a dog to a purchaser without first submitting a license application, a written statement provided by the purchaser stating that the dog is to be harbored outside the city and such proof as the commissioner may require indicating that such purchaser resides outside the city.

§ 17-1705 Minimum standards of animal care. a. Each pet shop shall comply with the following minimum standards of care for every dog or cat in such pet shop's custody or possession:

1. (a) Animals shall be housed in primary enclosures or cages, which shall be constructed to be structurally sound. Such enclosures shall be maintained in good repair to contain the animal housed inside and protect it from injury. Surfaces shall be impervious to the absorption of fluids and able to withstand thorough and repeated cleaning and disinfecting without deteriorating or retaining odors.

(b) Primary enclosures or cages housing the animals shall provide sufficient space to allow each animal adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around, and lie down with its limbs outstretched. If the flooring is constructed of metal strands, such strands must be greater than one-eighth inch in diameter (nine gauge wire) coated with a material such as plastic or fiberglass, and constructed to not allow the passage of the animal's feet through any opening in the floor of the enclosure. Such flooring shall not sag or bend between structural supports.

(c) Housing facilities shall be adequately ventilated at all times to provide for the health and well-being of the animal. Ventilation shall be provided by natural or

mechanical means, such as windows, vents, fans, or air conditioners. Ventilation shall be established to minimize drafts, odors, and moisture condensation.

(d) The temperature surrounding the animal shall be compatible with the health and well-being of the animal. Temperature shall be regulated by heating and cooling to sufficiently protect each animal from extremes of temperature and humidity and shall not be permitted to fall below sixty degrees Fahrenheit or rise eighty-five degrees Fahrenheit.

(e) The indoor facilities housing the animals shall be provided with adequate lighting consisting of a diurnal light cycle of either natural or artificial light sufficient to permit routine inspection and cleaning and arranged so that each animal is protected from excessive illumination which poses a health hazard to the animal.

(f) The indoor and outdoor facilities housing the animals, including the primary enclosure or cage, shall be designed to allow for the efficient elimination of excretions, water, and waste material in order to keep the animal dry and prevent the animal from coming into contact with these substances. If drains are used they shall be constructed in a manner to minimize foul odors and backup of sewage. If a drainage system is used it shall comply with federal, state, and local laws relating to pollution control.

(g) In the event that a pet shop has a pregnant or nursing dog on its premises, the pet shop shall provide a whelping box for such dog. Each nursing dog shall be provided with an additional amount of floor space, based on her breed and behavioral characteristics in accordance with generally accepted husbandry practices as determined and approved in writing by a licensed veterinarian.

(h) Pet shops shall designate and provide an isolation area for animals that exhibit symptoms of contagious disease or illness. The location of such designated area must be such as to prevent or reduce the spread of disease to healthy animals.

2. Housing facilities, including primary enclosures and cages, shall be kept in a clean condition in order to maintain a safe and healthy environment for the animal. Such maintenance shall include removing and destroying any agents injurious to the health of the animal.

(a) Primary enclosures shall be cleaned on a daily basis.

(b) Primary enclosures shall be sanitized at least once every two weeks using one of the following methods:

(i) live steam under pressure; or

(ii) washing with soap or detergent and water with a temperature of at least one hundred eighty degrees Fahrenheit; or

(iii) washing all soiled surfaces with appropriate detergent solutions and disinfectant or by using a combination detergent or disinfectant product that accomplishes the same purpose with a thorough cleaning of the surfaces to remove excreta, feces, hair, dirt, debris and food waste so as to remove all organic and mineral buildup and to provide sanitization, followed by a clean water rinse.

(c) Under no circumstances shall the animal remain inside the primary enclosure or cage while it is being cleaned with sterilizing agents or agents toxic to animals or cleaned in a manner likely to threaten the health and safety of the animal.

(d) Trash and waste products on the premises shall be properly contained and disposed of so as to minimize the risks of disease, contamination, and vermin.

3. (a) Animals shall be provided with wholesome and palatable food, free from contamination and having nutritional value sufficient to maintain each animal in good health.

(b) Animals shall be adequately fed at intervals not to exceed twelve hours or shall be fed at least twice in any twenty-four hour period in quantities appropriate for the animal species and age, unless determined otherwise by and under the direction of a duly licensed veterinarian.

(c) Sanitary food receptacles shall be provided in sufficient number, size, and location as to enable each animal in the primary enclosure or cage to be supplied with an adequate amount of food.

(d) Animals shall be provided with constant access to clean, fresh water, supplied in a sanitary manner sufficient for its needs, except when there are instructions from a duly licensed veterinarian to withhold water for medical reasons.

4. Each animal shall be handled in a humane manner so as not to cause the animal physical injury, harm, or undue stress.

5. (a) Every pet shop shall designate an attending veterinarian, who shall provide veterinary care to the pet shop's animals which shall include a written program of veterinary care and regular visits to the pet shop's premises. Such program of veterinary care shall include:

(i) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this chapter;

(ii) The use of methods determined to be appropriate by the attending veterinarian to prevent, control, and respond to diseases and injuries, and the availability of emergency, weekend, and holiday care;

(iii) Daily observation of all animals to assess their health and well-being; provided, however, that daily observation of animals may be accomplished by someone other than the attending veterinarian who has received the guidance identified in clause (iv) of this paragraph; and provided, further, that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(iv) Adequate guidance to personnel involved in the care and use of animals regarding handling and immobilization; and

(v) Pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

(b) All animals shall be inoculated as required by state or local law. Veterinary care appropriate to the species shall be provided without undue delay when necessary. Each animal shall be observed each day by the pet shop, or by a person working under such pet shop's supervision.

(c) Within five business days of receipt, but prior to sale of any dog or cat, the pet shop shall have a duly licensed veterinarian conduct an examination and tests appropriate to the age and breed to determine if the animal has any medical conditions apparent at the time of the examination that adversely affect the health of the animal. For animals eighteen months of age or older, such examination shall include a diagnosis of any congenital conditions that adversely affect the health of the animal. Any animal diagnosed with a contagious disease shall be treated and caged separately from healthy animals in the isolation area required pursuant to subparagraph (h) of paragraph one of subdivision a of section 17-1705 of this chapter.

(d) If an animal suffers from a congenital or hereditary condition, disease, or illness which, in the professional opinion of the pet shop's veterinarian, requires euthanasia, the veterinarian shall humanely euthanize such animal without undue delay.

(e) In the event an animal is returned to a pet shop due to a congenital or hereditary condition, illness, or disease requiring veterinary care, the pet shop shall, without undue delay, provide the animal with proper veterinary care.

6. No pet shop shall euthanize an animal except by humane euthanasia performed by a veterinarian duly licensed in the state of New York in accordance with section three hundred seventy four of the agriculture and markets law who has diagnosed such animal as requiring euthanasia due to a serious illness or injury.

7. Every pet shop shall develop, maintain, document, and implement an appropriate written plan to provide dogs with the opportunity for daily exercise. In developing such plan, consideration shall be given to providing positive physical contact with humans that encourages exercise through play or other similar activities. Such written plan shall be approved by the attending veterinarian, and must be made available to the department upon request.

§17-1706 Exemptions for shelter and rescue partners. A pet shop that allows an animal shelter or animal rescue group to use such pet shop's premises for the purpose of making animals available for adoption shall be exempt from the provisions of this chapter with respect to such animals, provided such pet shop does not have an ownership interest in such animals.

§17-1707 Violations and fines. Any person found in violation of any provision of this chapter or any provision of any rule promulgated thereunder shall be subject to a civil penalty of five hundred dollars per day for each such violation. Each violation in connection with the sale of more than one animal shall be deemed a separate violation with respect to each animal offered for sale. A notice of violation served pursuant to this section shall be returnable at the environmental control board or any tribunal established within the office of administrative trials and hearings as designated by the commissioner.

§17-1708 Forfeiture and seizure. a. The commissioner or his or her designee may seize any animal offered for sale in a pet shop where the sale of such animal is prohibited by section 17-1702 of this chapter.

b. Any animal offered for sale in violation of section 17-1702 of this chapter or seized pursuant to subdivision a of this section shall be subject to forfeiture upon notice and hearing.

c. The commissioner shall provide for the appropriate disposition of each animal seized pursuant to this section. Such disposition may include impoundment at an animal shelter or animal rescue group.

d. The commissioner may impose upon the owner of a pet shop from which an animal is seized pursuant to this section a fee representing expenses incurred in connection with the cost of impounding such animal.

§17-1709 Rules. The commissioner may promulgate such rules as are necessary to carry out the provisions of this chapter and to ensure the health and safety of any animal in a pet shop.