

From: [Crawford, Stephen](#)
To: [Kim Reeve](#)
Cc: [Jasper, Shawn](#); [Michael Morrell](#); [Christina Muniz](#)
Subject: RE: 2021-104 Agr 1700
Date: Thursday, February 3, 2022 10:46:40 AM

Since we have until March 7 to file our formal reply with JLCAR, we'll hold off on a meeting for now, Kim. Thank you for that offer.

We will likely ask the relevant legislative committee to address this through legislation. We will be back in touch with a more definitive response once that conversation has taken place.

Thanks for your patience,

Steve

Stephen K. Crawford, DVM
New Hampshire State Veterinarian
25 Capitol Street
Concord, NH 03301
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From: Kim Reeve <kim.reeve@leg.state.nh.us>
Sent: Thursday, February 3, 2022 9:52 AM
To: Crawford, Stephen <stephen.k.crawford@agr.nh.gov>
Cc: Jasper, Shawn <Shawn.N.Jasper@agr.nh.gov>; Michael Morrell <Michael.Morrell@leg.state.nh.us>; Christina Muniz <christina.muniz@leg.state.nh.us>
Subject: RE: 2021-104 Agr 1700

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Hello Doctor Crawford,

Coming from the agency side, I understand how you feel but this is the review process for agency rules, and sometimes we miss things and then catch them later, but I do understand how frustrating that can be.

We've read through this analysis and we think you are missing the major point, and it could be that I am not explaining it well or that it is lost in translation because of the limitations of email. We are available this morning to do a teams call if that's good for you.

The bottom line is that pursuant to RSA 541-A:30, III and RSA 437:7, as amended by 2021, 215:4 (HB 250), a licensee's license cannot be suspended, revoked, or passively "expired" because of a statutory violation without notice and an opportunity for a hearing.

Let me know what time is good for you and I'll send out an invite.

Best,

Kim

From: Crawford, Stephen <stephen.k.crawford@agr.nh.gov>

Sent: Thursday, February 3, 2022 5:50 AM

To: Kim Reeve <kim.reeve@leg.state.nh.us>

Cc: Jasper, Shawn <Shawn.N.Jasper@agr.nh.gov>; Michael Morrell
<Michael.Morrell@leg.state.nh.us>; Christina Muniz <christina.muniz@leg.state.nh.us>

Subject: RE: 2021-104 Agr 1700

Thanks, Kim -

No need for a personal apology. This is not the first time, and it will not be the last, that multiple reviews have led to new substantive comments very late in the process. My comments are based on my frustration with a process that allows for new comments at every review rather than having some imposed limit (e.g. prior to submission of the final proposal, etc.). I do admit that I am not sure what that limit should be if the ultimate goal is to get the rules correct (we read our various statutes almost daily and frequently see new nuance and detail, so fully understand how it can happen when attorneys are reading statutes that they do not see every day).

That said, I would love to chat this morning, if you are available.

If I'm reading your note correctly, it seems that JLCAR may not be aware that the department must issue licenses without zoning approval in some instances..."The statute allows for licenses to be issued and the applicant has to prove that the local zoning requirements have been met in order to get a license. An applicant would not be able to get a license if the zoning requirements are not met."

- RSA 437:1, IV defines "pet vendor" as any entity "that transfers 30 or more dogs, 30 or more cats, 30 or more ferrets".
- RSA 437:3 requires licensing of all pet vendors.
- The subsequent sentence in RSA 437:3 only requires proof of zoning approval for those entities that transfer "more than 50 or more dogs, 50 or more cats, 50 or more ferrets".

This zoning exemption window (30-49 dogs, cats, or ferrets) was intentionally added to statute last session by the Legislature. A pet vendor is required to obtain a license, and the department is obligated to issue a license to them (presuming all legal standards are met), upon reaching the threshold of 30 dogs, cats, or ferrets. This license does not require zoning approval. A pet vendor is only required to submit zoning approval to transfer 50 or more dogs, cats, or ferrets, so we do not believe that this sentiment applies in every instance..."an applicant would not be able to get a license if the zoning requirements are not met". We do agree that it would apply once that applicant reaches the threshold of 50 dogs, cats, or ferrets.

Statutory language, RSA 437:3, creates an obligation to apply for a new license at that point, "A pet vendor that transfers more than 50 or more dogs, 50 or more cats, 50 or more ferrets, or 50 or more birds shall include proof that the zoning enforcement official of the municipality wherein any facility is to be maintained has certified that the facility conforms to the municipal zoning regulations in his or her application." We read this to mean that no license category exists for a pet vendor license transferring >50 dogs, cats, or ferrets unless they have provided proof of zoning with the application. As such, we believe there is no license without local zoning that exists after transferring 49 dogs, cats, or ferrets, hence the expiration. As mentioned below, we believe license expiration is a passive event that occurs at a certain point in time set in statute (e.g. at a specific number of animal transfers) as the Legislature has done in RSA 437:3.

Again, I'm happy to discuss this morning.

Steve

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From: Kim Reeve <kim.reeve@leg.state.nh.us>
Sent: Wednesday, February 2, 2022 5:19 PM
To: Crawford, Stephen <stephen.k.crawford@agr.nh.gov>
Cc: Jasper, Shawn <Shawn.N.Jasper@agr.nh.gov>; Michael Morrell <Michael.Morrell@leg.state.nh.us>; Christina Muniz <christina.muniz@leg.state.nh.us>; Kim Reeve <kim.reeve@leg.state.nh.us>
Subject: RE: 2021-104 Agr 1700

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon Doctor Crawford,

You are correct that I did not catch this issue when I reviewed the initial proposal or when I reviewed the draft final proposal, but it was noticed during our review of the final proposal as filed. My apologies for missing the issue in earlier reviews.

We have reviewed the statute, and discussed what you proposed below. We do not think what you propose will address the comment, and we are happy to meet with you to discuss it.

The problem is that what you have outlined is in effect a suspension of a license, despite it being called "expiration". The statute allows for licenses to be issued and the applicant has to prove that the local zoning requirements have been met in order to get a license. An applicant would not be able to get a license if the zoning requirements are not met. So you are correct in that the applicant

could not even get a license if the zoning requirements are met; however, we think that this is an enforcement issue in that it would most likely come up when a licensee after having gotten their license violates the statute. In other words, the issue would come up after an applicant has gotten a license and then later is found to have violated either the zoning or the statute by transferring too many animals in violation of both. In such a case, the licensee must have notice and an opportunity for a hearing. If the legislature wanted such a violation to result in an automatic suspension, expiration, or revocation of the licensee's license, then that would be in the statute. We also note that the statute talks about expiration of licenses but in only two places and not in regards to this particular issue. (RSA 437:3 states that licenses expire yearly and are subject to renewal via application, and RSA 437:7 on exemptions allows for the commissioner to grant an exception with the exception expiring on June 30th).

Please let me know if you would like to meet to discuss it.

Best,
Kim Reeve
Committee Attorney

From: Crawford, Stephen <stephen.k.crawford@agr.nh.gov>
Sent: Wednesday, February 2, 2022 6:53 AM
To: Kim Reeve <kim.reeve@leg.state.nh.us>
Cc: Jasper, Shawn <Shawn.N.Jasper@agr.nh.gov>
Subject: RE: 2021-104 Agr 1700

Thanks for the note, Kim.

We have been discussing the best approach to this note. We have not landed on a definitive response yet.

At the moment, we are leaning toward changing "automatic suspension" to "expire". The Legislature does not even contemplate a **legal license** in statute for anyone who has transferred 50 or more animals since statute, RSA 437:3, explicitly establishes zoning approval as a pre-requisite for that type of license. As such, perhaps "automatic suspension" was the wrong approach. A suspension is an administrative action taken by the department, while an expiration is a passive event that occurs at a certain point in time set in statute (e.g. at a specific number of animal transfers).

It would likely be something along these lines...

Agr 1707.02 Application Form and Zoning Approvals.

(a) Persons seeking a pet vendor license shall apply for that license by completing and submitting form "Application to License Pet Vendor Premises" (Revised 9/21) with a non-refundable fee required by RSA 437:3.

(b) Pursuant to RSA 437:3, local zoning approval shall not be required for pet vendors

transferring 49 or fewer dogs, cats, ferrets, or birds between January 1 and December 31 of a year.

- (c) Pursuant to RSA 437:3, local zoning approval shall be required for pet vendors transferring 50 or more dogs, cats, ferrets, or birds between January 1 and December 31 of a year.*
- (d) Pursuant to statute, a license issued in the absence of local zoning approval does not exist after 49 dogs, cats, ferrets, or birds have been transferred between January 1 and December 31 of a year.*
- (e) As such, any pet vendor license issued by the department without sufficient proof provided by the applicant of local zoning approval shall ~~automatically be suspended~~ expire when a pet vendor transfers 49 such animals between January 1 and December 31.*
- (f) If the license ~~is suspended~~ expires as described in (e) above, the person shall not transfer any more such animals until the license holder submits sufficient proof of local zoning approval along with a complete "Application to License Pet Vendor Premises" (Revised 9/21) and a non-refundable fee required by RSA 437:3 to the department and receives from the department written confirmation of a new license being issued.*
- (g) Any pet vendor found in violation of any of these provisions shall be subject to the penalties in RSA 437:10 for operating as an unlicensed pet vendor*

The Legislature created this tangle with the quasi-exemption concept, so that process was the most important piece of this submission. Our greatest challenge has been the timing of comments on the final proposal. This rule was submitted as an Initial Proposal on September 27 and then as a Final Proposal on December 27. Over that time it was reviewed by at least two JLCAR attorneys. There were various comments, all of which we accommodated, but there was not one whisper about the concerns with the suspension process proposed in Agr 1707.02 (d) until after the final proposal for JLCAR was accepted. Based on our staffing and logistical boundaries, this timing left us no real options for addressing it at that point.

I'll be back in touch by March 7, 20220 with a note regarding how we intend to proceed.

Thanks,

Steve

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From: Kim Reeve <kim.reeve@leg.state.nh.us>
Sent: Tuesday, February 1, 2022 2:57 PM
To: Crawford, Stephen <stephen.k.crawford@agr.nh.gov>
Cc: Kim Reeve <kim.reeve@leg.state.nh.us>
Subject: 2021-104 Agr 1700

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Good afternoon Doctor Crawford,

I am writing to touch base with you on the attached. Let me know if you have any questions.

Stay safe and warm.

Best,

Kim