

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		<p style="text-align: center;"><b>This space for use by IRRC</b></p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">2001 JUN 01 PM 3:32</p> <p style="text-align: center;">REGULATORY REVIEW COMMISSION</p> <p style="text-align: right;">IRRC Number: #2130</p>
<p>(1) Agency          Pennsylvania Department of Agriculture          Bureau of Dog Law Enforcement</p>		
<p>(2) I.D. Number (Governor's Office Use)</p> <p style="text-align: center;">2-132</p>		
<p>(3) Short Title          Amendments to Shelter Regulations – Repealing Rest Board Requirement and Adding Vinyl Coated Metal Strand Requirement</p>		
<p>(4) PA Code Cite          7 Pa.Code § 21.24(d)</p>	<p>(5) Agency Contacts &amp; Telephone Numbers</p> <p>Primary Contact: Richard F. Hess (717) 787-3062</p> <p>Secondary Contact: Rick L. Burd (717) 787-3062</p>	
<p>(6) Type of Rulemaking (check one)</p> <p>Proposed Rulemaking</p> <p>Final Order Adopting Regulation <input checked="" type="checkbox"/></p> <p>Final Order, Proposed Rulemaking Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p>No <input checked="" type="checkbox"/></p> <p>Yes: By the Attorney General</p> <p>Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>The regulation will allow kennel owners to remove rest boards from primary enclosures where dogs are housed on wire flooring. If kennel owners elect to keep the rest boards in place, the rest boards will be required to be made of impervious material. Kennel owners will be required to sanitize the rest boards just as they were prior to this amendment. Language has been added to require all kennel owners housing dogs in primary enclosures with wire flooring to construct such flooring with vinyl coated metal strands of sufficient diameter to provide a completely rigid floor that will support the weight of the dog(s) without bending or sagging.</p>		

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

NO. The proposed amendments are not mandated by any federal or state law or court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations were originally enacted to protect the health and safety of dogs, assure their humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards.

It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Concerns were voiced and written complaints were filed by licensed veterinarians, the Pennsylvania Pet Breeders Association and owners of pet store kennels, that illness and disease was occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement. The amendments will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the amendments address the comfort, safety and humane treatment of the dogs by requiring that, "(A) dog may be sheltered in a primary enclosure having metal strand flooring provided the metal strand is coated with a vinyl type coating. The coated metal strand flooring must be kept in good repair and shall be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated metal strand flooring shall be constructed of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure such that the metal strand floor does not bend or sag from the weight of the dog(s)." The removal of the rest boards and the added language concerning vinyl coated metal strand flooring has been under discussion for three (3) years.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

See the answer to question 11 above. It explains the health, safety and general welfare issues addressed by this proposed regulatory amendment. The amendments will allow for a more sanitary and humane environment for the dogs as required by the Dog Law.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Commercial breeders and pet shop owners will be the primary benefactors of this regulatory change. Approximately 450 State Licensed Kennels will be required to comply with this regulatory change. They will benefit through the lower cost of operation associated with lower rates of disease and morbidity. In addition, the removal of the rest boards will lower the cost and time associated with sanitizing the rest boards and the primary enclosure.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.) There should be no adverse affects on any kennel owner. The majority of kennel owners that house dogs in primary enclosures with metal strand flooring, already have a coated metal strand floor of such a diameter and gauge as to bring them into compliance with this regulation. The cost associated with installing the coated metal strand flooring should be made up through the savings discussed in question 13 above. In addition, kennel owners are not required to remove the existing rest boards. The proposed regulatory amendment provides the option to use rest boards or remove them. Kennel owners may continue to use rest boards so long as they keep them properly sanitized.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.) All licensed kennel owners who maintain kennels with wire flooring will be required to comply. Approximately 450 State Licensed Kennels have wire flooring and rest boards in place at this time.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable. These proposed amendments are in response to concerns voiced and written complaints filed by licensed veterinarians, the Pennsylvania Pet Breeders Association and owners of pet store kennels regarding the adverse health effects caused by rest boards. Kennel owners were finding it impossible to keep the rest boards sanitized properly. Therefore, illness and disease was occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. Upon speaking with kennel owners and the persons listed above, the Department developed the proposed amendatory language. The removal of the rest boards and the added language concerning vinyl coated metal strand flooring has been discussed and reviewed for the past (3) years by the Dog Law Advisory Committee and a Rest Board Committee. The Rest Board Committee was set up by the Department and was composed of groups representing dog clubs, animal rights groups, kennel owners and pet shops and veterinarians. The regulation has the support of many of the groups represented on the Rest Board Committee and the Dog Law Advisory Board. The Preamble to the final-form regulation outlines this in more detail.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. The specific cost figures are illusive and are impossible to project until the regulatory change has been effectuated. However, the costs associated with this regulation should be minimal and the savings realized by the regulated community should far outweigh any cost associated with compliance. The majority of kennel owners that house dogs in primary enclosures with wire flooring, already have coated metal strand flooring of such a diameter and gauge as to bring them into compliance with this regulation. In addition, kennel owners are not required to remove the existing rest boards. Kennel owners may continue to use rest boards so long as they keep them properly sanitized. These proposed amendments are in response to concerns voiced by the industry and the added language concerning vinyl coated metal strand flooring is a compromise agreed to by the regulated community and supported by veterinarians and other groups as set forth in the Preamble to the final-form regulation. No additional legal, accounting or consulting procedures are required by this proposed regulatory amendment.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no costs or savings to local governments associated with compliance with the proposed regulatory amendment. No additional legal, accounting or consulting procedures are required by this proposed regulatory amendment.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There will be no costs or savings to local governments associated with compliance with the proposed regulatory amendment. No additional legal, accounting or consulting procedures are required by this proposed regulatory amendment. The proposed change will not increase or decrease the Department's regulatory workload. The Department already inspects kennels on a regular basis and the proposed changes to the regulation will not affect inspection schedules, paperwork requirements or the time required to inspect a kennel. The only costs associated with the proposed regulatory amendment will be to reprint 5000 new regulation booklets. The cost will be approximately \$1400. However, it should be noted that these books are already reprinted on a periodic basis in order to supply new kennel owners with the required criteria to operate a State Licensed Kennel.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings						
<b>COSTS:</b>						
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	1499.00	N/A	N/A	N/A	N/A	N/A
Total Costs	1499.00	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>		N				
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

5000 revised regulation booklets @ \$0.28 per book = \$1400.00

## Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
None	None	None	None	None
None	None	None	None	None
None	None	None	None	None
None	None	None	None	None

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The costs associated with this regulation should be minimal and the savings realized by the regulated community should far outweigh any cost associated with compliance. The majority of kennel owners that house dogs in primary enclosures with metal strand flooring, already have coated metal strand flooring of such a diameter and gauge as to bring them into compliance with this regulation. In addition, kennel owners are not required to remove the existing rest boards. The proposed regulatory amendment provides the option to use rest boards or remove them. Kennel owners may continue to use rest boards so long as they keep them properly sanitized. They will benefit through the lower cost of operation associated with lower rates of disease and morbidity. In addition, the removal of the rest boards will lower the cost and time associated with sanitizing the rest boards and the primary enclosure. These proposed amendments are in response to concerns voiced by the industry and the added language concerning vinyl coated metal strand flooring has the support of kennel owners, veterinarians, the Dog Law Advisory Board, the Rest Board Committee and various other groups that took part in the debates and discussions pertaining to this regulation. No additional legal, accounting or consulting procedures are required by this proposed regulatory amendment.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There have been no alternatives considered. To effectuate the changes suggested by the industry and already implemented by the United States Department of Agriculture, an amendment to the regulation is necessary. The removal of rest boards and the requirement of vinyl coated metal strand flooring sufficient in gauge and diameter to provide a completely rigid floor which will support the weight of the dog(s) in the primary enclosure is the method recommended and supported by veterinarians and the industry to protect the health of dogs so sheltered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternatives were discussed. The veterinarians and the industry felt that the proposed amendments were the best, most cost effective and least intrusive manner in which to protect the health and safety of dogs and promote the humane treatment of dogs housed in primary enclosures with metal strand flooring.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The provisions of this regulation will be slightly more stringent than the federal standards. The federal standards require metal strand flooring of 1/8 inch or greater or coated metal strand flooring of sufficient diameter (gauge) to support the weight of the dog(s) house in the primary enclosure without bending or sagging. The Department requires the metal strand flooring to be coated in all circumstances. Metal strand flooring of 1/8 inch or greater must still be coated under the Department's regulation.

The regulation is intended to assure and increase the health and safety of dogs and assure the humane treatment of dogs. The Department, consulted veterinarians and the industry (regulated community) all agreed that requiring all metal strand flooring to be coated was the best way to ensure the dogs were comfortable, the enclosure could be kept sanitary and the health and safety of the dogs would be enhanced.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The proposed amendment to the regulation will bring Pennsylvania's law into line with current federal law. Pennsylvania will not be put at a competitive disadvantage with other states. The proposed amendment is less stringent and provides more flexibility than the current regulation. At the same time the proposed amendment to the regulation will help to assure the health, safety and humane treatment of dogs housed in primary enclosures having metal strand flooring and benefit the industry in lower disease and morbidity rates and lower sanitation and maintenance costs.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes. As required by section 902 of the Dog Law (3 P.S. § 459-902) the Department held a public hearing on October 12, 2000. Notice of the public hearing was published at 30 *Pennsylvania Bulletin* 5152 (October 7, 2000). In addition, commentators, Dog Law Advisory Board members and other interested parties, such as those who normally attend the public meetings of the Dog Law Advisory Board were notified of the public hearing by regular mail. As stated previously, the Department has already met with representatives of the kennel owners and various other industry groups and has consulted veterinarians with regard to this proposed regulatory change. The language in the amendment is the result of these meetings and addresses the concerns expressed by the regulated industry.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulation applies only to kennel owners that house their dogs in primary enclosures with wire flooring. The proposed amendment is the result of meetings and discussions with affected industry groups and persons.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of the regulation is January of 2001.

Compliance with the regulation, as amended, will be required within 90 days of the effective date of the regulation. All kennels owners housing dogs in primary enclosures with metal strand flooring must comply with the requirements of the regulation within 90 days of the effective date of the regulation. The regulatory amendment is flexible and allows kennels owners that house dogs in primary enclosures with metal strand flooring to keep rest boards in place. The kennel owners affected by the regulatory change must keep the rest boards in place until such time as they comply with the coated metal strand flooring requirements of the proposed regulatory amendment.

No additional permits, licenses or other approvals are required by the proposed regulatory amendment.

(31) Provide the schedule for continual review of the regulation.

All kennels licensed by the Commonwealth are required to be inspected one time per calendar year. However, the majority of such kennels are inspected two times per calendar year. During these inspections, the State Dog Wardens will monitor the sanitation practices of the kennels and the health of the dogs housed in the kennels to determine if the removal of the rest boards had a positive impact, no impact or a negative impact on the health and sanitation of the dogs housed therein.



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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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LEGISLATIVE  
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-132

DATE OF ADOPTION \_\_\_\_\_

BY: Samuel E. Hayes, Jr.  
Samuel E. Hayes, Jr.

TITLE Secretary of Agriculture

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY: Sandra W. Stoner

1/19/01  
DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or  
objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**Department of Agriculture  
Bureau of Dog Law Enforcement  
7 Pa.Code § 21.24(d)  
Amendments to Shelter Regulations – Repealing  
Rest Board Requirement and Adding Vinyl  
Coated Wire Requirement**

**TITLE 7 - AGRICULTURE**  
**7 Pennsylvania Code**  
**Part II. Dog Law Enforcement Bureau**  
**Chapter 21. General Provisions; Kennels; Licensure;**  
**Dog-Caused Damages.**

The Department of Agriculture ("Department"), under the authority conferred by the act of December 12, 1994, P.L. 956, No. 135, as amended, December 11, 1996, P.L. 943, No. 151, known as the Dog Law ("Act") (3 P.S. § 459-101 et seq.), hereby amends the regulations at Chapter 21 of Title 7 (7 Pa.Code § 21.24(d)).

***Authority***

The Department has the power and authority to amend and adopt these regulations. This authority includes:

- (1) The general duty to implement the policy of the act set forth at Section 101 (3 P.S. § 459-101) which states this in an act "... relating to dogs, regulating the keeping of dogs; providing for the licensing of ...kennels..." and "... providing for the protection of dogs ...." The Department has a duty to assure the proper and humane care of dogs kept in captivity.
- (2) The specific authority conferred by Section 207(b) (3 P.S. §459-207(b)) of the act, which confers upon the Department the power to promulgate regulations regarding the maintenance of kennels. It states, "(A)ll kennels shall be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary."

***Need for the Regulation***

The current regulation at Chapter 21.24(d) of Title 7 (7 Pa.Code § 21.24(d)), relating to shelters for dogs, became effective April 12, 1996. The current regulation requires kennels that house dogs in a primary enclosure with wire flooring to provide a solid draft free resting surface to allow the dogs to rest comfortably. The regulation was originally enacted to protect the health and safety of dogs, assure their

humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels.

The Department vigorously enforced the regulation and all kennels with wire or mesh flooring were brought into compliance with the rest board requirements. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards. It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Illness and disease were occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement.

The amendments will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the amendments address the comfort, safety and humane treatment of the dogs by requiring that a dog may be sheltered in a primary enclosure having metal strand flooring provided the metal strand flooring is coated with a vinyl type coating. The coated metal strand flooring must be kept in good repair and be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated metal strand flooring must be of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure such that the metal strand floor does not bend or sag from the weight of the dog(s). The regulation requires a kennel owner to install vinyl coated metal strand flooring before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated metal strand flooring meeting the standards of the regulation and will be required to keep the rest boards sanitized.

The amendments are intended to update the Department's policy regarding the sheltering of dogs in kennels. The amendments are consistent with the Department's duties under the act. In addition, the amended regulation is very similar, although slightly more stringent than, the Federal regulations regarding the sheltering of dogs in kennels, which are set forth at Chapter 3 of Title 9 of the Code of

Federal Regulations (9 CFR § 3.6(a)(xii)). In the interest of continuing to carry out the policy of the act, to assure the health, safety and humane treatment of dogs, the Department hereby amends the regulations at Title 7, Chapter 21.24(d) (7 Pa.Code § 21.24(d)) to effectuate the changes referred to above.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

### *Comments*

Notice of Proposed Rulemaking was published at 30 *Pennsylvania Bulletin* 3660 (July 22, 2000), and provided for a 30-day public comment period. In accordance with section 902 of the act (3 P.S. § 459-902) the Department held a public hearing on October 12, 2000, with regard to the regulation. Notice of the public hearing was published at 30 *Pennsylvania Bulletin* 5152 (October 7, 2000). In addition, commentators, Dog Law Advisory Board members and other interested parties, such as those who normally attend the public meetings of the Dog Law Advisory Board were notified of the public hearing by regular mail. An official record of the public hearing is available for public inspection.

Comments were received from the Independent Regulatory Review Commission (IRRC); the Honorable Stewart J. Greenleaf; the Honorable Noah W. Wenger; Johnna L. Seeton, Chairperson, Pennsylvania Legislative Animal Network; Dotsie Keith, Legislative Chairman, Pennsylvania Federation of Dog Clubs; and Anne Irwin, President, Federated Humane Societies of Pennsylvania.

**Comment:** IRRC commented regarding the minimum standards for wire flooring. IRRC had six concerns related to the reasonableness, clarity and consistency with existing regulations of the proposed requirements for wire flooring.

First, IRRC commented the proposed regulation requires the use of vinyl-coated flooring in primary enclosures if a kennel removes rest boards. IRRC noted that the federal regulations at 9 CFR 3.6, allow for the removal of rest boards and require that the flooring be “constructed of metal strands greater than 1/8 of an inch in diameter (9 gauge) or be coated with a material such as plastic or fiberglass” IRRC suggested that rather than write a different regulation the Department should consider incorporating the federal regulations by reference.

IRRC’s second comment relating to the minimum standards for wire flooring concerned the recommendations of four commentators that the regulation should include a minimum standard of greater than 1/8 of an inch in diameter for vinyl-coated metal strands. IRRC specifically commented that such a standard would exceed the federal regulations, which does not require a coating for strands greater than 1/8 of an inch in diameter. IRRC questioned whether the Department had a compelling reason that justified exceeding the minimum standards of the federal regulations.

IRRC’s third comment with regard to the minimum standards for wire flooring concerned the clarity of the regulation. IRRC stated that subsection 21.24(d) is a long paragraph (containing seven sentences) and that four of the sentences contain six requirements relating to minimum standards for metal strand flooring. IRRC suggested these requirements would be “...easier to understand if they were set forth clearly as a list in the proposed regulation.”

IRRC’s fourth comment concerning the minimum standards for wire flooring concerned clarity as well. Subsection 21.24(d) states that the metal strand flooring must provide a “rigid floor area” that “does not bend or sag.” IRRC questioned whether any deviation from a straight line would constitute a “sag” and whether the floor must be completely rigid, or if some degree of variation or flex is allowable. IRRC commented the Department should clarify this requirement.

IRRC's fifth comment related to clarifying the language regarding a "draft free" area. IRRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog(s).

IRRC's sixth comment with regard to the minimum standards for wire flooring was that the regulation should be consistent with the federal regulations and use the words "metal strands" instead of "wire".

*Response:* With regard to IRRC's first comment related to the minimum standards for wire flooring, the Department believes that it can not merely reference the federal regulations at 9 CFR 3.6. The Department has been working for three-years with the Dog Law Advisory Board, members of the regulated community and other interested persons regarding the proposed amendments to section 24 of the Dog Law regulations (7 Pa.Code § 21.24). The Department even established a special "Rest Board Committee" to discuss the current proposed amendments to section 24 of the Dog Law regulations (7 Pa.Code § 21.24). During those discussions the most heated debate was with regard to the removal of the rest boards. A compromise was eventually struck leading to an agreement to allow for the removal of rest boards, **so long as, all primary enclosures having wire flooring would be required to have coated wire flooring.** The Department realizes the amended regulations would be more stringent than the current federal regulations, which allow metal strand flooring to be uncoated so long as it is 1/8 of an inch in diameter. However, given the compromise struck between the parties interested in and affected by the proposed amendments to the regulations, the Department is unable to reference the federal regulation in its entirety and feels it would be confusing to reference only part of the federal regulation or attempt to explain an exception to the federal regulation. In addition, the vinyl coating does add additional protection for the dog(s) and thereby creates a more healthy and humane environment for the dog(s). As an additional point of clarity, as these regulations have progressed it has become apparent that the groups commenting on the proposed amendments would prefer that the words "wire flooring",

which is in the current regulation, be replace with the words “metal strand” or “metal rod”. The Department addresses this issue in its response to IRRC’s second comment regarding minimum standards for wire flooring.

In response to IRRC’s second comment regarding the minimum standards for wire flooring, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendments, the Department finds no compelling reason to exceed the standards of the federal regulations by requiring **all** coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons: 1) The amended regulation requires the coated metal strand flooring “...must be constructed of **sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure** such that the metal strand floor **does not bend or sag from the weight of the dog(s).**” The commentators reason for requesting the use of the term “metal rod” was because “metal rod” denotes a metal strand that is greater than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog(s). The language of the amended regulation addresses the commentators concerns regarding a completely rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog or dogs. There is a zero tolerance for bending or sagging no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (i.e. the question which standard is it?); 2) Requiring all **coated** metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the

current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced in order to be in compliance with the regulations. In addition, the Department to enforce a violation would have to test all of the enclosures having coated metal strands. The Dog Law Wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. Such accuracy would have to be proven when prosecuting each violation;

3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog(s) without bending or sagging. The Department, under the current language, does not have to prove diameter (gauge), tensile strength or improper metal strand floor construction in order to enforce a violation; and 4) The regulations would be much more stringent than the federal regulations and would place an undue burden on the regulated community. The Department will however change the phrase "wire flooring" to "metal strand flooring" throughout the amended regulation. The Department does this in response to comments in the proposed stage, testimony at a public hearing and in order to make the Department's regulations more consistent with the federal regulations.

In response to IRRC's third comment concerning the clarity of the regulation and suggesting the Department set forth the six requirements of the regulation in a list, the Department has reformatted the regulation and listed the requirements.



In response to IRRC's forth comment questioning whether any deviation from a straight line would constitute a "sag" and whether the metal strand floor must be **completely** rigid, or if some degree of variation or flex is allowable the Department's response is that the flooring must be completely rigid and no bend or sag is allowed. Although the Department believes that the current language of the regulation does denote that no bending or sagging is allowed and the language is consistent with and at least as comprehensive as the federal regulations at 9 CFR 3.6(a)(2)(xii), the Department will add the word "completely" before the word "rigid" to the language of the regulation.

IRRC's fifth comment related to clarifying the language regarding a "draft free" area. IRRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog(s). The draft free area does not apply to the entire primary enclosure. The draft free area provided must be large enough to house all of the occupants of the primary enclosure at the same time and its purpose is to protect the dogs from inclement weather. The Department has added the language "...draft free area that PROTECTS THE DOG(S) FROM INCLEMENT WEATHER AND is large enough to hold all occupants ..." to the regulation. The Department believes this language along with the current language of the regulation is sufficiently clear.

IRRC's sixth comment with regard to the minimum standards for wire flooring was that the regulation should be consistent with the federal regulations and use the words "metal strands" instead of "wire". The Department agrees and has changed the word "wire" to "metal strand" throughout the regulation.

**Comment:** IRRC commented regarding the “optional rest board” requirement of section 21.24(d). The requirement states “...the solid resting surface shall be constructed of impervious material.” IRRC commented this provision lacks sufficient detail in two ways: 1) Section 21.24(d) should require that rest boards, if used, must be kept sanitized; and 2) The Department should clarify what types of material are considered to be “impervious”. IRRC suggested the Department should state the rest boards if used must be kept sanitary or should reference the sanitation requirements of section 21.29 (7 Pa.Code § 21.29). In addition, IRRC suggested the Department should include examples of impervious materials in the regulation or reference the definition of “impervious surface” in the federal regulations at 9 CFR 1.1.

**Response:** The Department agrees with IRRC’s comment and has added language to the regulation that references the sanitary requirements set forth at section 21.29 of the Department’s kennel regulations (7 Pa.Code § 21.29). In addition, the Department has added language that explains the rest boards must be constructed of a material that is impervious to “...WATER OR MOISTURE...”

**Comment:** IRRC commented with regard to four commentators’ suggestion that the regulation continue to require a rest board to ensure adequate protection for small dogs, puppies and toy breeds. The commentator’s concerns were that the rest boards are a guarantee of a comfortable and safe place to walk or stand for small dogs. IRRC had the following three questions related to this concern: 1) Is there a certain type of mesh construction for vinyl-coated metal strand flooring that will provide the same or similar protection as a rest board; 2) If there is, should the regulation specifically require this type of metal strand flooring for enclosures that house small breeds or breeding dogs and their offspring; and 3) If not, should the regulation continue to require rest boards in the enclosures for these dogs?

**Response:** The Department considered the suggestions of the commentators and decided there should be no specific requirement to provide rest boards for “small dogs”, “puppies” and “toy breeds”. The Department reached this conclusion based on the following reasons: 1) Such language would be inconsistent with the federal regulation and would be inconsistent with the very reason the United States Department of Agriculture and this Department decided to rescind the rest board requirement. The United States Department of Agriculture and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in or coming in contact with their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the regulation; 2) The language of the current regulation protects “small dogs”, “puppies” and “toy breeds”. The metal strand flooring must be of such construction “...that it does not allow the dog’s feet to pass through any opening in the floor and does not otherwise cause injury to the dog.” In addition, the dog(s) must be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog; 3) The mesh construction currently being used by kennels has shown itself to be protective of the dog’s feet and does not otherwise cause injury to the dog; 4) The kennel owners must use the appropriately sized mesh construction metal strand flooring to assure the dog’s feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. Any violation of this can lead to prosecution by the Department; 5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type; 6) The language of the regulation is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog

in any manner; 7) The size of the opening, the pattern or construction of the metal strand flooring must account not only for the size of the dog and the dog's feet but must also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement; and 8) In order to carve out the exception for "small dogs", "puppies" and "toy breeds" very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. Such a requirement would add a myriad of extraneous factors which the Department would have to prove in order to successfully prosecute a violation. In addition, such a requirement would be more stringent than the federal regulations. Given the reasons delineated above, the Department believes that such a requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place such an additional burden on the regulated community.

*Comment:* The Pennsylvania Legislative Animal Network (PLAN), the Pennsylvania Federation of Dog Clubs (PFDC), the Federated Humane Societies of Pennsylvania (FSHP) and the Honorable Senator Stewart J. Greenleaf all commented on and made suggestion regarding the following three issues: 1) Change the word "wire" throughout section 21.24(d) to "metal strand" or "metal rod". PLAN commented that this would be consistent with the federal Animal Welfare Act and the coinciding regulations at 9 CFR 3.6(a)(2)(xii); 2) Rest boards should be required for small puppies and toy breeds; and 3) The Department should set a minimum diameter (gauge) for the coated metal strand flooring. Three of these commentators suggested the minimum diameter (gauge) should be 1/8 inch or greater. All of the commentators require the metal strands to be vinyl coated no matter what the diameter (gauge) of the metal stands.

**Response:** In response to the first comment the Department agrees with changing the word “wire” to “metal strand” in order to be consistent with the federal regulations. The Department has changed the word “wire” to “metal strand” throughout the regulation.

In response to the second comment the Department disagrees with carving out such an exception for “small dogs”, “puppies” and “toy breeds” for the following reasons: 1) Such language would be inconsistent with the federal regulation and would be inconsistent with the very reason the United States Department of Agriculture and this Department decided to rescind the rest board requirement. The United States Department of Agriculture and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in or coming in contact with their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the regulation; 2) The language of the current regulation protects “small dogs”, “puppies” and “toy breeds”. The metal strand flooring must be of such construction “...that it does not allow the dog’s feet to pass through any opening in the floor and does not otherwise cause injury to the dog.” In addition, the dog(s) must be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog; 3) The mesh construction currently being used by kennels has shown itself to be protective of the dog’s feet and does not otherwise cause injury to the dog; 4) The kennel owners must use the appropriately sized mesh construction metal strand flooring to assure the dog’s feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. Any violation of this can lead to prosecution by the Department; 5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type; 6) The language

of the regulation is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog in any manner; 7) The size of the opening, the pattern or construction of the metal strand flooring must account not only for the size of the dog and the dog's feet but must also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement; and 8) In order to carve out the exception for "small dogs", "puppies" and "toy breeds" very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. Such a requirement would add a myriad of extraneous factors which the Department would have to prove in order to successfully prosecute a violation. In addition, such a requirement would be more stringent than the federal regulations. Given the reasons delineated above, the Department believes that such a requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place such an additional burden on the regulated community.

In response to the third comment, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendments, the Department finds no compelling reason to exceed the standards of the federal regulations by requiring the coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons: 1) The amended regulation requires the coated metal strand flooring to "...be constructed of **sufficient diameter(gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure** such that the metal strand flooring **does not bend or sag for the weight of the dog(s)**. The commentators reason for requesting the use of the term "metal rod" was because "metal rod" denotes a metal strand that is greater

than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog(s). The language of the amended regulation addresses the commentators concerns regarding a rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog or dogs. There is a zero tolerance for bending or sagging no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (i.e. the question which standard is it?); 2) Requiring all coated metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced in order to be in compliance with the regulations. In addition, the Department to enforce a violation would have to test all of the enclosures having coated metal strands. The Dog Law Wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. Such accuracy would have to be proven when prosecuting each violation; 3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog(s) with out bending or

sagging. The Department, under the current language, does not have to prove diameter (gauge), tensil strength or improper metal strand structure in order to enforce a violation; and 4) The regulations would be much more stringent than the federal regulations and would place an undue burden on the regulated community. The Department will however change the phrase “wire flooring” to “metal strand flooring” throughout the amended regulation. The Department does this in response to comments in the proposed stage, testimony at a public hearing and in order to make the Department’s regulations more consistent with the federal regulations.

*Comment:* PLAN and PFDC both expressed concern that neither the Rest Board Committee nor the Dog Law Advisory Committee had been given an opportunity to review the final form of the regulation before it was printed in the *Pennsylvania Bulletin*.

*Response:* The amendments to this regulation have been under review and discussion for three years. The Department formed the Rest Board Committee in order to find a solution to the problems caused by the use of rest boards and to try to forge a compromise on the issue of rescinding the rest board requirement. The topic was discussed at numerous meetings of the Dog Law Advisory Board and the Rest Board Committee. During an August 1999 meeting of the Dog Law Advisory Board, the proposed language of the regulation was read and the Department believed the language was agreed to by members of the Dog Law Advisory Board and Rest Board Committee. The Department then published notice of the **proposed rulemaking** in the July 22, 2000, edition of the *Pennsylvania Bulletin*. At the time of publication, the Department was unaware of the disagreement with regard to using the word “metal strand” or “metal rod” instead of “wire” and with regard to the demand to specify a specific diameter (gauge) of the metal strand. The Department, subsequent to publication of the proposed rulemaking, held another public meeting on the proposed rulemaking and a public hearing on the matter.



The Department has considered all input received in the official comments to the proposed rulemaking and at the public meeting and hearing on the proposed rulemaking.

**Comment:** The FSHP commented that except for the issues of changing the word “wire” to “metal strand” or “metal rod”, delineating a specific diameter (gauge) for the “metal strand” and continuing to require rest boards for “small dogs”, “puppies” and “toy breeds”, that the other language in the proposed regulation seemed to reflect the concerns of the Rest Board Committee, particularly the requirement that the wire or rod be coated and that the floors be strong enough so they do not sag.

**Response:** The Department appreciates the support of FSHP with regard to the other language contained in the regulation. The Department has changed the word “wire” to “metal strand” throughout the final-form regulation. In addition, the Department has already set forth and responded to the FSHP’s comments regarding delineating a specific diameter (gauge) for the metal strand flooring and its concerns regarding continuing to require rest boards for “small dogs”, “puppies” and “toy breeds”.

**Comment:** PFDC had the following comments with regard to the proposed regulation.

PFDC’s first comment was that mandated use of rest boards was to be eliminated.

PFDC’s second comment relates to the minimum standards for kennels using raised flooring in pens. PFDC stated, “(A) dog may be sheltered in a primary enclosure on a rod floor where metal strands have a diameter greater than 1/8. All metal flooring shall be of a rod mesh or slatted construction and must be plastic coated, and constructed so the dog’s feet shall not be allowed to pass through any opening in the floor and may not otherwise cause injury to the dog. It shall be kept in good repair and shall not sag or bend. The spaces between rods must be either round, square or rectangular in configuration. Support members under a raised kennel floor must be constructed of a material that is impervious to moisture and of a shape that will not impede the passage of feces or urine. Flat support

surfaces under a raised floor are not permitted.” This comment went on to state a definition of “wire” and a definition of “rod”. Wire was defined as, “(A) metal strand that has a diameter equal to or less than 1/8.” Rod was defined as, “(A) metal strand that has a diameter greater than 1/8 inch.” The comment states, “1/8 is the demarcation that the metal working industry uses between welded wire and welded rod.”

PFDC’s third comment was that the Rest Board Committee was shown samples of coated rod material and felt that requiring this would greatly improve living conditions for the dogs housed on this sturdy and easily cleaned flooring. PFDC goes on to state the use of this type of flooring was the only reason they agreed to the removal of the current mandated rest boards.

The fourth comment relates to PFDC’s concerns for small puppies and toy breeds of dogs. PFDC states these dogs would have difficulty balancing on “this surface” (it is presumed they mean a “wire” surface) and could be easily injured. PFDC therefore believes rest boards should continue to be mandated for small puppies and toy breeds. They further comment the rest boards provided “...should be large enough for all of the dogs in the pen to lay on, made of a material that is easily cleaned and kept free of urine and feces.”

Along with these comments, PFDC included a glossary of terms that is too large to include in this document. PFDC did not reference the source of this glossary.

**Response:** The Department has already set forth and responded to the parts of PFDC’s comments related to changing the term “wire” to “metal rod”, requiring all “metal rod” to be 1/8 inch or greater in diameter (gauge) and continuing to require rest boards for “small puppies” and “toy breeds”.

With regard to PFDC’s first comment that the regulation was supposed to eliminate the mandated use of rest boards, the Department agrees. The regulation does eliminate the mandated use of rest boards. However, the regulation does not make the continued use of rest boards unlawful. Kennels

may continue to use rest boards so long as those rest boards are kept in a sanitary condition in accordance with section 21.29 of the regulations (7 Pa.Code § 21.29).

In response to PFDC's comment that "...the spaces between rods must be either round, square or rectangular in configuration, the Department disagrees with this language because it is unnecessary, does not allow flexibility for future developments in metal strand floor construction, creates possible enforcement barriers and, without presenting any evidence, excludes all other designs or patterns which may or may not cause harm to a dog's paws or otherwise cause injury to the dog. The current language of the regulation does not allow a construction that would hurt the paws of a dog or otherwise cause injury to a dog. This language allows the Department to take enforcement action with regard to any pattern of metal strand flooring that causes injury to the dog. The Department only has to prove the flooring caused actual injury or harm. The Department has no compelling reason or evidence to suggest that all patterns of flooring other than round, square or rectangular cause injury or harm to dogs and therefore should be excluded from use.

The Department does not agree with adding PFDC's language regarding support members under a raised kennel floor. This section of the kennel regulations should not be looked at in a vacuum. The kennel regulations, at section 21.29 (7 Pa. Code § 21.29), require that primary enclosures must be kept in a sanitary condition and cleaned as often as is necessary to prevent an accumulation of debris or excreta or a disease hazard. Any urine or feces accumulating on a support surface must be cleaned at least once daily or as often as necessary to prevent accumulation of such excreta or a disease hazard. Flat support surfaces under a raised floor do provide for the most rigid and comfortable surface for the dogs. In addition, round support surfaces would create a rounded uneven floor surface on which the dog would have to stand or walk. Requiring the regulated industry to change all the supports under primary enclosures to meet the requirements espoused by PFDC would impose a huge cost on the industry and may or may not lead to a more comfortable and healthy environment for the dogs.

In response to PFDC's comment regarding mandating use of a certain type of flooring which was presented to them at a meeting, the Department disagrees with mandating a specific metal strand flooring. Some kennels will use the type of flooring shown, however there are situations where that type of flooring would not be needed or warranted. The regulation addresses the commentators' concern that the floor be rigid and in addition, allows the necessary flexibility for a kennel owner to use the type of metal strand floor that best fits the size and weight of the dog or dogs in the enclosure. Because dogs come in all different sizes and weights, requiring one type of flooring could lead to less humane and safe conditions for dogs.

*Comment:* The Honorable Senator Stewart J. Greenleaf commented the proposed regulation appears to represent a step backward in the Department's effort to protect animals from inhumane living conditions. The Honorable Senator Greenleaf further commented that he had spoken to members of the Rest Board Committee and that they had indicated there was a compromise struck between members representing animal welfare interests and members of the Amish community engaged in dog breeding. Under the compromise rest boards would no longer be mandated so long as wire were eliminated. The Honorable Senator Greenleaf goes on to note the proposed regulation retains wire but eliminates rest boards. The Honorable Senator Greenleaf questions whether this is a drafting error or misunderstanding and states he sincerely hopes this is corrected to reflect the Department's commitment to the protection of dogs. The Honorable Senator Greenleaf suggests that "...wire bottom cages should be eliminated in favor of coated metal rod flooring of a diameter (greater than one-eighth inch) that will provide comfort for standing dogs of all sizes, and that rest boards should be retained for small dogs and toy breeds." The Honorable Senator Greenleaf further suggested that if wire continues to be allowed, then rest boards should remain mandated for dogs of all sizes.

**Response:** The Department agrees with the Honorable Senator Greenleaf's suggestion that the word "wire" should be replaced. The Department has replace the word "wire" with "metal strand" and the regulation does require **all** metal strand flooring to be coated. However, for the reasons stated previously the Department does not agree with the Honorable Senator Greenleaf's suggestions that a minimum diameter (gauge) for the metal strand flooring should be set forth in the regulation or that rest boards should be retained for "small dogs" and "toy breeds".

**Comment:** The Honorable Senator Noah W. Wenger commented that the proposed amendments to the regulation would, "...make Pennsylvania's regulations consistent with the same changes recently made in Federal regulations." He further commented that the regulations were originally enacted to protect the health and safety of dogs and assure their humane treatment and that it has become apparent that rest boards are difficult to keep sanitized at all times, thereby creating a health hazard for dogs. The Honorable Senator Wenger stated he agrees with the Department's proposal to require all metal strand flooring to be vinyl coated and of sufficient diameter so that the floor will not sag or bend. The Honorable Senator Wenger acknowledged the many concerns expressed over this regulation but, stated he knows the Department will consider them. Therefore, after evaluating the proposed changes, the Honorable Senator Wenger had no objections to them and encouraged IRRC to review the rulemaking favorably.

**Response:** The Department appreciates the support of the Honorable Senator Wenger. The Department has taken all comments into consideration and has made a number of changes to the proposed amendments based on those comments.

**Comment:** As noted previously, the Department, in accordance with section 902 of the act (3 P.S. § 459-902), held a public hearing on October 12, 2000, with regard to the regulation. Testimony was taken and written comments were accepted and made part of the record. Following is a list of commentators, their affiliations and a brief synopsis of their testimony.

1. A representative of the American Boarding Kennel Association (ABKA) expressed her concerns that the amended regulation **required all kennels** to install coated metal strand flooring. Later in the hearing she added testimony regarding the structure (size) of the metal strand flooring. In her testimony she stated that the size of a dogs feces does not normally exceed the diameter of their leg or their foot. She suggested the Department put wording in the regulation stating the diameter of the metal strand flooring (meaning the spacing of the metal strands and the mesh construction) must be consistent with the breed of the dog.

2. A representative of the Humane Society of Harrisburg expressed her concurrence with the written testimony submitted by a representative of the Federated Humane Societies of Pennsylvania (FHSP). The FHSP was also an official commentator with regard to the proposed regulation. The FHSP's written testimony asserted that the regulation should be consistent with the Federal regulations and specifically stated the term "metal strand" should be used throughout the regulation. In addition, FHSP stated the regulation "...needs to be understandable and enforceable in the field, so that inclusion of a diameter for the metal strand could be a problem." The FHSP's major concern was that the language of the regulation be clear with regard to the mesh and construction of the metal strand flooring in order to assure the size and type of construction is such that it will not cause injury to dogs or puppies of any size or allow their feet to pass through the openings.

3. A representative for the Pennsylvania Legislative Animal Network (PLAN) who is also a member of the Dog Law Advisory Committee, offered testimony on the regulation. PLAN was an official commentator with regard to the proposed regulation. Their comments regarding the proposed regulation are listed above. PLAN's testimony expressed their concerns regarding the construction of

the metal strand flooring. PLAN was concerned that metal strand flooring which was constructed in a manner to prevent the paws of small toy breeds from passing through the metal strand flooring, would also prevent feces and urine from passing through the metal strand flooring. PLAN was concerned this would result in the same health problems caused by rest boards. In addition, the PLAN representative read the written testimony submitted by the Pennsylvania Federation of Dog Clubs, Incorporated, (PFDC) into the record.

4. As noted above PFDC submitted written testimony for the hearing. PFDC was an official commentator with regard to the proposed regulation. Their comments regarding the proposed regulation are listed above. PFDC's written testimony presented essentially the same comments and concerns expressed in their official comments. The written testimony expressed concern that if rest boards were removed the dogs would have no solid surface, outside the dog boxes or buildings on which to rest. In addition, PFDC testified the configuration of the floor was a concern to them. PFDC believes the configuration of the floor for each size of dog, from one and two pound puppies and small breeds to Great Danes, should be set forth and defined in the regulation. PFDC testified that it now believes the Department should, "...consider the needs of dogs kept in dog boxes and write rules as to how to best protect them from the elements in all seasons and every kind of weather, especially if now we are going to remove the outside rest boards." PFDC asks the Department to delay any further action on this regulation and to reconvene the Rest Board Committee, "...in order to give all interested parties the opportunity to address their concerns before these rules become final."

5. Dr. Knauff, a member of the Dog Law Advisory Board and Chairman of the Rest Board Committee, representing the research facilities testified with regard to the regulation. Dr. Knauff testified the rest board requirement was originally added to the regulation in order to be consistent with the Federal Regulations in this area. He went on to state that the United States Department of Agriculture (USDA), eventually repealed the rest board requirement because they found the rest boards were detrimental to the animals. The dogs would defecate and urinate on the rest boards. The rest

boards would not allow the fecal matter or urine to pass through the bottom of the cage and therefore the dogs were laying and standing in the urine and fecal matter, which led to numerous health problems. In addition, many rest boards were made of rubber (because it is impervious to moisture) and kennel owners found that the dogs were eating the rest boards. This led to various health and safety problems. He testified that coated metal strand flooring can be easily cleaned and sanitized with a power sprayer and that his experience indicates dogs have no aversion to resting on a rigid metal strand floor that is properly coated and maintained. Dr. Knauff further testified that the passage of the dog's feet through the coated metal strand flooring has nothing to do with the rest board issue and that the regulation already states the animal's feet may not pass through the opening in the metal strand flooring, regardless of the material from which it is made. Dr. Knauff testified the Rest Board Committee had been discussing these issues for two years and that given the evidence regarding the health and safety problems presented by the use of rest boards he would not advise the Department to continue to require the mandatory use of rest boards. He stated this was the recommendation of the Rest Board Committee. Dr. Knauff added testimony later stating that he believed concerns with regard to the size of the spacing between the metal strands or the mesh construction had already been addressed by the regulation.

6. A kennel owner and board member of the Professional Pet Breeders Association testified. He testified that he was at all the meetings (Advisory Board and Rest Board Committee) and thought there was an agreement that rest boards could be removed so long as they were replaced with vinyl or plastic coated strands. He further testified the use of rest boards at his kennel has resulted in dogs resting in their own urine and feces and causes health concerns for the dogs and people handling the dogs. He agrees with the current language of the regulation, which allows the use of rest boards (because he would like to leave them in for some of his dogs) but does not mandate their use.

7. A representative for the Commercial Breeders, who is a kennel owner and also served on the Rest Board Committee, testified with regard to the regulation. The representative testified the Rest Board Committee had been discussing this matter for two to three years and he believes the paramount



issue is the health of the dogs and puppies in the pet shops and kennels. He testified dogs in his kennel often seem to prefer the vinyl coated flooring to a solid surface and that many of the dogs use the vinyl coated flooring as a rest area and the solid resting surface as a toilet. With regard to the health of the dogs he testified it is nearly impossible to keep the solid surface (rest board) clean and sanitized at all times. In order to do so would require people watching the dogs twenty-four (24) hours a day. This leads to various health problems, such as skin problems and sore feet because of the acidity of the urine. In addition, he testified the State's mandatory rest board requirement has created an inconsistency between the State's regulations and the Federal regulations. This inconsistency creates problems for the kennel owners because they must disregard Federal regulations and recommendations in order to comply with the State's current regulations. The representative recommended the removal of the mandatory rest board requirement and the addition of the language which provides for a better surface for the animals (i.e. – vinyl coated metal strand flooring that is rigid and does not sag or bend).

8. A kennel owner commented the rest boards do create a sanitation problem and result in the dogs sitting or resting in their own urine and feces. She testified she is concerned for her dogs and that is why the regulation is important to her.

9. A representative for the pet shops, who is also a member of the Dog Law Advisory Board and the Rest Board Committee, testified with regard to the regulation. He testified the rest board requirement should be removed from the Dog Law regulations and agreed with the language mandating vinyl coated metal strand flooring. He emphasized that installing such flooring would be costly to the kennel industry and that it represented a compromise the industry was willing to make so long as the mandatory rest board requirement currently in place was repealed. He stated it is his experience that dogs sometimes prefer to rest on the coated metal strand flooring as opposed to the rest board. In addition, he opined the regulation as written presents a necessary compromise in some cases between feces or the feet of a dog passing through the metal strand flooring. His conclusion was the rigid metal strand flooring requirement represented a healthier and safer alternative to rest boards. The

representative operates a pet shop and his primary enclosures have metal strand flooring in them. He contended there are no current health or safety problems related to the raising of dogs on metal strand flooring. The representative read a letter from a licensed Pennsylvania veterinarian stating that in the last 25 years, the veterinarian had not seen or treated one case of injury to a dogs paws at his pet shop. The letter went on to state that since the pet shop had started using the mandated rest boards the cleanliness and sanitation of the animals and the facility had been compromised. Even with near constant care the feces and urine of the dogs accumulate on the rest boards. The letter stated this enhances the chances for spreading intestinal parasitic disease and severe life threatening contagious diseases such as parvo virus. In addition, the representative stated the United States Department of Agriculture had studied the health and safety problems presented by rest boards and had removed the rest board requirement from their regulations. The representative testified, "(I)n my experience I have learned that it (the rest board requirement) is putting dogs in danger and the resting boards should be removed as soon as possible." The representative also commented with regard to the PFDC's testimony that the regulation should be delayed. He stated that as a member of the Rest Board Committee, he had been discussing the issues raised by this regulatory change since 1997, that during that time the health of dogs has continued to be jeopardized by the rest board requirement and that he believed the regulation had to be put on a "fast track".

10. The Dog Law Advisory Board member representing the Pennsylvania Veterinary Medical Association (PVMA) offered written testimony regarding the regulation. In its written testimony, PVMA stated it supports the regulation as proposed so long as the Department substitutes the words "metal strand" for the word "wire" throughout the regulation. The written testimony went on to state, "(R)esting boards promote unsanitary conditions which promote the spread of infectious disease.... and ... coated metal strand material available for cages...is appropriate and acceptable for the health of dogs."

**Response:** Following is the Department's response to the testimony of each commentator at the public hearing.

1. The Department does not intend and the language of the regulation does not require all kennels to install coated metal strand flooring. The regulation is intended to address only those kennels that currently have or subsequently install metal strand flooring in the primary enclosure sheltering the dog. The regulation sets the standard for shelters using metal strand flooring in their primary enclosures. With regard to the suggestion the Department should develop language which states the size of the opening in the metal strand flooring should be consistent with the breed of dog, the Department believes the regulation already addresses that issue and that to add the language "consistent with the breed of dog" would only add ambiguity and confusion to the regulation and make it more difficult to enforce.

2. The Department agrees with this testimony. The Department has replaced all references to "wire flooring" with the term "coated metal strand flooring". In addition, the Department believes the language of the final-form regulation does protect dogs (including puppies) of all size with regard to the type and construction of the metal strand flooring required. The regulation states, "(T)he metal strand flooring must be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." Section 2 of the Dog Law (3 P.S. § 459-102) defines the word "dog" in such a manner as to include puppies.

3 and 4. With regard to the testimony offered by commentators 3 and 4 (PLAN and PFDC), the Department has considered this testimony and the official comments previously offered by these commentators and for reasons expressed above in the Department's response to PLAN's and PFDC's official comments on the proposed rulemaking, the Department believes the final-form regulation addresses their concerns. In addition, the Department disagrees with PFDC's suggestion the Department delay further action on the regulation. The Department has worked on this regulation for three years. During that time the Department established the Rest Board Committee and held numerous public meetings of both the Rest Board Committee and the Dog Law Advisory Committee to discuss this

regulation. Over that three year period the Department has received advise and input from the regulated community, industry members, dog clubs, humane society groups and other interested parties. The Department has considered all of the input and believes this regulation addresses the primary concerns of the groups and more importantly carries out the duty of the Department to provide for the safe, healthy and humane care of dogs in this Commonwealth. In addition, the language of the final-form regulation is consistent with the language of the federal regulations.

5 through 10. With regard to the testimony offered by commentators 5 through 10 above, the Department has considered the testimony and believes the final-form regulation addresses the commentator's concerns.

## **FISCAL IMPACT**

### **Commonwealth**

The final-form regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The amendments to the regulation will not require any additional paperwork or impose any additional workload on the Department.

### **Political Subdivisions**

The final-form regulations will impose no costs and have no fiscal impact upon political subdivisions.

### **Private Sector**

The final-form regulations will impose additional costs on the segment of the regulated community that houses dogs in primary enclosures that have metal strand flooring. That segment of the regulated community will be required to install coated metal stand flooring which complies with the provisions of the amended regulation. Approximately 450 State Licensed Kennels will be required to comply with this regulatory change. The majority of kennel owners that house dogs in primary

enclosures with metal strand flooring, already have a coated metal strand floor of such a diameter and gauge as to bring them into compliance with this regulation. In addition, they will benefit through the lower cost of operation associated with lower rates of disease and morbidity and the removal of the rest boards will lower the cost and time associated with sanitizing the rest boards and the primary enclosures. It should be noted that the regulated community requested amendments be made to this regulation and is supportive of the regulation as amended.

### **General Public**

The final-form regulations will impose no costs and have no fiscal impact on the general public. The general public should benefit from the amended regulation because animals will be healthier and safer and there should be a reduced cost to the industry.

### **PAPERWORK REQUIREMENTS**

The final-form regulations will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer the regulation.

### **CONTACT PERSON**

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408; Attn: Richard Hess (717) 787-4833.

## **REGULATORY REVIEW**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at 30 *Pennsylvania Bulletin* 3660 (July 22, 2000), on July 10, 2000 to the Independent Regulatory Review Commission and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment. In compliance with § 5(b.1) (71 P.S. § 745.5(b.1)), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from the Commission, the Committees and the public.

These final-form regulations were (deemed) approved by the House Agricultural and Rural Affairs Committee on \_\_\_\_\_, were (deemed) approved by the Senate Agriculture and Rural Affairs Committee on \_\_\_\_\_, and were (deemed) approved by the Commission on \_\_\_\_\_.

## **FINDINGS**

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulations encompassed by this Order has been given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa.Code, Sections 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 *Pennsylvania Bulletin* 3660 (July 22, 2000).

(4) A public hearing was held as required by Section 902 of the Dog Law (3 P.S. § 459-902).

(5) The modifications that were made to these regulations in response to testimony presented at the public hearing do not enlarge the purpose of the proposed regulations published at 30 *Pennsylvania Bulletin* 3660 (July 22, 2000).

(6) The adoption of the regulations in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

### **ORDER**

The Department of Agriculture, acting under authority of the authorizing statute, orders the following:

(1) The new regulation of the Department of Agriculture at 7 Pa. Code Chapter 21.24(d) (regarding Shelter of Dogs in Kennels) are adopted as set forth in Annex "A" attached hereto.

(2) The Secretary of Agriculture shall submit this Order and Annex "A" to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Secretary of Agriculture shall certify this Order and Annex "A" and deposit them with the Legislative Reference Bureau, as required by law.

(4) This Order shall take effect upon publication in the Pennsylvania Bulletin.

BY THE DEPARTMENT OF AGRICULTURE

SAMUEL E. HAYES, JR., SECRETARY



Annex "A"

7 Pennsylvania Code  
Part II. Dog Law Enforcement Bureau  
Chapter 21. General Provisions; Kennels; Licensure;  
Dog-Caused Damages.

CHAPTER 21. GENERAL PROVISIONS; KENNELS; LICENSURE;  
DOG-CAUSED DAMAGES

\* \* \*

KENNELS-PRIMARY ENCLOSURES

\* \* \*

§ 21.24. Shelters.

\* \* \*

(d) A dog may be sheltered in a primary enclosure having [wire] METAL STRAND flooring [if] provided the [wire] FOLLOWING CONDITIONS ARE MET:

(1) THE METAL STRAND flooring is coated with a vinyl type coating.

(2) The coated wire- METAL STRAND flooring must be kept in good repair [, is].

(3) and THE COATED METAL STAND FLOORING shall MUST be made of mesh [or slatted] construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog.

(4) The coated wire- METAL STRAND FLOORING shall MUST be constructed of sufficient diameter (gauge) to provide a COMPLETELY rigid floor area sufficient to support the weight of dog(s) housed in the enclosure such that the wire METAL STRAND floor does not bend or sag from the weight of the dog(s).

(5) THE DOG MUST BE PROVIDED WITH A DRAFT FREE AREA THAT PROTECTS THE DOG(S) FROM INCLEMENT WEATHER AND IS LARGE ENOUGH TO HOLD ALL THE OCCUPANTS OF THE PRIMARY ENCLOSURE AT THE SAME TIME COMFORTABLY.

(E) ~~Coated wire~~ METAL STRAND ~~flooring shall~~ MUST be installed within ninety (90) days of the effective date of this regulation. Coated wire METAL STRAND flooring shall MUST be installed prior to the removal of a solid resting surface. If a solid resting surface is provided, such solid resting surface must be constructed of MATERIAL THAT IS impervious material TO WATER OR MOISTURE AND MUST BE KEPT IN A SANITARY CONDITION IN ACCORDANCE WITH SECTION 29 OF THIS CHAPTER (7 PA.CODE § 21.29). ~~A dog being housed in a primary enclosure with [wire] METAL STRAND flooring shall be provided with a draft free [solid resting surface that, in the aggregate,] area that PROTECTS THE DOG(S) FROM INCLEMENT WEATHER AND is large enough to hold all the occupants of the primary enclosure at the same time comfortably.~~

(e) (F) A dog may not be housed on a temporary or permanent basis in a drum or barrel dog house, regardless of the material of which the drum or barrel is constructed.

\* \* \*

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 21]

### Dog Shelters

The Department of Agriculture (Department), under the specific authority conferred by section 207(b) of the Dog Law (act) (3 P.S. § 459-207(b)), proposes to amend § 21.24 (relating to shelters). Section 101 of the act (3 P.S. § 459-101) states this is an act "... relating to dogs, regulating the keeping of dogs; providing for the licensing of ... kennels ..." and "... providing for the protection of dogs..." The Department has a duty to assure the proper and humane care of dogs kept in captivity. Section 207(b) of the act confers upon the Department the power to promulgate regulations regarding the maintenance of kennels. It states, "(A)ll kennels shall be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary."

#### Background

The current provisions in § 21.24, relating to shelters for dogs, became effective April 12, 1996. They require kennels that house dogs in a primary enclosure with wire flooring to provide a solid draft free resting surface to allow the dogs to rest comfortably. Section 21.24 was originally enacted to protect the health and safety of dogs, assure their humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels.

The Department vigorously enforced the regulations and all kennels with wire or mesh flooring were brought into compliance with the rest board requirements. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards. It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Concerns were voiced and written complaints were filed by licensed veterinarians, the Pennsylvania Pet Breeders Association and owners of pet store kennels. The complaints stated that illness and disease was occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement.

The proposed amendment will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the proposed amendment addresses the comfort, safety and humane treatment of the dogs by requiring that, "(A) dog may be sheltered in a primary enclosure having wire flooring provided the wire is coated with a vinyl type coating. The coated wire flooring must be kept in good repair and shall be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated wire shall be constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the wire floor does not bend or sag from

the weight of the dogs." The proposed amendment requires a kennel owner to install vinyl coated wire before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated wire flooring meeting the standards of these regulations and will be required to keep the rest boards sanitized. The ability to remove the rest boards and the added language concerning vinyl coated wire has been agreed to by a representative for pet store kennels, a representative of the Pennsylvania Legislative Animal Network, and representatives for the Pet Breeders Association and various dog clubs.

The proposed amendment is intended to update the Department's policy regarding the sheltering of dogs in kennels. The proposed amendment is consistent with the Department's duties under the act and brings the Department into closer compliance with Federal regulations regarding the sheltering of dogs in kennels.

In the interest of continuing to carry out the policy of the act, to assure the health, safety and humane treatment of dogs, the Department proposes to amend § 21.24 to effectuate the changes referred to previously.

#### Summary of Proposed Change

*Section 21.24(d).* This section will be changed by eliminating the language requiring that a "solid resting surface" be provided for dogs being housed in a primary enclosure having wire flooring. Language will be added to require that the wire flooring in primary enclosures must be "vinyl coated" and be "constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the wire floor does not bend or sag from the weight of the dogs." All other requirements, such as a draft free area and wire constructed in a manner which does not allow the dog's feet to pass through any opening in the floor, shall remain unchanged. Kennel owners will be required to install vinyl coated wire flooring before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated wire flooring meeting the standards of these regulations and will be required to keep the rest boards sanitized.

#### Fiscal Impact

##### Commonwealth

The proposed amendment will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The proposed change will not increase or decrease the regulatory workload. The Department already inspects kennels on a regular basis and the proposed change will not affect inspection schedules or the time required to inspect a kennel.

##### Political Subdivisions

The proposed amendment will impose no costs and have no fiscal impact upon political subdivisions.

##### Private Sector

The proposed amendment will impose minimal costs on private sector organizations and individuals. There will not be an increased cost to the regulated community. The regulated community will have an increase in costs initially, because it will be required to replace current wire flooring with a vinyl coated wire flooring. However,

the regulated community has requested the proposed change. The regulated community believes the change will decrease the health problems associated with the rest board requirement and thereby decrease veterinary and health care costs. In addition, the elimination of rest boards will decrease the sanitary expenses by reducing the man-hours required to clean the kennels.

*General Public*

The proposed amendment will impose no costs and have no fiscal impact on the general public. The general public should benefit through reduced costs to the industry.

*Paperwork Requirements*

The proposed amendment will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer kennel inspections. Only small changes will be required.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) on July 10, 2000, the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1 "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment it will notify the Department within 10 days after the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendment to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Department, the General Assembly and the Governor of objections raised.

*Public Comment Period*

The public comment period for this proposal shall be 30 days from the date of publication in the *Pennsylvania Bulletin*.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Richard Burd (717) 787-4833.

*Effective Date*

This proposed amendment would become effective upon publication in the *Pennsylvania Bulletin*.

SAMUEL F. HAYES, Jr.  
Secretary

**Fiscal Note:** 2-132; (1) General Fund; (2) Implementing Year 1999-00 is \$1,400; (3) 1st Succeeding Year 2000-01 is \$N/A; 2nd Succeeding Year 2001-02 is \$N/A; 3rd Succeeding Year 2002-03 is \$N/A; 4th Succeeding Year 2003-04 is \$N/A; 5th Succeeding Year 2004-05 is \$N/A; (4)

Fiscal Year 1998-99 \$N/A; Fiscal Year 1997-98 \$N/A; Fiscal Year 1996-97 \$N/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7, AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU  
CHAPTER 21. GENERAL PROVISIONS; KENNELS;  
LICENSURE; DOG-CAUSED DAMAGES

KENNELS—PRIMARY ENCLOSURES

§ 21.24. Shelters.

(d) A dog may be sheltered in a primary enclosure having wire flooring [if] provided the wire flooring is coated with a vinyl type coating. The coated wire flooring shall be kept in good repair, is] and shall be made of mesh [or slatted] construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated wire shall be constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of the dogs housed in the enclosure so that the wire floor does not bend or sag from the weight of the dogs. Coated wire flooring shall be installed by  
(Editor's Note: The blank refers to a date 90 days after the effective date of adoption of this proposal.) Coated wire flooring shall be installed prior to the removal of a solid resting surface. If a solid resting surface is provided, the solid resting surface shall be constructed of impervious material. A dog being housed in a primary enclosure with wire flooring shall be provided with a draft free [solid resting surface that, in the aggregate,] area that is large enough to hold all the occupants of the primary enclosure at the same time comfortably.

[Pa. B. Doc. No. 00-1241. Filed for public inspection July 21, 2000, 9:00 a.m.]

ENVIRONMENTAL  
QUALITY BOARD

[25 PA. CODE CH. 240]

Radon Certification; Continuing Education

The Environmental Quality Board (Board) proposes to amend § 240.306 (relating to continuing education program). The amendment is being proposed to modify the requirements for a continuing education program by certified persons performing radon-related work in this Commonwealth outlined in § 240.306 to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of June 20, 2000.

*A. Effective Date*

This proposed amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.



COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF AGRICULTURE**  
LEGAL OFFICE

January 31, 2001

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

**RE: FINAL-FORM REGULATION**  
**Department of Agriculture: Bureau of Dog Law Enforcement**  
**7 Pa. Code § 21.24(d)**  
**I.D. No. 2-132**  
**Proposed Rulemaking: 30 Pennsylvania Bulletin 3660 (July 22, 2000)**  
**Final-Form Regulation Approved by**  
**Office of General Counsel: January 19, 2001**

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to the appropriate Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date. In response to the requirement (at 71 P.S. § 745.5a(b) and 1 Pa. Code § 307.2(c)(7)) that this Department provide the names and addresses of commentators who requested additional information on the final-form regulation, the Department relates that no commentators have made this request. However, the Department has sent a copy of the final-form regulation to all commentators.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,

*David C. Kennedy*  
David C. Kennedy  
Assistant Counsel

Enclosures

2301 NORTH CAMERON STREET  
HARRISBURG, PA 17110-9408  
717-787-8744  
FAX 717-787-1270

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-132

SUBJECT: Shelter Regulations - Repealing Rest Board Requirement & Adding Vinyl Coated Wire Requirement

AGENCY: DEPARTMENT OF AGRICULTURE # 2130

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
 2001 JAN 31 PM 3:34  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1/31/01	<i>[Signature]</i> Representative Burd's office	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
1/31	<i>[Signature]</i> Senator Wang's office	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
1/31/01	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

January 19, 2001