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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 21, 2000

Honorable Samuel E. Hayes, Jr., Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #2-132 (IRRC #2130)  
Department of Agriculture  
Dog Shelters

Dear Secretary Hayes:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
cae

Enclosure

cc: Honorable Raymond Bunt, Jr., Majority Chairman, House Agriculture & Rural Affairs Committee  
Honorable Italo S. Cappabianca, Democratic Chairman, House Agriculture & Rural Affairs Committee  
Honorable Noah Wenger, Vice Chairman, Senate Agriculture & Rural Affairs Committee  
Honorable Patrick J. Stapleton, Minority Chairman, Senate Agriculture & Rural Affairs Committee  
Richard F. Hess  
Rick L. Burd

# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation No. 2-132

### Dog Shelters

September 21, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)), which has not been met. The Department of Agriculture must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by August 21, 2002, the regulation will be deemed withdrawn.

#### **1. Section 21.24. Shelters. - Reasonableness; Consistency with existing regulations, Clarity.**

##### *Minimum standards for wire flooring.*

There are six concerns related to the proposed requirements for wire flooring.

First, the proposed regulation requires the use of vinyl-coated wire flooring in primary enclosures if a kennel removes rest boards. Existing federal regulations at 9 CFR 3.6 already allow for the removal of rest boards. Subsection 3.6(a)(2) of the federal regulations requires that the flooring be “constructed of metal strands greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass” (emphasis added). Rather than write a different regulation that does not provide both options, the Department should consider incorporating the federal regulations by reference.

Second, four commentators recommended that the regulation include a minimum standard of greater than 1/8 of an inch in diameter for vinyl-coated metal strands. 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. The Department should determine whether there is a compelling reason that justifies exceeding the minimum standards of the federal regulations.

Third, Subsection 21.24(d) is a long paragraph with seven sentences. Four sentences contain requirements relating to metal strand flooring. These requirements include:

- The metal strand flooring must be coated with a vinyl-type coating.
- The vinyl-coated metal strand flooring must be kept in good repair.
- The vinyl-coated metal strand flooring 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 vinyl-coated metal strands 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.
- The vinyl-coated metal strand flooring must not bend or sag from the weight of the dogs.
- Enclosures with vinyl-coated metal strand flooring shall include a draft free area large enough to hold all dogs in the primary enclosure comfortably.

These requirements would be easier to understand if they were set forth clearly as a list in the proposed regulation. Chapter 7 of the *Pennsylvania Code & Bulletin Style Manual* contains guidelines for “enumerations” and the use of lists. If these requirements are retained in the final-form regulation, they should be enumerated in a list format.

Fourth, this subsection states that the metal strand flooring must provide a “rigid floor area” that “does not bend or sag.” Does any deviation from a straight line constitute a “sag” in a metal strand floor? Must the floor be completely rigid, or is a certain degree of variation or flex allowable? The Department should explain its intent.

Fifth, the requirement for a “draft free” area is unclear. It is our understanding that this provision does not apply to the entire primary enclosure. Only part of the enclosure area or an attached area accessible to the dogs must be draft free. The Department should clarify this requirement.

Sixth, the regulation should be consistent with the federal regulations and use the words “metal strands” instead of “wire.”

*Optional rest boards.*

The optional “rest board” requirement states: “the solid resting surface shall be constructed of impervious material.” This provision lacks sufficient detail in two ways. First, Subsection 21.24(d) should require that rest boards, if used, must be kept sanitized. As an alternative, the subsection could include or reference the sanitation requirements in Section 21.29.

Second, what types of material are considered to be “impervious”? The Department should amend the regulation to provide examples of impervious materials. It could also include or reference the definition of “impervious surface” in the federal regulations at 9 CFR 1.1.

*Mandatory rest boards.*

Four commentators recommended that the regulation continue to require a rest board to ensure adequate protection for small dogs, puppies and toy breeds. For these commentators, the rest boards are a guarantee of comfort and a safe place to walk or stand for small dogs. 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? 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? If not, should the regulation continue to require rest boards in the enclosures for these dogs?

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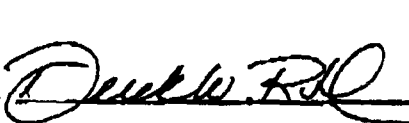
# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Derek Ruhl  
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**From:** Kristine M. Shomper  
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**Company:** Independent Regulatory Review  
Commission  
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**Date:** September 21, 2000  
**# of Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-132. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  Date: 9/21/00