



THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS®

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DOG LAW ENFORCEMENT

Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
Attn: Ms. Mary Bender
2301 North Cameron Street
Harrisburg, PA 17110-9408

February 5, 2007

RE: Comments on proposed Dog Law regulations

Dear Ms. Bender,

On behalf of the 79,690 ASPCA members who are residents of Pennsylvania, the ASPCA respectfully submits this comment on the proposed changes to the Dog Law regulations.

First, we would like to commend the Department of Agriculture and the Bureau of Dog Law Enforcement for proposing amendments to the Dog Law Regulations to improve conditions for dogs housed in commercial breeding operations in Pennsylvania and also remind the Department that the regulations must be at least as strict as the AWA regulations or they are void. It should also be noted that the proposed changes to the regulations do not bring hobby breeders under the Act. The same people who were exempt from the former regulations (i.e. hobby breeders who raise, breed, move, sell, etc. less than 26 dogs per year), will continue to be exempt under the revised regulations.

The ASPCA recommends that the following changes be made to the proposed regulations:

1. Subsection v of the dangerous dog provisions should be amended to only apply to attacks that are *unprovoked*. Furthermore, the word "unprovoked" should be defined in the regulations. A dog's actions should not be considered unprovoked if the person being attacked was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime. Nor should any dog be declared dangerous if it was responding to pain or injury, or was protecting itself, its kennels, or its offspring, or its owner.
2. § 21.4(1)(iii): This section should be amended to increase penalty for "failure of an individual to comply with licensure provisions" from \$25 to \$300 per violation to \$25 to \$300 *per day of violation*.

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3. § 21.4(1)(iii)(C): Regarding filing suit in Commonwealth Court to enjoin operation of unlicensed kennels, the following language should be added: "In cases where an unlicensed kennel is not in compliance with standards set forth in these regulations and is unable to qualify for a license, the Secretary *shall* file suit to enjoin operation." In addition to filing suit to enjoin the operation, since it make take some time before a case is adjudicated the Department should be authorized and mandated to issue a cease and desist order to the kennel in the interim.

4. § 21.4(1)(iv): Regarding the 10 year rule with respect to cruelty convictions, the language in the proposed regulations is incomplete. That section of the proposed regulations states that the Secretary *shall revoke* the license of anyone who is convicted (presumably while licensed), and the Secretary *shall not issue* a license to anyone who has been convicted within the past 10 years. However, there is nothing in the regulation that addresses the idea of retroactively revoking the license of a person who was convicted of a cruelty offense a number of years ago. If a person was convicted prior to being issued a license, the license never should have been issued to begin with, and as such, should be revoked. Therefore, there should be a provision in this section requiring that the Secretary revoke any license that was issued in spite of a prior cruelty conviction occurring within the past 10 years. Additionally, there is no indication in this section regarding how long the revocation or denial will stand. It should be clarified whether once the 10 year mark of the cruelty conviction has passed, a license will then be issued.

5. § 21.4(1)(v)(A): Regarding seizure of dogs, the language should be amended to allow for seizure not only when the dog's health, safety, or welfare is endangered, but also when the dog's health, safety, or welfare is in *imminent danger or threat of becoming endangered*.

6. § 21.4(1)(C)(aa): This section should be amended to state that the Department shall not take physical possession of a dog where there are no reasonable grounds to support the belief that the health, safety, or welfare of the dog is endangered, *or is in imminent danger or threat of becoming endangered*.

7. §21.4(1)(vi)(B): The provision deeming a dog abandoned if an owner fails to make "timely" payment of costs should be amended to include a specific amount of time. The word "timely" is too vague.

8. § 21.14: A new subsection should be added to § 21.14 detailing information that must be included in kennel license applications. As per 3 P.S. § 459-206, "The application forms and kennel licenses shall be as designated by the secretary." However, there is no section in the regulations where the kennel application form or the contents required to be included therein are set forth. A section should be added to address this. Any subsection added setting forth the form or requirements for licensure application should include the following:

- a. A provision requiring the applicant to certify, in writing, that he/she is in compliance with all local and zoning ordinances for the municipality in which the kennel is to be located.
- b. A provision requiring the applicant to certify in writing that he/she is in compliance with the Animal Welfare Act, and has obtained a current USDA license pursuant to that Act if applicable, and has never been convicted of or had a license revoked or suspended for violating the Animal Welfare Act. State laws governing commercial breeders must be at least as strict as the Animal Welfare Act. Therefore, if a person who is required to be licensed pursuant to the Animal Welfare Act is not in compliance with that law, it follows that he or she is necessarily out of compliance with the state law and no state license should be issued. Requiring applicants to certify that they are in compliance with and/or licensed under the Animal Welfare Act would help ensure that the facility is also in compliance with state law. It would also be useful to require the applicant to provide a copy of the most recent USDA inspection report and records for the facility. License renewal applications should also require that the most recent USDA inspection report be attached and that the USDA license number be provided.
- c. A provision requiring the applicant to certify that he/she is a legal citizen of the United States.
- d. A provision requiring the applicant to name the attending veterinarian for the facility.

9. § 21.14(a)(1) and § 21.14(a)(3): These sections should be amended to exempt class I and class II boarding kennels from certain engineering requirements. As they stand, the proposed regulations inadvertently require the activities of small board and train kennels that operate from their homes to meet strict and unreasonable engineering requirements. For example, if a person boards and trains 1 dog a week in his own home throughout the year, he will clearly board a cumulative total of more than 26 dogs throughout the calendar year. However, such a person should not be required to have a drain in the middle of his living room, rip up the carpeting in his home, etc. While we believe that such entities should still be subject to licensure and inspection as required by the Act, we recommend that Class I and Class II boarding kennels that operate out of their residential premises be exempt from the following requirements: § 21.21(b) – Interior building surfaces; § 21.21(c) – Gutters; § 21.23 – Space; § 21.21(b)(iii) – Segregation by size; § 21.24(b)(8) – Exercise areas to be constructed of concrete, gravel, or stone; § 21.24(b)(11) – Exercise area to be free of grass and weeds; § 21.24(f)(3) – Any surfaces in contact with animals must be impervious to moisture; § 21.24(f)(6) – Animal area must be free of furniture; § 21.24(f)(11) – Housing facilities must be equipped with drainage system; § 21.24(f)(18) – Kennel facilities must be cleaned and sanitized once every 24 hours; § 21.25(c) – Auxiliary temperature control; § 21.26(a) – Ventilation systems; § 21.27(a)(1) – Lighting requirements; § 21.29 – Sanitation of primary

enclosures; § 21.29(c)(1) – All building surfaces and outside surfaces must be sanitized once every 24 hours.

10. § 21.14(5): This section should be amended to require that kennels file all records with the Department, including health certificates for dogs imported into Pennsylvania and records detailing final disposition of dogs and information on where dogs were transferred.

11. § 21.14(a)(3)(ii), (iii), and (iv): These sections should be amended to clarify the requirements for temporary homes. A clear definition of “temporary home” is set forth in § 21.1. It is also clearly stated in § 21.14(a)(ii) that temporary homes are subject to inspection by the Department. However, the regulations do not specify whether temporary homes are subject to the licensure requirements or other standards set forth in the regulations. The ASPCA does not believe that temporary homes that house less than 26 dogs cumulatively throughout a calendar year should be subject to the licensure or engineering requirements set forth in the regulations. However, if they are subject to inspection, it is unclear what exactly a dog warden would be looking for upon inspection. There are no standards set forth for the dog wardens to enforce with respect to temporary homes. There are no penalty provisions giving the dog wardens the authority to cite owners of temporary homes or seize dogs when warranted. If the inspections are simply tools to verify the location of the dogs as recorded by the kennel owner, then the regulations should be amended to note this. The regulations should state clearly what a dog warden will be looking for upon inspection of a temporary home and to what requirements such temporary homes are subject.

12. § 21.21(e): This section should be amended to prohibit stacking primary enclosures on top of one another. Prohibiting stacking of cages would increase socialization with humans. Stacking cages creates an unnatural environment for the dogs. Additionally it makes observation of the dogs more difficult and creates sanitation problems as well. It is more difficult to observe the structural soundness and sanitary condition of cages located high above the ground. Additionally, even with a tray or partition between cages, it is likely that the partitions may overflow, causing feces, urine, food, water, and hair to fall onto the dogs located in the cages below.

13. § 21.22([d]): The provision requiring that adult dogs be segregated by sex except for health, welfare or breeding reasons should not be removed from the regulations. At the very least, this section must be at least as strict as the Animal Welfare Act, which requires that females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes. (9 C.F.R. § 3.7). However, state regulations are permitted to be more strict than the Animal Welfare Act. Requiring segregation of dogs by sex will help ensure the dogs’ well being, as well as ensuring that dogs are not bred haphazardly or unintentionally. This requirement should make an exception for puppies that are part of the same litter and they should be with the nursing mother until 6-8 weeks of age.

14. § 21.23(b): The ASPCA commends the Department of Agriculture and the Bureau of Dog Law Enforcement for doubling the required cage size. This is perhaps the most important change that can be made to improve the quality of life for dogs in commercial breeding facilities in PA. This provision should remain in the regulations regardless of opposition from breeders. Doubling the space in which a dog is spending its **entire existence** would give dogs adequate space for full range of movement and permit a bare minimum of exercise room. Such exercise contributes to the overall health and well being of an animal and reduces the stereotypical behavior often observed in dogs subjected to a lifetime of confinement. This section should be further strengthened by adding a provision stating that where more than one dog is housed in a primary enclosure, the primary enclosure must provide adequate space for all dogs. For instance, if the enclosure houses 2 dogs, it must provide double the cage space that would be required for a single dog. If it houses 3 dogs, it must provide 3 times the cage space, etc.

15. § 21.23(c): This section currently requires that dogs with nursing puppies be given an additional amount of floor space based on the mother's breed and behavioral characteristics and in accordance with generally accepted husbandry practices as determined by an attending vet. It provides that "if the additional amount of floor space for each nursing puppy is less than 5% of the minimum requirement for the bitch, the housing shall be approved by the attending veterinarian." However, this section should be amended to *require* that at least 5% of the minimum requirement for the bitch must be provided for each nursing pup in all circumstances. Good husbandry practices and responsible veterinary medicine dictate that no pup should be given less space under any circumstances. There should be no provision allowing for less space when approved by an attending vet, as a responsible veterinarian would not consent to less than 5% space for each pup.

16. § 21.23(e)(iii)(G): This section should be amended to read that nursing bitches and their puppies shall be exercised separately from other dogs. Currently, it reads "Nursing bitches *may* be exercised separately with their puppies." Puppies should not be exercised with full-grown dogs for their safety and well-being.

17. § 21.24(b.1)(4): This section should be amended to require that space be provided for *all dogs to lie in a full lateral recumbent position simultaneously*.

18. § 21.24(b.2): This section should be amended to require that a *separate* area for exercise be required. Currently, there is nothing to require that the housing area and exercise area need to be separate from one another.

19. § 21.24(b.10): This section should be amended to require that facilities be cleaned and sanitized *at least every 24 hours or as often as necessary to maintain a healthy environment for the dogs*, rather than simply requiring cleaning and sanitizing every 24 hours. In some cases, cleaning and sanitizing will need to be done more often than once every 24 hours in order to maintain a healthy environment. The regulations should reflect such.

20. § 21.24(c): The proposed regulations allow for the tethering of dogs at commercial breeding facilities. The section should be amended to require that when tethering a dog outdoors, a perimeter fence must be built to protect the dog(s) from wild animals and other dogs which may enter the premises. Additionally, a tether cannot be used as a substitute for exercise. It should be made clear in this section that the exercise requirements of § 21.23(e) apply to dogs that are tethered as well as those that are caged. Moreover, pursuant to the Animal Welfare Act, a tether cannot be used as a primary enclosure. Therefore, it should be specified that any dog box or shelter provided to a tethered dog is the primary enclosure and must meet the space and structural requirements for primary enclosures as set forth in the regulations. Additionally, it should be specified that choke collars and pinch collars may not be used with a tether.

21. § 21.24(d): This provision currently requires that mesh floor be constructed so as to not allow the dogs' feet to pass through any opening in the floor or otherwise cause injury to the dog. This section should be amended to be at least as strict as the Animal Welfare Act, which requires that metal strand flooring be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. (9. C.F.R. § 3.6.). The current language of the PA proposed regulations does not require that any specific gauge be used or that any coating be used on the wire. Therefore, it is less strict than the Animal Welfare Act and should be amended. Moreover, language should be added requiring that all primary enclosures that have wire mesh flooring also have a resting board of sufficient size to allow each dog in the enclosure to lie in a full lateral recumbent position and be able to make normal postural adjustments.

In his article "Comfortable Quarters for Dogs in Research Institutions," Robert Hubrecht of Universities Federation for Animal Welfare (UFAW), states:

The choice between solid or grid floors was considered at the Berlin Workshop (Gärtner et al., 1994). Open floored systems are sometimes preferred because they are cheaper to maintain and clean, but the majority of the experts recommended solid or at least only partly gridded floors and agreed that dogs prefer solid flooring. Whatever the flooring type, a safe, solid area of sufficient size for all dogs to comfortably and simultaneously lie down should be provided. When solid floors are used, a substrate such as sawdust helps to soak up urine and some of the moisture in feces. The sawdust is generally not used in sufficient quantities to provide bedding for the dog and is generally not required for this purpose. However, comfortable bedding is recommended, especially for puppies, sick animals and old animals (Figure 2; Loveridge, 1994; Eisele, 2001).

Resting boards are necessary to provide for the comfort of the dog to allow the animal to have some time away from living on grated fencing. A solid resting surface that is impervious to moisture is also a more natural environment for the animal and provides a draft free surface and enables the dog to retain its body heat. A dog feels most vulnerable

when lying down and forcing a dog to lie over an exposed area can contribute to anxiety. There have been several documented injuries to dogs from being attacked through the bottom of wire cages by other dogs. It is also important to remember that humane standards and survival standards are separate and creating an environment that merely allows for survival does not necessarily make such an environment humane.

22. § 21.24(f)(4): This section should be amended to require not only that housing facilities be constructed in a manner that minimizes vermin, insects, and pest infestation, but also that they be *maintained* in such a manner. Housing facilities should not be permitted to deteriorate to the point at which infestation becomes a problem.

23. § 21.24(f)(11)(i): This section should be amended to require that a gutter and drain be required for sluicing waste water *efficiently and quickly* during kennel cleaning. Water should not be permitted to stand or accumulate while cleaning indoor kennels in order to prevent bacteria growth and infestation. The Department should be commended for the proposed drainage requirements. Pursuant to the Animal Welfare Act, “[h]ousing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry.” The Proposed Pennsylvania regulation on this matter will ensure that the PA regulations are at least as strict as the Animal Welfare Act, as required.

24. § 21.24(f)(11)(iii): This section should be amended to state that indoor and outdoor runs be separated to allow for isolation *and safety* of the dogs during cleaning. Any device used to isolate the dog must also account for the dog’s safety during cleaning.

25. § 21.24(f)(18): This section should be amended to require that facilities be cleaned and sanitized *at least every 24 hours or as often as necessary to maintain a healthy environment for the dogs*, rather than simply requiring cleaning and sanitizing every 24 hours. In some cases, cleaning and sanitizing will need to be done more often than once every 24 hours in order to maintain a healthy environment. The regulations should reflect such

26. § 21.24: A new subsection should be added to § 21.24 requiring licensees to certify in writing that they are in compliance with all local and state building and fire codes. Additionally, smoke detectors and carbon monoxide detectors must be installed in housing facilities, and fire extinguishers containing substances nontoxic to animals must be readily accessible. Sprinkler systems must be installed according to local building codes.

27. § 21.25(d) and (e): This section addresses temperature control. The proposed regulations require that indoor kennels have a heating source that assures “a slab temperature of not less than 35 degrees Fahrenheit and not more than 55 degrees Fahrenheit during heating season.” To begin with, those temperatures are extremely low. In order for slab temperature to reach 35 degrees, presumably, the ambient temperature would have to be considerably lower. Moreover, this requirement is not as strict as the Animal Welfare Act and as such, would not be valid. The AWA requires that *ambient*

temperature in indoor and sheltered facilities not fall below 45 degrees Fahrenheit for more than 4 consecutive hours when dogs are present. The PA proposed regulations fall dreadfully short of this standard. The only mention of *ambient* (as opposed to slab) temperature applies to dogs that are not acclimated to lower temperatures, breeds that cannot tolerate lower temperatures without stress and discomfort, and sick, aged, young, or infirmed dogs. In order to be at least as strict as the AWA, the PA regulations need to include a bottom ambient temperature threshold of 45 degrees for *all dogs* in indoor and sheltered housing facilities. Additionally, the proposed regulations do not include the ASPCA's recommendation to the Governor's task force that a bottom threshold temperature be set for outdoor facilities, at which point dogs cannot be housed outdoors. The bottom threshold temperature for outdoor facilities should be the same as the bottom threshold temperature for indoor and sheltered facilities, i.e. 45 degrees. Lastly, attention should be drawn to the use of the word "acclimated." There is no explanation within the regulations as to how a dog becomes acclimated to extreme temperatures, or how a dog warden would be able to assess whether or not a dog is, in fact, acclimated, e.g. the dog is shivering or huddling in a corner. Providing a bottom threshold temperature at which point dogs cannot be housed outdoors, in addition to the requirements regarding non-acclimated, sick, infirmed, aged, and young dogs, and breeds that cannot tolerate low temperatures, would ensure that all dogs housed in PA commercial breeding establishments be provided with shelter appropriate to their breed and physical condition and the climate.

28. § 21.26(a)(1) and § 21.26(a)(2): These sections should be amended to increase the required amount of air flow exchange in indoor and sheltered facilities. According to a licensed engineer consulted by the ASPCA, typically, 12-15 air changes per hour are used in a kennel environment where dogs are present. The current regulations would result in only about half the recommended air changes. Furthermore, stratification of the air is important. If air is supplied and returned only through the ceiling, it is harder to assure good air flow at the bottom third of the room where the animals are typically housed. As a result, owners should be required to supply high and return low where possible, but if not at least to spread out the registers to get a good mix within the room along with the air change. Lastly, the ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) has the standard on ventilation in their guidelines, ASHRAE 62.1-2004. In general, these guidelines address only human occupied areas and do not give criteria for animal spaces. These criteria do state a minimum of 10 air changes per hour for a toilet room, which is a fairly accurate assessment of the air-change issue. 1.6 to 2 cfm/sf should be a minimum for kennel air change.

29. § 21.29(a): This section should be amended to state that all areas of the kennel shall be cleaned daily or as often as *necessary* to assure that they are free of any accumulation of debris, excreta, or disease hazard. Currently, the regulation states that they should be cleaned as often as *possible*. The word "necessary" imposes a more appropriate standard for the cleaning of kennels to assure that they are free of any accumulation of debris, excreta, or disease hazard.

30. § 21.30: The department of Agriculture should be commended for including a provision which requires the dog wardens to visually observe the physical condition of each dog. However, the provisions regarding orders of veterinary care should be strengthened. The current proposed regulations state that "if a dog exhibits signs of an infectious or contagious disease, parasites, or appears to be in poor health," the kennel owner must provide the warden with proof of adequate veterinary care. This section should be amended to state that the owner must provide "proof of *current and proper* veterinary care for the dog." This provision should also be amended to include excessive matting and excessively long toenails. Inadequate grooming can lead to painful medical issues for dogs, including skin lesions from excessive matting and leg and joint injuries from failure to keep toenails appropriately trimmed. As such, the dog wardens should be required to look for failure to adequately groom dogs in addition to looking for diseases, parasites, and poor health. Moreover, the section should be amended to *require* dog wardens to order a veterinary check on dogs that exhibit signs of an infections or contagious disease or parasite or appear to be in poor health. Under the current language, the issuance of a veterinary check order lies within the discretion of the dog warden. If a kennel owner does not provide proof of current and proper veterinary care, and a dog appears to be suffering from a disease, infected by parasites, or in poor health, there should be no discretion permitted. A veterinary check should be required. Lastly, a subsection should be added to this section requiring dog wardens to file veterinary check orders with the department along with inspection reports. This would ensure that there is documentation in cases where repeated veterinary checks are ordered to a single facility or regarding a single dog.

Additionally, the following language should be added to the end of § 21.30:

"In addition to the provisions of this section, the Bureau shall have the authority to require a veterinary examination of the subject dog(s) by a licensed veterinarian employed by the state, a licensed veterinarian who is a member of the Pennsylvania Veterinary Medical Association, or any other licensed veterinarian who participates in a program established by the Department to assist dog wardens in the satisfactory execution of their duties. A licensed veterinarian shall accompany the dog warden on subsequent inspections to examine the subject dog(s) to determine whether further medical treatment is necessary. The Department shall order licensed veterinarians described in this section to accompany dog wardens in their inspections of those kennels that have a history of violations affecting the health of dogs. Moreover, if a veterinarian referred to in this section finds that there is a substantial risk to the health and welfare of an animal, including, but not limited to disease or pain, the veterinarian may humanely euthanize the animal at the expense of the breeder."

- a. In addition to the above changes, a new subsection should be added to § 21.30 clarifying the required training for dog wardens, as was suggested by the ASPCA during meetings of the Governor's Ad Hoc Committee on Dog Law. Training in the following areas should be added into the regulations to expand upon the requirements set forth in 3 P.S. § 459-901:
 1. State laws relating to dog licensing, control and owner responsibilities;

2. State and federal laws relating to animal care, cruelty and neglect;
 3. State laws relating to dangerous dogs;
 4. State and federal law relating to lack of arrest powers, proper use of search, seizure and warrants;
 5. State and federal laws relating to pounds and shelters;
 6. Basics of cruelty and neglect investigations for referral to appropriate authorities;
 7. Report-writing and record-keeping;
 8. Overview of the legal system, court structure and terminology;
 9. Basics of interpreting animal behavior;
 10. Identification of injury, disease, abuse and neglect in dogs;
 11. Animal hoarders; and
 12. Civil liability issues.
- b. A new subsection should also be added requiring that an effective written program of veterinary care be established and maintained for disease control and prevention, humane euthanasia, and animal care.

31. § 21.41(a): This section should require that all records kept on dogs within a kennel or being transported in a primary conveyance not only be kept at the kennel, but also filed with the Department. Having permanent access to these records will allow the Department to ensure that kennels are in compliance with both the record keeping requirements and the standards documented within such records. Additionally, the words "or, when applicable" should be removed from this section. Records should *always* accompany dogs being transported.

32. § 21.41(e): This section should be amended to require that kennel owners make records available to the Department and state dog wardens upon request. The record keeping requirement is useless if dog wardens cannot view the records upon request.

33. A new section should be added to the regulations mandating that the Department and dog wardens coordinate and work with law enforcement when applicable. State dog wardens are not authorized to enforce the state cruelty laws. As was suggested by the ASPCA during meetings of the Governor's Ad Hoc Committee on Dog Law, when a dog warden inspects a facility and notices violations of the cruelty law, that warden should be required to contact the Humane Society police officer for the county in which the violation has occurred. 3 P.S. § 459-901 dictates that the Secretary of the Department is charged with enforcing the dog law through State dog wardens, employees of the Department, *and police officers*. As per 22 Pa. C.S. § 501, Humane Society police officers or officers appointed by an organization for the prevention of cruelty to animals shall possess and exercise all the powers of police officers in the Commonwealth. As such, the Secretary is mandated to work with such officers to further his enforcement of

the Dog Law. Furthermore, 3 P.S. § 459-401 states that police officers may not fail or refuse to perform their duties or refuse to assist in enforcement of the Dog Law upon the request of the Secretary. In order to clarify these provisions of law, a section should be added to the regulations mandating that the Secretary and dog wardens communicate with law enforcement officers where appropriate and/or necessary to enforce either the dog law or the State cruelty laws.

34. A new section should be added to the regulations requiring that a licensee must have enough employees to carry out the level of husbandry practices and care required by the Act and its regulations. Additionally, the employees who provide for care and husbandry or handle animals must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs to supervise others. The licensee must be certain that the supervisor and other employees can perform to such standards. Adding this language into the Dog Law regulations will help bring the regulations up to the standards set forth in the Animal Welfare Act and its regulations. Requirements regarding the number and qualifications of employees is set forth in the Animal Welfare Act regulations at 9 C.F.R. § 3.12.

Furthermore, in response to arguments that have been set forth by various breeders and breeder associations, the ASPCA offers the following:

1. "There is no scientific or accepted husbandry basis for the amended space and exercise requirements."

The Department should be commended for adopting larger cage space requirements *in addition to* an exercise requirement for dogs in PA's commercial kennels. According to an article published in the Journal of Applied Animal Welfare Science (JAAWS), "Dogs raised in cell-like conditions can develop abnormal behaviors of extreme fear, kennel shyness, and atypical aggression, or become involved in acute stereotypies. Stereotypies such as route tracing, self-injurious behaviors, or coprophagy and hypertrophied behaviors such as barking are indicators of psychologically deprived animals." (See Coppinger, Raymond and Jule Zuccotti, Kennel Enrichment: Exercise and Socialization of Dogs, JAAWS, 2(4), 281-296, 1999.). Coppinger and Zuccotti go on to state that "[a]t the very least, obnoxious behaviors increase the expense of management, compromise good health, make the dogs unsuitable for nonkennel life, and create difficult working conditions for caretakers." As a result, it is in the best interest of the dogs, the kennel owners/caretakers, and the humane community to reduce the frequency and/or severity of stereotypic behaviors in kennel dogs by increasing the amount of space and exercise that they are given. Additionally, "[c]ramped enclosures are associated with a higher prevalence of circling and other stereotypies than relatively large enclosures... This indicates that too small living areas affect the dogs' behavioral health and hence their general well-being." (See Hubrecht, Robert, Comfortable Quarters for Dogs in Research Institutions, Universities Federation for Animal Welfare.). Hubrecht also states that "[s]mall enclosures not only discourage exercise because there is no

possibility of traveling to another location, but they also restrict the type of locomotion that is possible and the ability of the dog to control his or her social interactions.” The Coppinger/Zuccotti article states further that exercise affects conformation. “A major part of atypical development may be related to movement or lack thereof. There is ample embryological evidence that organ systems cannot grow normally if they do not function normally. Legs not only can run but must run in order to grow.” Requiring that dogs be exercised daily will help prevent muscle atrophy common in dogs kept in close confinement for long periods of time. The vast majority of dogs in PA’s commercial kennels live out their entire existence in extremely small cages. Requiring kennel owners to increase the cage size and exercise dogs daily will dramatically improve the quality of life and physical and psychological well-being of these dogs and their offspring. This also adds to the sociability/friendliness of the puppies that are eventually sold in pet stores. Increasing the cage size could potentially decrease the number of dogs returned to pet stores or relinquished to shelters due to aggression or biting, and ultimately help decrease dangerous dogs in our communities and reduce the euthanasia rate of behaviorally unadoptable dogs.

The State is required to promulgate standards that are *at least as stringent* as the Animal Welfare Act standards. However, there is absolutely nothing preventing the state from promulgating *more stringent* standards. USDA has repeatedly asserted that their regulations and standards are *minimum* requirements and could be built upon by the states. USDA standards are by no means the “gold” standard and it was not the intent of the Dog Law to simply bring Pennsylvania up to USDA standards. In fact, The Dog Law was originally enacted in 1982 because of the failure and inadequacies of the federal Animal Welfare Act in addressing the problems associated with commercial kennels. To now argue that Pennsylvania need not adopt stricter standards than the federal Animal Welfare Act is to argue against the intent of the Dog Law. Moreover, the USDA regulations should not be used to restrict better state regulations. That was never the intent of the federal Animal Welfare Act. The opposition may argue that the current cage size is sufficient because USDA utilizes a performance based policy, where the inspectors observe for stereotypical behaviors associated with a caged dog, and the general condition of the dog, such as, toenail length, matted hair, and weight and muscle tone. The logic of this argument, however, does not apply in Pennsylvania, as dog wardens in Pennsylvania do not perform this type of examination. Even if such examinations were performed by dog wardens, under the current regulations, a dog found exhibiting stereotypical abnormal behavior, such as endlessly turning in circles, could still legally be kept in a cage barely larger than the dog. The proposed, improved standards do not even represent the type of housing/environment under which dogs are raised by responsible hobby breeders, who generally raise dogs in a home environment and do not keep dogs confined to cages 24 hours a day. It should be emphasized that the cage is the space in which dogs in commercial kennels spend their **entire existence**. The new regulations simply provide the dogs with enough space for full range of

movement and a minimum amount of exercise to enhance the quality of life and physical and psychological well-being of the dogs.

2. "The regulations require wholesale renovation, if not rebuilding of many kennels already built in compliance with current federal and/or state standards. There is no scientific foundation for the arbitrary, rigid engineering standards specified."

The proposed regulations are more akin to acceptable husbandry standards. The proposed regulations would bring the engineering standards up to par with, if not above, the Animal Welfare Act, which sets *minimum* standards. It should be emphasized that contrary to the hobby breeders' contention, the new regulations will not bring hobby breeders under the purview of the Dog Law. Only kennels that keep, harbor, board, shelter, sell, give away, or transfer *a cumulative total of 26 or more dogs* in one calendar year will be required to comply with the new regulations. As a result, true hobby breeders are still exempt from the law. Good husbandry practices dictate that anyone harboring a larger number of dogs (26 or more) should comply with certain engineering standards to ensure the health, safety, and well-being of the dogs. The Department has already established this number as the regulatory cut off. Smaller breeders and dog owners who maintain 26 or fewer dogs throughout the year in their own homes would not be covered by the Dog Law or its regulations. The Dog Law and its regulations are aimed at regulating larger and commercial breeding facilities. Therefore, the new regulations will not affect hobby breeders, contrary to what the breeding community suggests.

3. "The record keeping requirements with respect to exercise, cleaning, and other aspects of kennel management are excessively burdensome and serve no useful purpose, as it would be impossible to verify their accuracy in all but the most egregious circumstances."

The record keeping requirement changes in the proposed regulations support the importance of record keeping as set forth in the Animal Welfare Act. Requiring kennel operators to keep detailed records on the care of dogs housed within the facilities will greatly assist dog wardens in performing their duties. It is often difficult for dog wardens to determine if dogs are being cared for as required by the Dog Law and its regulations. Presumably, the kennel community is an honest and law abiding group that will keep accurate and true records in order to better assist the dog wardens in effectively and efficiently inspecting commercial kennels. Furthermore, the "most egregious" circumstances are precisely the ones that these regulations are targeting. If enhanced record keeping requirements will allow dog wardens to cite egregious violators for failure to comply with the standards set forth in the regulations, then the record keeping requirements will have served their purpose. Failure to comply with the standards in and of itself is a violation of the regulations. However, the benefits of requiring that an accurate record be kept documenting compliance with the regulations by far outweigh the burden on the regulated community of keeping such records.

4. The definition of "temporary housing" would require thousands of small residential hobby and show breeding households to become licensed which could not possibly comply with the regulations, and which there is no reason to regulate."

Pursuant to the proposed regulations, temporary homes are *only* required to obtain a kennel license and meet kennel licensure requirements of the Dog Law and its regulations if it keeps, harbors, boards, shelters, sells, gives away, or transfers a cumulative total of 26 or more dogs in one calendar year. Temporary homes that harbor fewer than 26 dogs are included in the definition of "temporary home" but are not covered by the licensure requirement or standards set forth in the regulations.

The ASPCA strongly supports the Pennsylvania Department of Agriculture and Bureau of Dog Law Enforcement's efforts in proposing amendments to the Dog Law Regulations to improve conditions for dogs housed in commercial breeding operations in Pennsylvania. The above comments are respectfully submitted in an attempt to ensure that the final regulations adequately provide for the well-being of dogs housed in Pennsylvania's commercial breeding facilities. Thank you for your time and consideration.

Sincerely,



Cori A. Menkin, Esq
ASPCA
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Senior Director
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CC: Jessie Smith, Jeffery Paladino