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INDEPENDENT REGULATORY
REVIEW COMMISSION

COMMENTS ON PROPOSED RULEMAKING

By the Pennsylvania Professional Pet Breeders Association

on proposed changes to Dog Law Enforcement by the

PENNSYLVANIA DEPARTMENT OF AGRICULTURE

7 Pa Code Chapters 21, 23, 25 and 27

Regulation No. 2-152

General Comments

There are several broad comments regarding the overall impact that the proposed regulations would have on dog breeding operations in Pennsylvania. Before analyzing the specific regulatory sections that the Department has proposed, the process of determining how to adequately address the issue of the inhumane treatment of dogs must start with an understanding of the problem.

For far too long, government has engaged in a "solution looking for a problem" public policy making position. Emotionally charged issues are given an emotional response, and unintended negative consequences emerge. It appears that this is precisely the issue in this instance, when an independent and fair review of the proposed regulations is undertaken.

Indeed, commercial and other kennel owners have been operating for many years in the Commonwealth. Like any industry, not all breeders follow the law – although they should. As such, celebrated cases arise and the public rightfully calls for change.

However, public policy issues should be addressed reasonably, rationally, and logically. There is no dispute that dogs should be treated humanely; indeed, all reputable breeders believe that the care and attention to their dogs is of the utmost importance. However, when cases of abuse arise, breeders who deeply care for their animals are unfairly targeted.

It is the Department's duty to enforce the Dog Law, and it appears that the current approach used by the Department is flawed. The result of this is Proposed Regulation No. 2-152, under which the Department seeks to further regulate dog kennels and to criminalize certain aspects of breeding as well as implement punitive measures to ensure compliance. Perhaps the Department should have sought a more appropriate method of enforcement, such as the one used by the United States Department of Agriculture (USDA). The USDA has a long and successful history of gaining compliance with breeders by working closely with them in an effort to solve problems. Where breeders refuse to address concerns, then appropriate action is taken by the agency. Sadly, the Pennsylvania Department of Agriculture's proposed regulations clearly indicate a difference approach.

Regardless of outcome, inadequate enforcement of the current regulations *will not be solved* by additional regulations. Unfortunately, the addition of severely regressive regulations will only impact those individuals who are already meeting USDA and Departmental standards.

The Department's proposed regulations impact upon every segment of breeders in Pennsylvania – from hobby dog breeders to larger breeding operations, and the result on every level would be largely negative. While the association represents a more defined class of dog breeder, it recognizes the detrimental impact that many of the provisions of these regulations would have on the dog breeding community at large.

Specific Comments

Section 21.1. *Definitions.*

This section adds new definitions to define "establishment" and "temporary home." Although the Department indicates that these definitions have been added to "provide clarification," clearly these definitions violate the defined terms that are found in Act 225 (P.L.784) of 1982, otherwise more commonly cited as the Dog Law.

For example, the General Assembly took great care to ensure that the following enumerated terms are defined: Boarding Kennel, Breeding Kennel, Dealer Kennel, Kennel, Non-profit Kennel, Pet-Shop Kennel, Private Kennel, and Research Kennel. In eight (8) separate instances, the Assembly chose to define very specific kennel terms.

In this regulation, the Department seeks to create its own defined terms, which are not considered nor authorized by the Dog Law. As such, the proposed definitions go beyond the existing law and therefore the Department should seek changes in statute instead of trying to add "statutory" definitions in regulation. The practical effect of the Department's current efforts is to create a new class of kennel, which is clearly prohibited under existing law.

Section 21.14. *Kennel licensure provisions.*

In subsection (b), relating to prohibitions on dealing with unlicensed kennels, the proposed regulations set forth that:

> **It shall be a violation of the act and this chapter for any kennel to keep, harbor, board, shelter, sell, give away or in any way accept, deal or transfer any dog from a kennel or establishment operating without a license in violation of sections 206, 207 or 209 of the act (3 P. S. §§ 459-206, 459-207 and 459-209), without the express written permission of the Department. In addition, it shall be a violation of the act and this chapter for any kennel to keep, harbor, board, shelter, sell, give away or in any way accept, deal or transfer any dog from a kennel that has had its license suspended or revoked, without the express written permission of the Department.**

Such a requirement raises several issues. First, what documentation is considered acceptable to determine whether dogs were kept, harbored, sheltered, sold, given away or accepted, dealt or transferred in a lawful manner? Are breeders now required to enforce the Commonwealth's Dog Law? What credentials should be asked for when transactions occur? Is this is a strict liability offense? The Secretary of the Department of Agriculture is charged under the Dog Law to enforce its provisions, however now all breeders are essentially given this responsibility.

In subsection (c), relating to health certificate requirements, the proposed regulations set forth that a dog entering Pennsylvania from another state, commonwealth or country shall have a health certificate stating that the following conditions have been met: (1) the dog is at least 7 weeks of age; (2) the dog shows no signs or symptoms of infectious or communicable disease; (3) the dog did not originate within an area under quarantine for rabies; (4) after reasonable investigation, the dog has not been exposed to rabies within 100 days of transportation; and (5) the dog has been vaccinated for rabies in accordance with the Rabies Prevention and Control in Domestic Animals and Wildlife Act (3 P.S. 455.1 - 455.12). Further, the health certificate must show the rabies vaccine and rabies tag number.

While the health certificate provisions may have merit, the additional mandated paperwork and recordkeeping requirements are cumbersome and do not necessarily conform to general veterinary practice standards. For example, while dogs can begin receiving rabies vaccinations at 7 weeks of age, it is common practice and a generally accepted standard by veterinarians and vaccine manufacturers that dogs should *not start* vaccinations for rabies until they are at a minimum 3 months of age. Indeed, Pennsylvania law sets forth the three month standard by already requiring that a dog does not need a rabies shot until it is 12 weeks of age.

Another consideration relative to the health certificate provisions is how such requirements would work within industry standards, which exist throughout the United States. The vast majority of states do not make such specific requirements, save for the general requirement that a health certificate be issued stating that the dog shows no signs or symptoms of infectious or communicable disease and that the dog appears to be healthy. The additional requirements of more health information could disrupt interstate commerce and the current marketplace without, necessarily, ensuring healthier dogs.

Section 21.15. *Exemptions.*

This section sets forth exemptions from certain provisions of the regulations. Specifically, dog control facilities authorized to receive grants under section 1002(a) of 3 P.S. 459-1002(a) are exempt from the housing requirements under section 21.22(d) and (e), which require quarantine and separation of puppies and adult dogs, in addition to the minimum space requirements under section 21.23(b).

It stands to reason, logically, that if new housing, quarantine, separation of puppies and adult dogs, and minimum space requirements are necessary to effectuate the best possible and most humane condition for dogs, then the same requirements should exist even for temporary quarters. If a dog were to be seized from a facility that violated the provisions of sections 21.22(d) and (e)

and/or section 21.23(b) for improper housing or space size, why should it be placed in a facility that does not meet the new standards?

If the proposed regulations are intended to set forth minimum standards for living conditions for dogs, then those standards should apply uniformly. Either the standards are necessary or they are not.

Section 21.21. *Dog quarters.*

Subsection (d) provides that:

> **Entryways and exits shall be maintained so that, when the gate or enclosure is opened, the dog will have unfettered clearance out of the enclosure.**

This requirement fails to recognize that nearly all commercially produced exits, including those for use in homes, are built to ensure that the entryway and exit is as tall as the dog's shoulder. Further, moveable "doggie doors" or flaps are utilized in many kennels to ensure that climates in the interior areas of kennels are kept at appropriate and safe levels.

Subsection (e) states that:

> **Where the primary enclosures are stacked or set side by side, a tray, wall, partition or other device approved by the Department which does not allow for feces or urine to pass between primary enclosures or soil the primary enclosure of another dog, shall be placed under or between, or both, the primary enclosures. The tray, wall, partition or approved device must be impermeable to water, removable and able to be easily accessed.**

There is concern that these requirements would negatively impact upon air flow through the kennel by restricting cross ventilation.

Further, the provisions of this regulation would essentially create a new, unworkable requirement. Current practice allows for the use of chain link fencing and pens. This is an industry standard, used heavily by private homeowners and operators of kennels of all sizes. If implemented, the proposed regulation would require significant infrastructure modifications and, perhaps, the development of an entirely new way of housing for dogs that is not yet commercially available.

Section 21.22. *Housing.*

The proposed changes to subsections (a) and (c) are good changes and should be incorporated in the final regulations.

The proposed regulations under subsection (c) seek to eliminate the authority of an attending veterinarian to approve the placement of certain dogs outside. What is the rationale for this

change? Has veterinary medicine provided additional information that now deems this practice unsafe? There appears to be no scientific, rational or reasonable explanation for this change.

Subsection (d) provides that:

> **Puppies not born in the receiving kennel facility or establishment, that are brought into a kennel from another kennel facility or acquired from another person shall be quarantined from other dogs and puppies in the receiving kennel facility for a minimum of 14 days or for the time period necessary to allow for treatment of any disease, prevent the spread of parasites or new strains of bacteria or viruses and to allow the puppies to acclimate to the new kennel environment, which ever is longer. Each group of puppies arriving from another kennel facility, person or establishment shall be quarantined together and kept separate from other groups of puppies arriving at the receiving kennel facility or establishment from a different kennel facility, person or establishment and shall be kept separate from the current kennel population of the receiving kennel facility or establishment.**

The United State Department of Agriculture (USDA), the Federal agency that also regulates animal welfare, only requires a 3 day quarantine. The proposed regulation sets forth a 14 day quarantine time period, which is unreasonable and irrational. If a facility were to comply with the 14 day time period, it would mean that the dog would be an additional 2 weeks older and therefore less desirable and somewhat less likely to be purchased. If the Department has concerns about dogs being confined to kennels, the sooner dogs are offered for purchase, the more quickly they will get a new home; exceeding the USDA guidelines by 11 days would not promote better animal health.

Section 21.23. *Space.*

This section sets forth new space requirements for dog kennels. It requires that dogs must be able to lie in a lateral recumbence with legs fully extended, without head, tail, legs, back or feet touching any side of the enclosure. It also details the calculation of the minimum amount of floor space by formula based on a variety of factors.

It would appear that the doubling of enclosure sizes is arbitrary and capricious, and in fact, runs afoul of the Department's own declaration of intent in proposing the regulations, which was, in part, to "...address the health and welfare of dogs housed in kennels and **which makes the Department's regulations more consistent with Federal regulations set forth under the Animal Welfare Act (7 U.S.C.A. 2131-2159).**" (*emphasis added*)

If the Department was seeking to make the Dog Law regulations more consistent with the Federal regulations governing kennel sizes, why not simply follow the Federal standards? The proposed regulations to double enclosure size far exceed the Federal requirements. In fact, according to a study published in *Laboratory Animal Science* (Volume 39, No. 4, July 1989), entitled "The Effects of Cage Sizes and Pair Housing on Exercise of Beagle Dogs," there is a

diminutive - if not a negative – impact on dogs with larger kennels. In brief, the study noted that:

- No cause/effect relationship between health and a formal exercise program or cage size could be found in previous studies.
- *Human contact* – **not cage size** – is the single most consistent and important factor in encouraging dogs to be active.
- On the average, only 5.8 to 14.6% of any day for a dog is spent in any type of movement. *Even with people in the room*, a dog will only spend 10 or 15 minutes of the hour in activity.
- A single housed dog in a regulation size cage travels only 600 m/day. Doubling the area of the cage did not increase the distance traveled, but reduced it significantly.
- Other studies have shown that dogs in a large cage did spend more time lying down so that, in fact, the higher level of activity in standard cages may not be reflective of active exercise, but rather small movements.
- When dogs were housed in larger cages, they spent more time moving, but they do not travel as far.
- Dogs that are well fed and content do not exercise routinely.
- **Artificial mechanisms such as doubling cage size do not increase exercise.**
- Increasing cage size decreases the time and distance a dog moves.
- When programs for exercise are established by the USDA and attending veterinarians, emphasis needs to be placed on human-animal interaction.

Unfortunately, studies such as this were clearly not considered when this regulation was promulgated. If the Department wishes to make changes, it should follow the USDA regulations relating to space size.

Compliance is another issue that must be considered. The new space size requirements will impact upon multiple license holders and, in fact, would severely impact upon a license holder to house their current complement of dogs. The proposed regulation would halve the number of dogs in many facilities and would require significant infrastructure changes to accommodate an unreasonable, irrational and unnecessary change.

Another provision of section 21.23 requires that:

> **In addition to the space requirements, each dog shall receive 20 minutes of exercise per day.**

In order to satisfy this requirement, the Department sets forth in the proposed regulations a series of requirements, including what size dogs may be exercised together, how a dog must be exercised, the proper repair of fencing, and the fact that an exercise area, "...must be equipped in a manner to allow dogs to be exercised even during inclement weather and to protect the dogs from becoming wet, matted or muddy during the exercise."

To begin, one must consider the conclusions drawn by a scientific study that examined exercise behaviors relative to living conditions. To baselessly set forth a 20 minute exercise regimen serves no logical, useful, or otherwise necessary purpose. An examination of Federal regulations (section 3.8-6) clearly demonstrates that exercise can be achieved through more reasonable means. The Federal regulations also indicate the importance of socialization. For example, Federal regulations recognize "pairing" of dogs to accommodate exercise and socialization needs. Was this considered by the Department in developing the proposed regulations?

Any change in size and exercise requirements should be examined closely and conclusions should be drawn from animal science rather than other factors. The segregation of dogs by size has no merit, is nonsensical and is devoid of any reasonable explanation. Many kennels (such as popular "doggie daycares") promote the socialization and exercise of different sized dogs under controlled conditions. There simply is no apparent violation of animal humane standards by allowing small dogs (35 pounds and less) to exercise with medium or large sized dogs. It appears that the Department seeks to criminalize the practice of allowing a 35 pound dog to exercise with a 36 pound dog. This is absurd in notion and extreme in practice.

Finally, the question recurs as to why 20 minutes was chosen, how any facility could provide for exercise facilities to be used during inclement weather, and whether, in fact, these requirements are either (1) useful to dogs or (2) able to be implemented at all. Based on a preliminary analysis, if a kennel were to have 24 dogs, it would take 8 hours each day every day of the year, in addition to the time to take the dog out of its kennel and put it back in and the time to record in writing all the required records of exercise in order to meet this *one* new requirement that far exceeds the Federal regulations.

Section 21.24. *Shelter, housing facilities and primary enclosures.*

In reviewing this section, it is believed that beyond the general rules that should be applicable to all facilities, that a kennel's licensed veterinarian should determine what is needed in the facility in order to ensure that dog breed specific issues are addressed. As a kennel's pen size and structure may vary depending upon breed, size and characteristics of dogs, it is important that an overreaching general rule recognize the variations that must take place within different facilities. The Federal USDA standards and exceptions should apply, as these have created a better overall balance.

A question also exists as to why in subsection (b) the proposed regulations call for more space for dogs who are housed in an outdoor enclosure verses dogs in an indoor primary enclosure. This provision requires that twice the amount of space be dedicated over what is required under section 21.23(b).

Further, under the lengthy list of requirements found in subsection (b), questions remain as to what the Department means in paragraph (6) by the statement"...additional clean and dry bedding shall be required when the temperature is 35° F or lower." What constitutes "additional clean and dry bedding?" This provision is unclear and subjective.

Similarly, in paragraph (11), the Department dictates that "Outdoor facilities, including runs and exercise areas shall be kept free of grass and weeds." It is altogether preposterous for the Department to take the position that grass runs and exercise areas create in some way an inhumane condition for a dog. This provision has no basis in proper animal husbandry practices, would create an unnecessary and burdensome requirement that would be difficult and in some cases impossible to implement, and serves no useful, reasonable, or rational purpose.

In subsection (f), relating *to house facilities – general*, the proposed regulations go to great length to detail specific issues that must be addressed. Some of the specifics are commonsense provisions, however it is believed that if the Department seeks to ensure that operators are keeping facilities in good repair, then perhaps kennel operators should be directed to have a written "Standard Operating Procedure" document that would detail the daily/weekly schedule for the points covered under this subsection. Inspectors could then readily see if the kennel operator is following the SOP by examining the kennel. It is further suggested that the Department develop and implement a uniform form for operators to use in developing an SOP.

Section 21.25. *Temperature control.*

This section outlines minimum and maximum temperatures for facilities. In reviewing the proposed temperature thresholds, it is not made clear why the floor of a kennel during warm temperatures must be kept at a minimum 50° F. Many kennels are air conditioned and kept at an average of 70° F. A dog sleeping on a 50° F floor can develop hypothermia, pneumonia or become otherwise ill. Further, modern and updated kennel operations use radiant heat as a primary or secondary heat source and must heat the floors above 55° F.

Industry practice is that temperature is best controlled the use of cooling through ventilation rather than through air-conditioning; however the Department's regulations seem to eliminate this as an option. Again, would it not make better practical sense for the kennel's attending veterinarian to assist a kennel in determining and approving the appropriate temperature ranges?

Section 21.26. *Ventilation in housing facilities.*

Like section 21.25 (*relating to temperature control*), it is believed that the attending veterinarian should set forth and approve ventilation requirements.

Section 21.27. *Lighting and electrical systems.*

Like section 21.25 (*relating to temperature control*), it is believed that the attending veterinarian should set forth and approve lighting requirements.

One broad observation that should be made is that absent the approval of the kennel's attending veterinarian for these issues, there is general agreement that more closely defining these requirements would assist in creating a more uniform system of expectation and inspection.

Section 21.28. *Food, water and bedding.*

It is believed that the changes proposed in this section do not effectuate any significant improvement over the existing regulations of food, water and bedding. The attending veterinarian should assist in the development of a plan that would meet with current food, water and bedding standards. Further, self-feeders are an essential component to larger breeding operations and are specifically designed to be very sanitary and to dispense food in a deliberate and controlled fashion. Daily sanitation would not provide significant and new benefits.

Another important note relates to the USDA regulations. Under the Federal regulations, bedding must only be provided for when temperatures are 50° or below. While there is no explanation as to why the Department seeks to mandate bedding, the Federal guidelines have taken into consideration the medical fact that bedding creates a warmer environment which, when temperatures are higher, can prevent dogs from properly cooling. As such, if the proposed regulations were to be implemented, they could, in fact, create inhumane conditions.

Section 21.29. *Sanitation.*

In reviewing this section, confusion occurred relative to the intermixing of certain terms throughout various sections of the proposed regulations, such as the words "sanitation," "sterilization," and "cleaning." These terms have different meanings and, at times, appear to be inappropriately interchanged. Each term has significant differences in meaning and terminology. Additionally, the Federal USDA regulations clearly differentiate the difference between sanitation and cleaning.

The proposed regulations also have unduly advanced the requirements of sanitation where cleanliness would more than meet animal humane and current veterinary standards. The frequency of the sanitation should be directed by the attending veterinarian whereas cleaning rightfully should be addressed through regulation.

Section 21.30. *Condition of dog.*

This section is proposed to be amended by adding the following:

> **A State dog warden or employee of the Department may order a veterinary check on any dog that exhibits signs of an infectious or contagious disease, parasites or the appearance of poor health. When a veterinary check is ordered, the kennel owner, person or individual who is the owner or keeper of the dog shall provide the Department, within 72 hours of the order, with proof that the veterinary check has been carried out and with documentation concerning the veterinary recommendation or protocol for treatment of the dog.**

There are several issues relative to the allowance of any "employee of the Department [of Agriculture]" to order a veterinary check. Currently, the Department has an authorized complement of 644 employees. The proposed regulation would seemingly seek to empower all of these people with the ability to order a veterinary check, despite little or no familiarity or understanding of animal husbandry.

Additionally, the exhibition of signs of infectious or contagious disease, parasites or the appearance of poor health may exist *during* a dog's recovery of such health issues. Under the proposal, the ordering of a veterinary check can be conducted despite a dog already being under a veterinarian's care. In such cases where a veterinary check is ordered without sufficient due cause, the Department should be made to reimburse the facility owner for expenses incurred under this provision.

However, it is not necessary to create a new reporting requirement. State dog wardens should only be able to order veterinary checks when the operator of a facility cannot provide proof of adequate medical care. In instances where proof cannot be produced, it would be more than appropriate for a State dog warden to take such action.

Section 21.41. *General requirements.*

This section proposes to add significant additional administrative burdens to kennel operations. It details seven (7) new reporting requirements *for each dog*, including:

1. **The date, time and detail of daily feedings, cleaning of kennel, and changing and refreshing potable water.**
2. **The date, time and detail of exercise activity of the dog.**
3. **The date, time and detail of any medication administered to a dog.**
4. **Any accident or incident in which the dog is injured.**
5. **The date and time of any veterinary care administered.**
6. **Records of veterinary care for each dog.**
7. **Any veterinary ordered or voluntary protocol for vaccination, medication or other recommendation for medical treatment of the dogs.**

Simply put, if the proposed new reporting requirements were to be adopted, it would not be possible to engage in the other more essential components of animal husbandry that are necessary in order to effectuate a healthy environment in a facility. **The practical effect of the proposed extensive reporting requirements is not to ensure compliance, but rather to administratively burden operators so as to reduce the size and scope of their operation.**

Clearly this approach should not be supported and should be soundly rejected because it serves no rational, reasonable or logical goal. While recordkeeping should be conducted, noting the "time and detail of exercise activity of the dog" has no useful purpose. For example, what constitutes compliance with reporting the "exercise activity of the dog?"

Instead, the Department should support uniform reporting requirements that would ensure compliance, such as the creation of a standard operating procedure for operators to follow and sign, under penalty of law.

Section 21.42. *Bills of sale.*

This section proposes to add the following new subsection:

> **It shall be a violation of the act and this chapter for a kennel owner, operator or agent to purchase, accept, sell on behalf of or transport a dog from a kennel required to be, but not licensed under section 207 or 209 of 3 P.S. 459-207 and 459-209) without written permission from the Department.**

It would appear that the proposed new regulations would require that a kennel operator know if the kennel that he or she is conducting business with is a licensed facility. Unless the kennel has purchased, sold or transferred more than 26 dogs in a calendar year to the individual, it is impossible for the kennel to know if the buyer or seller is required to have a license.

The current regulations require that the name, address, acquisition date, type of sale, among other information, is recorded for every dog sold, transferred, adopted or given away. This information is already in possession of the Department and therefore the Department already *has* the ability to identify those individuals who have unlawfully sold, purchased, transferred, adopted or given away a dog. If the requisite licenses are not in place, the Department should take immediate action to enforce the existing law. Absent that, it is not appropriate for a kennel owner to assume enforcement obligations on behalf of the Department through this new provision.