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

Re: Proposed Dog Law Enforcement Regulation #2-152 (#2559)

This commentary is sent on behalf of the Pennsylvania Federation of Dog Clubs concerning the Proposed Rulemaking of the Pennsylvania Department of Agriculture with respect to portions of 7 Pa. Code concerning Dog Law Enforcement as published in the Pennsylvania Bulletin (36 Pa.B. 7596) on Saturday, December 16, 2006.

The Pennsylvania Federation of Dog Clubs is an umbrella organization consisting of about 100 dog clubs, humane associations and dog training facilities with a total membership of over 4,000 people. Some members engage in participation in the sport of dogs, competing in conformation, obedience, herding, lure coursing, tracking, and many other types of competition, primarily at events run under the rules of the American Kennel Club. Others are pet owners who want to learn more about their breed, about dog shows, or about training their dogs. Many participate in breed rescue organizations, taking in pets that are no longer wanted by their owners and finding them new homes.

Members of these constituent clubs are licensed as kennels. However, as will be discussed below, they are not commercial in nature. They do not make a net profit and are not businesses under the provisions of the Internal Revenue Code. These are the quintessential hobby breeders. Proper care and treatment of animals is of great importance to our constituents.

I have been involved in breed rescue as a member of my local and national clubs, taking in dogs whose owners abandoned or abused them. I fostered them until suitable homes could be found and then placed them in new, loving homes. I have chaired single breed specialty dog shows and been assistant chair for all breed shows, as well as the President and Board member of both types of clubs. I have also shown dogs actively for almost 20 years and have taught conformation handling classes.

Professionally, I served on the New York State Bar Association Special Committee on Animals and the Law and was the General Counsel and then the Executive Director of New York City Animal Care and Control (NYCACC), a non-profit corporation under contract with the City of New York to perform animal control and animal shelter functions with the City limits. NYCACC takes in over 45,000 stray, abandoned, lost or abused dogs and cats and a smaller number of wild animals. Prior to that experience, I worked in several City agencies as a high level manager where, among other duties, I help negotiate, draft and interpret state and city legislation and regulations.

GENERAL THEMES

There are several themes reflected in this response, with comments discussed in more detail in the sections which following.

addressing industry changes, clarifying vague or outdated regulations and clarifying the enforcement powers and duties of the Department and its employees (36 Pa.B. 7596). It would be helpful if regulations were written in plain English so those regulated might understand better the rules that are being applied to them.

When evaluating proposed regulations, it is prudent not to rely on the good will and intent of those currently charged with their enforcement, since those individuals change over time. Rather the assessment requires a critical look at the potential for misunderstanding of the drafter's intent in the future should a less enlightened administration be charged with enforcement. The problems with substandard puppy factories and generic rescue groups bringing dogs into the Commonwealth are well known. Although there is little information accompanying the proposed regulations to define specific problems, the above issues alone justify some new regulations. Other areas less clearly need the proposed regulations, especially those stricter than the federal regulations. All the reviewer is left with in those cases is the Department's statement that new regulations are required and that they will address the issues.

Part of the problem in assessing the need for these new regulations is the lack of information on the specific instances of problems needing to be addressed. While we wish to accept at face value the assertion that these proposed regulations will solve the Department's enforcement problems, there is no evidence presented that these measures will improve enforcement or that improving enforcement of the current regulations could not achieve the same ends, especially with respect to dogs raised in homes and small, private Class I kennels.

FUNDAMENTAL PREMISE

The proposed (and existing) regulations attempt to apply standards suitable for the equivalent of a large scale manufacturing environment both to puppy factories and to the workshops of skilled craftsmen, experts in their trade. The practices associated with the high volume, low cost "manufacturing" of dogs for commercial sale to the public differs greatly from the methods and care given to breeding and raising dogs by the craftsman whose breeding is aimed at producing the best specimens of his or her breed. The craftsman carefully handpicks the best family for each puppy in every litter. The craftsman continually tests the results of his or her work against internal standards and the standards of experts in the field. Whether the success of his or her craft is evaluated for conformation against the Standard for Excellence of the Breed, against objectively stated performance criteria in obedience or agility, against training criteria and instinct in field competition or against other criteria, experts evaluate the results.

The craftsman spends time analyzing pedigrees, breed characteristics, performance abilities, temperament and other factors before each breeding. Each litter is part of an overall plan for the improvement of the breed. The skilled breeder who tests the product of his or her breeding against the standards and practices of the breed is engaged in a very different endeavor than the puppy factory whose goal is to maximize profits and minimize costs while producing large numbers for sale. In fact, most breeders do not realize any net profit from their endeavors – they are not truly commercial. Substandard puppy factories are more interested in quantity of output, not in the quality of their product. The establishments of the craftsmen are the Commonwealth's first line of defense against substandard puppy factories getting a monopoly on having dogs available to the public – and a lesser quality puppy at that.

kennels, dealer kennels or breeding kennels), which are classified on the cumulative number of dogs housed in any year. Most people cannot operate boarding kennels in their homes because of local zoning regulations, so compensation is not a factor for them. If they bring the cumulative total number of dogs to the 26 dog threshold for licensure, a license would be required. The Department is empowered to interpret the statute and if those dogs are to be excluded, the regulations should so state.

The definitions of kennels and the 26-dog threshold have been in the statute since 1996. When the kennel inspector comes, he counts the dogs in the kennel and counts the dogs that are listed on the required form as being present to see that they match. Each visit of the dog must be separately reported on the Kennel Record. What is someone to do if a dog that is there is not to be counted towards the total? It seems the choices are: 1) explain to the kennel inspector the dog is excluded from the total and shouldn't be counted, although listed on the form or 2) don't enter the dog on the form since it is not counted in the cumulative total and explain why it isn't listed. There is no way for the inspector to verify the information to be sure the statement is true and to know that the information is reported accurately or recorded accurately on the form. That causes enforcement problems. The fact that the regulated community, and possibly some dog wardens, do not understand some dogs are not counted in the cumulative total, suggests that its meaning should be addressed in the draft regulations.

Licensing groups which are not, but should be, covered by the regulations is a desirable goal. It will improve the health of animals and provide better oversight. However, throughout these proposals, the Department applies a broad brush of identical regulation to establishments created for different purposes, housing different numbers of dogs, and housing them in vastly different types of facilities. In trying to apply one set of standards to all facilities covered under the regulations, the Department ignores significant issues created by bringing new groups under the regulations in the definition of establishment.

The structural issues existing when a person's home is used as a temporary housing facility differ significantly from those where a separate kennel facility, either indoor or outdoor, exists. Uniformity of standards is good when applied to similar types of facilities. But it creates unnecessary paperwork and creates misunderstanding when uniformly applied across situations which are in no way physically comparable. Although it would more difficult to craft regulations to address these differences, to do so might provide the Department with an opportunity to more accurately direct its enforcement resources to the areas requiring the most attention. It would be well worth the effort.

One example might be to clarify the relationship of the definitions of and the purposes for which establishments, temporary homes and kennels exist. An establishment is defined as the *"premises including the home, homestead, place of business or operation of any individual or person . . . which includes all of the land, property, housing facilities or any combination thereof, on, in or through which any dog is kept, bred, harbored, boarded, sheltered, maintained, sold, given away, exchanged or in any way transferred. Establishment shall encompass all of the individuals or persons residing thereon. It may be public or private and includes an individual, person, organization, business or operation, which utilizes offsite or temporary homes to keep, maintain, breed, train, harbor, board, shelter, sell, give away, adopt, exchange, or in any way transfer dogs."* (Proposed Regulations § 21.1) The same section defines a temporary homes as a *"place, other than a licensed kennel or veterinary office, including a personal home, land, property, premises or housing facility or any combination thereof where an individual,*

premises include the *"place of business or operation of any individual or person . . . which includes all of the land, property, housing facilities or any combination thereof, on, in or through which any dog is kept, bred, harbored, boarded, sheltered, maintained . . . ."* Proposed Regulations § 21.1.

Hotels, motels and campgrounds that permit individuals to place their dogs on their premises overnight fall within the definition of establishment since the dogs are, at a minimum, "kept" there. Therefore, if they keep more than 26 dogs cumulatively annually, the regulations as written would require they be licensed.

Hotels and motels that charge an additional fee per room or per dog for permitting the dogs to be kept in the rooms would be classified as boarding kennels under the regulations once they meet the definition of establishment. If dog owners go to such establishments to show their dogs in local conformation, obedience, or tracking shows, to breed their dogs to a local dog, to go hunting, or to deliver a dog for sale to someone local, dogs there for those purposes would meet the criteria to classify the establishments as kennels. At the least, the hotels would have to require prospective guests with pets to let them know the purpose of the pet being there so they could determine whether the keeping or harboring of the pets fell within the regulations.

On their face, the breadth of the definitions in the new regulations creates the requirement for their licensure. The Department is aware of the recent experience of Louisville, KY regarding complaints from the hotels industry about cancellations and lost revenue from the imposition of new dog laws and has no intention of creating such a situation in the Commonwealth by imposing the proposed kennel requirements on hotels and motels. However, since it does not so intend, the regulations should be explicit in their exclusion.

Similarly, since the cooperative housing corporation is the owner of the property, with those residing therein merely shareholders, if more than 26 dogs are housed therein, it is an establishment under the definitions and requires a kennel license. The same applies to condominiums, since the individual housing facilities, although not owned by the condominium, are part of the *"of the land, property, housing facilities or any combination thereof, on, in or through which any dog is kept, bred, harbored, boarded, sheltered, maintained . . . ."* This is another area that should specifically be excluded.

It is not appropriate for the Department to argue that they haven't regulated these groups in the past, do not intend to do so, and will not do so in the future. In the past, there was no specific definition of establishment in the statute or regulations. By creating the definition as worded, the regulations themselves raise this issue. Proper drafting of statutes and regulations requires that they be drawn broadly enough to encompass all groups they are intended to cover, but narrowly enough to avoid snaring within their grasp those groups with respect to which enforcement is not contemplated. The Department should not state that it wants to clarify the regulations and at the same time make them make them vaguer. The better course of action would be to rewrite the proposed regulations so they more clearly defined the establishments within their scope.

It is clear from its representatives that the Department does not intend to apply the standards in the regulations to dogs kept in buildings in which people reside (e.g., homes, hotels, motels or campgrounds). If it is not, they should be exempted specifically from having to adhere to those standards, most especially with respect to construction-related items not

appears to have neglected the fact that all kennels will have significant additional paperwork requirements deriving from these regulations. The Department implicitly has recognized this when it states that the on-going cost of $5,000 per year per inspector for inspections and review of recordkeeping requirements. Although inspectors may not be creating new records, they are responsible for reviewing records maintained by the kennels and validating their accuracy. The annual cost of this review to the Commonwealth is included in the on-going cost of $265,000 annually for program enforcement. It is not possible from the documents to be sure that this cost is inclusive of the additional time, and possibly the additional staff, needed to review the voluminous records mandated by the new regulations. Therefore, there is no way of knowing if this figure cited is accurate or too low.

Furthermore, the Department's figures do not anticipate the need to hire additional kennel inspectors to enforce its more stringent regulations against what it estimates is a larger number of kennels than are now licensed. If the regulations bring unlicensed kennels that require licensure under its inspection program, additional staff will be needed for inspection. How it intends to increase enforcement without hiring additional kennel inspectors and raising the estimated costs to the Commonwealth is unclear from its submission.

The collective cost to all kennel owners is estimated to be at least $5,000 annually and as much as $20,000 annually in the Regulatory Analysis Form (Answer to Question 20). Since there are about 2,400 licensed kennels currently in existence, the Department is estimating a minimum average annual cost of slightly less than $2.10 per kennel per year, and a maximum annual cost of less than $8.50 per kennel per year, which it says is based on estimates from the regulated community. I do not know who within the community estimated these figures, but they are low by several orders of magnitude.

We are aware of one kennel that was already was built when the new owner purchased the property. It was constructed from blueprints for a commercial kennel and meets the proposed standards inside the kennel, but the outdoor runs only consisted of a dirt base. The new owner had concrete runs installed. They were sloped away from the kennel to permit adequate drainage and a drain system was put into place to carry off rainwater or water used for washing the runs. The construction cost was about $8,000 for one Class I kennel, or between 160% of the minimum to 40% of the maximum total annual outlay projected as the cost for all 2,400 licensed kennels. This did not require any structure changes to the kennel building itself.

Mandating construction to remove from kennels dangerous conditions that might lead to disease is a desirable and necessary goal. However, the estimate of costs should be more realistic to permit a better analysis of the cost of the regulations to the regulated community.

Some of the other statements on the fiscal impact of the regulations are difficult to accept on face value. For example, the Regulatory Analysis Form (Answer to Question 20) and the preamble to the regulations estimate that there will be no cost or fiscal impact to the general public from the proposed regulations. (36 Pa.B. 7599) It appears the Department believes that commercial boarding kennels will not pass these increased costs on to the owners of the dogs boarding with them and that breeders (large or small) will just absorb these costs without increasing the cost of dogs sold. Most economists would disagree with this premise.

Similarly, an unanticipated consequence of the proposed regulations may well be a reduction in the number of small, craftsman breeders and exhibitors who are unable or unwilling to raise dogs in the restrictive kennel environment mandated by the proposed regulations, rather

guarantee they are attainable, even by a conscientious establishment. Proposing unattainable regulations is the best way to make sure they are challenged.

The federal regulations also provide existing operations with a reasonable time period to come into compliance with the new regulations, something that is strikingly lacking in the proposed Department regulations (*see e.g.*, 9 C.F.R. 3.6(a)(2)(xii)). It was a relief to a see statement in the Regulatory Analysis Form response (Answer to Question 30) that the Department intends to phase in the effective date of the regulations for existing kennels and to permit kennels which need to be licensed a reasonable time to obtain such licenses.

Some of the physical changes to kennel facilities, e.g., construction of outdoor runs for both indoor housing facilities and outdoor housing facilities, can be accomplished without changes to the structure of the building. However, there may still be an impact in cases where the local zoning board does not approve permits for changes mandated under the new regulations. A grandfather clause is usually included in building codes exempting such buildings from compliance with new regulations until permits are required for other structural changes in the building. Changes to bring the building up to the new code are usually required only at that time. To do otherwise would place an unreasonable burden on the building owner. A similar practice exists in zoning regulations which generally permit the continued existence of a preexisting nonconforming use, while prohibiting new construction of similar types of facilities.

The Department has the authority to treat different kennel types with different rules. Although not an absolute criterion, the craftsman kennels are usually found in residentially zoned areas, while the puppy factories are on large tracts of agricultural land. Regulations could be written to apply appropriate standards to both types of kennels based on the zoning and capacity of the establishment. For example, class I private kennels (the group that potentially will suffer the most under the proposed regulations and not a group targeted by the Department for increased enforcement) could be grandfathered under the existing regulations or portions thereof. This would enable the Department to target better its enforcement resources to those areas most in need.

Some jurisdictions define kennels more specifically than do either the current or proposed regulations. For example,, the Montgomery County (Maryland) Code § 5-404 distinguishes between commercial and fancier kennels. Commercial kennels are defined as an establishment to sell animals or breeds them for sale, or that provides boarding, grooming, or training for animals for a fee. It does not include a fancier's kennel. A fancier's kennel is defined as a private kennel maintained by a fancier. The term fancier is defined as a person who owns or keeps 3 or more dogs or cats for noncommercial hunting, tracking, exhibition in shows, or field or obedience trials. Fancier does not include a person who keeps (1) 3 or more male dogs or cats primarily for commercial stud services; or (2) 3 or more female dogs or cats that each bear offspring more than once in a 12-month period.

The Department could use a similar approach to defining the term private kennel (which is undefined both in the statute or regulations). For example, it is within the Department's authority to define a fancier's kennel as a Class I Private kennel under § 459-206 of the statute. The regulations could further state that the construction and maintenance requirements of the proposed regulations do not apply to Class I private, breeding or show kennels if the dogs are kept in the home of the person operating the establishment. This would still permit the application of the definitions to the other establishments, especially those constructed with the intention of housing animals. This is merely an example, not a well defined alternative. There

as a more economical way of licensing their dogs. Other hobby breeders and show kennels have licenses because they believe that it is desirable to have an outside evaluation of their methods and operation, even if a license is not required. It provides further legitimacy to their operation. Some hobby breeders and dog rescue organization will be tempted to limit the number of dogs raised or saved in order to comply with the regulations. Any such changes in behavior would negatively affect Commonwealth revenues in a manner unaccounted for by the Department. In fact, the lack of clarity in the regulations is apparent in that the term "cumulative number of dogs" used throughout the statute for licensing requirements is left undefined and is variously interpreted and understood within the Commonwealth. As discussed above, this should be defined and clarified.

The following sections comment on the specific provisions of the proposed regulations and issues arising from the standards and language used in the proposals.

COMMENTS BY SECTION OF THE PROPOSED REGULATIONS

7 P.A. Code § 21.1 Definitions. *The department states that definitions were added or revised to provide clarification and that the "necessity for clarification is based on issues, comments and questions which have arisen with regard to the Department's interpretation of various provisions of the act and the current regulations over the past several years."*

The Department's interpretation of the act is given great weight in defining the applicability of the regulations. However, in this case the new definitions appear to grant powers to the Department that are not within the scope of the act or to broaden powers beyond that permitted by the act.

The expansion of the plain meaning of establishment also applies to the language in the proposed regulations that implicitly includes breed and other rescue organizations within the definition (*"It may be public or private and includes an individual, person, organization, business or operation, which utilizes offsite or temporary homes to keep, maintain, breed, train, harbor, board, shelter, sell, give away, adopt, exchange, or in any way transfer dogs."* Proposed Regulations § 21.1). The language referring to giving away or adopting animals tracks the section of the statute which describes the classes of kennel licenses (3 P.S. § 359-206(a)), but is not in the definition of the term kennel.

The terms "kennel" and "establishment" are used throughout the proposed regulations in a manner that changes the meaning as presented in the statute and confuses the distinction between the terms. There is a fundamental lack of clarity between the use of the term kennel in the statute and the term establishment as used in the proposed regulations.

There is no doubt that the Department must be able to evaluate and inspect dogs throughout the Commonwealth to ascertain the conditions under which they live and the care and treatment they are given. However, the statutory language "wherein dogs are kept" implies a physical structure created for the purposes listed. By including temporary homes (*"A place, other than a licensed kennel or veterinary office, including a personal home, land, property, premises or housing facility or any combination thereof where an individual, person, owner or keeper, keeps, maintains, breeds, harbors, boards or shelters dogs on behalf of another person, organization, business or operation for the purpose of later selling, giving away, adopting,*

The regulations are also unclear as to whether the authority of the Department extends to temporary homes in other jurisdictions that are used by a licensed kennel in Pennsylvania and what, if any, control it will assert over them, while attributing their cumulative total to the applicable local establishment.

7 P.A. Code § 21.4 Penalties. *Language has been added: with regard to the penalties associated with failure to license when required; to clarify the powers, duties and enforcement options when kennels are operated before a license is obtained; and to clarify the revocation, suspension and denial language and the seizure provisions of the regulations.*

The revisions under this section are generally useful, clear and reasonable in their approach.

However under subparagraph (1)(iii), the proposed regulations list penalties for *"[f]ailure to obtain a kennel license prior to operating any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any 1 calendar year . . ."* The problem with this formulation is that it is in conflict with subparagraph 21.14(a)(3)(i) which states that: *"[u]pon reaching the cumulative total of 26 or more dogs of any age in any 1 calendar year, the establishment in question shall be required to apply for and obtain a kennel license."* The proposed regulations require obtaining a kennel license prior to operating an establishment reaching the size required for licensure, but permits applying for a license once the cumulative total of 26 dogs is reached. The language of the proposed regulation states on its face that they may be liable for penalties covering a period when a license clearly was not required under the statute or the proposed regulations. It is unreasonable under the circumstances to require anyone keeping a dog to be prescient in cases which skirt the border of requiring a license and hold them responsible for operating an establishment when licensure was not required.

Furthermore, subparagraph (1)(iii) also states that it is *"unlawful for a kennel to operate without first obtaining a license."* The meaning of this statement is ambiguous. Kennels are not licensed under the statute. There is nothing in the statute or regulations that require a license for a kennel. Licenses are granted to establishments that fall within the criteria for licensure whether or not they have a kennel facility. This interpretation is bolstered by the Department's own proposed definition of establishment which includes temporary homes that clearly may not meet the criteria for kennels. This apparent confusion is generated by the breadth of the Department's proposed definition for establishment, since kennel is defined in the statute as being an establishment keeping dogs for specified purposes and constructed so they cannot escape therefrom. By broadening the definition as it proposes, it appears the Department may be extending the term kennel well beyond its statutory basis.

This section also needs to specify its implied statement that the penalties of the section do not apply when a kennel license renewal, which has been properly and timely applied for, is not received in a timely manner. Since kennel licenses lapse at the end of the year, an individual would have no proof of current licensure even if assured by the local office that it had been mailed. The statute places the burden on the owner of the dog to prove it is licensed. (3 P.S. § 459-802) We are aware of cases where license renewals weren't received before January 24, 2007. Should an inspector come to such an establishment before the license was received, there would be no proof that the establishment or the dogs were currently licensed.

kennels solely because they are defined as part of another establishment under the proposed regulations.

Licenses are required for establishments based on number of animals and purposes for which the animals are kept. The standards for operation of a kennel are discussed elsewhere. However, the standard for the size of the kennel required in subparagraph (a)(3)(i) is arbitrary, capricious and an abuse of authority in that it bears no relation to the actual housing needs for the health and safety of the dogs. The standard established is that *"[t]he establishment shall have kennel facilities that meet the regulatory requirements for all of the dogs currently on the premises or to be kept, harbored, boarded, sheltered, sold, given away or in any way transferred by the establishment, which ever number is larger."* Thus, if a kennel has 20 dogs in permanent residence and has, over the course of a year another 30 "ins and outs" (including puppies) the kennel would to be sized for 50 dogs. This cannot be the intention of the Department.

We believe what is meant is that "[t]he establishment shall have kennel facilities that meet the regulatory requirements for all of the dogs currently on the premises or the maximum number to be contemporaneously kept, harbored, boarded, or sheltered, which ever number is larger." If this is correct, it should say so.

This wording also requires that establishments that utilize temporary homes, including breed rescue groups, must have kennel facilities meeting the proposed standards even if they do not have or need a kennel to function. If a group places 30 dogs over the course of a year in 30 different homes, why are they mandated to maintain a kennel facility meeting the requirement of the proposed regulations? Similarly, why does a dog trainer who trains one dog every two weeks for a cumulative total of 26 dogs need to build and maintain a kennel when one is not needed?

Establishments that use temporary homes are classified as boarding kennels or non-profit kennels. § 21.14 (a)(3)(ii). However, breed rescue organizations clearly do not meet the statutory definition of non-profit kennel in the statute. *"Any kennel operated by an animal rescue league, a humane society or association for the prevention of cruelty to animals or a nonprofit animal control kennel under sections 901 and 1002."* 3 P. S. § 459-102. All these organizations may enforce the humane laws; breed rescue may not. They also do not meet the statutory definition of boarding kennels since the dogs kept therein are not kept for a fee and the establishment is not open to the general public for boarding. In fact, although these may be establishments, it is only by a great stretch of the wording of the "any other similar purpose" phrase in the definition, and ignoring the "so constructed" language that they can be considered kennels at all. It appears that they do not fit within the purposes for kennels.

With respect to the requirements of subsection (b), does the Department intend to publish a list of individuals who should have kennel licenses but do not? If not, how is the kennel owner supposed to know that an individual falls into that category so as to abide by section (b)? If the Department with all its resources is unable to find this out, how can the individual? The more appropriate standard would be that the action is done with knowledge that a license is required and knowledge that it does not exist. Although this is harder to prove, it would better withstand legal challenge.

Subsection (c) states *"A dog entering this Commonwealth from another state, commonwealth or country shall have a health certificate."* It then goes on to state *that "[i]n accordance with section 214 of the act (*3 P. S. § 459-214*), it shall be unlawful to transport any*

regulations would limit the space available to provide those services and limit the ability of these facilities to adopt such dogs.

As a former Executive Director of Animal Care and Control in New York City, the writer understands well the policy reasons for the exemption provided to *"dog control facilities authorized to receive grants under section 1002 of the act (3 P. S. § 459-1002(a)) . . . from the new quarantine and space provisions of the regulations."* Since the number of dogs coming into the facility is not under the control of the facility, there are times when the minimum space standards and strict quarantine cannot be maintained. However, the logic of the Department demonstrates the validity of exempting breed rescue organization in a similar manner and for the same reasons: *"[t]hese facilities perform a government service by taking stray and abandoned dogs from . . . the general public. . . . . Subjecting them to the quarantine and double space requirements of these proposed regulations would limit the space available to provide those services and limit the ability of these facilities to adopt such dogs."*

Although breed rescue organizations may not be able to accept funds under the statute and do not receive dogs directly from a seizure, in a number of well publicized cases within the Commonwealth, they have housed and rehomed dogs originally taken in by such dog control facilities when they were overwhelmed and breed rescue groups perform the same governmental service regarding stray and abandoned dogs as do facilities that may accept such funds. They also do this at no cost to the Commonwealth. The same policy reasons favoring exemption should apply to them. Even though apparently not recognized by the Department, they are an integral part of the system used to relieve the Commonwealth of the burden of these dogs. Surely at a minimum, a similar exemption could be included for non-profit rescue groups formed under the provisions of Section 501(c)(3) of the Internal Revenue Code and affiliated with a national or local breed club and they should be permitted to receive pure-bred dogs of their breed directly from a seizure.

Of course, it is somewhat ironic that the solution to solving the problem of dogs seized from kennels which do not provide a healthy environment is to place them in facilities which may have substandard space and inadequate quarantine procedures.

7 P.A. Code §§ 21.1 – 21.29 Generally

This comment applies to all of the above listed sections. People's homes and Class I private kennels should have a separate set of regulations applied to them that acknowledge there is a significant difference between these establishments and commercial kennel operations. The nature and reach of these differences should be developed based on discussions between the Department and representatives of that segment of the regulated community. The goal should be reaching a mutually acceptable set of regulations that will ensure the health and well-being of the dogs kept by that group without imposing onerous burdens that might eliminate this segment from meaningful participation in dog fancy. If that were accomplished, along with clarification of some existing terms used in the statute and regulations, many of the concerns of dog fanciers including those engaged in conformation and performance events, would be addressed.

new language addresses space requirements and sets forth the requirements of and for an exercise program for all dogs kept in a kennel.

The formula for the space requirement comes from the AWA. Under AWA regulations *"Dogs over 12 weeks of age, except bitches with litters, housed, held, or maintained [by those subject to the AWA] must be provided the opportunity for exercise regularly if they are kept individually in cages, pens, or runs that provide less than two times the required floor space for that dog, as indicated by Sec. 3.6(c)(1) of this subpart."* 9 C.F.R. § 3.8(a). There is no argument that this is too little space for dogs for to spend their entire lives. Commercial puppy factories and other kennels where the dog only has access to their primary enclosure should be required to meet new minimum standards as the proposed regulations contemplate. However, arbitrarily doubling the minimum requirement for class I private kennels where the dog has free access between an indoor enclosure and an outdoor exercise area or the dog is not within the enclosure for most of the day may not be appropriate. Also, why not just redefine minimum, rather than stating that the minimum is twice the minimum.

The term primary enclosure is defined somewhat ambiguously, especially since the regulations now cover both dogs housed indoors and dogs housed outdoors. Primary enclosure is defined as a *"structure used to immediately restrict a dog to a limited amount of space, such as a room, pen, run, cage, crate or compartment."* § 21.1. Does it include only the indoor area in a kennel where the dog has free access to an outdoor area? Does it include both the indoor and outdoor area in such a situation? If the outside area is larger than the indoor area, is the dog considered to be housed in an outside primary enclosure with the inside area defined as the shelter structure? We don't ask these questions to create problems, but to better understand the definitions under which we will be regulated.

The regulations additionally mandate exercise for all dogs whether housed at the newly defined minimum or housed with other dogs. Having more space for each dog is desirable and if the Department wants to increase that space, it should do so in a rational manner distinguishing between puppy factories, where large numbers of dogs are housed in substandard conditions and fancier kennels, where dogs get individual attention and significant opportunity to be outside their primary enclosures. Kennel inspectors also need to be trained that temporarily housing a dog in a crate does not make it a primary enclosure under the regulations. We know of one professional handler who was cited because a dog that had just come from the airport was still in an airline crate when the inspector arrived. The crate size of an airline crate is designed to make sure the dog does not get injured during transportation. It is clearly not of sufficient size to house a dog permanently. However, it is of sufficient size to house a dog during and immediately after transport and may be of sufficient size to temporarily house a dog while its primary enclosure is being cleaned and sanitized.

The standard set forth in subsection (d) for the interior height of a primary enclosure may make sense for a commercial puppy factory where there is a top directly over the primary enclosure's walls. The height is sufficient to prevent dogs from climbing or jumping out of such a covered run, while enabling room to move freely. However, it makes no sense in a kennel building where there are walls or fencing between primary enclosures with the ceiling height separated from the top of the wall or fencing. In those cases, the wall must be higher to prevent a dog from escaping from the primary enclosure. Of course the appropriate height should be determined by the breed, height and athleticism of the animals enclosed, not some number unrelated to real world behavior.

It is unclear why dogs have to be separated by size under paragraph (e)(iii). For dogs that are kenneled and well socialized, mixing sizes should not be a problem. For dogs that don't normally reside in the same kennel or that are unsocialized, the intent of the restrictions is understandable and a valuable addition. This is another example of the "one size fits all" solution that permeates these proposed regulations. Different sized kennels and different circumstances can have different outcomes. The focus of the proposed regulations is not on outcomes, which defines a desirable goal, but, rather on prescriptive procedures which may or may not be the simplest or best way to obtain the outcome in a specific instance.

It is unclear why intact males and females cannot be exercised together under subparagraph (e)(iii)(F). The proposed regulations have removed the restriction on males and females being housed together, but they want to restrict their ability to exercise together unless they are neutered. This is illogical on its face. Clearly males and females should not be exercised or housed together if the bitch is in season both for sound breeding practices and animal safety reasons. This does not explain the prohibition in these proposed regulations.

Paragraph (e)(iv) permits the Department to exempt dogs from the exercise requirements for a period of time upon a written diagnosis by a veterinarian of an *"injury or other physical condition that would cause exercise to endanger the health, safety or welfare of the dog."* The determination must be for a *"time period limited to the amount of time medically necessary to recover from the injury or illness, state the specific medical condition and reason for the exemption and list the time period for the exemption."* It is not clear why this provision is discretionary on the part of the Department. It would be better to permit the expert written veterinary opinion to suspend the exercise requirements automatically. Furthermore, placing a specific time limit on exercise exemption may not be in the best interests of the dog. Some congenital or hereditary conditions may prohibit any sustained exercise on the part of the dog. Would the Department require that such dogs be euthanized if they could not be exercised?

Given the failure to explain the need for the uniform exercise regulations themselves, it does not appear that the recordkeeping requirements of paragraph (e)(v) are necessary or should apply to most kennels. In the instances where there is an actual need for exercising dogs, the provision of subparagraph (e)(v)(B) should apply if the Department is can demonstrate evidentiary problems proving noncompliance.

7 P.A. Code § 21.24 Shelter, housing facilities and primary enclosures. *New provisions establish separate requirements for indoor and outdoor kennel facilities. These changes are based on situations encountered by the Department over the last several years and in many cases set forth provisions contained in the Animal Welfare Act and in the "Military Dog Training Manual." The revised regulations address, clarify and enhance sanitary and animal husbandry practices. They address and set forth more detailed requirements for outdoor kennels in areas such as drainage, construction and maintenance of primary enclosures, shade and shelter requirements, bedding, lighting, slope of ground, and run and footing materials for the dogs. They provide more detailed requirements for indoor kennels with regard to slope of floor and drainage, construction of kennels and primary enclosures, sanitation, storage of food and medical supplies and wash facilities.*

The addition of subsection (b) is a positive step towards ensuring adequate care for dogs housed outdoors, something that has long been absent from the regulations. However, there is considerable confusion among the regulated community regarding the coverage of this

The standard set forth in paragraph (f)(3) also may be arbitrary, capricious and an abuse of authority if it prevents the use of standard wallboard which is not impermeable to moisture. It is unclear what degree of replaceablity required. Clarification is desirable.

The requirement of this section that surfaces that come in contact with the animals be impervious to water differs from the Military Working Dog Program which state that a *"pallet will be provided for each dog. Pallets will be wolmanized wood or other hardwood to resist insect infestation and chewing by the dog."* Department of the Army Pamphlet 190-12, page 77. It also permits the use of plastic. Resting boards were previously permitted in kennels, but were eliminated in an earlier regulation revision. The reason for this is not clear and the use of resting boards makes good animal husbandry sense as well as providing an area for the dog's comfort. Many homes and Class I private use raised beds with a fabric cover stretched across a frame. Rather than be impervious to water, which would permit water to pond in the bed, the beds permit water to drain through the fabric to maintain a dry condition. Why cannot resting boards and such bed be used for the comfort of the dog?

The standard set forth in paragraph (f)(7) regarding the daily removal of dirty and non-potable water is at variance with the standard in Subsection 21.28 (2) requiring potable water be available at all times. See comments on Section 21.28 below. As an aside, it would be helpful in making comments on the proposed regulations if the Subsections, Paragraphs and Subparagraphs were uniformly referred to throughout the proposals.

Paragraph (f)(8) on new recordkeeping requirements is excessive and creates a situation where the time to keep required records will significantly impact the time needed take care of the dogs. This regulation will not help the Commissioner carry out either the provisions or intent of the act as required in 3 P.S. 459-902. It creates unnecessary paperwork with no real benefit to kennel oversight.

Paragraph (f)(11)(iii) does not provide for any alternative designs which achieve the same purpose. For example, if the indoor runs are sloped to drains inside and the outdoor runs are sloped to drains outside (as required by the new regulations), why do you need a drain in the area to which no water will flow? Even the AWA Regulations recognize that innovative primary enclosure arrangements may be acceptable for some requirements (*see, e.g.* (9 C.F.R. § 3.6(d)). Also, this appears to be unnecessary since the runs are supposed to be squeegee dried under proposed regulation § 21.29(5).

Paragraph (f)(12) specifies requirements for trash containers that are at variance with the requirements of Subsection 29(6) that the entire kennel area be free of refuse that could attract, rats, vermin, insects or other vectors of disease. See the discussion under that subsection.

Paragraph (f)(13) appears to forbid the reuse of bedding after washing and sanitization. Surely, that cannot be its intent. Perhaps this could be reworded to make the meaning more clear.

Paragraph (f)(15) requires that substances *" that are toxic to dogs, including those substances necessary for normal animal husbandry practices, may not be stored in food storage or preparation areas."* This certainly will create issues for small hobby and show kennels where food may be prepared in a kitchen or a kennel building where laundry detergent and bleach are kept near a food preparation area. The kitchen of most homes, where food is prepared, usually

veterinarian and generally accepted professional and husbandry practices." (9 C.F.R. § 3.2(b)). Although these standards are not strictly applicable to most of the licensed kennels in the Commonwealth, they are illustrative of how meaningful standards may be written to provide flexibility in their attainment, while maintaining the health and safety of the animals.

The requirements of subsection (e) more closely relate to those of the AWA. With respect to indoor and outdoor kennels, the standard in (e) would be a perfectly reasonable one if, as discussed above, it were not so absolutely stated. A determination of whether the temperature conditions provide for the health and well-being of the dog is one where a veterinarian could make a reasonable determination regarding compliance. Absent such expert opinion, the standard should permit some variation for duration and relative humidity.

7 P.A. Code § 21.26 Ventilation in Housing Facilities. *Language has been added to clarify and address concerns expressed by the Department's State dog wardens and district justices regarding vagueness and a lack of clarity with regard to the current regulations. The new language provides specific ventilation, humidity and air movement requirements.*

This entire section is filled with engineering standards that are needlessly technical and overly confusing to the average non-commercial kennel owner without clearly specifying the desirable outcomes to be achieved.

Paragraph (b), is preferable to the standards used in Section 21.25 (as mentioned above), and is sufficient unto itself. In the present context, it is overly prescriptive in that the proposed regulation requires the temperature not to exceed 85 degrees. How it is achieved is irrelevant to the issues of health. It looks like someone tried, somewhat unsuccessfully, to apply as many of the AWA Regulations for wholesale, commercial kennels in interstate commerce to non-commercial, small, intrastate kennels. Furthermore, the Military Working Dog Program does not permit kennels to be air-conditioned, and only allows it in support and food preparation areas. Department of the Army Pamphlet 190-12, page 76. It may be appropriate in some cases for working dogs and other types to become accustomed to the environment in which they will work. This will make them better able to perform difficult tasks under stressful conditions. For example, it would be unfortunate if a search and rescue dog could not function on hot, humid days or in the cold of winter because they were unaccustomed to working in that environment. This is not to say that reasonable standards should not be applied, but that all standards should be reasonable with respect to the dog's function and the environmental conditions. Retrievers get wet, terriers get dirty, and sighthounds run over long distances across varying surfaces. Regulations that ignore these realities will not work when broadly applied.

The requirement for ground level ventilation to assure dry kennel floors during cold weather as required in paragraph (a)(3) is a further example of defining means and not ends. First, it is unclear what kind and type of ventilation would meet the requirements of the regulation. Second, kennels with hydronically heated or radiant floors already provide another means to keep floors dry in cold weather. Why require a less efficient means which might, as a side effect, chill the dogs and cause illness?

7 P.A. Code § 21.27 Lighting and Electrical Systems. *This section sets forth specific lighting requirements for indoor and outdoor kennels and attached buildings. The revisions are in*

use." (9 C.F.R. § 3.9(b)). Therefore, it is unclear why they are prohibited by the Department for non-commercial, smaller kennels. Surely single use bowls are more sanitary than bowls that are reused.

7 P.A. Code § 21.29 Sanitation. *This section sets more specific sanitation requirements and controls. The intent, in part, is to address the control of contagious diseases within kennel facilities and to more effectively address sanitation issues and requirements in outdoor kennels.*

The frequency of required sanitation and disinfection in this and other sections is excessive. Daily sanitization, as distinguished from cleaning, is not necessary to protect the health of the dogs in small class I kennels where the population is stable. It makes more sense in large commercial kennels where that chance for the spread of opportunistic diseases is more prevalent. The AWA Regulations state: *"Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards."* (9 C.F.R. § 3.11(b)(2)). Again, their standard is more reasonable for the small kennel owner where the care and attention given the individual dog is significantly greater than that found in puppy factories or in the commercial, wholesale, interstate commerce arena. The Military Working Dog Program requires that kennels *"must be sanitary, in a good state of repair, and thoroughly cleaned every day. Kennels should be disinfected at least once every week using only those disinfecting products approved by the veterinarian. Kennels also should be disinfected whenever an animal is removed from a kennel so that the kennel will be ready to be occupied by another animal."* Department of the Army Pamphlet 190-12, page 69. This seems to be a reasonable standard for homes and Class I private kennels.

Anyone reading the standard Material and Safety Data Sheets (MSDS) accompanying sanitization materials realizes that they are potentially hazardous to people and animals. It is for this reason that the daily sanitization and accompanying dislocation of the animals in the kennel is excessive. The MSDS prescribes the standards for safe use of the product. The regulations attempt to address this by defining sanitization procedures. It might, however, be better to incorporate by reference the procedures listed in the MSDS for the products used rather than issue regulations that may not be applicable to the particular product being used or which might not keep up with safety advances in the industry.

The requirement in paragraph (1) mandating the sanitization, as contrasted with the cleaning, of outdoor runs every day meets the same objection as above. Furthermore, it will create hazardous conditions for the dogs during subfreezing weather. Does the Department have any guidance on how to sanitize outside runs in such weather without creating a surface which might injure the dogs? Again, the AWA regulations may provide a better definition. *"Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.* (9 C.F.R. § 1.1). Clearly, in the winter it might not be practical to sanitize the runs on a daily basis. This contrasts with the language in the proposed regulations "*[s]anitize — To make physically clean and to remove and destroy, to a practical minimum, agents vectors of disease, bacteria and all infective and deleterious elements injurious to the health of a dog* (Proposed Regulations § 21.1) which would appear to require such practices, causing potentially dangerous conditions which the kennel owner would then have to attempt to remove as injurious to the health of the dog. There is an apparently

and the Department should pay the costs of the veterinary examination if it does not show the existence of the problem for which the examination was ordered.

7 P.A. Code § 21.41 General Requirements. *This section presents general requirements for kennel records. The amendments provide more specific provisions related to the amendments to the previous sections of these regulations. More specifically, they are more specific with regard to food, water and sanitation records, exercise records and injury and veterinary care records. The amendments also provide for unsworn falsification to authorities with regard to the records kept at kennels.*

The record requirements of part of subsection (e) are overly burdensome on the kennel owner, requiring excessive amounts of time to record activities that provide no substantive benefit to improving the health of animals. Paragraphs (e)(1) and (e)(2) particularly require records that fall into the category of excessively time consuming, especially with the proposed requirement that these activities be conducted daily. The lack of need for these activities on a daily basis was discussed above. The remaining paragraphs do not appear unreasonable since they are not regular activities, but rather exceptions to normal circumstances.

7 P.A. Code § 21.42 Bills of Sale. *The Department added subsection (b) to this section, addressing the in-State and out-of-State licensure provisions of the act. Subsection (b) notifies licensed kennel owners that it is a violation of the act to purchase, accept, sell on behalf of or transport a dog from a kennel required to be, but not licensed under the provisions of the act. It provides an exception where the Department provides the kennel owner with written permission to accept dogs from an unlicensed kennel. This is to allow the Department flexibility in closing unlicensed kennels. Furthermore, it should be noted that this provision is not intended to and does not affect the ability of a licensed kennel to sell dogs it owns.*

See discussion under section 21.4 (b) regarding questioning how a kennel owner is to obtain the required information on kennels that should be licensed, but do not have the required licensing. The same concerns apply here.

7 P.A. Code § 21.64 This section sets forth the requirement that the owner of the animal injured or killed will not be compensated if the owner has already received reimbursement for the injuries sustained or the loss of the animal.

To prevent unjust enrichment of the owner of the animal injured or lost, the section should include a requirement that any recovery from insurance or from the owner of the dog causing the injury after payment from the Department will be reimbursed to the Department up to the amount paid by the Department for the injury or loss.

We have no substantive comments at this time on the proposed amendments to the regulations for which comments were not submitted.

In summary, the proposed regulations: