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Bureau of Dog Law Enforcement
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Attn: Mary Bender

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INDEPENDENT REGULATORY REVIEW COMMISSION

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.

1. Most of the regulated kennels and breed rescue groups that rehome dogs within the Commonwealth are well served by the present regulations. We support the Department's efforts to regulate better large, difficult to regulate, substandard puppy factories, to regulate establishments that fall within the statutory definitions, but have avoided regulation, and to implement licensing for rescue organizations, especially those bringing dogs into the state. While the Commonwealth may enact regulations more strict than those of the Animal Welfare Act, we believe that the regulations as drafted will bring severe hardship to small kennel owners who are hobby breeders not being targeted specifically by the Department for increased enforcement.

2. Some of the new definitions create problems which did not exist before, while other frequently misunderstood terms remain undefined. The unanticipated consequences of enforcing the regulations may bring legal challenges that could compromise, or further erode, enforcement of the statutes.

3. The proposed regulations define processes and not the ends to be achieved. There may be alternate methods of reaching the unstated objectives both better than those proposed and less onerous for the regulated community, especially the small fancier kennels. This is especially applicable to instances where the Animal Welfare Act provides significantly more reasonable alternatives for the small kennel owner than those proposed by the Department. Suggestions are made for alternatives and improvements. However, knowing more details of the nature of the enforcement problems might enable us to make more specific recommendations.

4. The Department has significantly understated the costs of implementing the regulations for the Commonwealth, local governments, the public and the regulated community.

5. Sometimes the regulations are internally inconsistent and create standards that are so absolute as to be impossible to achieve in real world conditions. They risk the type of court challenge to the regulations and loss of cases that the Department hopes these proposed regulations will, in part, remedy.

GENERAL COMMENTS

The proposed regulations were drafted with great thought given to the health and safety of animals housed within the Commonwealth. Pennsylvania has significant issues with, and had experienced negative publicity over, its regulation of and oversight over both unlicensed kennels which should be licensed and large scale licensed kennels that do not comply with the law or regulations affecting their operation. The Department believes that the new regulations are designed, in part, to rectify that situation by addressing concerns expressed by dog wardens and district justices regarding vagueness and lack of clarity in the current regulations. To the extent that the new regulations significantly improve upon or clarify existing regulations, they will be well received by most of our members.

The Department has done an extensive review in an effort to improve the clarity and enforceability of the existing regulations. However, there are a number of instances where the proposals fall short of the mark. At times, the proposed regulations go beyond merely

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.

Small craftsman kennels, the people from whom the healthiest and best socialized pets are obtained, comprise the largest group falling within the scope of these proposals. They are not the group stated as the target of these revisions, yet they are the group most impacted. Improved regulation and better enforcement are needed to correct the problems in substandard puppy factories, but placing undue burden on the craftsman does nothing to further these goals.

There is no requirement in the statute, and none in logic, that requires the same treatment for all kennels regardless of purpose. In fact, the very inclusion in the statute of different purposes for operation and different types of establishments presupposes that there may be different rules applied if, in the Department's discretion, such differences are warranted. Other jurisdictions take this distinction into account; so can the Commonwealth.

DEFINITIONAL ISSUES

By creating broad new definitions and more stringent regulatory requirements without making distinctions among types of kennels, the regulations penalize reputable breeders, while not doing more to protect the dogs in their care. Parts of the regulations are unclear as to how they comport with existing law; in some cases they may be at variance with such law, encroaching on the powers of the legislature. Some proposed changes may require legislative enactment, if they are to be enacted at all. In other cases, the authority of the Department to interpret the statute to clarify its meaning has not been fulfilled

Some of the changes may produce unanticipated consequences that make enforcement more difficult. By creating broad new definitions, the regulations may cover groups that the Department does not intend to include in its enforcement efforts. However, if the regulations are not enforced uniformly with respect to those establishments covered by the plain meaning of the new language, the regulations are open to attack from the very groups the Department hopes to add to the coverage (*see, e.g.,* Regulatory Analysis Form Answer to Question 14).

At the same time the Department is creating new definitions, it has ignored areas where neither the current regulatory scheme nor the statute provides clarity. Another function of the statutory purposes of regulations *("to carry out the provisions and intent of this act."* 3 P. S. § 459-902), is to make clear what is regulated and how it is regulated. In significant instances the current and proposed regulations fail to do that.

Let us provide a few examples of how the regulations are unclear. The 26-dog cumulative threshold for licensure is part of the existing statute. The Department has interpreted the cumulative total to exclude some dogs on the premises. That is, in determining whether a kennel license is required for an establishment, dogs that stop by during the day, dogs that accompany their owners overnight, and dogs that stay overnight without a fee are not counted in the cumulative total. In addition, a dog is counted only once towards the cumulative total regardless of how many times the dog returns during the course of the year. If this is so, why is this not stated explicitly in the regulations to explain and clarify the meaning for kennel inspectors and the regulated community? There has been considerable confusion about this issue and the regulations are the place to clarify them.

The rules on licensure differ for a boarding kennel (defined by statute as "available to the general public" and "for compensation," 3 P.S. § 459-102), which are classified on the capacity of the facility, and other classes of kennels (i.e., private kennels, pet-shop kennels, research

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,*

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, exchanging or transferring the dogs." These contrast with the statutory definition of kennel as *"Any establishment wherein dogs are kept for the purpose of breeding, hunting, training, renting, research or vivisection, buying, boarding, sale, show or any other similar purpose and is so constructed that dogs cannot stray therefrom."* (3 P.S. § 459-102.)

In order to be a kennel under the statute, you must first be an establishment where the listed purposes are met and which is so constructed that dogs cannot escape. However, kennels are not licensed, establishments are. The original purpose of kennel licenses was to provide a way to license dogs as a group, rather than to license them individually. It is possible to be a licensed establishment without having a kennel facility. If you are an establishment and have 26 or more dogs cumulatively housed there each year, a kennel license is required. Clearly, a person who keeps 26 dogs cumulatively in their house as pets and did not breed them or engage in any of the other purposes defined for a kennel would not be classified as such, although they would need a license as an establishment. Thus, the Department is placed in the anomalous position of requiring hoarders to obtain kennel licenses.

The definition of establishment under the proposed regulations appears to significantly expand the plain meaning in the statute. Again, it is easy to understand that defining this term more completely than it is in the statute is necessary to permit the Department to enforce the statute with respect to individuals who may attempt to avoid its grasp. But in doing so, the regulations encompass groups and individuals with respect to whom the Department clearly has no interest in including in its enforcement plans.

Unfortunately, in its attempt to provide measurable standards for appropriate treatment of animals, the regulations require their application to some settings for which they are inappropriate, for which no clear basis is presented and which do not pass the test of real world applicability. Furthermore, some of the proposed regulations appear to go beyond merely carrying out of the provisions and intent of the act. There are internal inconsistencies and a lack of clarifying statements that make the rules difficult to understand by the layperson that has to abide by them. Some of the opposition to this portion of the regulations is derived from this misunderstanding, not from any disagreement with the intent of the regulations to control better large, commercial kennels.

The statute states that kennels are *"so constructed that dogs cannot stray therefrom."* (3 P.S. § 459-102.) It appears from the statutory definition that there is something related to its construction required for an establishment to be a kennel. However, the statute and regulations are silent on the meaning of that phrase. Nowhere is there a clear statement of what differentiates a house from a kennel, requiring adherence to the full panoply of kennel regulations. Does the purpose of the construction have to be that dogs cannot stray therefrom? Must the building have been constructed to contain dogs or, at least, animals? Is it that there must be a fence around the building or property? Does that mean that an unfenced house is not a kennel, while a fenced one might be? If it is unfenced, but has a doggy door permitting egress is it no longer a kennel? The statute is not clear and the regulations should clarify the issue.

The Department correctly does not intend to enforce the regulations against a hotel or motel that permits owners to keep their dogs in their rooms. Nor do they contemplate enforcement against cooperative housing or condominium developments. However, the new language appears to include these groups within the definition of establishment in that the

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

suitable for a residential environment. It is possible for the regulations to make clear that if the purpose of the construction was to house people, and if people actually resided therein, the incidental use of the premises to house dogs would not make it a kennel for the purposes of complying with the structural and maintenance parts of the regulations.

One way to do this is to refine the definition of the term cumulative total. Section 21.1 could be further amended to include a definition of cumulative total. We believe the following is one way to accurately present the Department's policy. *"Cumulative Total - the total number of dogs kept, bred, harbored, boarded, sheltered, maintained, sold, given away, exchanged or in any way transferred by an establishment at any time during a licensing year and owned by any individual or person residing thereon. Cumulative total shall not include a dog temporarily housed in the same room with an owner not associated with establishment, or a dog kept temporarily without charge. A dog shall only be counted in the cumulative total once year calendar year regardless of the number of times it enters and leaves the establishment."* This is only one possible example of wording that could clarify the meaning and clearly exclude groups the Department does not believe should be regulated..

Similarly, the Department should not have any objections to puppies being whelped and raised in a residential setting, even though the houses do not conform to kennel standards. People who raise puppies in their houses take great care to keep the space clean, sanitary and as odorless as possible. The situation provides puppies that are better socialized and more fit to live with a family than a puppy that is raised solely in a kennel and has exercise for 20 minutes per day. Furthermore, some breeds require significant attention during the first week of their lives and having them raised in a residence is the best practice to ensure the health and proper development of the dam and the puppies.

COST ESTIMATES

The cost estimates cited in the Regulatory Analysis Form have ignored significant costs to the government, to the regulated community and to the public.

I do not know the extent to which the Commonwealth and local governments use dogs in enforcement of laws, the number of such dogs, or whether some other statute exempts kennels maintained for law enforcement dogs (bomb dogs, drug dogs, etc.) at the Commonwealth and local level from adhering to the kennel (as opposed to licensure) provisions. However, the Department of Agriculture Web site lists 27 currently licensed police-related kennels. Given the definition of establishment, the plain language of the regulations referring to training as a purpose for kennels, and the fact that they are licensed currently suggests that these facilities come under their purview. Some of these facilities keep dogs pending disposition, which may include transferring the dog. Dog kennels maintained by Commonwealth and local governments may not meet the standards of the new regulations. Surely the regulations do not intend that the Commonwealth and local governments not meet the stringent standards set forth for everyone else. If this reading of the new regulations is correct, these costs need to be accounted for or the regulations need to be clarified.

The Department states that there will be no increase in paperwork requirements. Generally, governments assess the cost and time to the public as well as the governmental entity when evaluating paperwork requirements. This is specifically one factor considered by IRRC in assessing the economic and fiscal impact of proposed regulations. The Department

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

than in their homes. The loss of these breeders will reduce the supply of quality puppies available in the Commonwealth, enabling substandard kennels to raise puppy prices to the public.

The loss of these exhibitors will have a negative impact on revenues from dog shows within the Commonwealth, reducing funds available for governmental operations at all levels. In 2006, there were 620 AKC events, with 173,105 entries, and 146,855 competitors in the Commonwealth. An economic benefits research survey conducted by the AKC asked respondents how much they spent on lodging, gas, meals and other travel expenses. Respondents attending events reported an average expenditure of $320 per respondent or a total of $46,993,600 in revenue generated by AKC events conducted in PA, in addition to the monies received by local clubs and show sites for holding the shows. Dog shows are a significant income producer for the economic health of the public. The multiplier effect of a reduction in expenditures will impact all public funding sources.

The Department itself recognizes only minimal costs to the private sector for establishments utilizing temporary homes. While it is true that the temporary homes will have additional requirements, this statement ignores the costs to kennels of the other instances of new mandated recordkeeping. Given the increase in the amount and type of data that the rules require, larger kennels may have to hire additional personnel and smaller, single or family owned kennels may be overwhelmed. While this cost increase will be a marginal economic factor for the large puppy factories, it will be a major new cost for the craftsman kennels. Furthermore, each temporary home will be required to have a separate kennel license under the regulations as written. This will be a major cost factor for rescue organizations.

COMPARABLE STANDARDS

Many of the proposed regulations, and specifically the new standards for kennels, are derived from the Animal Welfare Act (7 U.S.C. §§ 2131 *et. seq*) and its Regulations (9 C.F.R. 1.1 *et seq.*), which were designed to apply to facilities engaged in wholesale interstate commerce, not to the types of situations found in small, craftsman kennels. Despite the fact that federal regulations are frequently taken verbatim in the proposed revisions, there are significant areas in which the proposed regulations ignore more reasonable federal guidelines. This is, in significant part, related to the Department's approach of trying to establish a single set of regulations applicable to all kennels, rather than targeting regulations on a more specific basis.

The AWA serves as the minimum standard for those kennels included within that law. States are permitted to institute more stringent regulations over that class of kennels when they deem necessary. The Commonwealth is free to regulate other kennels more or less strictly, as it deems necessary. Different circumstances may suggest different standards. By not tailoring the regulations to the type of kennel, the Department seeks to implement the most stringent regulations with respect to all kennels, rather than targeting those area most in need of attention.

It is unclear from the Regulatory Analysis Form (Answer to Question 21) or the proposed regulations themselves, why the Department believes that more stringent regulations, rather than better defined regulations coupled with significant enforcement initiatives, would not achieve the desired results. Stringent does not necessarily mean better or clearer and does not

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

are many such alternate approaches that would yield similar outcomes. Where, exactly, the regulatory line should be drawn is a matter of debate; however, it should be clear that there is a need to define such a line.

Although instructive, neither the Animal Welfare Act nor the Military Dog Training Manual is a suitable guide for regulating private, craftsman kennels. At times the requirements of the two information sources may be diametrically opposed to the requirements of the proposed regulations. For example, The Military Working Dog Program, unlike the proposed regulations, mandates that the sanitary inspection of kennel facilities, the establishment of plans for kennel buildings and the establishment of an adequate feeding program be performed by veterinarians. Department of the Army Pamphlet 190-12, page 61. This differs greatly from the restrictive and voluminous proposals specifying methods of goal attainment contained in the proposals.

Our belief is that the purposes and intent of the act would be best served by regulations based on the types of kennel licenses authorized in the statute and the purposes for which the kennels exist. The primary purpose of a kennel may be determined by the activities that involve the majority (or a large plurality) of the dogs housed therein. The size of the kennel is already known based on licensure. Some regulations will be the same across kennels, others may be varied depending on the type and size of the kennel. It should be clear the Class I private kennels differ so significantly from large volume, commercial kennels that identical regulations should not be applied to both. The Commonwealth may have good reason to implement more stringent kennel regulations, but where and how the regulations impact on the different classes of kennels and different purposes of kennel operation should be more clearly and flexibly defined. This would permit the Department to focus its resources in a more targeted manner in the areas requiring the greatest attention, thereby improving enforcement of the provisions and the intent of the act.

UNANTICIPATED CONSEQUENCES

As the Department properly states " . . . *rules and regulations [are issued by the Secretary] to carry out the provisions and intent of this act.*" (3 P. S. § 459-902). Most laws rely on the voluntary compliance of the public. Without such voluntary compliance, laws and regulations will not work (Penn's motto is particularly appropriate in this context –*Leges sine Moribus vanae*). It is almost impossible outside a police state for the government to determine accurately the validity of such reporting of non-public activities.

The requirement for a kennel license *("A kennel license is required to keep or operate 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 one calendar year."* 3 P.S. § 359-206(a)) presupposes voluntary reporting of the number of dogs by the public. To the extent that regulations create overly burdensome or onerous conditions for those regulated, those regulated will seek to be unregulated. Although the inspectors will be able to prosecute those who falsify records under the regulations as proposed, legally sufficient proof of the falsification is difficult to obtain and would take significantly more resources than are currently available and significantly more than the regulations contemplate would be required to implement their enforcement.

Significant numbers of hobby breeders have kennel licenses as a matter of convenience, not necessity. They never have a cumulative annual total of 26 dogs, but have a kennel license

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,*

exchanging or transferring the dogs." Proposed regulations § 21.1), the regulation takes a group of people with a common purpose and treats their private residences as part of an establishment and, by extension, makes them into a kennel.

The phrase "or other similar purpose" as used in the definition of kennel makes unclear whether the homes, or portions thereof, fall within the definition of kennel since the homes are now part of an establishment. The regulations need to interpret and clarify the "so constructed" language in the statute, or the language needs to be clarified by the legislature, so that it is clear that homes are not held to the all the construction standards of a "kennel," despite possibly keeping dogs for the purposes listed in the statute. A family whose dogs are in their home and who have one or two females of a breed that has large litters, may be required to have a kennel license, but not have or need a kennel.

The concern is that private homes will be required to meet all kennel standards. Private homes are not constructed for the purposes listed and, therefore, should not fall with the definition of kennel with respect to adhering to the full range of kennel regulations. To require that a person's home have impermeable floors, walls and ceilings, to have drains in the floors, and to remove carpeting because it may harbor contaminants, is ludicrous on its face.

This appears more to be an attempt to remove pets from people's houses than to improve the health and safety of the dogs. By clarifying the exemption of this type of housing from the full scope of the regulations, you would allay the concerns of many owners of small, private kennels that they will be required to adapt their houses to meet the kennel regulations.

Individuals who keep their dogs in their homes for their own purposes should clearly be exempt from having to rebuild their homes to kennel standards. Those whose homes are temporary refuges for rescue under affiliation with national or local breed organizations and are established as non-profit organizations under the tax code also should not be made to turn their abodes into full fledged kennels, although they should be tracked and licensed. *Bona fide* breed rescue groups perform a public good for the welfare of animals and their homes do not become kennels, except for licensing purposes, merely by joining together with others for a common end. Furthermore, they reduce costs to the Commonwealth, taking in dogs that would otherwise be housed in shelters able to collect funds under the statute (3 P.S. §459-1002).

Finally, although an establishment may be broadly defined as a residence or business with its possessions and staff, it appears that the use in the statute is significantly more limited than that. Under the statute, dog wardens and others have the right to inspect kennels and dogs and to enter into the premises of a person for an inspection (3 P.S. § 359-218). It is illegal to refuse dog wardens admittance to do an inspection or enforce the statute's provisions. The Secretary is permitted to enforce the act by *"all proper means"* and for purposes of investigation *"[a] dog warden or employee of the department may enter into a home or other building only with the permission of the occupant or with a duly issued search warrant."* (3 P.S. § 459-901). It does not appear that the statute contemplates dog wardens entering homes without permission or a warrant. The proposed regulations, by broadening the scope of the term "establishment" and by defining a "temporary home" as it does, appears to authorize entry into a person's home without either permission or a warrant. This not only violates the express terms of the statute, but may present the Commonwealth with some Constitutional difficulties under the Fourth Amendment to the U.S. Constitution. Warrants are obtainable in cases where needed. The regulations cannot and should not change that requirement.

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.

Even though the penalties in this section are not mandatory, it would be better to clarify this issue.

The requirements of (1)(iv) regarding convictions for animal cruelty with the past 10 years should be strengthened to include convictions for animal cruelty outside the Commonwealth. The current language does not prevent animal abusers from moving into the Commonwealth and being licensed here. The Commonwealth should not grant licenses to convicted animal abusers who were convicted anywhere within the regulatory time period.

7 P.A. Kennel Licensure Provisions. *This section gives more specifics with regard to the intent and enforcement of the kennel licensure provisions of the act and sets forth the substantive provisions of the regulations relating to the new definitions of "establishment" and "temporary home" set forth in these regulations. It addresses and sets forth the prohibitions related to dealing with unlicensed kennels. It is intended to provide clarification related to Article II provisions of the act and to assure greater compliance with the existing provisions of the act to enhance the Department's ability to carry out the intent of the act which is protection of the health, safety and welfare of dogs.*

The requirement of Subparagraph (a)(3)(ii) of the Proposed Regulations that each *"temporary home utilized by the establishment shall be treated as a separate kennel location"* and the requirement of paragraph (a)(2) that a *"separate and proper kennel license shall be required for each type of kennel and every location at which a kennel is kept or operated"* creates a definitional problem. First, statute requires the licensure of establishments, not kennels. It is the broad definition of establishment under the proposed regulations that creates this situation. The Department's definition requires a license for each temporary home since they are kennels by extension as part of the establishment requiring a license. This circular reasoning should be eliminated. Dual licensure is not necessary, especially since the regulations require the establishment to provide tags for the dogs in the temporary homes.

Second, it is arguable whether rehoming an abandoned dog falls within the catch-all phrase *"or other similar purpose"* in the statutory definition of kennel. The problem with this formulation is twofold. The purpose of rescuing, socializing and rehoming dogs varies from the purpose of a kennel as defined in P. S. § 359-101, unless included under the catch-all phrase therein. However, temporary homes are defined so broadly that many may not meet the requirement of the same section mandating that kennels be constructed so that dogs are unable to stray therefrom. The Department appears to mean that each temporary home is part of the same establishment. That, however, does not make the location a "kennel," to which other sections of the statute and regulations specifically apply. The same concerns discussed regarding the language under Section 21.4 above applies to the repetition in this section of the requirement that kennels be licensed prior to meeting the standard for licensure.

Subparagraph (a)(3)(iii) further states that such a "temporary home *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 becomes a kennel and shall meet the kennel licensure requirements of the act and this chapter.* It appears the Department means to say they become a separate establishment needing an individual kennel license. If the proposed definitions are to be taken at face value, temporary homes are required to be a separately licensed establishment in all cases. This is illogical. If they do not meet the requirement of being an establishment requiring licensure by themselves, they should not require separate licensure and be defined as

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*

dog into this Commonwealth, except dogs temporarily in this Commonwealth as defined in section 212 of the act (3 P. S. § 459-212), without a certificate of health prepared by a licensed doctor of veterinary medicine." It would be clearer to place the second quoted sentence first, so that the subsection read as follows:

> In accordance with section 214 of the act (3 P. S. § 459-214), it shall be unlawful to transport any dog into this Commonwealth, except dogs temporarily in this Commonwealth as defined in section 212 of the act (3 P. S. § 459-212), without a certificate of health prepared by a licensed doctor of veterinary medicine. All other dogs entering the Commonwealth 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 importation.
>
> (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). The health certificate must show the vaccine manufacturer, the date of administration of the rabies vaccine and the rabies tag number.

Paragraph (1) states that dogs entering the Commonwealth must have certificates of health stating the age of the dog is at least 7 weeks and paragraph (5) requires a statement that 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). However, the statute does not require vaccination of dogs within the Commonwealth until a puppy is at least 13 weeks old and vaccination may be delayed until the puppy is four months old (*"Every person living in this Commonwealth, owning or keeping a dog or cat over three months of age, shall cause that dog or cat to be vaccinated against rabies." 3 P.S. § 455.8 (a)*). It is not clear what, if any, vaccination is required for dogs older than 7 but less than 17 weeks, whether rabies vaccinations will protect dogs if vaccinated earlier than 13 weeks, and what statement the certificate should state for those under four months who have not been vaccinated.

The paragraph also appears to prohibit anyone from moving from another jurisdiction into the Commonwealth with their personal pets if they have a dam that is nursing puppies less than 3 weeks old since the statute grants only a 30 day period to bring a pet in before it is licensed. (3 P. S. § 459-212). This should be clarified.

7 P.A. Code § 21.15 Exemptions. *Dog control facilities that are authorized to receive grants under section 1002 of the act (3 P. S. § 459-1002(a)) would be exempt from the new quarantine and space provisions of the regulations. The Department accepts that these facilities perform a government service by taking stray and abandoned dogs from the Department and the general public. In addition, they accept and hold dogs seized from licensed and unlicensed kennels. 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.

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.

7 P.A. Code § 21.21 Dog Quarters. *Language added to this section clarifies the overall sanitation and housing requirements of the regulations and to addresses the amendments to later sections of the regulation related to sanitation and housing of dogs.*

Subsections (a), (b) and (c) appear reasonable. The terms of subsections (d) and (e) appear to be inconsistent. It is not clear how an enclosure can be stacked and still permit unfettered clearance out of the enclosure without presenting a threat to the safety of the dog. In fact, it is better for the dogs and the maintenance of the facility if the enclosures are not stacked at all. Perhaps this could be clarified.

7 P.A. Code § 21.22 Housing. *Changes to this section address problems and issues that have arisen with regard to dogs, both puppies and adults, being brought into a kennel from another kennel or establishment. The new language sets forth health requirements, such as an isolation time period for the dogs, and thereby addresses health problems related to new or varied strains of virus and bacteria being brought into the kennel or new or existing parasites the may accompany puppies or adult dogs not born at the particular establishment.*

The provisions of subsections (a), (b), and (c) improve existing regulations and the removal of the language requiring separation of dogs by sex except for certain reasons makes sense.

However, the language and distinctions made in paragraphs (d) and (e) are troublesome. Puppies are puppies until 12 months old and then they become adults. Restricting access of any dog to others in the kennel when they show signs of disease or when there is no record of health care makes sense. What does not, is taking away from the treating veterinarian the ability to make that determination regarding the health of the puppy or dog and the amount of time required for separation for health reasons. If the Department cannot accept the opinion of licensed veterinarians regarding the health and treatment of animals within the Commonwealth, the problem will not be solved by enforcing arbitrary quarantines, regardless of the age of the animal.

This approach is at variance with the approach of the Animal Welfare Act (AWA) Regulations. Dogs received directly from their breeders who raised them need only be held for a 24 hour period prior to sale. 9 C.F.R. 2.101 (a)(4). *"Dogs and cats that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony, as directed by the attending veterinarian."* (9 C.F.R. § 3.7(e)). The language of the proposed regulations should also specify that the release of the veterinarian should be in writing so there is a record.

The proposed regulations mandate the quarantine of dogs for the longer of 14 days or the period the veterinarian thinks necessary to treat disease, to halt the spread of bacteria or viruses or to acclimate the dog to the kennel. Why the opinion of the veterinarian is not controlling is unclear. This is another example of regulations that make sense in the context bringing large numbers puppies into of a commercial breeding establishment, but make little or no sense when an individual puppy is brought into a new home or class I private kennel.

7 P.A. Code § 21.23 Space. *New language in this section is intended to address the health and welfare of dogs housed in kennels and make the Department's regulations more consistent with Federal regulations set forth under the Animal Welfare Act (7 U.S.C.A. §§ 2131--2159). The*

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.

The provisions in subsection (e) regarding additional exercise requirements establish uniform procedures for all dogs. This makes sense in a puppy factory environment where dogs are unexercised and there is evidence of muscular degeneration or atrophy. However, the tolerance of a dog for exercise is governed not only by its health, but by its breed characteristics, its age and the weather conditions. It is dangerous to require the same amount of exercise for puppies as for adults, for long-coated or brachycephalic breeds compared to other breeds in the hot, humid weather, for short haired breeds when it is excessively cold, for any dog in extreme weather conditions (very low or very high temperatures, during hurricanes, thunderstorms, etc.) or for elderly or infirm dogs. The provisions of the AWA regulations may be instructive here: *"The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian." 9 C.F.R. § 3.8(c)(1) and "Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section."* 9 C.F.R. § 3.8(c)(4). Both provisions are absent from the proposed regulations.

There is no evidence of the ongoing cost of compliance with these changes or the new recordkeeping requirements. However, it is reasonably sure that 1) puppies may be injured by 20 minutes of continuous exercise in very cold or very hot weather and 2) that some long haired and brachycephalic breeds will die if exercised for 20 minutes in 90 degree weather with a relative humidity of 90 percent. If the dogs are housed in primary enclosures of sufficient size without other dogs or if housed with other dogs in sufficient space, they will self exercise and limit exertion based on their age, breed characteristics and the weather so as to stay healthy. Furthermore, sporting, working, terrier and herding breeds frequently require a great deal of exercise to keep them sound, healthy, and mentally fit. A single regulation made without reference to breed characteristics does not serve the health or exercise requirements of the dogs. To provide for the best care of the dogs, exercise requirements must be tailored to the dogs and the conditions under which the exercise takes place.

It is unclear to me why dogs are not permitted to become wet, matted or muddy under subparagraph (e)(ii)(C). Sporting, working, terrier and herding breeds come into contact with water, mud and dirt when performing the functions for which they were bred. The goal of this subparagraph appears to be that dogs be clean, dry and have unmatted hair. If that is the goal, why prevent the dogs from enjoying their freedom and purpose? Why not require meeting the goals rather than prescribing how they shall be met? Also, what do you propose to do about Komondor, Puli, Poodles, or a few other breeds, whose standards describes a dog that develops a corded coat? As some breeds mature, the coat will eventually reach to the ground. Will kennel inspectors be trained to know the standards for these breeds and to recognize their coats so their owners are not penalized incorrectly?

It is unclear why exercise on grass is not permitted in subparagraph (e)(ii)(D), which requires the floors of outside exercise areas to be made of the same material as required in Subparagraph 21.24 (b)(ii)(6). The subparagraph referred to probably should be (b)(ii)(7), since the former subparagraph does not cover type of flooring and the latter one does. That subparagraph restricts outdoor runs or exercise areas to concrete, gravel or stone. Dogs may have enclosed outdoor runs made of concrete, but they also love to run in the enclosed grass field surrounding kennels. A concern among owners of small kennels is that this will no longer be permitted. What purpose does it serve for the health or safety of the dog? Furthermore, most pet owners want pets that are housetrained to eliminate outside. How is the dedicated breeder who owns a class I private kennel supposed to train his or her puppies to eliminate outside on the grass if they are forbidden to exercise them on grass?

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

subsection, particularly paragraphs (8) and (11) regarding runs and exercise areas. Paragraph (8) applies to all kennels by reference in Section 21.23, but paragraph (11) properly applies only to outdoor kennels since it is contained within that subsection. There is concern on the part of some that the proposed amendment will prohibit dogs from being exercised (or turned out) on grass fields for exercise under paragraph 8 (specifying outdoor runs and exercise areas may be constructed of concrete, gravel or stone), as discussed above under subparagraphs 21.23(e)(ii)(C) and (D), where they are referenced.

Dogs that are trained for jumping, for hunting, for earthdog events or for herding must be trained on a natural surface. It is more dangerous to jump dogs on unyielding surfaces since it may cause injury. Hunting and herding dogs and terriers must be trained in a natural environment. These types of dogs require a significant amount of activity to stay in proper condition. To perform their function, they must learn to work in fields and woods. Dogs that are shown in conformation, agility and obedience are shown both indoors and outdoors on grass. They must feel comfortable moving on both types of surface. This is consistent with the Military Working Dog Program which states that "[m]uch of the required proficiency training for an MWD team can and should be conducted in the working environment or in a similar one." Department of the Army Pamphlet 190-12, page 23. In the same vein, search and rescue dogs must be exercised in a natural environment. It is not possible to train them in static, artificial settings.

The Military Working Dog Program also permits vegetation in the training areas - *"Training areas must be kept clean, all obstacles in good repair, and vegetation closely trimmed."* Department of the Army Pamphlet 190-12, page 78. This makes more sense that the arbitrary exclusion of dogs from exercise on grassy areas.

There is a similar concern with respect to paragraph 11 (keeping runs and exercise areas free of grass and weeds). There is no explanation given for the reason that grass is prohibited and no idea of the outcome the regulations intends to foster. If the Department's intent is not to apply it as such, more clarity is desirable since much of the regulated community does not understand it. If the Department intends to apply this to all runs and exercise areas for all dogs, it makes no sense. If that is the case, please tell us how it helps to prevent flea and tick infestation to clear a five foot area around runs which are already four feet from any grass or weeds. Would not the use of a pesticide achieve the same desired result as clearing a 5 foot swath around the runs? Why is that not an alternative and sufficient precaution? This is another example of prescribing methods, rather than desired outcomes.

With respect to paragraph (b)(2), there is an incompatibility between the terms "flat and level" and the requirement that the outdoor facilities and exercise areas be sloped. They cannot be both.

The standard in paragraph (b)(4) is arbitrary, capricious and an abuse of authority. This absolute type of standard is used throughout the proposed regulations. It is impossible for anyone to ensure that bedding is dry and clean **at all times** (emphasis added). A dog could soil bedding overnight, mark its territory, or have been playing in the rain, and the kennel owner would have a situation where he or she is in violation of the regulations with no opportunity to learn about or correct the condition.

The same comments apply to paragraph (b)(6)(iv) with respect to bedding. The provision of a requirement for additional bedding in temperatures 35 degrees or below is vague in that there is no standard for what constitutes sufficient additional bedding.

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

has cleaning products and other materials toxic to dogs (and humans). Separation of toxic materials from food is a standard animal husbandry practice. There is no need for this degree of specificity in the regulation. All that is necessary is that food products not be contaminated by toxic substances.

Paragraph (f)(18) creates a standard for sanitization that is arbitrary, capricious and an abuse of authority and without scientific basis for being necessary for keeping the dogs healthy. This will be discussed in more detail under Section 21.29.

7 P.A. Code § 21.25 Temperature Control. *This section provides more specific language regarding temperature control in indoor and outdoor kennels and establishes permissible temperature ranges. This addresses 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.*

Subsections (a), (b) and (c) are reasonable and do not present a problem. The slab temperature standard in paragraph (d) is another instance of the use of engineering standards in a situation that is not suitable. First, how will kennel inspectors measure slab temperature? The issue should be whether the dogs are comfortable and the environment is healthful, with reasonable ambient temperatures in the kennel. Especially where raised beds or other bedding is used to eliminate contact between the slab and the animal, or where the primary enclosure rests above the kennel floor, slab temperature is not relevant. How is the kennel owner to determine the slab temperature of the floor, especially when the floor is heated in the winter? If it is warm and comfortable and the dogs are healthy, that should be sufficient. This is another example of the imposition of rigid standards which ignore other solutions to solve potential problems, an approach is prevalent throughout the proposed standards. Subsection (d) should be eliminated.

Subsection (d) is another case where more reasonable standards are presented in AWA regulations than in the proposed regulations by the Department. Rather than stating that the temperature never fall below 50 degrees nor exceed 85 degrees, the AWA Regulations state that *"[t]he ambient temperature must not fall below 45 [deg]F (7.2 [deg]C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85 [deg]F (29.5 [deg]C) for more than 4 consecutive hours when dogs or cats are present."* (9 C.F.R. § 3.2(a)). We are unsure of the scientific derivation of the 50 degree standard for minimum temperature in the proposed regulations, since it varies from the AWA regulations.

Similarly, it is unclear upon what scientific standard the 85 degree maximum temperature is based and why no flexibility is permitted as in the AWA Regulations. Based on experience, some dogs like to lie outside in runs during the summer heat as long as the humidity is not high; they do not develop health problems from the high temperatures. Since they have ready access to the cooler inside and to water and suffer no ill effects, why are absolute temperatures defined as applicable to all dogs. Depending on the temperature, humidity, condition of the dog, and its breed characteristics, different temperatures may be appropriate. The AWA regulations permit such variance and allow veterinary professionals and industry standards to determine appropriate levels for commercial kennels. *"Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when the ambient temperature is 85 [deg]F (29.5 [deg]C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending*

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*

response to 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.

If the concern is that lighting be available to see the dogs outside if necessary at night, rather than that the outside be illuminated all night, this needs to be clarified.

Again, the foot-candle standards are unnecessarily complex and overly technical. The AWA regulations are both more reasonable and readily understandable by the general public. *"Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light."* (9 C.F.R. § 3.2(c)).

Department Dog Wardens and district justices expressed concerns regarding vagueness and a lack of clarity with regard to the current regulations, thereby resulting in the inability to impose sanctions on violators. Both improving training in evidence collection and contacting the Federal officials responsible for implementing the regulations under the AWA might be a better approach to solving the problem than some of the highly technical proposed regulations.

While it makes sense that GFCI receptacles be used in water prone areas, it also makes sense, and is required by most codes, to have them in outside areas, whether prone to spraying or not. It does not increase safety to require that all receptacles have spring covers, especially when connected to GFCI circuits. It would make more sense to require it when receptacles are at a height reachable by dogs in the kennel.

7 P.A. Code § 21.28 Feed, Water and Bedding. *This section establishes more specific and more stringent food, water and bedding requirements. The amendments are aimed in part to address control of contagious diseases and to assure dogs housed in kennels have access to water at all times.*

Again, absolute, rigid standards are imposed without any apparent underlying scientific basis. It is unreasonable to hold someone to a standard that is unattainable as in subsection (2). If a dog turns over its water bowl, or splashes the water out of it, or if the dog urinates or defecates in it, the standard is immediately violated even by the most conscientious kennel owners. This subsection is also at variance with proposed paragraph 21.24(f)(7) which requires the daily removal of non-potable water. The previous standard requiring potable water at least 6 hours per day or the AWA regulation are more realistic. *"If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian."* (9 C.F.R. § 3.10). Almost any regulatory requirement other than "at all times" would be more meaningful and enforceable.

The same subsection mandates that food and water containers be accessible to dogs and located to avoid contamination by feces and urine. Most food and water bowls are kept on the floor, especially in homes. The bowls cannot be so high that eating and drinking will be a problem. Where are they to be placed and how high must they be?

Subsection (3) does not provide for the use of disposable food bowls. Although many use only metal bowls that are readily cleanable, the AWA regulations permit the use of disposable bowls (*"If the food receptacles are disposable, they must be discarded after one*

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

unacknowledged difference in emphasis between the phrases "to the maximum degree that is practical" and "to a practical minimum" as used in the contrasted regulations.

Paragraph (6) should be clarified by adding language similar to that in the AWA Regulations. *"Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times."* (9 C.F.R. § 3.1(f)). It is impractical to have *"[t}he entire kennel area . . . free of refuse and garbage that could attract rats, vermin, insects and other vectors of disease."* What should be required is that such items be in enclosed containers resistant to being tampered with, similar to the statement in paragraph 21.24(f)(12).

The intent of paragraph (7) is laudable. However, the conclusions therein are, in part, based on a logical fallacy. Just because there is evidence that, for example, a dog or dogs have ticks, it does not mean that the program is ineffective or there is "unsanitary environmental sanitation" in the kennel. Ticks may be picked up when dogs are removed from the property for short periods or the ticks may not be immediately visible despite reasonable grooming and inspection of the dogs and the reasonable use of pesticides in the area surrounding the kennel. The facts may not support the conclusion reached in the regulation. A better standard would refer to the degree of infestation and the percentage of dogs bearing ticks that are attached. Since ticks can take some time to attach, a large percentage of dogs so infested would be evidence of a lack of proper monitoring of the health of the dogs. The opinion of a veterinarian would be helpful in establishing the seriousness of the problem and the degree to which the conditions in the kennel contribute to the existence of the problem.

With regard to veterinarian approval of disinfectants, pesticides and disinfectant procedures, does this have to be in writing? If so, why does the Department issue specific regulations for disinfection instead of requiring a program approved by a veterinarian? Should this not be entirely left to the veterinarian?

7 P.A. Code § 21.30 Condition of Dog. *Amendments to this section were made for the purpose of addressing grammatical errors.*

Given the definition of establishment and temporary home, and since subparagraph 21.14(a)(iii)(2) of the proposed regulation makes temporary homes subject to inspections, this is another area potentially permitting warrantless searches of a home without the owners permission in violation of the statute (3 P.S. § 459-901) and the provisions of the fourth amendment to the U.S. Constitution. This should be clarified and brought into line with the statutory and constitution proscriptions.

Furthermore, this section, authorizes mandated veterinary checks based on the observations of a Dog Warden of an infectious or contagious disease, parasites or appearance of poor health. However, it also mandates that the kennel owner provide proof of adequate veterinary care and proposed paragraphs 21.41 (e)(5) and (e)(6) of the regulations require maintenance of medical records. Such records would be prima facie evidence of adequate veterinary care if care were recently provided. If Dog Wardens are permitted to order veterinary examinations, they should occur only in cases where such records do not exist or where the problem has occurred without recent veterinary intervention. Dog Wardens should not have the authority to place their judgment over that of a licensed veterinary professional. In the alternative, if such orders are permitted, the Warden must specify the problem believed to exist

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:

- are well intended, but in many cases are unclear or set standards that are impossible to attain, causing undue hardship on the most responsible of dog owners.

- do not adequately define terms misunderstood in the regulations

- significantly understated the costs of implementing the regulations for the Commonwealth, local governments, the public and the regulated community.

- apply standards applicable to large commercial kennels and standards used to maintain dogs in a military environment to small, private kennels.

- ignore the fact that fancier kennels produce dogs that are sounder and healthier than dogs produced commercially. This should be recognized in the regulations.

- use a "one size fits all" approach that is unsuitable for achieving their stated goals.

- stress stringent, overly prescriptive regulations, rather than trying to better clarify and enforce existing regulations.

- define processes and not the ends to be achieved, ignoring alternate methods of reaching the unstated objectives both better than those proposed and less onerous for the regulated community.

- risk court challenge to the regulations and the loss of cases that the Department hopes these proposed regulations will, in part, remedy.

I appreciate you taking the time to consider our concerns and comments. If you wish to discuss this further, I am at your disposal.

Julian Prager
Legislative Chair
Pennsylvania Federation of Dog Clubs

cc: The Honorable Michael O'Pake
The Honorable Douglas Reichley
The Honorable Michael Brubaker
The Honorable Michael K. Hanna
The Honorable Arthur Hershey
Arthur Coccodrilli, Chairman IRRC
Pennsylvania Federation of Dog Clubs