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INDEPENDENT REGULATORY
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March 15, 2007

Via Federal Express

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

Re: Proposed Dog Law Enforcement Regulations
36 Pa.B. 7596

Dear Ms. Bender:

This correspondence concerns the proposed regulations promulgated by the Department of Agriculture (the "Department") under section 902 of the Dog Law, 3 P. S. § 459-902 as published in the Pennsylvania Bulletin (36 Pa.B. 7596) on December 16, 2006.

General Comments

The Department states that the proposed regulations are directed "to amend numerous sections of the current regulations to address changes in the industry, clarify provisions of the regulations which are vague or outdated and clarify enforcement powers and duties of the Department and the Secretary." As described below, the proposed regulations are not reasonably tailored to improve or ensure the humane treatment of animals and are overly burdensome and impose undue expense on the establishments that are subject to the proposed regulations. The proposed regulations, if implemented, will negatively impact all people that own, operate, utilize or do business with boarders, kennels, day care facilities, groomers, trainers, breeders and veterinarians, people who purchase dogs from local breeders or kennel operators and anyone who travels with their pet in Pennsylvania. Enforcement of existing regulations is sufficient to prevent inhumane and substandard kennel conditions.

I am an attorney and have spoken to several businesses in the Western Pennsylvania area who expressed concern about the negative impact of the proposed regulations. I am also a

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member of the Shenango Chapter of the North American Versatile Hunting Dog Association ("NAVHDA"), an organization dedicated to fostering, improving, promoting, and protecting the versatile hunting dog in North America. I am also a member of the Atlantic Chapter of the Verein Deutsch Drahthaar, Group North America. The Verein Deutsch Drahthaar ("VDD") is a breed organization dedicated to the development, breeding and continuous improvement of the versatile hunting Drahthaar. Members of both organizations consist of small breeders, professional and novice trainers and sportsmen and women. The proposed regulations unreasonably impose the same restrictions on these small, often not for profit, hobbyists as are imposed on large, commercial operations.

I am primarily concerned that the proposed regulations, if implemented, will impose such a significant financial and practical burden to comply with the regulations that many of the individuals and small businesses that members of these groups rely upon will simply cease their activities. These include small breeders that generate less than a handful of litters of dogs for little or no profit and day care and kennel facilities that cannot afford to renovate their facilities to comply with the space requirements for dogs that do not spend a significant amount of time in the kennels before returning to their homes.

My comments to specific provisions of the proposed regulations are as follows:

Specific Comments

§ 21.1. Definitions.

***Establishment*--The premises including the home, homestead, place of business or operation of any individual or person, including a dealer, 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.**

***Temporary home*--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.**

§ 21.14. Kennel licensure provisions.

(3) *Kennel license required.* A kennel license shall be required for any establishment upon which a cumulative total of 26 or more dogs of any age in any 1 calendar year are kept, harbored, boarded, sheltered, sold, given away or in any way transferred. The Department, based upon the application, will determine the appropriate licensure classifications.

Comment: Although the 26 dog threshold is part of the existing regulations, the proposed regulations are written so broadly that a dog's mere presence at an Establishment appears to require it to be counted toward the cumulative total of 26 dogs, thereby subjecting the Establishment to licensure requirements. I understand that the Department does not intend to require that a dog's mere presence at an Establishment equates to the dog being kept or harbored, and that several understood exceptions exist, including where no compensation is paid to house the dogs, as well as if dogs are at the Establishment only for the day. Consistent compliance with and enforcement of the proposed regulations, however, is not possible unless the regulations specify the circumstances under which a dog that is at an Establishment will not be considered to be "kept" or "harbored." The proposed regulations can either include definitions of terms such as "kept" and "harbored" or include provisions exclude from the calculation the dogs that are not kept overnight or those that are on or at the Establishment for a purpose other than kenneling (for a training day, for example).

The broad definition of Establishment also creates confusion concerning what businesses will be required to obtain a license and comply with the space and exercise requirements outlined § 21.23. Establishment appears to include veterinary offices, veterinary research institutions, hotels, campgrounds and similar facilities where dogs have the potential to be kept. If the Department does not intend to require such establishments to obtain kennel licenses and comply with the regulations, the regulations should be revised to so state.

§ 21.22. Housing.

(c) [Adult dogs shall be segregated by sex except for health, welfare or breeding reasons.]

Comment: This provision arbitrarily requires segregation of dogs by sex, regardless of whether or not they are spayed or neutered or not in season. Most good dog trainers would recommend that dogs should interact with dogs of different sexes for proper socialization.

§ 21.23. Space.

(a) Primary enclosures [shall] must be constructed and maintained to provide sufficient space to allow each dog to turn about freely and to stand erect, sit and lie down in a comfortable, normal position. **The dog shall be able to lie in a lateral recumbence (on its side or back)**

with legs fully extended, without head, tail, legs, back or feet touching any side of the enclosure.

(b) Each dog housed in a primary enclosure shall be provided with [a] **twice the minimum amount of floor space[, which] set forth in this subsection. The minimum amount of floor space** shall be calculated according to the following procedure:

Comment: To the extent a dog is confined to a primary enclosure exclusively, the new space requirements are reasonable. The space requirements disregard circumstances where the dog has unlimited access to a dog run or outside area or if the dog is not within the primary enclosure for the majority of its day.

...

In addition to the space requirements, each dog shall receive 20 minutes of exercise per day. Dogs shall be observed and supervised during exercise and shall be exercised the following manner:

...

Comment: The exercise requirements are arbitrarily regimented in numerous respects. There is no rational basis to segregate dogs by size so long as they are socialized, and most veterinarians would state that dogs of various sizes must be permitted to interact in the same space for proper socialization. Requiring a kennel to obtain written permission from a veterinarian to exempt a dog from exercise for a period of time imposes an undue burden on both the kennel operator and the veterinarian, and one would expect that a veterinarian would not willingly make such a determination unless the dog is physically taken to the veterinarian for an examination. The requirements also fail to credit or take account for normal activities that many dogs are permitted to do on a regular basis, including running in a yard or field, training, swimming, or hunting. The proposed regulations are also arbitrary in requiring the kennel to prevent the dogs from "from becoming wet, matted or muddy during the exercise." Allowing a dog to become wet, matted or muddy is not inhumane. Allowing a dog to remain wet, matted or muddy without cleaning the dog could be considered inhumane. The entire provisions governing exercise should be eliminated from the regulations.

§ 21.24. [Shelters] Shelter, housing facilities and primary enclosures.

(8) Outdoor runs and exercise areas may be constructed of concrete, gravel or stone. . . .

(10) Outdoor facilities must be constructed and maintained in a manner and in an area that assures adequate and proper drainage and elimination of standing water, pooled water and mud--even in times of severe weather conditions.

(11) Outdoor facilities, including runs and exercise areas shall be kept free of grass and weeds.

Comment: Although §21.24 (8) does not state that outdoor runs and exercise areas MUST be constructed of concrete, gravel or stone, the provisions read in conjunction eliminate all other commonly used flooring materials for healthy and safe exercise areas, including woodchips and grass. The proposed regulations prohibit kennels from utilizing a fenced in area, regardless of size, if it has grass or any other material other than a hard surface. I believe that this requirement alone causes the Department's estimated additional costs on the regulated community to be significantly understated.

(f) Housing facilities--general. The following criteria apply to both indoor and outdoor facilities:

...

(8) Records shall be kept in accordance with the act and §§ 21.14(a)(5) and 21.41 (relating to kennel licensure provisions; and general requirements) must evidence, among the other provisions, the date and time of day following conditions were met:

Comment: The recordkeeping obligations set forth in the proposed regulations are time consuming and excessive. Kennel operators will have difficulty preparing and keeping the required records and actually performing the work necessary to care for their dogs. This aspect of the regulation will not assist or enable the Commissioner to carry out either the provisions or intent of the act. It creates unnecessary paperwork with no benefit to kennel oversight or enforcement of the regulations.

§ 21.28. Food, water and bedding.

... (2) Potable water shall be available to the dogs at all times unless otherwise directed by a veterinarian. The water must be free of stools, urine, vomit and other contaminants at all times. The water in dog bowls may not be frozen.

Comment: Because this provision is drafted in absolute terms, kennels are not able to comply with the provision and it imposes an unreasonable standard. The regulations should require that potable water be available as often as necessary to ensure the dogs' health and wellbeing.

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§ 21.29. Sanitation.

(b) Primary enclosures for dogs shall be sanitized a minimum of once daily, and as often as is necessary to prevent an accumulation of debris or excreta or a disease hazard. A dog may not be placed in a primary enclosure previously occupied unless the enclosure has been sanitized.

Comment: Daily sanitation appears to be excessive and could potentially expose the kennel operator and the dogs to dangerous chemicals on a more frequent basis than the products recommend.

In addition to the general and specific comments outlined herein, I have also reviewed and support in their entirety the comments submitted by the Pennsylvania Federation of Dog Clubs on February 21, 2007.

Thank you for your consideration of these comments and I look forward to receiving the Department's response.

Very truly yours,



Kevin L. Barley

cc: Hon. Jane Clare Orié
Hon. Randy Vulakovich
Independent Regulatory Review Commission