



Pennsylvania Farm Bureau

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Ms. Mary Bender
Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
2301 North Cameron Street, Room 102
Harrisburg, PA 17110-9408

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INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Proposed rulemaking to amend Dog Law regulations (7 Pa. Code Ch. 21, 23, 25 and 27) – 36 Pa. Bulletin 7596

Dear Ms. Bender:

On behalf of the more than 40,000 rural and farm family members of Pennsylvania's largest general farm organization, thank you for the opportunity to submit the following comments regarding proposed rulemaking concerning the amendments to the Pennsylvania Dog Law Regulations.

Pennsylvania Farm Bureau commends the Department of Agriculture and its staff for its efforts to protect the health and welfare of dogs in the state. However we have serious concerns about the new proposed regulations. After the proposed regulations were published, Pennsylvania Farm Bureau has received nearly 200 letters, calls and emails from our members expressing concern about the Department's proposals, and a very real fear that these regulations will put them out of business.

Briefly, our concerns focus upon the fact that these regulations (1) fail to clearly identify standards with which kennel owners need to comply; (2) mandate burdensome and impractical requirements for kennels; and (3) at times, go beyond the standards set forth in the Animal Welfare Act. Allow me to discuss these matters in more detail.

In the background section of the proposed regulations, the Department states that the intent of the amendments is to clarify the numerous provisions of the act, and thereby increase both the Department's ability to carry out the intent of the act and the awareness and understanding among the regulated community and the general public of the Department's authority and the responsibilities to be carried out by those regulated under the act. Yet we believe in numerous areas of the proposed regulations, the language drafted is vague and confusing, is subject to multiple interpretations, and fails to clearly and adequately identify the standards that regulated

kennel operators are expected to meet in the operation of their kennels and the construction and maintenance of their kennel facilities.

A number of terms used throughout the proposed regulations are not defined. Other terms that are defined in the proposed regulations attempt to create and apply several differing concepts to the same term. For example, the term 'establishment' is attempted to be defined both with respect to the person for whom and the geography for which the term applies.

The proposed regulations' failure to clearly and concretely identify the applicable standards for dog operations and facilities requirements will create additional misunderstanding and friction between the regulated community and the enforcers of such regulations. For the interest of all parties, these regulations (and terms contained within) must be clearly and easily understood.

Our second general concern is that many of the proposals set forth in the regulations would be burdensome and impractical requirements for kennels. Any proposed regulations must be able to be realistically implemented without severe economic strain on the industry. These regulations will overburden Pennsylvania's breeders and kennels – a concern repeated again and again by those who will be regulated by the proposed regulations. The cost and time investment will be impractical for many of the states breeders and kennels, and in the end, what will it truly gain for dogs' health and welfare? The proposed requirements for recordkeeping, exercise and primary enclosures are just three of the major changes that will adversely affect this industry.

Thirdly, these regulations often far exceed the standards set forth in the federal Animal Welfare Act, which is the basis for USDA's kennel inspection regulations. For example, the proposed revisions to §21.23 (exercise and primary enclosures) are overly rigorous, and even contradict the Department's statement that it wished to bring the regulations more in line with the Animal Welfare Act.

The following is an offering of comments to specific provisions of the proposed rulemaking, which we would respectfully ask the Department to seriously consider. Many of the comments we raise come in the form of a question, because of the difficulty that we -- and we suspect many others -- had in our practical understanding of the specific directives that are intended under proposed provisions.

Section 21.1

As identified more specifically below in our comments to other proposed provisions, there is a serious failure in this section and in the proposed rulemaking to offer any definition to numerous terms which are used throughout the proposed rulemaking in prescribing requirements and standards that all kennel operators must meet. This must be remedied before the final version of the regulations are published.

In addition, the proposed definition of 'establishment' is very convoluted. It begins by identifying the 'premises' as the basis for determining the extent and limitation of what an 'establishment' is for purposes of the regulations. It then shifts to a description of 'persons' in

describing what falls within the definition's scope. The definition includes any person, organization, business or operation that utilizes offsite or temporary homes to keep, harbor, etc. dogs. This causes problems, as more fully identified in §21.14.

Section 21.4

Section 21.4(1)(iv)

These proposed regulations would require revocation of the kennel license of a person convicted of animal cruelty law violations, and would preclude issuance of a kennel license to any person convicted of violating animal cruelty law within the last 10 years.

Provisions of Section 211 of the Dog Law gives the Department the discretion to suspend or revoke upon conviction of cruelty to animals law, but does not mandate that the Department revoke or refuse to issue a kennel license. We are specifically concerned with the proposed rulemaking's absolute rejection of the Dog Law's statutory directive that the Department exercise its discretion to determine which violations of the cruelty to animals law are so egregious as to warrant revocation of kennel license or refusal of issuance of kennel license to a violator.

When persons hear that the "cruelty to animals" law has been violated, they normally envision the violator committed an intentional and malicious act to kill or harm a domestic animal, or had committed such an extreme degree of neglect or a gross form of negligence that has caused serious deterioration of the animal's health or well-being. However, court interpretations of Section 5511 show that a person can be "convicted" merely by a standard of conduct that amounts to ordinary negligence -- not the gross form of negligence that other statutes of the Crimes Code would require in order to find a person criminally culpable.

We would refer you to the 2000 Superior Court case of *Commonwealth v. Atkins*, 761 A.2d 601. In *Atkins*, the Superior Court affirmed the conviction of a dog owner for violating the cruelty to animals law essentially on the enforcing officer's testimony that on two separate occasions of the same day the officer observed the dog was tethered on the owner's front porch. On the one occasion, the dog could not reach the food or water that the owner provided to the dog. On the other occasion, the dog could not reach the food that was provided. Nothing in the record showed that dog was being harmed or was suffering from dehydration or malnourishment. The dissenting judge in *Atkins* specifically pointed out that the type of conduct for which the defendant was being found guilty was, at worst, ordinary negligence -- not the type of grossly negligent conduct that the judge believed was necessary for conviction of a criminal statute.

We certainly believe that the Department should invoke its discretionary authority to revoke or refuse kennel licenses to those who have violated the cruelty to animals law through malicious acts to harm domestic animals or through obvious neglect that results in substantial deterioration to the health and well-being of the animal. However, given the very low bar that the courts have established for the type of conduct that would constitute a violation of the cruelty to animals statute, we are concerned that the proposed rulemaking's **absolute** directive for revocation or

license refusal could easily lead to unfair results for otherwise reputable kennel operators. Furthermore, we fear that this **absolute** directive could provide the opportunity for abuse of targeted kennel operators through repeated prosecutions of animal cruelty violations in order to get the one conviction necessary for automatic revocation of license.

Section 21.4(2)(iii)

Proposed changes here would require impoundment of dangerous dog for any violation of § 505-A(a) of the Dog Law until final outcome of a court proceeding, and would require forfeiture of the dog upon a finding of guilt for violation of §505-A(a).

Nothing in § 505-A(a) gives the Department or the court the statutory authority to impose such obligations or sanctions. The proposed change would also 'presume' a dog to be abandoned by the owner if the owner fails to pay for reasonable costs for transportation, care and feeding after two written requests to do so by the entity boarding the dog during the court proceeding.

It is certainly possible for abuse with respect to the establishment of this presumption, as entities holding dangerous dogs could precipitate the legal application of abandonment through attempts by the holder of the dog to impose unreasonable charges upon the dog owner.

We would recommend that this provision be deleted as not authorized by statute. If requirement for impoundment would be prescribed in any final rulemaking, we would recommend that the provision specifically prescribe limitations in claimed costs that the owner would be responsible for timely payment in order to avoid a "presumption" of legal abandonment.

Section 21.14

As noted above, often instead of clarifying existing and proposed language, the draft changes to the dog law serve to create more misunderstanding. Farm Bureau has highlighted what we believe are some of the major problems in the proposed regulations in the below section.

Section 21.14(a)(2)

These proposed regulations would require a separate and proper kennel license for 'each type of kennel and every location at which a kennel is kept or operated.' This section lacks clarity and leads to several questions:

Is the provision intended to require any breeding kennel to obtain two licenses – a 'breeding kennel' license and a 'dealer kennel' license?

Will two licenses be required for an 'establishment' that has two housing structures located on adjoining, but separately deeded properties?

These proposed regulations also would require 'an establishment' to obtain a kennel license when a cumulative total of 26 or more dogs are kept, harbored, boarded, sheltered, sold, given away or transferred in a year.

What basis of 'establishment' (see concerns listed under §21.1) will be applied in determining the number of licenses a kennel operator will need under this provision – the 'person' basis or the 'location' basis?

Section 21.14(a)(3)(ii)

The proposed changes here would require 'an establishment that utilizes temporary homes and meets the 26-dog threshold to be licensed as a kennel.'

What is a 'temporary home' for purposes of kennel licensing requirement, as 'temporary home' is proposed to be defined in Section 21.1 as 'a place other than a licensed kennel'?

Does an 'establishment' with a main premises that houses 26-dogs plus a 'temporary home' that houses less than 26 dogs required to obtain 2 kennel licenses?

Section 21.14(a)(3)(iii)

Proposed changes here would require 'a temporary home' that meets the 26-dog threshold to be licensed as a kennel.

Is the 'temporary home' required to be separately licensed as a kennel, even though the 'establishment' operating the 'temporary home' is already licensed?

Section 21.14(a)(5)

These changes would require extensive recordkeeping by all licensed kennels:

Should persons operating under a private kennel license be required to keep records of dogs they breed internally and do not normally transfer to another?

Section 21.14(a)(5)(i)

The proposed revisions would require the kennel operator to keep records of the 'age' of each dog kept at the kennel. In contrast, the Animal Welfare Act Regulations (3 CFR § 2.75) require only the 'date of birth or approximate age' of the dog to be kept.

Section 21.14(a)(5)(iii)(A)(III)

These proposed changes would require all kennels licensed under Kennel Classes I through V that acquires a dog from another dealer to record the transferring dealer's 'Pennsylvania kennel license number' or 'out-of-state dealer license number.'

Will a federal APHIS dealer's license meet the requirement?

What is the kennel receiving a dog from an out-of-state dealer required to do if that dealer's state does not regulate and issue a state kennel or dealer's license?

Will the kennel receiving a dog be held to be in violation if the transferring dealer intentionally misrepresents or provides false information on being licensed or having a license number?

What credentials, if any, should the receiving kennel operator require the transferring operator to produce, and to what degree should the receiving kennel operator be required to verify the information and documentation provided by the transferring dealer?

Section 21.14(a)(5)(iii)(B)(III)

Here, changes proposed would require a Boarding Kennel and a Nonprofit Kennel, in the case of a dog running at large or a rescue dog, to record 'the person that last owned the dog.'

If the dog is licensed, is the kennel receiving the dog required to investigate county records to determine the owner to whom the license tag was issued?

Is the kennel receiving the dog in violation for recording information on the dog's 'owner' provided by the transferring person or organization that turns out to be incorrect?

What happens if the kennel does not know the last owner of a stray dog? Would they be in violation of the regulations?

Section 21.14(a)(5)(iv) and (vii)

These proposals would require all licensed kennel operators to keep records of 'to whom the dog belongs at the time of transfer,' in addition to keeping records of 'how and to whom the dog is dispersed.'

In what context is 'belonging' to a person to be judged, as there is nothing in the proposed rulemaking or in applicable law to define the term or assess its determination?

How is a kennel operator receiving the dog able to determine 'to whom the dog belongs' if that person transferring the dog does not know?

Additionally, §21.14(a)(5)(vi) requires recordings of the date each dog 'leaves' the kennel, while § 21.14(a)(5)(vii) requires recordings of how and to whom each dog is 'dispersed.'

Are the term's 'leave' and 'disperse' intended to mean the same thing for purposes of meeting the requirements, and if not, in what ways are the terms intended to mean and be applied differently?

Also proposed under §21.14(a)(5)(vii) is the requirement that all licensed kennels record 'how' the dog is dispersed. In comparison, the Animal Welfare Act Regulations (3 CFR § 2.75) require a licensed dealer to record 'the method of disposition' and gives specific examples of a description that would meet the recording requirements: 'e.g. sale, death, euthanasia or donation.'

Will the method of recording disposition of the dog prescribed in the Animal Welfare Act regulations meet the recording requirement proposed under this provision?

Section 21.14(a)(5)(vii)(A)

Proposed revisions here would require that recordings of dispersals to another kennel include information of the kennel acquiring the dog, including name, address and PA or out-of-state license number.

What activities are the transferring kennel operator required to perform in order discover the identity of the person receiving the dog as a kennel operator?

If the person receiving the dog does not voluntarily disclose that he is a kennel operator and the kennel operator transferring the dog has no actual knowledge that the person receiving the dog is operating a kennel that is licensed or required to be licensed, must some initial inquiry be made in order to avoid being in violation?

If the person receiving the dog is an out-of-state dealer, will recording of the person's federal APHIS dealer's license meet the requirement for recording the 'out-of-state dealer's license?'

What is the transferring kennel operator required to do If the state of the person receiving the dog does not regulate and issue a state kennel or dealer's license?

Will the kennel transferring a dog be held to be in violation if the person receiving the dog intentionally misrepresents or provides false information on being licensed or having a license number?

What credentials, if any, should the transferring kennel operator require the receiving operator to produce, and to what degree should the transferring kennel operator be required to verify the information and documentation provided from the person receiving the dog?

Section 21.14(a)(5)(vii)(C)

These proposed regulations would mandate that kennel operators transferring a dog be required to record whether each dog transferred from the kennel 'is spayed or neutered' and 'whether an agreement to spay or neuter the dog has been entered into.'

What is the rationale for the existence of such regulations?

With respect to agreements on spaying or neutering, is the regulation requiring a recording on all transferred dogs, including a recording that 'an agreement has not been entered into, or is the regulation only requiring a recording with respect to the records of dogs for which 'an agreement has been entered into?'

Section 21.14(b)

The proposed changes would prohibit licensed kennel operators from receiving or transferring dogs to an establishment operating without a license required under the Dog Law.

To what extent is the licensed kennel operator required to investigate the person transferring a dog to the operator or receiving the dog from the operator to ensure the person is not operating a kennel or is operating a kennel that is required to be licensed under the Dog Law, in the absence of any specific communication by the person on these matters?

Will the licensed kennel be in violation if the person the person transferring a dog to the operator or receiving the dog from the operator intentionally misrepresents or provides false information on being licensed or having a license number?

What credentials, if any, should the licensed kennel operator require the such person to produce, and to what degree should the licensed kennel operator be required to verify the information and documentation that the person provides pursuant to the transfer or receipt?

Section 21.14(c)

This section proposes health certificate requirements for dogs. One of the proposed requirements states that a dog entering Pennsylvania from another state, commonwealth or country shall have a health certificate stating that the following conditions are met (1) that the dog is at least seven

weeks of age ... (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)....

It is Farm Bureau's understanding that while dogs may begin to receive rabies vaccinations at seven weeks, it is a common practice and a generally accepted veterinary standard that dogs should not start rabies vaccinations until they reach three months of age. In addition, Pennsylvania law requires all dogs three months and older be vaccinated against rabies.

While Pennsylvania Farm Bureau does not disagree with the need for health certificates, the seven weeks of age requirement for dogs entering Pennsylvania should be realigned to match Pennsylvania law for Pennsylvania dogs.

Section 21.15

This section would exempt humane societies and joint dog control agencies from the proposed regulations' requirement to meet housing, quarantine, separation, spacing and other requirements for dog housing facilities that will be imposed on other kennels.

Farm Bureau questions why these organizations are exempted from the law. One would think that these facilities should be required to perform tasks and maintain sanitation of kennels to enhance the safety and welfare of dogs kenneled to minimize health risks.

If increased standards are needed to increase humane standards – then they should be applied uniformly without exception, regardless of the purpose or size of the facility.

Section 21.21

The proposed regulations attempt to impose numerous standards with respect to 'indoor' and 'outdoor' facilities. However, the proposed (and current) regulations lack specific definitions of both 'indoor facilities' and 'outdoor facilities.'

A clear understanding of the extent and scope of 'indoor facilities' and 'outdoor facilities' may be critical to a kennel operator in determining what standards apply and do not apply in the operation of the kennel. Many kennels have been constructed in a manner in which 'housing areas' for dogs are inside a permanently constructed building and 'run areas' accessible to the interior housing areas are outside the building. The regulations do not clarify if these 'facilities' are considered to be 'indoor' or 'outdoor'?

In addition, the proposed regulations in §21.21 do not reflect what are generally accepted practices in the canine community. Proposed changes will have a negative impact on kennels, and the concerns are highlighted below.

Section 21.21(b)

This proposed regulation would require 'outdoor facilities' of kennels to be constructed in a way that is 'mud free' and that 'assure[s] there is no standing or pooled water.' However, the Animal Welfare Act Regulations (9 CFR 3.1) requires that standing puddles in animal enclosures be drained or mopped so that the animals stay dry. There is no requirement that kennel facilities be designed and constructed to **absolutely** prevent any occurrence of mud or pooled or standing water anywhere in the facility. Strict compliance with this standard is neither practically nor economically feasible.

Section 21.21 (d)

This proposed regulation states that 'entryways and exits shall be maintained so that, when the gate or enclosure is opened, the dog will have unfettered clearance out of the enclosure.'

It is Farm Bureau's understanding that many kennels (and homes) use commercially produced exits built to ensure that the entryway and exit is as tall as the dog's shoulder. In addition, moveable doggie doors or flaps, which many kennels also use, help to ensure that the interior areas of kennels are kept to the appropriate climate level.

Section 21.21 (e)

The proposed language here states that 'where the primary enclosures are stacked or set side by side, a tray, wall, partition or other device approved by the Department which does not allow for feces and urine to pass between primary enclosures or soil the primary enclosure of another dog, shall be placed under or between, or both, the primary enclosures. The tray, wall, partition or approved device must be impermeable to water, removable and able to be easily sanitized.'

It is Farm Bureau's understanding that this may hurt the airflow through the kennel by restricting cross ventilation.

Section 21.23

Proposed revisions to the this section will significantly heighten the standards for space that must be provided by all licensed kennels in their primary enclosures and other facilities, and will create a rigid and inflexible mandatory program for daily exercise of dogs. Farm Bureau has determined that many of the specifications included in the draft regulations go well beyond the standards set in the Animal Welfare Act, and would impose extreme cost burdens in reconfiguration and reconstruction of kennel facilities and in daily operation and management of kennels. Many reputable families who have responsibly and caringly operated private kennels, boarding kennels and breeding kennels would be forced to incur economically burdensome costs to comply with the proposed requirements, and will likely force many to discontinue their operations.

We seriously question whether there is any empirical evidence to show that the current standards for housing structures within kennel facilities are inadequate or that the proposed standards for kennel facilities dogs will significantly improve the well-being of dogs being housed. And while we do not dispute the general need for exercise of dogs kept in kennel facilities, we seriously question the proposed rulemaking's extreme inflexibility in the exercise program to be mandated and the proposed regulation's apparent rejection of the more flexible and individually tailored approach taken by Animal Welfare Act regulations in implementing of dog exercise programs in kennels.

Section 21.23 (b)

Proposed language in this subsection would require each dog housed in a primary enclosure to be provided with TWICE the minimum amount of floor space that is currently required in either our state Dog Law regulations or in regulations to the Animal Welfare Act [9 CFR 3.6(c)].

It is our understanding that there are many kennels in Pennsylvania that built their primary enclosures to USDA kennel standards, these kennels and all others who are in compliance with the current regulations will need to make significant changes to their current facilities. Many of our members who operate licensed kennels indicated that the Department's estimates of additional costs to be incurred by kennel operators to comply with the proposed rulemaking's spacing requirements were seriously understated. The sheer cost of construction and a reduction in revenue is likely to have severe economic consequences on the regulated parties – possibly forcing them out of business.

Section 21.23 (e)

This subsection would require that each dog in every kennel subject to licensing requirements receive 20 minutes of exercise per day, would only authorize two forms of exercise (leash walking or exercise areas) that would satisfy the requirement, prescribe pervasive limitations on size of the dogs that may be exercised together, and sets forth provisions for the conditions and size of the exercise area. It also provides for a stringent recordkeeping requirement as well.

Also, this subsection would only provide one exemption to the daily exercise requirement – if the Department grants an exemption after veterinarian has determined in writing that the dog's physical condition is such that the dog's health, safety or welfare would be endangered.

In addition, most outdoor areas that are not roofed or constructed to prevent rain or snow from falling on the area would be unlikely to meet the proposed regulation, as §21.23(e)(C)(ii) proposes to require that dogs be protected from 'becoming wet, matted or muddy during the exercise'

Pennsylvania Farm Bureau believes that the Department's extreme inflexibility pertaining to the minimum requirements for the exercise of dogs will make it unreasonably difficult for many kennel operators to both properly operate their kennels and fully comply with these regulations.

In contrast, the Animal Welfare Act regulation (9 CFR 3.8) offers more flexible and reasonable requirements for licensed facilities. The regulations require that a licensed facility develop, document and follow an appropriate plan for exercise of dogs housed in the kennel. The plan must be approved by a veterinarian and must provide for regular exercise of individual dogs being held in enclosures that are less than twice the minimum spacing required under the regulations. For dogs housed in groups, exercise is not required if the total floor space provided in group housing (cages, pens and runs) equals at least 100 percent of the total floor space required under the federal regulations if the dogs were individually maintained. The regulations also have no specifications as to the size and type of dogs to be exercised together (so long as they are compatible), and has no prohibitions on dogs becoming 'wet, matted or muddy.' The AWA regulations would also require that dogs maintained without sensory contact with other dogs have contact with humans. We believe this approach is more practical and will provide better opportunity for kennel operators to carry out activities for proper exercise of dogs and interaction with human contact.

Section 21.24

Many of the new provisions contained within §21.24 go beyond the Animal Welfare Act regulations and would require a significant cost investment for kennel owners to bring themselves into compliance. What is the rationale behind these changes? Are they based upon sound science principles? Instead of mandating new requirements in a 'one-size fits all' manner, perhaps the health and welfare of dogs would receive greater benefit in having a veterinarian set the standards for kennels individually, based upon the purpose and type of dogs in the facility. In addition, there are several areas that require clarification in the language used. More specific elements of concern are highlighted below:

Section 21.24(b)(1)

The proposed regulation would establish standards for outdoor kennel facilities that go beyond the minimum standards prescribed in the Animal Welfare regulations [9 CFR 3.4(b)]

The proposed regulation would require specific criteria for the area of shade that must be provided to dogs in addition to the structure that houses dogs. The shade must be a permanent fixture (no tarps). It must be located immediately outside the dog housing structure so that the dog has a mud and water free area to be dry before entering the housing structure. It must provide sufficient air movement to keep dogs comfortable in excessive heat. Every shade area must be at least four feet in length by the width of the dog run. Each shade area must be large enough to allow all dogs individually to sit, lie down normally and freely turn around. It must be large enough to allow all dogs to 'avoid inclement weather.'

The Animal Welfare Act regulations offer more flexibility for kennels while ensuring the health and safety of the dogs. Among the standards it sets forth, the shelter must protect animals from

direct rays of the sun; contain a roof, four sides and a floor; provide adequate protection and shelter from cold and heat; provide animals with a wind and rain break at the entrance; contain clean and dry bedding materials if the ambient temperature is below 50F, with additional dry bedding required for temperatures below 35F. Animal Welfare Act regulations also permit the use of grass in outdoor enclosures, whereas the proposed regulations would essentially prohibit the existence of any grass surfaces. We question the wisdom and need for such a prohibition.

Section 21.24 (b)(2)

The proposed regulation would establish standards regarding the slope of the surface on which a housing structure in an outdoor kennel would be placed. The Animal Welfare Act regulations do not specifically prescribe this standard, and Pennsylvania Farm Bureau would also recommend that the proposed regulations do not specify such standards as well.

Section 21.24 (b)(3)

The proposed regulation would require dog runs for each dog housing structure with an area of at least five times the length and twice the width of the largest dog in the housing structure. There are no requirements which specify runs and the size of runs for outdoor kennels in the Animal Welfare Act regulations. Following the lead of the absence of AWA regulations, Farm Bureau does not believe that a regulation specifying the size of runs is necessary.

Section 21.24(b)(4) and (5)

These proposed provisions would impose standards for bedding and would 'assure' the dog can maintain body heat and for location of housing structure that would 'insure' the dog can maintain body heat.

Are 'assure' and 'insure' intended to have the same meaning and application, and if not, what are the differences that are intended to apply to these terms?

How are the terms intended to be measured and applied in determining whether the standards are met?

Section 21.24 (b)(5)

The proposed regulation would require that the housing structure be 'raised' off the ground to 'prevent moisture' and constructed and situated to 'provide a draft-free area.' This provision would suggest that installation of a dog door at the entrance of the housing structure would meet the standard of providing a draft free area.

How will the standards of 'preventing moisture' and 'draft-free areas' be measured and applied in determining whether the standard is met?

Section 21.24(b)(7)

The proposed regulation would require 'outdoor' floor area of an outdoor kennel with which a dog may come in contact and which is 'not exposed to the sun' be 'impervious to moisture.'

Is the application of 'no exposure to the sun' condition to be determined on the basis of any point of time of day (i.e. will the requirement for an impervious surface apply if an outdoor floor area is shaded during any portion of the day), or is it to be determined on the basis of whether any sunlight hits an area in any portion of any day of the year?

Section 21.24(b)(8)

The proposed regulation would establish specific construction requirements for run and exercise areas for outdoor facilities that are constructed of gravel or stone. However, no standard for make-up of stone, gravel or other composite runs is specified in the Animal Welfare Act regulations.

Pennsylvania Farm Bureau believes that stone and gravel runs may be constructed in other ways that ensure the safety and protection to dogs who may utilize the run to the same or better degree than the one manner of construction and the construction materials specifically mandated in the proposed regulation. We would recommend that the regulations be amended to establish objectives to be accomplished through construction of composite dog runs, rather than prescribe only one means for composite dog runs to be constructed.

Section 21.24(b)(10)

The proposed regulation would set requirements for outdoor facility areas to be constructed and maintained that assures '...elimination of standing water, pooled water and mud – even in times of severe weather conditions.' It would also require the facility and drainage system be constructed to 'insure the animals stay dry and are not subjected to wet [or] muddy conditions.'

Are 'assure' and 'insure' intended to have the same meaning and application, and if not, what are the differences that are intended to be applied to these terms?

What is the practical measurement to be applied to the 'elimination of standing water' standard to determine whether compliance is met? Is it to be applied on the basis of 'any point in time,' such that the kennel operator would be in violation for any puddle of water that was formed during a rainstorm? Is it to be applied to time periods immediately after precipitation event, such that the kennel operator would be in violation for any puddle of water that existed immediately after a rainstorm? Or would it be applied and limited to a

time period where a reasonably constructed drainage system would normally dissipate the existence of standing water, such that a kennel owner would not be in violation unless there was a continued existence of standing water after such time period?

In addition to this section lacking clarity, we question whether it is practically or economically feasible for kennel operators to strictly comply with a standard that calls for the elimination of mud on all parts of the kennel facility.

Section 21.24(b)(11)

This proposed regulation would essentially prevent kennels with outdoor facilities from having runs and exercise areas with grass.

Many kennels in operation today have grass in runs and exercise areas. *What is the scientific basis behind this requirement?* The Animal Welfare Act regulations permit grass as a floor, so long as it is replaced if there are any prevalent odors, diseases, insects, pests or vermin and it is maintained on a regular basis.

Section 21.24(f)(7)

The proposed regulation would require that animal waste, bodily fluids, food waste, soiled bedding, dead animals, garbage and water that is dirty and not potable be removed daily.

The Animal Welfare Act regulations [9 CFR 3.1(f)] require 'regular and frequent collection, removal, and disposal' of animal and food wastes, bedding, debris, garbage, water, and dead animals, 'in a manner that minimizes contamination and disease risks.'

Section 21.24(f)(7)

The proposed regulation would require immediate replacement of water that is removed and discarded.

The Animal Welfare Act regulations (9 CFR 3.10) require that if potable water is not continually available to the dogs, such water must be offered 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.

Section 21.24(f)(8)

The proposed regulation would require that records be kept for cleaning, and sanitizing housing facilities, food and water bowls and for providing food and water to dogs 'in accordance with § 21.14(a)(5).' Records proposed to be kept under § 21.14(a)(5) are records that would be specific to each individual dog in the kennel.

The Animal Welfare Act regulations do not specifically prescribe requirements for notations and recordkeeping of cleaning activities or activities related to the providing of food or water to dogs.

Farm Bureau does not believe that it is reasonable to require notations and records on the cleaning and sanitizing activities for each individual dog. Instead, we would recommend any requirements for notation and recordkeeping of cleaning activities only require the identification of areas and equipment that are cleaned and the dates when they are cleaned.

Section 21.24(f)(10)

The proposed regulation would require housing facilities to have heating, cooling ventilation and lighting mechanisms that meet the standards to be established in §§ 21.25-21.27.

We believe that this proposed change is unnecessary and could be interpreted in a manner as would cause a kennel operator to have committed two violations of the Dog Law for failure to meet any standard prescribed in §§ 21.25-21.27.

Section 21.24(f)(11)(i)

The proposed regulation would require indoor kennels with no outside runs to have a gutter and drain that provides for 'sluicing waste waters during kennel cleaning.'

How is 'sluicing' standard to be applied and measured in determining whether the standard is met?

The Animal Welfare Act regulations [9CFR 3.1(f)] require that all drains used in housing facilities be properly constructed, installed and maintained and, if a closed drainage system is used, the system must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor.

Section 21.24(f)(11)(ii)

This section requires surface drains and gutters to be at least 6 inches in diameter. The Animal Welfare Act regulations prescribe no specific minimum standard for drain or gutter size.

It is Farm Bureau's understanding that this drain size is not consistent with the standard sized drains typically used in kennels. As such, this would be a major change for many kennels currently in operation.

Section 21.24(f)(11)(iii)

This section further provides for drains and gutters in kennels with indoor housing and outside runs, stating that drains and gutters must be installed between inside and outside portions.

Again, if this feature is not consistent with how kennels are typically built, installing drains and gutters per this section is likely to be another costly infrastructure change for kennels. As mentioned above, the Animal Welfare Act regulations do not specifically mandate minimum standards for drain or gutter size in kennels.

In addition, the requirement for a 'half round pipe installation' is vague and would need further clarification for the regulated community.

Section 21.24(f)(11)(iv)

This proposed regulation would require outdoor kennel runs to be 'sloped to a gutter located immediately outside the end fence of each run' and to 'meet the criteria established in (b)(1)-(3) and (b)(6)-(9).'

Per Farm Bureau's interpretation of the regulations, the standards prescribed in § 21.24 (b)(1), (b)(3), (b)(6), (b)(7), (b)(8) and (b)(9) have nothing to do with kennel runs.

In addition, the extent and limitation of slope required for outdoor kennel runs are not specified in this provision. If the slope standard is intended to be the same as prescribed in (b)(2), the provision is not necessary and could be interpreted in a manner as would cause a kennel operator to have committed two violations of the Dog Law for failure to meet the standard.

*Is this standard consistent with the construction features that normally exist in kennels?
If not, can the standard be complied with in a feasible and reasonably cost effective manner?*

Section 21.24(f)(11)(iv)

The proposed regulation would require indoor kennels with outdoor runs to 'have indoor drains or gutters.'

How will this standard be applied and measured in determining whether the standard is met?

Section 21.24(f)(11)(v)

The proposed regulation would require drains and gutters used to handle wastewater and storm water to be sanitized at least once daily and immediately flushed with potable water.

The Animal Welfare Act regulations do not impose any specified time period for sanitization of gutters. In considering AWA's regulations and why PDA feels the need to go further than those of AWA, Farm Bureau poses the following questions:

*Does the failure to impose a **daily** sanitizing requirement significantly increase the chances of placing the health of dogs at risk?*

Is there an alternative time period that can be prescribed that is more reasonable and consistent with practices normally performed by kennel operators and will not significantly increase the chances of placing the health of dogs at risk?

Section 21.24(f)(11)(vii)

This provision would propose that all floors or surfaces of an indoor or outdoor kennel are sloped, situated and constructed in a manner that ‘assures the urine and feces are eliminated from the areas occupied by the dog or dogs housed in that enclosure.’

This standard could be interpreted to require housing areas and runs to be constructed in a manner that would cause urine or feces produced by a dog to immediately travel into a guttered area or drain without the need of assistance a water stream.

If the provision is intended to impose such a requirement, we seriously doubt that many current kennel facilities would meet this requirement, and we seriously question whether improvements to existing facilities could be made a practical and economically feasible manner to ensure strict compliance with this standard.

Section 21.24(f)(16)

This provision proposes that operators of indoor kennels would be required to have accessible washing facilities specifically in the area of the kennel that houses animals. There is nothing in the Animal Welfare Act regulations that specifies this requirement. We question the need for washing facilities to be provided specifically in this area, and are concerned with the additional cost that existing kennels will need to incur to comply with this requirement.

Section 21.24(f)(18)

This provision in the proposed regulations would require all kennel facilities to be ‘cleaned and sanitized’ every 24 hours.

Nothing in this provision defines, quantifies or gives any meaningful or practical guidance on how enforcement officials or regulated kennels are to determine whether the standard for ‘cleaning’ and ‘sanitizing’ is met. To further complicate matters, the use of two terms in the provision suggests that the kennel operator must comply with two differing standards, neither of which are clearly defined or articulated.

The proposed requirement for performance of cleaning and sanitizing activities every 24 hours sharply contrasts with the more flexible and practical standards established under the Animal Welfare Act regulations [9 CFR 3.11(b)]. While the AWA regulations specifically prescribe

kennels be sanitized at least once every two weeks, cleaning of particular areas within the facility is required more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta and other disease hazards.

Section 3.1(b) of the AWA does require that hard surfaces be spot cleaned and sanitized to prevent accumulation of excreta and reduce disease hazards' floors be made of dirt, absorbent bedding, sand, gravel, grass or other similar material be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta; contaminated material be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests or vermin infestation; and all other surfaces of housing facility be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices.

Farm Bureau again questions whether a requirement for daily 'cleaning' and 'sanitizing' of kennels is necessary, is consistent with practices that normally occur in kennels, and can be strictly complied with by kennel operators in a practical and economically feasible manner.

Section 21.25

This provision proposes to establish minimum standards for temperature control in indoor and outdoor kennels. Per communication with the regulated community, there are concerns about the temperature thresholds set for dogs. We recommend that regulations provide the flexibility for kennel operators be able to work with an attending veterinarian in determining and approving appropriate temperature ranges based upon the types of dogs housed.

Section 21.25(b)

This proposed regulation would require outdoor kennels to have an area of shade that meets the standards already stated in § 21.24(b)(1).

This proposed change is unnecessary and could be interpreted in a manner as would cause a kennel operator to have committed two violations of the Dog Law for failure to have shading that meets the requirements of § 21.24(b)(1).

Section 21.25(c)

The proposed regulation would require auxiliary temperature control and air movement blowers or air conditioners when ambient temperature is at or above 85 degrees.

While the Animal Welfare Act Regulations [9 CFR 3.2(b) and 3.3(b)] require auxiliary ventilation, such as fans, blowers, or air conditioning be provided at indoor housing and at sheltered housing facilities when the ambient temperature is 85 degrees, the requirement is

imposed in the context of the standard that prohibits absolutely the presence of an ambient temperature of 85 degrees for four consecutive hours.

Farm Bureau does not believe that this requirement should apply to indoor kennels, as the proposed § 21.25(e)(2) would prohibit absolutely any indoor kennel from having an ambient temperature above 85 degrees. See also our comments to § 21.25(e)(2) below.

We also question how this standard can be applied and measured in determining whether the auxiliary ventilation activities performed by outdoor kennel operators meet the requirements prescribed in this standard.

Section 21.25(d)

This provision would require 'indoor kennels' to have a 'heating source' that would maintain 'slab temperatures' in the kennel to be between 35 and 55 degrees.

How is 'slab' defined and what areas and features are intended to be subject to the 'slab temperature' standard?

Does it not logically follow that the proposed minimum 'slab temperature' requirement will inherently be met through compliance with proposed subsection (e)(1) requirement for indoor kennels to maintain a minimum ambient temperature of 50 degrees?

In addition, it is Farm Bureau's understanding that many modern, updated kennels utilize radiant heat as a primary or secondary heat source, keeping the floors to a temperature above 55F. If this needed to be changed, this would require a significant change in building infrastructure for kennel owners to bring themselves into compliance.

Section 21.25(e)(2)

This provision's proposed maximum temperature standards for indoor kennels are not consistent with the Animal Welfare Act regulations [9 CFR 3.2(a) and 3.3(a)]. The proposed standard would prohibit an ambient temperature of greater than 85 degrees at any point in time. In contrast, the Animal Welfare Act's standard would prohibit an ambient temperature of greater than 85 degrees for four consecutive hours.

We believe the Animal Welfare Act regulations' standard in prohibiting temperatures of excessive temperatures for prolonged periods of time better reflect a kennel condition that would put the health and well-being of dogs at substantial risk and should be avoided than the point-in-time standard the proposed rulemaking would impose. We would recommend the Department adopt the AWA regulations standard.

Section 21.26

This section proposes to establish additional ventilation standards for kennels. There are numerous problems with clarity in language which need to be addressed in order to identify more concretely the standards and requirements that apply. In addition, similar to our recommendations for §21.25, we believe the best regulatory approach is one that provides for the development of a veterinarian-approved ventilation program that is tailored to the specific characteristics of the kennel.

Section 21.26 (a)

This proposed regulation would impose various standards on the 'sheltered part of sheltered housing facilities.' Unfortunately, there is no definition of 'sheltered housing facility' in the Dog Law or regulations or proposed regulations. There is a definition of 'sheltered housing facility' in the Animal Welfare Act Regulations (9 CFR 1.1). The AWA regulations define 'sheltered housing facility' as 'a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times.' A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

Is the AWA Regulations' definition of 'sheltered housing facility' intended to apply in determining who and what is subject to the standard?

Farm Bureau believes there needs to be further clarification to identify and distinguish what is and what is not a 'sheltered housing facility' for purposes of the regulations. If the intent of the regulations is to define a 'sheltered housing facility' in the same manner as the definition contained in the Animal Welfare Act regulations, Farm Bureau recommends that such intent be specifically noted in the regulations.

Section 21.26(a)

This proposed regulation would change the applicable standard for ventilation from requiring that the ventilation to be provided 'minimize' moisture condensation to requiring that the ventilation to be provided 'prevent' moisture condensation.

How is the 'prevention' standard to be applied and measured in determining whether the standard is met?

If an extreme standard of moisture condensation prevention is intended (i.e. a standard that would prohibit windows of a kennel facility from fogging), could kennel operators strictly comply in a practical and economically feasible manner?

We also believe there is a potential for confusion and conflict between the standard to be established under this provision and the standard to be established under § 21.26(a)(1). If the

specific standard of airflow proposed in § 21.26(a)(1) for control of moisture condensation is intended to meet § 21.26(a)'s general 'prevention of moisture condensation standard, inclusion of § 21.26(a)'s general standard is unnecessary.

Section 21.26(a)(1)

This proposed regulation would require indoor and 'sheltered' housing facilities to have a minimum airflow of 0.8 to 1.0 cubic feet per minute per square foot of floor area.

If an airflow of 0.8 cu. ft. per sq. ft. meets 'minimum air flow,' there is no need for prescribing another minimum airflow requirement of 1.0 cu. ft. per sq. ft.

Again, we question whether this requirement is consistent with what is typically found in kennels. If changes are required, what would be the cost for kennels?

Would 'floor area' include only housing areas, runs or both?

Section 21.26(a)(2)

This proposed regulation would require 'kennel buildings' in indoor and 'sheltered' housing facilities to have a ventilation system that provides at least six air changes per hour.

What is considered to be a 'kennel building' for purposes of this standard?

Is the proposed requirement consistent with practices that normally occur in kennel operation? If not, is can such requirement be achieved in a feasible and reasonably cost effective manner?

Section 21.26(a)(3)

This section would require 'kennel buildings' in indoor and 'sheltered' housing facilities to have 'ground level ventilation' to 'assure dry kennel run floors during cold weather.'

What is considered to be a 'kennel building' for purposes of this standard?

How is the proposed 'ground ventilation' requirement to be applied and measured in determining whether the requirement is met?

Assuming the definition of 'sheltered housing facility' prescribed in the Animal Welfare Act Regulations is intended for this provision, will the requirement for 'ground level ventilation' apply to outside runs?

Section 21.26(a)(3)

This section would require ventilation systems for latrines and support buildings to be separate from the ventilation system for the 'kennel building.'

What is considered to be a 'kennel building' and what is considered to be a 'support building' for purposes of this standard?

We also question whether there is empirical evidence that demonstrates a regulatory standard to require a separate ventilation system is absolutely necessary for the health and well-being of dogs housed in a kennel.

Section 21.27

As with several previous sections, Farm Bureau believes that a better regulatory approach for this section is one that allows a kennel owner to meet lighting requirements through implementation of lighting system that has been approved by a veterinarian. However, in the absence of approval from a kennel's attending veterinarian for this section, there is general agreement among the regulated community that more clearly and concretely identified standards would assist in understanding of how the standards will practically apply to their particular kennel operations and in facilitating their compliance.

Section 21.27(a)(1)

This proposed regulation would impose specific requirements for illumination of 'indoor kennel' and 'sheltered kennel' facilities of 10 foot-candles in the 'kennel building' and 'primary enclosure' areas, 20 foot-candles in 'bathing, grooming and toilet areas,' and 70 foot-candles in 'support buildings.'

What is considered to be a 'sheltered kennel facility,' a 'kennel building,' and a 'support building' for purposes of this standard?

Are these proposed requirements for illumination intended to impose heightened illumination standards, relative to the illumination that is normally provided in responsibly operated kennel operations? If so, what is the empirical justification for such heightened standards?

Section 21.27(a)(2)

This proposed regulation would require the primary enclosures of 'outdoor kennels' to be '.... placed to protect the dogs from excessive light and direct rays of the sun.'

Proposed § 21.24(b)(1) would require a shaded area to be provided for primary enclosures of outdoor kennels, and would prescribe minimum criteria for the shading that would need to be provided.

Is § 21.27(a)(2) essentially attempting to impose the same requirement as is to be imposed under § 21.24(b)(1)?

If so, inclusion of this requirement is unnecessary and could be interpreted in a manner as would cause a kennel operator to have committed two violations of the Dog Law for failure to meet § 21.24(b)(1)'s standard.

If not, how does this requirement differ from § 21.24(b)(1) and how will this requirement be applied and measured in determining whether the requirement is met?

Section 21.28

This section proposes new language and amendments regarding food, water and bedding for kennels. We believe the language drafted does not clearly and concretely identify the standards that kennel operators are expected to meet. In addition, many of the proposed amendments go beyond what is stated in the Animal Welfare Act regulations. Farm Bureau believes that the standards set forth in the AWA regulations for food, water and bedding are already set upon sound science and further measures beyond the AWA will only serve to make it even harder for kennels to comply with regulations – and even more difficult to take care of their dogs properly.

Section 21.28(1)

This proposed regulation would require that food that is 'wet,' 'moldy,' 'soiled' or 'inedible' be disposed within two hours of feeding.

How are these conditions to be applied and measured in determining whether the requirement for timely disposed is triggered?

In addition, the AWA regulations [9 CFR §3.9(b)] state that 'measures should be taken to ensure that there is no molding, deterioration, and caking of feed.' This may be the better, and more easily measurable and enforceable option to ensure that dogs are fed quality rations.

This proposed regulation would also require feeding bowls to be cleaned daily, if one feeding is provided, and before the next feeding, if more than one feeding is provided.

The Animal Welfare Act regulations [9CFR 3.11(b)(2)] require that food and water receptacles for dogs be sanitized at least once every two weeks using one of the methods prescribed in paragraph (b)(3) of Section 3.11, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

Is the proposed requirement for daily cleaning and sanitizing of feeding bowls consistent with practices that normally occur in responsible kennel operations? If not, is can these requirements be achieved in a feasible and reasonably cost effective manner?

We also foresee that the proposed mandate of cleaning and sanitizing bowls before every feeding may have an unintended effect of discouraging kennel operators to provide more than one feeding per day.

This proposed regulation would require water bowls to be cleaned daily and whenever urine, stools or vomit are present in the bowl.

See notes for section 21.28(1) above for the applicable standard for times prescribed in the Animal Welfare Act Regulations when water receptacles must be cleaned.

Is the proposed requirement for daily cleaning and sanitizing of water bowls consistent with practices that normally occur in responsible kennel operations? If not, is can these requirements be achieved in a feasible and reasonably cost effective manner?

Section 21.28(2)

This section would require potable water to be provided at all times.

The Animal Welfare Act regulations (9 CFR 3.10) require that if potable water is not continually available to the dogs, such water must be offered as often as necessary to ensure their health and well-being, but not less than twice daily for at least one hour each time, unless restricted by the attending veterinarian.

Current Dog Law Regulations require that potable water be provided for at least 6 hours daily.

Is the degree of increase in period when water must be available absolutely necessary for the health and well-being of the dogs?

Is there empirical evidence to demonstrate that maintaining the standards currently imposed in regulation or adopting the standards prescribed in the Animal Welfare Act regulations seriously compromises the health and well-being of the dogs?

Farm Bureau questions the feasibility of this standard during nighttime or other light duty times, when personnel operating the kennel are not reasonably expected to be present. In fact, a dog might knock over its own water as a result of its own activities within the enclosure.

Section 21.28(4)

The proposed regulation would require bedding used in primary enclosures be 'free' of stools, urine, vomit and other contaminants:

In contrast, the Animal Welfare Act regulations [9CFR 3.1(c)(3)] require that bedding in housing facilities be raked and spot cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta, and contaminated bedding material be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests, or vermin infestation.

How is the proposed 'free of contaminants' standard to be applied and measured in determining whether the standard is met?

What is considered to be a 'contaminant' for purposes of the standard?

Section 21.29

The language used in this proposed section is vague and confusing. Terms such as 'sanitation,' 'sterilization' and 'cleaning' are used interchangeably in the proposals. It is important to note that these terms have different meanings and should be differentiated – just as they are in the AWA regulations.

Farm Bureau also is concerned about a proposal to impose an extremely high requirement for 'sanitizing' kennel areas, where a standard of keeping areas 'clean' would likely meet current animal health and veterinary standards. Again, we believe that the regulations should allow kennel owners to meet kennel cleaning and maintenance standards through implementation of a cleaning and maintenance program approved by a veterinarian.

Section 21.29(1)

This proposed regulation would require all interior surfaces, primary enclosures indoor and outdoor runs, and gutters and drains to be 'sanitized' and 'disinfected' daily (every 24 hours):

The Animal Welfare Act Regulations [9 CFR 3.11(b)(2)] require that used primary enclosures be sanitized at least once every two weeks, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

Farm Bureau believes that the proposed language is unclear and leads to even more questions:

Are the terms 'sanitize' and 'disinfect' intended to have different meanings with respect to the proposed requirement, and if not, what differences are intended to apply?

How are the proposed requirements for 'sanitizing' and 'disinfecting' to be applied and measured in determining whether each requirement is met?

If 'sanitizing' is intended to mean washing down and rinsing run areas, how practically feasible is it to apply this standard to primary enclosures whose surface is comprised of earthen materials (gravel and dirt)?

Will a kennel operator who properly 'sanitizes' and 'disinfects' one day before noon and properly sanitizes the next day after noon violate the requirement for failure to sanitize and disinfect 'every 24 hours'?

Is the proposed requirement for daily sanitizing and disinfection of kennel areas consistent with practices that normally occur in responsible kennel operations? If not, is can these requirements be achieved in a feasible and reasonably cost effective manner?

Can another standard for cleaning be imposed that is more reasonable and more consistent with practices normally performed on responsibly operated kennels without significantly increasing the chances of placing the health of dogs at risk?

Do interior areas other than areas where dogs have contact need to be sanitized on a daily basis?

We also believe there is a potential for confusion and conflict between the standard to be established under this provision and the standard to be established under proposed § 21.24(f)(11)(v). Section 21.24(f)(11)(v) would require drains and gutters used to be sanitized at least once daily. See notes associated with §21.24(f)(11)(v) above.

Is the proposed requirement under for daily cleaning to be imposed under this provision intended to be different from the requirement for sanitizing of gutters to be imposed under § 21.24(f)(11)(v)?

If not, inclusion of requirement in this provision is unnecessary and could be interpreted in a manner as would cause a kennel operator to have committed two violations of the Dog Law for failure to meet the requirement.

Section 21.29(2)

This proposed regulation would require a primary enclosure to be 'sanitized and disinfected' whenever any change in dogs occupying the enclosure would occur – i.e. whenever any dog is added to or removed from a primary enclosure.

Are the terms 'sanitized' and 'disinfected' intended to have different meanings with respect to the proposed requirement, and if not, what differences are intended to apply?

Is the requirement for daily sanitizing and disinfecting of a primary enclosure whenever any change in occupancy of dog within the enclosure occurs consistent with practices that normally occur on responsible kennel operations? If not, is can these requirements be achieved in a feasible and reasonably cost effective manner?

What empirical evidence justifies the need for this standard to be met to ensure the health and well being of dogs being housed?

Would 'removal' of a dog triggering requirements for sanitizing and disinfecting a primary enclosure include temporary removal of the dog, such as when a dog is moved to an exercise area outside the dog's primary enclosure?

Section 21.29(2)

This proposed regulation would require an exercise area to be 'sanitized' and all stools required to be removed prior to the exercise of any group of dogs in the exercise area.

How is the proposed requirement for 'sanitizing' an exercise area to be applied and measured in determining whether the requirement is met?

Is the proposed requirement for 'sanitizing' an exercise area intended to differ from the requirement for 'sanitizing and disinfecting' proposed for primary enclosures under this paragraph? If so, how are requirements intended to differ?

In light of the proposed requirements for daily exercise of all dogs in a licensed kennel and the restrictions in the types of dogs that may be exercised as a group in an exercise area, can the proposed requirement for sanitizing the area each time before an individual dog or group of dogs would be exercise in the area be strictly achieved by kennel operators in a feasible manner?

Section 21.29(3)

This proposed regulation would require removal of all dogs from a primary enclosure and runs being 'cleaned and sanitized.'

The Animal Welfare Act regulations [9 CFR 3.11(a)] require, when steam or water is used to clean the primary enclosure by hosing, flushing or cleaning method, that the dogs be removed from the enclosure, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process.

Is there a demonstrated need for the prescribed standard for cleaning primary enclosures to be more stringent than what is prescribed in the Animal Welfare Act regulations?

Farm Bureau believes that as long as there is not a scientific basis for requiring the removal of dogs from the kennel in all cleaning or sanitizing situations, the AWA regulations should be followed.

Section 21.29(4)

This proposed regulation would require removal of feces with a shovel before 'washing down' any concrete runs:

The Animal Welfare Act regulations do not specifically impose such requirement. Farm Bureau questions whether this additional requirement is vital to the health and well-being of dogs. As long as the feces is eliminated from the run, does it matter how it is removed?

Section 21.29(5)

This proposed regulation would require that floor areas of a primary enclosure be 'squeegee dried.'

Is the application of this requirement reasonable with respect to primary enclosures whose surface comprised of earthen materials (gravel and dirt)?

How is the 'squeegee dried' standard to be applied and measured in determining whether the standard is met?

Farm Bureau would recommend as long as the floor area is dried, manually or otherwise, the method of drying should not be mandated.

Section 21.29(7)

This proposed regulation would require a kennel operator to develop an 'effective program' that controls insects, parasites and pests. If such insects, parasites and pests would exist in a kennel, that would be 'indicative' of an 'ineffective' program:

No requirement for development of this program is specifically required in the Animal Welfare Act Regulations.

Is the requirement for effective control program consistent with measures employed normally by kennel operations? If not, is can this requirement be achieved in a feasible and reasonably cost effective manner?

Should the regulations provide for a process or mechanism in which a kennel operator will be considered to have complied with this requirement through specified practices are performed or if the operator is acting under a program that has been subject to review and approval?

Section 21.30

This provision proposes to amend the dog law regulations regarding the condition of the dogs. There are several problems which are apparent with this language.

The section proposes that a 'state dog warden or other employee of the Department' has the authority to order examination by a veterinarian or other requirements. Farm Bureau believes that this should be more narrowly defined as essentially any employee of the Department could

require a veterinary check – regardless of whether they have any background in animal husbandry, dog care or veterinary experience.

In addition, a dog might have signs of ‘infectious or contagious disease, parasites or the appearance of poor health’ while *recovering* from illness, and if so a veterinary check must be carried out with proof provided to the Department within 72 hours.

This proposed regulation should specifically exclude from the regulation’s requirements a dog is already under the treatment of a licensed veterinarian, and proof can be provided to the warden.

Section 21.41 (e) (1-7)

This proposed regulation would outline *seven* new recordkeeping requirements for kennel operators (not including the other requirements throughout the proposed and current regulations). Considering that just two of the seven tasks listed requires at least nine notations on record – date, time and detail of daily feedings; kennel cleanings; changing and refreshing of potable water; and date, time and detail of exercise activities of EACH dog.

Such a system would create a heavy administrative burden for the regulated community, even causing them a need to hire additional staff or leaving less time for the completion of other tasks. While Farm Bureau agrees that good recordkeeping is key to quality animal care, we question the need for the detail and method of recordkeeping required under the proposed regulations. If such a recordkeeping requirement is necessary, than perhaps a fairer balance of recordkeeping requirements would be for each kennel to establish a standard operating procedure (certified by a veterinarian) where owners/caretakers could utilize a check sheet to keep a record of care.

Concluding Comments

We hope these comments will help the Department understand how and why these regulations fail to clearly identify standards for compliance, create burdensome and impractical requirements and at times go well beyond the Animal Welfare Act. Despite contentions to the contrary, these proposed regulations will not improve compliance. Indeed, we believe compliance will suffer as a result of the overburden on the regulated community. These regulations will have severe consequences – economic and otherwise – for the entire regulated community, including private rescue kennels, small hobby breeders, boarding kennels, vet facilities and larger commercial kennels.

Moreover, we believe the proposed regulations will cause many law-abiding and caring kennel operators to discontinue their operations, and will place even greater strain on a system of sheltering dogs that some believe is already strained.

We recommend that the Pennsylvania Department of Agriculture concentrate its efforts on enforcement of those regulations already in existence. Just as in any industry, there are those

who flout convention. Instead of focusing on those who consistently non-comply, these new regulation will hurt the many who have been operating within the law.

Above all, we recommend that the Pennsylvania Department of Agriculture align the Dog Law Regulations with the standards prescribed in regulations to federal Animal Welfare Act, standards that are embraced by the regulated community and USDA. Reasonable and scientifically based regulations are the key to a workable *and* enforceable Pennsylvania Dog Law. Unfortunately, the proposed regulations have fallen decidedly short of those requirements – particularly when you note the above comments.

Thank you for the opportunity to submit these comments for the public record.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. Watson".

Kristina L. Watson
Regulatory Reform Director

CC: Senate Agriculture and Rural Affairs Committee
House Agriculture and Rural Affairs Committee
Arthur Coccodrilli, Chairman, Independent Regulatory Review Commission

RECEIVED

Gelnett, Wanda B.

From: Jewett, John H.
Sent: Friday, March 16, 2007 9:03 AM
To: Gelnett, Wanda B.; Stephens, Michael J.; Wilmarth, Fiona E.
Subject: FW: Comments to Proposed Amendments to Dog Law Regulations

2007 MAR 16 AM 9:12

INDEPENDENT REGULATORY
REVIEW COMMISSION

Wanda and Mike:

I hope this is "forwarding" with the attachment. I am trying to do this from my home PC. I hope it works.

These are "proposed comments" for #2559.

Thanks, John

From: John Bell [mailto:JJBELL@pfb.com]
Sent: Thu 3/15/2007 6:51 PM
To: Jewett, John H.
Cc: Gary Swan; Joel Rotz; Kristina Watson
Subject: Comments to Proposed Amendments to Dog Law Regulations

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Date: March 15, 2007
To: John Jewett, Regulatory Analyst
Independent Regulatory Review Commission
Re: Department of Agriculture Proposed Rulemaking to Amend Dog Law Regulations (7 Pa. Code. Ch. 21, 23, 25 and 27) -- 36 Pa. Bulletin 7536

John,

Attached, in PDF format, is the document containing our comments to the aforementioned proposed rulemaking, which were mailed today to the Department of Agriculture.

A hard copy of our comments document is also being mailed to IRRR Chair Arthur Coccodrilli, per your email of 12/15/2006.

Please let me know if there are any others within the Commission whom you feel should receive

our comments. Also, don't hesitate to contact us if you have any questions regarding any of the comments offered in our document.

Sincerely,

John

John J. Bell
Governmental Affairs Counsel
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3/16/2007