PENNSYLVANIA FEDERATION OF DOG CLUBS, Inc.

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

RE: Proposed Amendments to Title 7, Part II, Chapters 21, 23, 25 and 27 Relating to the Pennsylvania Dog Law [3 P.S. Sec. 459-902] *Pennsylvania Bulletin* (36 Pa. B. 7596, December 16, 2007

Ladies and Gentlemen:

The following comments on the Department's proposed amendments to Chapters 21, 23, 25 and 27 of the regulations implementing the Pennsylvania Dog Law are submitted by the Pennsylvania Federation of Dog Clubs, Inc.. These comments were prepared with the assistance of Dr. James S. Holt, Federal Legislative Liaison, American Kennel Club (AKC). These comments are additional to those submitted by Julian Prager, Esq., Legislative Liaison for the Pennsylvania Federation, which are endorsed and incorporated herein by reference.

The Interest of the Pennsylvania Federation of Dog Clubs, Inc. in this rulemaking.

The Pennsylvania Federation of Dog Clubs, Inc. (hereafter "Pennsylvania Federation") is a non-profit organization whose membership is comprised of dog clubs which are members of, or whose events are sanctioned by, the American Kennel Club (AKC). More than 240 dog clubs are members of, or are sanctioned by the American Kennel Club located within the Commonwealth of Pennsylvania. Approximately 75 of these clubs are current, active members of the Pennsylvania Federation. However, the Federation represents and speaks for all of the AKC-affiliated clubs in Pennsylvania. The membership of the Federation also includes dog clubs, humane societies and similar organizations not affiliated with the American Kennel Club.

Most of the members of the member clubs of the Pennsylvania Federation are persons involved in the hobby and sport of purebred dogs who maintain their dogs in their own homes and/or small kennel facilities which are part of their homes or residential properties, and are not engaged in breeding or selling dogs as a significant commercial activity or means of livelihood. Many of them, however, meet the threshold requirements for being licensed as a kennel in the Commonwealth.

It is safe to say that the members of the Pennsylvania Federation's member clubs have, collectively, thousands of years of experience in breeding, keeping and caring for dogs. It is also safe to say that they breed and keep the premier dogs in the Commonwealth, and maintain some of the finest housing for dogs in the Commonwealth. Thus, the Pennsylvania Federation speaks from vast experience in expressing our views on the proposed regulations.

Finally, I should point out that the Pennsylvania Federation has been an active and positive force in advocating for and supporting reasonable and proactive legislation and regulations pertaining to the licensing and care of dogs in the Commonwealth. The Federation strongly supported the enactment of the Commonwealth's current dog law and has actively supported and participated in the activities of the Pennsylvania Dog Law Advisory Board since its inception, and has actively supported other positive state legislation pertaining to dogs, including the Dog Fighting Bill, the Dangerous Dog Law, and the Puppy Lemon Law. Therefore, it has not been without a great deal of concern and introspection that we find ourselves strongly opposing many of the provisions of the current proposal.

The Federation is opposing these regulations because we firmly believe that they will be detrimental to the advancement of animal welfare, and will work the greatest hardship on the very people and organizations in the Commonwealth who have been most supportive of animal welfare, have spent their time, resources and in many cases a significant portion of their lives dedicated to the cause of advancing the welfare and sport of purebred dogs, and who have been the most supportive of enlightened public policy with respect to the ownership and care of dogs in the Commonwealth.

Background on dog breeding and dog ownership in the Commonwealth.

Breeding, keeping and training dogs is an extremely diverse activity. Some persons engage in breeding, keeping or training dogs as a commercial activity. However, many more persons do so purely for pleasure, for sporting purposes, and/or for the advancement of purebred dogs and the sport of purebred dogs. For most of these persons, keeping dogs is a way of spending money, not a way of making money.

Approximately 20,000 Pennsylvanians registered one or more litters of puppies with the American Kennel Club over the past 3 years. Although data on the size of breeders is not available by state, for the U.S. as a whole the average breeder registering litters with the American Kennel Club registers fewer than two litters a year. Fewer than 4 percent of breeders registering litters with the American Kennel Club register more than 6 litters a year. With the average size of litters being approximately 4 and a fraction puppies, this suggests that only about 4 percent of Pennsylvania breeders reach the threshold number of dogs required for registration under the Pennsylvania dog law, based on their own breeding activity.

However, the agency needs to be aware that with the expansive interpretation given to the kennel licensing requirements in the Pennsylvania dog law, which encompasses any establishment where 26 or more dogs cross the threshold within a calendar year, many persons are classified as kennels and required to be licensed and comply with the Pennsylvania dog law kennel regulations who do not engage in any commercial activity in dogs, or for whom such commercial activity is *de minimus*, and purely incidental to their involvement in the non-commercial sport of purebred dogs. The reality is that the Pennsylvania dog law and regulations covers many persons who maintain most or all of their dogs in their own residential establishments, and who do not maintain commercial "kennel" structures.

Another significant category of dog owners, many of whom fall under the Pennsylvania dog law and regulations, who are not commercially involved in dogs are individual sportsmen and hunters and sportsmen's clubs who maintain packs of dogs for hunting purposes. Most of these dog owners do not maintain dogs for commercial purposes, and are involved in the purchase and sale of dogs on a *de minimus* basis incidental to the management of their hunting dog kennels.

While the Commonwealth has a legitimate interest in assuring that *all* dogs are adequately cared for and humanely treated, including hunting dogs and dogs maintained in residential environments, this diversity of ownership patterns makes clear that a 'one-size-fits-all" approach to dog law regulation, and particularly kenneling standards, is not possible. In fact, such an approach could be counterproductive. The existing Pennsylvania dog regulations already have a bias toward commercial breeding operations. However, the extensive engineering specifications, record keeping requirements and other provisions of the proposed regulations will make compliance by all but the largest, most sophisticated commercial breeding operations impossible. The perverse effect is that these regulations will weigh heaviest on exactly the class of dog owners and breeders the Commonwealth should be trying to encourage – those that breed and maintain dogs for non-commercial purposes and to whom the dogs are companions and family members, and not merely profit making entities.

General comments on the proposed regulatory amendments.

Before commenting on the specific provisions of the proposed regulations, we have several general comments pertaining to the proposal and the process by which it was brought before the public.

Failure to establish a predicate that the regulations are needed.

The proposal is devoid of any specific evidence of the need for these amendments or predicate for the specific amendments proposed. The sole paragraph of this extensive proposal which even attempts to address the predicate for the rulemaking simply says that it sets forth "more specific and stringent provisions related to kennel requirements and related enforcement" and that "the intent of the amendments are to clarity (sic.) numerous provisions of the Dog Law and thereby increase both the Department's ability to carry out the intent of the Dog Law and the awareness and understanding among the regulated community and the general public of the Department's authority under and interpretation of the Dog Law." This statement could justify virtually any proposed change in regulations, and amounts to little more than stating that we are doing this because we want to and we think we have the authority to do it. This would not be adequate justification for any proposed rulemaking changes, much less a 67-page rewrite of virtually every provision of the existing regulations.

The Pennsylvania Federation agrees that the Commonwealth is not presently doing an adequate job of protecting the welfare of dogs in some of the commercial breeding facilities in the Commonwealth. This is evidenced by simple observation of the conditions on some "dog farming" enterprises that are readily evident as one drives around the Commonwealth, as well as by the periodic media exposes of deplorable conditions in some kennels. However, the observable evidence and media exposes are clear violations of numerous provisions of the *existing* dog regulations. They are certainly evidence of a failure to enforce the existing regulations, but are hardly evidence that the existing regulations are inadequate.

The Department excuses its lax enforcement of the existing regulations by stating, variously, that it does not have enough resources to inspect and enforce the law, that its agents are not sufficiently trained and do not have the legal backup to mount effective enforcement actions in the relevant legal venues, and that local law enforcement officials often refuse to prosecute violators even when violations are evident and proven. We have no doubt that all of these reasons are true to some degree. However, none of them will be rectified by simply writing more regulations, particularly regulations that in many cases are, on their face, either absurd or unenforceable, or both.

We note that when Governor Rendell appeared at a public meeting of the Pennsylvania Dog Law Advisory Board in December to introduce the new regulations, he conceded in his introductory remarks that the Commonwealth had not devoted the amount and type of resources necessary to effectively enforce the dog law regulations. He announced a series of measures, including expanding enforcement personnel, providing enforcement personnel with modern computer equipment and data management tools, assigning enforcement personnel to areas other than the areas of the state in which they lived, and the creation of a SWAT team of legal experts that would assist enforcement personnel in preparing and arguing their non-compliance cases so as to achieve a higher level of convictions. All of these are measures which are directly related to addressing the ineffectiveness of the current enforcement regimen, and none of them are related to a need for wholesale revision of the existing regulations.

Agency personnel also asserted at the December public meeting of the Dog Law Advisory Board that they had been unable to attain convictions for violations of the existing regulations because the regulations were allegedly ambiguous or imprecise. However, when pressed both at the open meeting and in private conversations after the meeting for even one example of an instance in which the ambiguity of a regulation had been the reason for failing to obtain a conviction, not a single example was proferred at the time nor since that time. The preamble to the regulations is similarly devoid of any specific evidence that the ambiguity of the regulations was a factor in the agency's failing to obtain convictions of violators.

In proposing wholesale revisions to existing regulations, it is incumbent on the regulatory agency, not only for the purpose of providing a legal predicate for their action, but even more importantly to help secure acceptance and buy-in of the regulated community and the general public, to provide a strong predicate for the action. This has clearly not been done in this case.

Failure to consult with stakeholders.

Not withstanding the fact that there is a well established tradition of consultation with stakeholders for developing and implementing changes to the Pennsylvania dog law and regulations, and a clear, statutorily-provided mechanism for undertaking that consultation, these extensive, expensive and far-reaching regulatory amendments were developed essentially in secret, without any meaningful consultation with stakeholders nor the Pennsylvania Dog Law Advisory Board.

The Dog Law Advisory Board is a body created under the Pennsylvania dog law specifically to advise the Governor and the agency with respect to the dog law, regulations, enforcement policies and the like. It is important to emphasize that the PDLAB meets *at the call of the Governor*. It has no independent authority to meet or act

on its own. No meetings of the PDLAB were called either to discuss the need for regulatory amendments nor to advise the agency on specific amendments, nor to provide input on amendments proposed by the agency. In fact, while the amendments were in development, the Governor inexplicably dismissed the sitting PDLAB, alleging that it was inactive, even though he had never called it into session. The Governor constituted a new Board which had its first meeting in December, at which the proposed regulations were presented to the Board and the public as a *fait accompli*.

Unfortunately, the absence of stakeholder input is evident throughout the proposed regulations, and has resulted in a document that has drawn objection across the entire spectrum of the regulated community, from humane societies and shelter operators, to residential and hobby kennel operators, to commercial kennels and sportsmen's groups which maintain kennels of hunting dogs. According to the agency officials who spoke at the December meeting of the PDLAB at which the proposal was unveiled, the principal resources the agency relied on in crafting the proposal were the USDA's Animal Care regulations implementing the federal Animal Welfare Act, and the Department of Defense Military Dog Training Manual. Neither of these is, in our view, an appropriate model.

The USDA's Animal Care regulations at 9 C.F.R. Part III, Subpart A ("Specifications for the Humane Handling, Care, Treatment and Transportation of Dogs and Cats.") applies only to commercial kennels operating in inter-state commerce *which sell dogs and/or cats at wholesale*, and exempts even these operations if they maintain 3 or fewer breeding female dogs and/or cats. Therefore, the standards specified are for commercial kennels. However, an examination of the USDA regulations at 9 C.F.R. Part III will demonstrate that these regulations are, in large part, performance based regulations not unlike the existing Pennsylvania regulations. The USDA regulations include few, if any, of the extensive engineering and onerous record keeping regulations which we object to in this comment letter. In fact, it appears that the authors of the proposed Pennsylvania regulations have, in many cases, taken the federal performance-based regulatory language and used it as a preamble and then appended detailed engineering specifications for the implementation of these standards which have no counterpart whatsoever in the federal regulations.

Likewise, it is clear that the Department of Defense Military Dog Training Manual has little or no applicability to either commercial breeding kennels or to circumstances where individual fanciers are breeding, keeping and training dogs in their own residences. Military dogs are for entirely different purposes, and are maintained under entirely different circumstances.

Replacement of performance standards with engineering standards.

A hallmark of the proposed amended regulations is that they either replace performance-based regulatory language with engineering standards or, in many cases, add engineering standards to the performance-based language. This represents a huge step backward in regulation.

For the past couple of decades, governmental regulatory agencies has been exhorted to replace engineering-based standards with performance-based standards in the interest of maximizing not only the achievement of the desired regulatory goals, but also the economy of achieving the goals. The federal government, in particular, has championed performance based regulatory standards. The proposed amended Pennsylvania regulations turn the regulatory clock back at least a couple of decades and, in many instances, spell out detailed engineering requirements. Not only may these detailed engineering requirements not be the only, or most effective or economical way, to achieve the performance standard, they may not actually achieve the performance standard at all. This leaves the regulated individual in the dilemma of having to choose which part of the regulations to comply with.

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) has made substantial progress in the past couple of decades in writing performance-based standards for the federal Animal Care standards at 9 C.F.R. Part 3, Subpart A. The federal Animal Care standards were presumably a model (and certainly should have been a model) for the Pennsylvania standards. Unfortunately, in many instances the agency either adopted the federal performance based standards and then appended extensive engineering standards to them, or ignored the federal performance-based standards completely. While there are many instances of this in the proposed regulations, we point out one here by way of example.

The USDA animal care regulations at 9 C.F.R. Sec. 3.2(b) set forth the ventilation standards for indoor kennel facilities as follows:

> (b) *Ventilation.* Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers or air conditioning must be provided when the ambient temperature is 85 degrees F (29.5 degrees 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.

The proposed amended Pennsylvania regulations (at Sec. 26(a)) contain an introductory paragraph that largely mimics the federal standard:

> (a) *Indoor and sheltered housing facilities.* Indoor housing facilities and the sheltered part of sheltered housing facilities for dogs shall be sufficiently ventilated when dogs are present to minimize drafts, odors, ammonia levels and to prevent moisture condensation. Ventilation shall be provided by natural means such as windows, doors, vents and building shell design or by mechanical means such as ventilators, air exchange fans, forced air reversible fans or air conditioners.

So far, so good. But then the proposed amended Pennsylvania regulations go on to require:

- Minimum air flow of 0.8 to 1.0 cubic feed per minute per square foot of floor area
- At least six changes of air per hour
- Ground level ventilation to assure dry kennel run floors during cold weather
- Separate ventilating systems for restrooms and support buildings.
- Doors and windows in addition to whatever mechanical ventilation system is provided
- Auxiliary ventilation such as fans, blowers or air conditioners for *outdoor* housing facilities, sufficient to maintain ambient air temperature at 85 degrees or less and control humidity

It should be noted that both the general and the specific requirements must be complied with. Thus, even if the ventilation system is sufficient to control drafts, odors, ammonia levels and prevent moisture condensation, it is not compliant if it does not provide a minimum air flow of 0.8 cubic feet per minute per square foot of floor area. Conversely, a system that does meet this standard is not compliant if it does not control drafts, odors, ammonia levels and prevent moisture condensation.

We strongly recommend that Pennsylvania not resort to the now largely discredited practice of setting engineering standards for kennel regulation, and instead rely on performance-based standards in which the method of compliance is dictated by economics and by the nature of the housing facility.

The fiscal impact of the proposed amendments on the private sector and the general public is greatly underestimated.

The estimated cost of compliance with the proposed amended standards by the regulated community set forth in the preamble to the proposed regulations is grossly understated. First, the estimate includes only capital costs to bring kennels into compliance with the new engineering standards. It completely ignores the extensive and burdensome additional operating costs for recordkeeping, daily sanitizing of primary enclosures, and the other additional operating requirements. We frankly do not have any idea how to go about estimating these additional operating and recordkeeping costs. But one example of how pervasive and extensive they could become is described below.

The regulations require that kennel operators keep daily records of the date and time of the sanitization of *each* food and water dish. In order to accomplish this, it will first be necessary to uniquely identify each such dish by engraving an identification number on it, or by affixing some other permanent means of identification. Then, as each dish is sanitized, the operator will have to make a record of the number of the dish and the time of day the dish was sanitized. For a 25-dog kennel, this would mean creating at least 25 such records a day, or 9,125 records per year. Since the same requirement applies to food bowls, this will add an additional 9,125 records per year. In addition, a record must be created each time new food or potable water is provided to the dog. Assuming that each dog will be fed at least once per day, and that the water will be changed at least twice a day, that adds an additional 27,375 record entries per year. Just the requirements enumerated here will, in total, require the generation of 45,625 record entries per year for a 25-dog kennel. Even if it requires only 30 seconds to create each entry, the records described above will require 380 hours, or about 9.5 weeks per year for an employee working 40-hours a week and creating a new record every 30 seconds. (Note that this does not take into account the records required to be kept of kennel cleaning, exercising of each dog, etc.)

In order for the agency's enforcement official to determine compliance, it will not be sufficient for the inspector merely to ascertain that the water bowls are clean and contain potable water, which is a separate requirement of the regulations. The inspector will also have to ascertain that the required sanitizing and recordkeeping requirements have been complied with.

The agency estimates that it will cost from $5,000 to $20,000 per kennel to retrofit kennels to comply with the new standards. Given the fact that the new standards arbitrarily double the required size of each primary enclosure as well as establish new space requirements for exercise areas, new and extremely specific specifications for drainage systems, new lighting and ventilation requirements for indoor housing, and

temperature and humidity control for outside housing and exercise areas, this estimate seems absurdly low.

Finally, the agency blithely states that the new requirements will impose no additional costs whatsoever and have no fiscal impact on, the general public. Given the substantial capital and operating cost increases the new standards will impose on kennel operators in the Commonwealth, the only way this could not affect the general public is if the costs of purchasing dogs bred in the Commonwealth becomes so prohibitive that purchasers buy their puppies out of state, and that the cost of boarding dogs becomes so prohibitive that persons no longer board. Otherwise, it is clear that the increased costs will have an impact on, *and will in fact be borne ultimately by*, the general public.

Specific comments on the proposal.

Chapter 21. General Provisions; Kennels; Licensure; Dog-Caused Damages

Sec. 1 Definitions

"Establishment"

This term appears to be defined for the purpose of implementing Sec. 14(a)(3) of the regulations, which requires any "establishment" to be licensed upon which a cumulative total of 26 or more dogs of any age in any one calendar year are kept, harbored, boarded, sheltered, sold, given away or in any way transferred. As discussed more fully below, we suggest combining the definition of "establishment" and "temporary home" into one definition that brings off-site housing utilized by a kennel operator within the scope of responsibility of the kennel operator.

"Temporary Home"

This term is defined to include anyone who keeps, even temporarily, or breeds (among other activities) on behalf of another person, "for the purpose of later selling, giving away, adopting, exchanging or transferring such dog or dogs.". As stated, the definition is all encompassing. The person for whom the dog is kept, etc. need not be a dealer or a kennel operator required to be licensed by the Act. It could be the owner of a single dog. Further, it is unclear to whom the condition "for the purpose of later selling, ..." etc. applies, the person on whose behalf the dog is kept or the person providing the temporary home. Finally, it is unclear what standards apply to the person who provides the temporary home. This definition is simply too vague and expansive to give the public a clear understanding of whom and what is, and is not, covered.

It appears that the concept of "temporary home" has been introduced into the regulations to assure coverage of persons who deal in dogs, but who farm out animals in small numbers to other persons in order to keep the number of animals at any one location below the threshold limits for regulation by the federal government and/or the state agency. We endorse the concept of bringing such individuals under coverage, but not the clumsy manner in which this is accomplished through the "temporary home" provision.

We suggest that the objective can be achieved by deleting the term "temporary home" entirely, and clarifying the definition of "establishment" to read as follows:

> Establishment -- All premises, including the home(s), homestead(s), place(s) of business or operation, whether public or private, of any person or persons, including a dealer, on, in, or through which such person or persons keeps, breeds, harbors, boards, shelters, maintains, sells, gives away, exchanges or in any way transfers any dog, and includes the land, property, housing facilities or any combination thereof of any other individual, person, organization, business or operation, other than a kennel licensed pursuant to Sec. 206 of the Act and Sec. 14 of these regulations, on, in or through which dogs owned, leased, otherwise under the control of such person or persons, or in which such person or persons have any interest whatsoever, are kept, bred, harbored, boarded, sheltered, maintained, sold, given away, exchanged or in any way transferred

This definition will ensure that only persons keeping dogs for kennel operators are covered, and will subject all housing facilities in which such persons keep dogs to the same standards.

Sec. 4 Penalties

(1)(iii) *Failure of a kennel to comply with licensure provisions.*

This provision, in conjunction with the proposed definition of the term "establishment", is overly broad, and exceeds the agency's authority under the Pennsylvania Dog Law.

The Dog Law requires "kennels" to be licensed. A "kennel" is defined in the Act as any establishment wherein dogs are kept for the specific purposes of "breeding, hunting, training, renting, research or vivisection, buying, boarding, sale, show or any other *similar* purpose". [Emphasis added.] However, the amended regulations propose to require licensing of establishments which merely "keep", "harbor", "shelter", "gives away" and/or "transfer" dogs. The purposes enumerated in the definition of kennel in the Act are commercial activities. The mere keeping of dogs, even a considerable number of

dogs, and the other activities enumerated in the amended regulations that are not included in the definition of "kennel" in the Act, can not reasonably be construed as "similar" activities to the purposes enumerated in the Act. The activities of keeping, harboring, etc. enumerated in the penultimate sentence of the first paragraph of Sec. 206(a) of the Act clearly in its context is meant to enumerate the dogs to be included for the purpose of defining the threshold number of 26 or more, and is not intended to replace or expand the definition of the term "kennel".

Given that the term "kennel" is already defined in the Act, the existing language at Sec. 4(1)(iii) appears adequate. If additional amplification is needed, it can be achieved by adding the following sentence, which is fully within the authority of the Act: "Failure to obtain a license prior to operating a kennel that keeps, harbors, boards, shelter, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any one calendar year, may result in any or all of the following actions by the Secretary:"

(1)(iv) *Revocation, suspension or denial of a kennel license.*

We have no objection to this provision. We believe that rehabilitation of persons with convictions which are more than 10 years old should be permitted, but not be obligatory.

(1)(v) *Seizure of dogs.*

We have no objection to this provision.

(1)(vi) *Forfeiture of dog.*

We have no objection to this provision.

(2)(iii) *Failure to register and restrain a dangerous dog.*

We have no objection to this provision.

(2)(iv) *Attacks by a dangerous dog.*

We have no objection to this provision.

(2)(v) *Attacks by a dangerous dog causing severe injury or death.*

We have no objection to this provision.

Sec. 14 Kennel Licensure Provisions

(a)(3) Kennel license required.

This subsection requires an individual to obtain a kennel license upon reaching a cumulative total of 26 or more dogs in any calendar year.

Subsection (a)(3)(i) further requires the individual to have kennel facilities that meet the regulatory requirements for the total number of dogs on the premises or the total to be kept, harbored, etc., whichever is larger. Given that an individual could easily reach a cumulative total of 26 dogs in a calendar year without ever having anywhere near 26 or more dogs on the premises at any one time, it is unreasonable to require operators to have facilities for the cumulative total number of dogs that will be on the premises during the year. It should be entirely sufficient, and is not inconsistent with the Act, that the kennel have facilities to accommodate the total number of dogs that are kept on the premises *at any one time*.

Subsection (a)(3)(ii) addresses how dogs maintained in "temporary homes", which are homes off the premises of the licensed kennel, are to be treated and counted for the purpose of licensing of the primary kennel. It appears that dogs maintained in "temporary homes" are to be counted for the purpose of determining whether the primary kennel reaches the threshold number of 26 or more dogs.

The second sentence of subsection (a)(3)(ii) further indicates that kennels that utilize temporary homes shall be considered boarding kennels or nonprofit kennels. Rescue and shelter organizations that utilize temporary homes may appropriately be classified as nonprofit kennels or boarding kennels. However, individuals that maintain dogs for breeding purposes also may utilize temporary homes for the purpose of maintaining breeding animals. These establishments should be required to maintain the same kinds of records, and meet all of the other standards, that any other breeding kennel must meet, including with respect to dogs kept in temporary homes.

It is unclear what is intended by the last two sentences of subsection (a)(3)(ii). If each temporary home is to be treated as a separate kennel location, then it is possible that some or all of the temporary homes would fall below the 26 or more dog threshold and not be subject to the regulations on care and condition requirements. This appears to create a loophole by which a breeding operation could farm out small numbers of bitches to many individual temporary homes, and the temporary homes thereby evade compliance with the regulations. However, the last sentence of the paragraph states that the temporary homes shall be subject to inspection by the Department. If the temporary homes are not required to be licensed, the care and condition standards would not apply, and it is unclear what authority the Department could exercise as a result of an inspection

of the temporary home, other than assuring compliance with the requirements for licensing and rabies inoculations, which they already have the authority to enforce.

In our comments on the definition of "establishment" and "temporary home" we have suggested that the term "temporary home" be abandoned, and that an establishment, for the purposes both of determining its licensing obligation and for purposes of compliance with the care and condition standards for dogs, be deemed to include all off-premises locations where dogs owned, leased, or otherwise under the control of the owner(s) or operator(s) of the establishment, or in which such persons have an interest, if such locations are not licensed kennels in their own right. Dogs kept at such off-premises locations should be subject to the same care and condition standards as if the dog were maintained on the principal premises of the owner or operator of the kennel.

(a)(4) Prohibition to operate.

This subsection appears to be in conflict with subsection (3). Subsection (3) requires an individual to obtain a kennel license "upon reaching" the cululative total of 26 or more dogs of any age, whereas subsection (4) requires an individual to "first" obtain a kennel license before operating a kennel. Given that, at the margin, an individual may not know whether or not he or she will reach the threshold requirement for a kennel license within a given year, it seems most reasonable to require the individual to apply for the license "upon reaching" the threshold, and to consider such a person in compliance upon filing of the application until and unless the application is rejected, revoked or suspended.

(a)(5) Kennel records.

Subsection (a)(5) sets forth records that are to be maintained by kennels. The records required include (at (a)(5)(vii)(C)) where a dog is disbursed to a private individual by a breeding kennel, boarding kennel, or any other type of kennel "whether the dogs is spayed or neutered and whether an agreement to spay or neuter the dog has been entered into." We suggest that this information has no relevance to any purpose of the dog law, is a private matter for the owner to decide, and that any pressure, no matter how subtle, to suggest that an owner is required to enter into an agreement to spay or neuter a dog, except where a dog has been determined to be dangerous or is being adopted from a shelter, has no foundation in the Dog Law and should be deleted as an invasion of privacy.

Subsection (a)(5)(vii)(C) also requires a complete history of all vaccinations and medications administered to the dog. For example, every time a dog is boarded, the complete medical history of the dog would have to be entered into the boarding kennel's records. Such a requirement is invasive and unnecessary. The only medical records that

are reasonably necessary for the safety of the dog and other dogs are the *current* vaccination status of the dog, and a certificate indicating the dogs is in sound health at the time of surrender to the kennel.

(b) Prohibition on dealing with unlicensed kennels.

This paragraph prohibits dealing with unlicensed kennels. However, it is impractical for a kennel operator to know, except to take the word of a person bringing a dog in for boarding or training, or from whom the kennel may purchase a dog, whether the individual is required to be licensed or not. We strongly urge that the word "knowingly" be inserted before the word "dealing" in the paragraph subtitle, and that the word "knowingly" be inserted before the words " ... to keep, ..." in the first sentence of the text of this paragraph.

(c) Health certificate required.

This paragraph requires that, with certain exceptions e.g. for dogs attending a dog show, dogs brought into the Commonwealth must have a health certificate issued by a licensed doctor of veterinary medicine. However, the regulations do not say how recently the health certificate must have been issued. We suggest such a provision be added.

Sec. 15 Exemptions.

We have no objection to these exemptions, but do wish to point out that the exemption of shelters from the requirement for doubling the floor space of kennel runs only serves to underscore the arbitrariness of this requirement, and the fact that it has no relationship to animal welfare. Our comments on the space requirement are set forth more fully below.

Sec. 21 Dog quarters.

This section sets forth performance-based standards for housing facilities for dogs. The proposed amendments to this section add specificity to the standards which are appropriate for separately maintained kennel facilities. In contrast to the engineering standards set forth in the following sections, these standards are appropriate for circumstances in which dogs are kept in non-residential facilities. However, they are not appropriate for circumstances in which dogs are maintained in residential facilities.

This section should be rewritten to provide appropriate performance-based standards for both residential and separately maintained kennel facilities. Properly written, it can replace most of the inappropriate, engineering-based standards which

follow it. It should be pointed out that if this section is properly written and adequately enforced, very little additional language with respect to housing standards would be necessary.

A suggested rewrite of this section is as follows:

Sec. 21. Dog quarters.

(a) The indoor and outdoor housing facilities for dogs shall be maintained in a manner to protect the dogs from injury, insure healthful and sanitary conditions, and to contain the dogs.

(b) Outdoor exercise areas shall be constructed and maintained to be adequately drained and reasonably mud-free.

(c) Where dogs are maintained in a separate kennel facility, the facility shall be constructed and maintained to comply with the following standards:

(i) Interior building surfaces of the housing facility shall be constructed and maintained so that they are water resistant and may be readily cleaned. Outdoor facilities shall be constructed with adequate drains or gutters or both to provide rapid elimination of excess water and assure that there is no standing or pooled water;

(ii) Entryways and exits between indoor housing and outdoor exercise areas shall be maintained so that when the gate or enclosure is opened, the dog will have unfettered clearance out of the enclosure;

(iii) Where 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 shall be impermeable to water, removable and able to be easily sanitized.

Sec. 22 Housing.

This section amends the provisions with respect to dogs that may be housed together by adding a requirement that "puppies" not born in the receiving kennel be quarantined for specified periods of time. It also sets forth a quarantine provision for

adult dogs entering kennel facilities, but permits the treating licensed veterinarian to set aside such requirement.

First, it should be pointed out that "puppy" is not self-defining, and is not defined in either the Act or the regulations. Second, there is no scientific basis for treating puppies and adult dogs, however defined, differently in this regard. Third, a certification from a licensed veterinarian (not restricted to the treating veterinarian of the receiving kennel), that the puppy or dog is healthy, free of disease or parasites, and has had appropriate vaccinations for its age and condition, including a rabies vaccination if the dog is of appropriate age, should be sufficient to allow a puppy or dog to be introduced directly to a kennel or housing facility.

It is unreasonable to require the kennel's treating veterinarian to examine every dog brought into a kennel environment before it is housed with, or comes into contact with, other dogs, provided the new dog or puppy has been examined by a licensed veterinarian and has a health certificate.

Sec. 23 Space.

Sec. 23 sets forth the minimum required size of primary enclosures for dogs.

(a) and (b) with respect to size of primary enclosures.

Paragraph (a) further amplifies on the minimum floor space for primary enclosures by requiring that the dog shall be able to lie in a lateral recumbent position with legs fully extended, without head, tail, legs, back or feet touching any side of the enclosure. Existing paragraph (b) of this section sets forth a formula for determining the minimum square feet of floor space required in the primary enclosure. While we believe the performance standard specified in paragraph (a) is preferable to the engineering standard specified in paragraph (b) and makes it unnecessary, we do not object to the retention of paragraph (b) given that kennels are already required to meet this requirement. However, the amended paragraph (b) requires that the minimum space requirement set forth in the existing paragraph (b) be doubled, not withstanding the additional language in paragraph (a). (We note that the existing Pennsylvania standard for the size of the primary enclosure uses the same formula set forth in the USDA Animal Care regulations for primary enclosures. The USDA requires that the floor space be double the area required by this formula *only if* the same enclosure is to be used both for the purpose of housing *and* exercising the dog. In other words, a separate exercise area and exercise program for dogs is not required in the Federal regulations if the primary enclosure is at least twice the area required by the formula set forth above.)

There is absolutely no basis for doubling the floor space requirement in the existing regulations, and the agency does not even attempt to provide one. This is a completely arbitrary and baseless "feel good" requirement that will require all kennels in the Commonwealth to retrofit their housing facilities. The existing standard in paragraph (b), as amplified by the additional language proposed to be amended into paragraph (a), is clearly sufficient to assure adequate space in the primary enclosure.

Furthermore, the increase in the space requirement in the primary enclosure is contrary to good animal husbandry practice. Dogs are, by nature, den animals. A snug primary enclosure provides psychological benefits to dogs. Furthermore, a primary enclosure that is too big makes training of dogs difficult. If the primary enclosure is too large, some dogs are inclined to use a portion of the enclosure as an area for elimination and confine their living space to the other portion of the enclosure.

(e) with respect to exercise requirements

Paragraph (e) sets forth specific engineering-type standards for the exercise of dogs, and requires keeping daily records of the exercise of each dog.

This paragraph requires that dogs be walked on a leash or placed in an exercise area meeting specific requirements, for at least 20 minutes per day. This paragraph is overly specific, has no foundation in science or accepted husbandry procedures, and will be impossible to enforce.

We recognize that dogs kept in a confined enclosure should, under ordinary conditions, be provided with daily exercise. However, requiring a specific number of minutes per day of exercise is inappropriate, has no foundation in any science or accepted husbandry procedure, and will be impossible to enforce.

The amount of exercise appropriate for a dog is dependent on the dog's breed, size, age, and physical condition as well as on environmental conditions on the given day. The purpose of exercise is to provide the dog with an opportunity for physical conditioning and socialization with humans and/or other dogs. Only the operator of the kennel or a licensed veterinarian is in a position to make judgments about the appropriate type and amount of exercise for a given dog on a given day. We strongly recommend that the agency use as a guide the performance based standards of the USDA Animal Care regulations, which require exercise appropriate to the dog and the conditions.

Furthermore, the maintenance of daily records of the exercise provided to each dog is a meaningless paperwork exercise, not only because the standard is arbitrary and not related to the well being of any particular dog, but because it will be impossible for the agency to determine whether the record is accurate or not. The only indicator as to

whether a dog is receiving sufficient exercise is the condition of the dog. If the condition of the dog is the only useful criterion of compliance, then the condition of the dog should be the criterion used.

We strongly recommend a performance-based approach. We suggest wording such as the following, which borrows heavily from the USDA exercise requirements for dogs at 9 C.F.R. 3.8, Exercise for Dogs. :

> (e) For all dogs over 12 weeks of age which are not kept in residential housing, except bitches with litters, the kennel operator must develop, document, and follow an appropriate plan to provide each dog with the opportunity for exercise. The plan shall be in writing, shall assure the maintenance of each dog in good physical and psychological health, taking into account the breed, age, physical condition and housing of the dog, and the environmental conditions on the day, and shall be approved by the attending veterinarian. Each dog shall receive daily exercise in accordance with the plan. This requirement shall not apply to dogs housed together in pens or runs where the required space for each dog is at least 100 percent of the required space for each dog if maintained separately under the minimum space requirements of Section 23, or if the dog is maintained in an individual pen or run containing at least twice the space required in Section 23.

We suggest that the above language apply only to dogs kept in kennel environments. We do not believe it is practical or necessary to have an exercise requirement for dogs that are maintained in residential housing, with the possible exception that the residential housing include a fenced yard from which they can not escape, in which the dogs can periodically be turned out for exercise when necessary.

Subparagraph (e)(ii) sets forth standards for exercise areas for dogs. Most of these standards reference provisions of Section 24(b). These standards are discussed below in the comments pertaining to that Section. We note here, however, that (e)(ii)(C) requires that the exercise area must be such as to prevent dogs from becoming wet even during inclement weather. The only exercise area that could possibly meet such a requirement would be a totally enclosed structure. We believe that requiring dogs to be exercised only in enclosed structures is unreasonable. Further, we do not believe that it is consistent with the good husbandry practices nor conducive to the psychological well-being of the dogs. It is not unreasonable that a portion of the exercise area be required to be covered from direct impact of rain and sun, but a requirement that a dog remain dry during exercise is not reasonable. Further, (e)(ii)(D) pertaining to flooring in the exercise area would preclude dogs from being permitted to exercise on grass. We believe that this is unreasonable and contrary to good husbandry practice.

Subparagraph (e)(iii) requires dogs to be segregated by size and sex for the purposes of exercise. This requirement is arbitrary and has no basis whatever in science or accepted husbandry practice. The only requirement should be that aggressive dogs be exercised individually, and that bitches in season be exercised individually or only with other bitches in season. We further advise that bitches in season be required to be exercised in a separate exercise area from that utilized by other dogs.

As stated previously, the exercise record keeping requirement in subparagraph (e)(v) is unreasonable, burdensome and has no value because it is unenforceable. The only evidence that adequate exercise has not been provided will be that the dog is not fit, and if the dog is fit, then further evidence of adequate exercise is unnecessary.

Sec. 24 Shelter, housing facilities and primary enclosures

This section sets forth specifications for dogs housed out of doors.

(a) general prescription

Subparagraph (a) sets forth a good performance-based requirement, except that the temperature requirement in this section appears inappropriate for outdoor housing, and in conflict with the temperature requirements in the remaining portion of this paragraph.

In particular, this section addressing outdoor housing facilities requires that dogs be protected from "excessive temperatures (as set forth more specifically in section 25 of this chapter)" … . Paragraph (c) of section 25 provides that auxiliary temperature control must be provided when the ambient temperature is 85 degrees or higher. There is no part of the Commonwealth that we are aware of where the summertime ambient temperature does not rise above 85 degrees during some portions of the summer. Therefore, subparagraph 25(c) would require ventilating *outdoor* housing facilities, or preclude the use of outdoor housing during these weather conditions. This would, in effect, preclude outdoor housing of dogs at all, as it would be impractical to have to maintain indoor facilities on a contingency basis.

Subparagraph 25(e) sets forth temperature standards for indoor kennels and "the sheltered part of sheltered housing facilities". It is unclear what is meant by the "sheltered part of sheltered housing facilities", but it sounds a lot like the primary enclosures of outdoor housing facilities. According to the provisions of subparagraph 25(e), these primary enclosures must be maintained at not more than 85 degrees. This would be a practical impossibility in the Commonwealth.

The temperature standard in Section 24(a) is unreasonable and will render outdoor housing of dogs impractical. We recommend a general performance-standard such as that used in the USDA Animal Care regulations at 9 C.F.R. 3.4(b), which requires the provision of "adequate protection and shelter from cold and heat", a leaves the question of whether dogs are acclimated to the prevalent conditions of the area to the operator of the kennel and the attending veterinarian.

We note that the maximum temperature standard of 85 degrees set forth in the USDA Animal Care regulations applies *only* to dogs while being transported by air, and then only for 4 or more consecutive hours. It is not a general requirement applicable to normal housing situations. Air transport is a somewhat more stressful activity for dogs where temperatures can vary greatly. This temperature maximum in the USDA regulations does not apply, and is not intended to apply, to normal housing situations.

(b) Outdoor housing facilities

We do not have substantive disagreements with these subparagraphs, with the exception of some clarifications and conflicting requirements noted below. However, we object to the naming of specific breeds, e.g. Huskies, in the introductory acclimation paragraph. There are many Siberian Huskies and dogs of similar breeds that live comfortably in Pennsylvania and many other states with seasonal temperatures comparable to or even warmer than those in Pennsylvania. If the dog is healthy and acclimated to the weather conditions (both already requirements of the regulations), there is no reason why a Husky should not be able to live outdoors in the same environment as other long-haired breeds. The ultimate determination as to whether a specific dog can be safely and humanely housed in any housing environment should be the attending veterinarian. So long as the attending veterinarian determines that the housing accommodations are adequate, the regulations should not preclude them.

(1) with respect to shelter structure

Subparagraph (b.1.) requires that the primary enclosure in outdoor housing comply with the space requirements of this Chapter. As discussed earlier, the amended space requirements for primary enclosures are excessive. This will be particularly a problem with outdoor primary enclosures, because the dog's body heat will likely be insufficient to keep the primary enclosure warm.

(2) with respect to slope and drainage

Subparagraph (b.2.) in internally inconsistent. It requires that the housing and exercise areas be "flat and level" in the first sentence, and then requires a specific slope in the next sentence. It is reasonable that the housing and any outdoor shaded resting

area be level, however the exercise area should be sloped to facilitate drainage. Furthermore, this subparagraph is redundant of subparagraph (b.10.), which is stated in more appropriate performance language, and is preferred.

(3) with respect to exercise area

The alternative of daily access to a larger exercise area, similar to that provided to dogs housed in indoor housing facilities, should be provided as an alternative to individual exercise areas.

(4) with respect to bedding

This provision is consistent with federal regulations, and we have no objections.

(5) with respect to elevation of primary enclosure

We have no objection to this provision.

(6) with respect to additional specification of the shelter structure

This provision is consistent with federal regulations, and we have no objections.

(7) with respect to building surfaces

The first sentence of this subparagraph is very confusing. The regulations should make clear that painted wood is considered a "material impervious to water" if the paint is in good condition.

(8) with respect to additional specification of the exercise area

This subparagraph is overly specific. The third and fourth sentences should be deleted. The remainder of the paragraph is sufficient to assure the required performance criteria without attempting to specify engineering standards for achieving the result in the regulations. Kennel operators should be free to use any means to achieve the required result.

(9) with respect to fencing

We have no objection to this provision.

(10) with respect to additional specifications of the exercise area

The requirement that outdoor housing facilities be constructed in a manner that insures that the dog stays dry would appear to preclude outdoor housing facilities. The regulations already require that a portion of the outdoor run be covered to protect the dog from weather. It is unreasonable that the entire area should be covered and sided, which is the only way that the kennel owner could assure that the animal stay dry even in times of severe weather.

(11) with respect vegetation and pesticides

Subparagraph (b.11.) appears to preclude lawns, fields and other vegetated areas as exercise areas. We do not believe that is reasonable or desirable. Fields and paddocks should be permitted as exercise areas, provided they are free of hazards and are not overused so as to become muddy or dusty.

(c) with respect to tethering in outdoor housing facilities

No substantive amendments are proposed to this provision.

(d) with respect to primary enclosures with metal strand flooring

No amendments are proposed to this provision.

(f) with respect to additional requirements for indoor and outdoor housing facilities

An introductory sentence should be added to this subsection that states that it applies to housing facilities for dogs other than dogs housed in residential structures.

Subparagraph (f)(3) should clarify that wood that has been painted or otherwise coated to make it impervious to water is permitted, provided the coating is in good condition.

The recordkeeping requirements set forth in subparagraph (f)(8) are unnecessary and patently unreasonable and burdensome. The regulations already spell out in detail the cleanliness standards that food and water bowls, primary enclosures, runs and exercise areas must meet. To require the keeping of records on each and every such act for each and every enclosure, food and water bowl is ridiculous. Furthermore, the records will be meaningless. Either the facilities meet the standards, in which case the records are superfluous, or they do not meet the standards, in which case the records are irrelevant. Subparagraph (f)(8) should be deleted.

The provision at (f)(11)(ii) is unnecessarily rigid. The required performance has already been set forth in (i) above. If the standard is met, it is irrelevant what the diameter of the drainage pipe is, and if it is not met then the diameter of the drainage pipe is still irrelevant. Similarly, the specifications in (f)(11)(iii) through (vi) are unnecessarily rigid. The required performance is already fully described in the introductory paragraph to subsection (f). Kennel owners, contractors and local building code departments should be left to specify construction details. These have no place in kennel regulations.

We have no objections to (f)(12) through (15).

Subparagraph (f)(16) appears to require laundry facilities and showers within dog kennel facility. We believe this is unreasonable. Most kennel facilities are on the same property with the residence of kennel operators and/or employees. As long as washroom facilities and laundry facilities are available on the premises, it is unnecessary that they be located within the kennel facility.

Subparagraph (f)(18) needs to be clarified. It is not reasonable or necessary that primary enclosures be cleaned and sanitized daily. This provision should apply only to kennel runs and enclosed, confined exercise areas. If primary enclosures are cleaned and sanitized daily they will not dry out, or barely dry out, within the 24 hour period and be unavailable to the dog for an unreasonably long period of time each day. Primary enclosures should only be required to be emptied out and cleaned when necessary to remove accumulations of hair, bedding and other dirt and to control parasites and insects.

Sec. 25 Temperature control.

Subparagraph (b) appears to require that outdoor as well as indoor housing facilities and exercise areas must be ventilated when the ambient temperature is above 85 degrees. We have already commented that this requirement is patently unreasonable. Subparagraph (c) should be restated to clarify that it applies only to indoor housing facilities.

Subparagraph (c) requires that the temperature in kennel facilities never rise above 85 degrees. Requiring ventilation in indoor facilities when the ambient temperature is 85 degrees or higher is reasonable, in our view, but requiring that the temperature in housing facilities never rise above 85 degrees is not reasonable. In Pennsylvania the only way such a standard could be assured would be to install air conditioning in every kennel facility.

Sec. 26 Ventilation in housing facilities

This section is an egregious example of excessive engineering standards that have no basis. The amended regulations already spell out, ad nauseum, the temperature and ventilation requirements for kennels. The further specifications in this section are excessive and unreasonable. If anything further is needed than is already contained in the other sections of the regulations, the first sentence and last sentence of this section would be sufficient. So long as this standard is maintained, it is irrelevant how it is maintained, and if it is not maintained, then it is irrelevant what ventilation system is in place – it is inadequate to meet the standard.

Subsection (b) for the first time reveals that it is the intent of the writers of the regulations to, in fact, require ventilation and cooling of *outdoor* facilities when the ambient temperature is above 85 degrees. The language also suggests that it is the intent of the writers to require humidity control in outdoor facilities. These requirements are patently ridiculous and impractical to meet. In effect, to impose such requirements will make outdoor housing a practical impossibility. In fact, it even leaves open to question the issue of whether outdoor exercise areas for dogs housed indoors are permissible when the temperature is above 85 degrees and/or the humidity it high.

Collectively the requirements in Sections 25 and 26 should be dropped and language similar to that in the USDA regulations substituted (see 9 C.F.R. 3.3(b)):

> (b) Ventilation. The enclosed or sheltered part of a sheltered housing facilities for dogs or cats must be sufficiently ventilated when dogs ... are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when the ambient temperature is 85 degrees F or higher.

Sec. 27 Lighting and electrical systems.

The proposed amendments to the lighting regulations are excessively proscriptive, and have no basis in science or husbandry. The performance based standard in the existing regulation, which requires sufficient lighting to allow observation of the physical condition of the dogs and the sanitary conditions of the facility is sufficient. The agency provides no basis which would require or support a change in this requirement.

We have no objection to the requirement that there be lighting available to light outside housing facilities at night when needed, but we do not agree that these areas should be lighted at all times and strongly recommend that the wording of the

requirement make clear that the lighting is only required to be available for use when needed to check on the safety and condition of the dogs.

Sec. 28 Food, water and bedding.

The first sentence of paragraph (c) is ambiguous, and could be interpreted to require that food needs to be available at all times. We suggest that paragraph (a), requiring feeding at least once a day, is adequate, and that reference to food should be deleted from paragraph (c). We note, for example, that it is not uncommon where dogs are housed in groups, or in individual crates, for the kennel operator to remove the dogs individually for feeding, and not feed dogs in the crates, or in the group run. This practice is acceptable husbandry.

While we recommend that access to potable water be provided on a continuous basis, that is sometime impractical, particularly when puppies are present or when a dog has developed a habit of playing with and upsetting the water bowl. We recommend that the regulations correspond with the USDA Animal Care regulations at 9 C.F.R. Sec. 3.10, which require that if water is not continually available, that it must be provided to the dogs at least twice daily for a period of at least one hour.

Sec. 29 Sanitation

Paragraph (a) of this section requires that primary enclosures, i.e. crates, dog boxes and other shelters, be "sanitized and disinfected daily". Elsewhere, the amended regulations require that dogs not be returned to runs and primary enclosures after they are cleaned until they are dry.

The requirement to sanitize and disinfect primary enclosures daily is unnecessary and impractical. Combined with the requirement that the enclosure be dry before the dog is returned to it, as a practical matter the primary enclosure could be unavailable to the dog for a substantial portion of each day. Enclosed dog crates are likely to take a significant period of time to dry.

The USDA Animal Care regulations at 9 C.F.R. Sec. 3.11 pertaining to sanitizing primary enclosures requires only that a primary enclosure be sanitized before it is used to house another dog, and that when used continuously by the same dog it us only required to be sanitized once every two weeks. Daily removal of excreta and/or food waste is also required, if applicable. This is a much more reasonable standard which we strongly recommend the agency adopt.

Paragraph (b) of this section requires that stools be removed and exercise areas be sanitized prior to the next group of dogs being exercised in that area. This requirement

also appears unreasonable, particularly taken together with the provisions requiring separate exercising of dogs by size and sex. Removal of feces between each group, and sanitizing of the area daily should be sufficient.

Sec. 30 Condition of dog.

This section requires kennel inspectors upon entering a kennel to visually inspect each animal to determine that the animal appears to be free of infectious or contagious diseases and parasites and to be in good health. This requirement is not unreasonable, but only if agency inspectors have sufficient training to make informed observations of the health and condition of dogs. The section further authorizes inspectors to require the kennel owner to have any dog which appears to the inspector to exhibit signs of infectious or contagious diseases or parasites, or which appears not to be in good health, to be examined by a veterinarian, and to provide evidence of such examination within 72 hours. The language of the final sentence of the provision seems to presume ill health. The words, "if any" should be added to the end of the sentence. Further, this provision should only apply if the kennel operator can not provide evidence that the dog is under the observation and care of a licensed veterinarian.

Sec. 41 General requirements (records).

This section amplifies on the records required to be kept by kennel owners.

Paragraph (e) of this section proposes to amend the regulations by requiring records of the date, time and detail of daily feedings, cleaning of kennel, changing and refreshing of potable water, exercise activity of the dog, and medications administered. Elsewhere, the amendments propose to require, in addition, records of the date and time of cleaning and sanitizing every food and water bowl, and all primary enclosures, kennel runs, exercise areas and kennel buildings and facilities.

The recordkeeping specified in the above paragraph is excessive, unnecessary, and will serve no useful purpose in that it will be impossible to verify the accuracy of the records except by visual inspection of the kennel facilities and animals. If the animals and kennel facilities are in compliance with the performance-based requirements of the regulations, the records will be irrelevant, and if they are not, the existence of records will not exonerate the kennel operator from compliance with the standards. The simple reality is that records can be easily falsified, and mean nothing without visual inspection of the facilities and animals.

The only record among those listed above which has arguable value is the records of medications administered, which would be useful to other kennel employees in the event a question arose as to whether a particular medication had, in fact, been

administered. We strongly recommend that the additional required records described above be deleted.

Sec. 42 Bills of sale.

This section requires that bills of sale for dogs required to have them be maintained at the kennel location and with the dog when the dog is being transported. It would be useful to reiterate in this section of the regulations that the Act does not require a bill of sale for dogs being boarded at the kennel or which were whelped by the kennel operator, but only for dogs purchased from other persons.

Paragraph (b) makes it a violation of the Act (and the regulations) for a kennel owner or operator or agent to purchase or otherwise handle a dog from a kennel required to be licensed by Pennsylvania law which is not licensed. This requirement poses an unreasonable burden on persons acquiring dogs, since it may not be possible for an individual acquiring a dog to know, independently of being told by the person from whom the dog is acquired, whether that person is a person required to be licensed. We recommend that the word "knowingly" be inserted before the word "purchase" in paragraph (b).

Sec. 61 – 66 pertaining to Dog or Coyote-Caused Damages.

We have no comments on the amendments proposed to this Section.

Chapter 25. Reimbursement for Humane Disposition of Dogs and Reimbursement for Losses.

We have no comments on the amendments proposed to this Chapter.

Chapter 27. Dangerous Dogs.

We have no comments on the amendments proposed to this Chapter.

Recommendations

We do not believe the deficiencies in this rulemaking can corrected by merely revising some provisions of the proposed rule based on the public comments. We strongly recommend that the proposed rulemaking be withdrawn. We recommend that a period of time be provided for the agency's new enforcement strategies and expanded enforcement resources to be put in place and their effectiveness assessed. Thereafter, the agency should identify the specific deficiencies in the regulations, if any, which are preventing the agency from achieving its statutory purposes, and, if wholesale revision of

the dog regulations still appears necessary, undertake a broad and open consultation with all stakeholders, through the Dog Law Advisory Board and by other appropriate means, to assure that all views have an opportunity to be expressed. The purpose of this consultation should be to achieve broad consensus on needed changes in the regulations, if any, and what the specific changes should be.

After opportunity to assess the results of improved enforcement, and broad consultation with stakeholders, if there is reasonably broad agreement that amendments to the regulations are needed, a new proposed rule should be crafted based on the results of this consultation. Any such new proposed regulation should be performance-based and be capable of being complied with by the full range of diverse entities regulated by the Pennsylvania dog law, including both commercial breeding facilities and those persons who breed, keep and/or train dogs in residential or semi-residential settings for hobby, show, trialing and other purposes than the breeding and keeping of dogs for the commercial pet trade.

The Pennsylvania Federation of Dog Clubs, Inc. stands ready to participate enthusiastically and positively in such a process.

We appreciate your attention to our comments on the proposed amendments to the Pennsylvania dog law regulations, and will be happy to answer questions or discuss any issues raised in this comment letter.

Sincerely yours,

Nina Schaefer
President

cc The Honorable Michael O'Pake
The Honorable Douglas Reichley
The Honorable Michael Brubaker
The Honorable Arthur Hershey
The Honorable Michael Hanna
Chairman Arthur Coccidrilli, IRRC
Walter Bebout, AKC