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INDEPENDENT REGULATORY  
 REVIEW COMMISSION

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

Dear Ms. Bender,

I, too, am yet another Pennsylvania citizen with concerns about the Proposed Rulemaking Amendments to 7 Pa. Code § 21. I offer my comments to you on the passages that concern me the most with an eye toward rescue and with a special interest and background in the law of animals.

I. The Definitions and Scope are ill-defined, unconstitutionally overbroad, and result in unintended consequences for reputable quality breeders, rescuers, and boarding kennels.

§ 21.1 Definitions.

*Establishment.* The word "home" and perhaps "homestead" need to be removed from this definition. The words "kept", "maintained", "harbored", "sheltered" and "given away" need to be clarified in this definition as well. As written, one could literally construe that an establishment could be a *home* where I *keep* my own dogs or where I *give away* one of my dogs to my brother. Surely this is not what is intended. Added language "for the purpose of later selling" would place these property ownership concepts into the perspective of a business kennel rather than private property ownership. I am reminded of an out-of-state farmer with lots of acreage who permanently maintains about 70 rescue dogs on his premises. These dogs were not able to be placed and this farm is their last hope to live out the rest of their lives. No further sales or transfers occur here. They belong to him and him alone. Yet under strict construction of your proposed regulations this farmer would be subject to the onerous engineering specifications required.

*Temporary Home.* The word "personal home" clearly needs to be removed for common sense reasons as well as right to privacy reasons (see II. *infra*). Since most rescue organizations use temporary foster homes to further vet and assess a rescue's temperament before permanent placement in the forever home, a private home would then fall squarely under *temporary home*.

*Housing Facility.* Again, remove the word "home" for the same reasons as well as the phrase "for any period of time." In effect, if I am dog-sitting my brother's dog for the weekend, this essentially says I can't keep him in the barn for a few hours while I am elsewhere.

-- *Indoor Housing Facility* is a sub-definition that clearly needs to be added. Suggestion: "Indoor housing facility as used in this Part means any physical structure other than either a personal family residence or structure used as human living quarters."

*Primary Enclosure.* The words "immediately restrict a dog" does not make literal sense. Nor does it account for puppy housebreaking by crate-training. Suggestion: "A structure used to [immediately] restrict a dog over 6 months old to a limited amount of space, such as a room, pen, run,

cage, crate or compartment where the dog is expected to spend more than 4 hours in any given day. Medical deviations should be substantiated by veterinarian documentation."

## § 21.2 Scope.

At the end of the paragraph it would be extremely prudent to add: "These regulations do not apply to dogs living in or puppies consistently whelped and raised inside a private family residence or structure used as human living quarters." This is probably the most powerful way to exclude the home breeder from expensive and onerous regulations while holding the large impersonal breeders accountable.

## II. Right to Privacy implications

Some elements of this proposed regulation implicate an unconstitutional regulating of private homes. The definitions and references to indoor housing facilities clearly must exclude the constitutionally-sanctioned right to privacy in our homes. Surely this proposed regulation did not intend that kitchens housing puppies be reconfigured for 6" drain pipes and animal control inspectors have unfettered right of entry into private homes. How absurd.

§ 21.14(a)(3)(ii) requires disclosing the location of temporary homes as well as making temporary homes subject to inspection. Again, this begs invasion of privacy on two levels: 1) unauthorized disclosure of private individuals' addresses is protected data under the 1974 Right to Privacy Act and 2) because temporary foster homes are used in the rescue sequence, this makes private homes subject to inspection. As an example, if my brother fosters a dog for me, does that mean animal control can barge into his private residence and inspect it? I think not.

§ 21.14(a)(3)(iii) needs a simple fix: remove the word "home" and replace it with "facility." Home implies private family residence.

§ 21.42(a) again addresses street addresses of individuals: previous owners and purchasers. A name without the street address would better protect privacy of individuals not intended to be covered under the purposes of this regulation.

## III. Unlawful seizure implications

§ 21.4(1)(iv)(D) (as well as the "Act") tells us that if an owner fails to comply with ANY part of this regulation, then their license to operate a kennel is subject to revocation, suspension, etc. Further, § 21.4(1)(iv)(D) says that upon any revocation, suspension, etc. dogs may be seized and impounded. So, for example, taken literally and logically, if an owner's drains and gutters (*see* §21.24(f)(11)(ii)) are only 4" in diameter despite the fact that the drains work well, the owner is out of compliance with this regulation and subject to license revocation or suspension, then subject to seizure/impoundment. Surely this produces an absurd result, unintended for reputable quality breeders and rescuers. What is conspicuously missing in this section is that under the "Act" the dog owner must be given adequate Notice of Intent to revoke or suspend, with opportunity to request an administrative hearing before revocation, suspension, and the followon seizure. Re-stating this in your regulation is of utmost importance for the more rural areas of Pennsylvania where sheriffs and animal control officers may not have ready access to all the shreds and pieces of the dog law.

Next, while § 21.4(1)(v)(C) makes some sense under Due Process, "reasonable grounds" needs to be determined by an impartial finder of fact, not a legally-untrained, possibly emotional animal control officer. If the intent is to use an impartial finder of fact, then that needs to be expressly stated here.

§ 21.4(1)(vi) discussing forfeiture indicates that after Due Process, the owner will have 10 days to forfeit the dog. In light of today's mobile society, 10 days is not enough time to respond. 20 days should be a more adequate standard as forfeiture is final.

Remember: seizing a dog is not like seizing an automobile. Dogs are living things – sentient property – and deserve a special status under the mere property concept. One of my own dogs, for example, is very old and infirm. Just looking at him would drive an animal control officer to presume he's abused and malnourished when, in fact, he has extensive medical issues. If he were seized, he would be separated from his heart meds, would panic without me, and would surely die of a broken heart locked in a cold, sterile cage. Seizure must not be taken lightly.

#### IV. Substantive Concerns

§ 21.23 Space. (e) Exercise.

(iii) This is just plain silly. Dogs need to be together for proper socialization.

(iv) Does this mean every time my dog is not exercised I have to have written permission from my vet? It's too cost prohibitive to seek a vet for permission to opt out of daily exercise every time my dog has weather-induced diarrhea, or when he's too old and frail to walk on the ice without falling. This needs to be my own choice, not the government's.

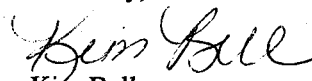
(v) Addresses the medical exemption. See (iv) *supra*.

§ 21.23 Space. (f)(8) Cleaning records. This involves way too much detail and is too easy to pencil-whip.

§ 21.30 Condition of Dog. You need more than 72 hours to see a vet. Suggest 7-10 days to get on the vet's appointment calendar.

Overall these proposed regulations are a step in the right direction and I appreciate the intent of this regulation to tighten down the horrid conditions of Pennsylvania's puppy mills; however the net has been cast too widely (forgetting that many reputable breeders operate from private residences) and this regulation will hurt Pennsylvania's existing small breeders and will hamper the grass roots rescue efforts. If the language is kept as proposed, reputable Pennsylvania breeders will surely need to pass the cost of premises changes onto their customers, thus raising the already expensive purchase price of healthy purebred puppies. Furthermore, if state revenue is an issue, why not crack down on the hundreds of out-of-state disreputable breeders who export puppies into our Commonwealth daily via the Internet without first purchasing an out-of-state dealer license? Why not make those licenses into a fee schedule according to the number of puppies shipped or brought over state lines and ENFORCE those licenses? This would help protect the reputable out-of-state breeders while curtailing mass quantity breeders from invading our Commonwealth unlawfully without having a license. I look forward to the Department's more reasonable and considerate revisions of this proposed rulemaking.

Sincerely,

  
Kim Bell

cc: Rep. Jim Cox, 129<sup>th</sup> District