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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 16, 2007

Honorable Dennis C. Wolff, Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #2-152 (IRRC #2559)  
Department of Agriculture  
Dog Law Enforcement

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

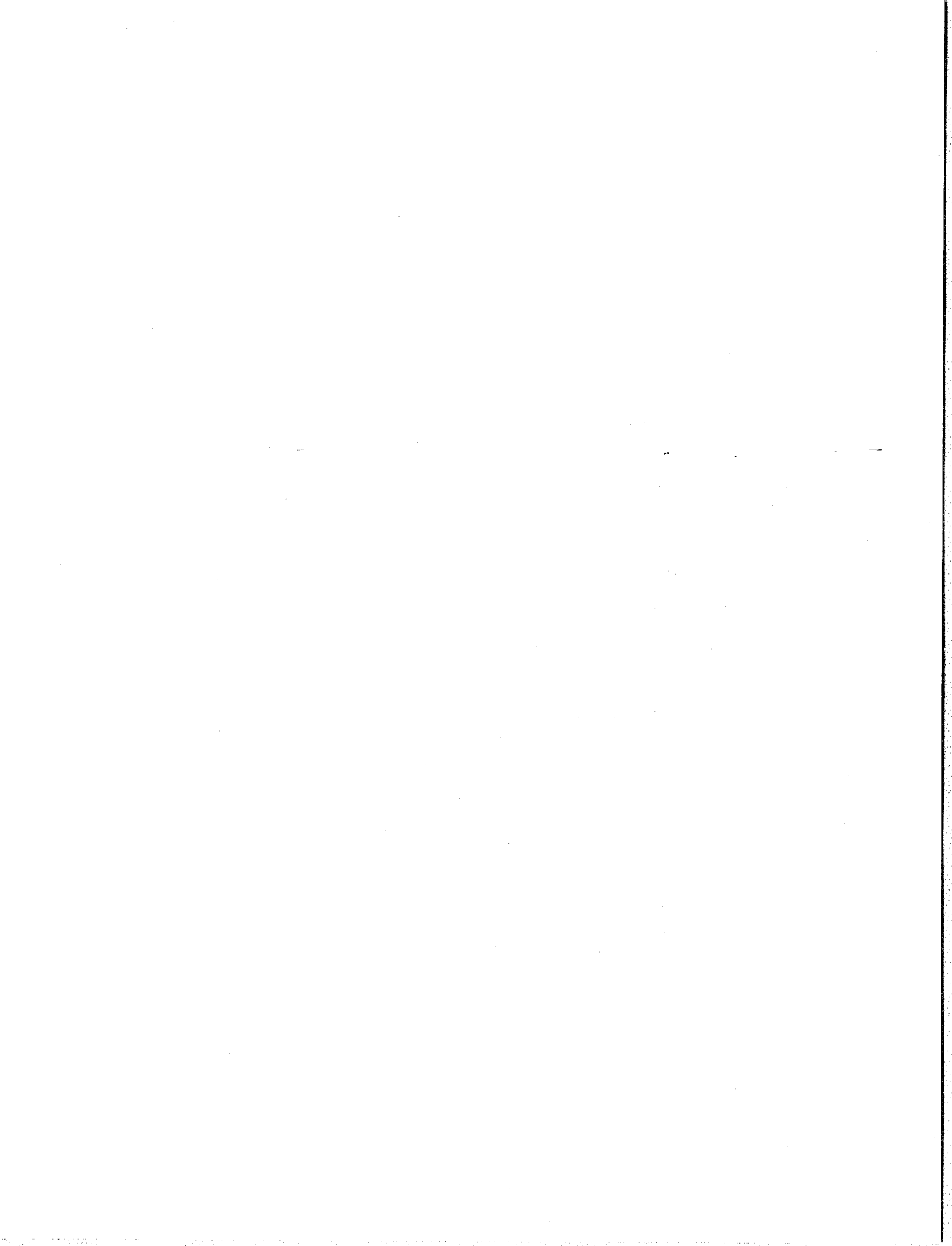
Sincerely,

Kim Kaufman  
Executive Director

wbg

Enclosure

cc: Honorable Michael W. Brubaker, Chairman, Senate Agriculture and Rural Affairs  
Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs  
Committee  
Honorable Michael K. Hanna, Sr., Majority Chairman, House Agriculture and Rural Affairs  
Committee  
Honorable Arthur D. Hershey, Minority Chairman, House Agriculture and Rural Affairs  
Committee



# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation #2-152 (IRRC #2559)

### Dog Law Enforcement

April 16, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the December 16, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

**1. General - Statutory authority; Fiscal impact; Protection of public health and safety; Need; Reasonableness; Consistency with other regulations and statutes; Implementation procedure; Legislative review; Clarity.**

The proposed regulation generated an exceptional level of interest. The Department is to be commended for extending the public comment period to 90 days. More than 16,000 comments on this proposed regulation were received. Although many expressed support for the goals of this proposed regulation, there was also concern among both supporters and opponents. Our comments include both a detailed review of specific provisions in the proposed regulation and discussion of general concerns.

*Fiscal impact v. Benefit; Need for change*

In the Preamble to the proposed regulation, the Department stated the costs of compliance with this proposed regulation will range from \$5,000 to \$20,000 per existing kennel. Numerous commentators, including members of the General Assembly, asserted that this regulation would impose far-reaching costs on all kennels and the public. Based on the comments received, it appears that the fiscal impact estimates presented by the Department were significantly understated. Legislators who commented include: Senators Jake Corman, Stewart J. Greenleaf, J. Barry Stout and Robert C. Wonderling, and Representatives Bob Bastian, Karen Boback, Mark Keller, Mike Fleck, Michael K. Hanna and Michael B. Carroll.

Commentators provided a wide range of cost estimates for the renovations, new construction and additional staff that would be necessary to comply with the proposed regulation. These estimates were vastly greater than those of the Department. These costs are expected to far exceed what could be recovered by increasing purchase prices or adoption fees for puppies or dogs.

Many asserted that non-breeding kennels, including those operated by local Humane Societies, rescue shelters and other nonprofit organizations, would be forced to close their doors to unwanted, abused or stray dogs. This unintended consequence of the proposed regulation carries a significant impact on public health and safety beyond our capacity to estimate in the limited

period of our review. Supporters of the proposed regulation are genuinely concerned with the condition and suffering of this same dog population, which includes displaced, unwanted or unhealthy dogs purchased or rescued from poorly run kennels.

The crucial question is how to correct existing problems and protect dog health and safety in the most cost-effective way. In order to aid our review, Commission staff asked the Department to provide the name and location of kennels that currently meet the requirements of the proposed regulation. Although there are kennels that currently meet most of the proposed changes, the Department is unable to identify one privately operated kennel that meets all of the proposed requirements and standards.

The Department needs to explicitly identify the problems that it seeks to resolve. What are the number and type of existing complaints concerning dog health and safety, or human health, safety and welfare that are not being addressed by the existing regulations? To what extent are these problems related to enforcement? Does the Department have access to information on complaints or problems documented under the "puppy lemon law" (Act 27 of 1997) or via other sources? What specifically have dog wardens or other Department employees observed in performing their duties that could be improved via changes in the rules? Has the Department gathered information concerning the frequency and costs of care and medical treatment for dogs with problems that can be attributed to conditions at Pennsylvania kennels? Finally, what is the need for this rule?

Furthermore, the Department needs to explain how the provisions of the proposed regulation will solve the identified problems. What evidence or scientific research is available that supports and documents the benefits of the new rules? This same question was asked in a joint letter dated March 15, 2007, from Representatives Bastian, Boback, Keller and Fleck. Will the benefits outweigh the costs? Are there cost-effective alternatives that will produce similar benefits? Essentially, the Department needs to document the need for change and how its proposals will efficiently accomplish its objectives.

#### *Next steps for this rulemaking*

Given the considerable public involvement and legislative interest in this proposed regulation and the strong support for major revisions in the rulemaking, the Department should work to guarantee full public review of proposed revisions. We strongly encourage the Department to organize stakeholder meetings with representatives from all types of kennels to develop a full understanding of their operations, dogs and clients. In this way, it can develop standards that will protect the health and safety of dogs while simultaneously recognizing the unique functions at different kennels. The Department should work with affected parties, experts, concerned citizens, and the General Assembly to develop improved ideas for achieving its policy objectives without imposing unnecessary or unreasonable financial burdens.

Section 902 of the Dog Law (Law) (3 P.S. § 459-902) requires that the Department hold a public hearing before it promulgates final regulations. The Department could use this hearing as one opportunity for input. We urge the Department to make proposed revisions available for the public and legislators to review before the hearing. Interested parties could submit written comments and participate in the hearing. The Department should also publish an Advanced Notice of Final Rulemaking and provide an opportunity for public comment to resolve any remaining issues before submitting a final-form regulation.

### *"One-size-fits-all" approach*

This proposed regulation seeks to manage all kennels with one uniform set of requirements. A consistent theme offered by commentators is that one size does not fit all. Large commercial breeders, small home-based breeders, rescue organizations, shelters, research laboratories, boarding kennels, sporting kennels, and other kennel operations, cover a broad range of facilities of various sizes and functions.

Section 102 of the Law (3 P.S. § 459-102) sets forth several different statutory definitions for kennels. Hence, the rationale for placing all kennels together under one regulatory scheme appears to be at odds with the recognition in the enabling statute that not all kennels are alike. We recommend that the regulation reflect the statute and acknowledge differing conditions at a variety of kennels. Alternatively, if the Department opts to retain the uniform "one-size-fits-all" program in the final-form regulation, it will need to set forth a detailed justification in its response to comments.

### *Role of federal law and regulations*

There is disagreement between commentators and the Department over the relationship between the proposed regulation and federal regulations and law. The U.S. Department of Agriculture (USDA) promulgates regulations for kennels that engage in interstate commerce under the authority of the Animal Welfare Act (7 U.S.C. §§ 2131-2159). Some supporters of the proposed regulation and Department staff assert that the proposed regulation is consistent with the Animal Welfare Act and federal regulations. On the other hand, other commentators, including members of the General Assembly, declare that the regulation exceeds the federal rules and standards. Many commentators recommend that the Department base the revisions in the proposed regulation on the federal regulations or simply reference the federal regulations in Chapter 21.

The Department needs to identify precisely where the provisions of its proposed regulation meet or exceed provisions of the federal regulations. If a proposed provision is more stringent than its federal counterpart, the Department should explain the compelling interest, need or reason for exceeding the federal rule.

### *Major revision of existing Chapter 21: Format, Structure and Clarity*

Given the scope of the amendments to Chapter 21, this proposed regulation represents a major revision and a new direction. A pervasive problem is the attempt to fold several new provisions into the existing provisions of Chapter 21. Commentators expressed concerns not only with the substance of the proposed regulation but also with its format, and sometimes redundant and conflicting language.

For example, even though there are specific sections entitled "Sanitation" and "Food, water and bedding," provisions for "sanitation" and "bedding" are repeated in other sections. The effect is confusing for interpretation, implementation and enforcement. Another problem is that standards for similar subjects are scattered into different sections. The "space" requirements for "primary enclosures" are in one section entitled "Space." Another section entitled "Shelters" contains some requirements for flooring in "primary enclosures." Other sections are entitled "Ventilation in indoor facilities," "Lighting in indoor facilities," and "Temperature control." Requirements for outdoor or indoor facilities are scattered in different sections. Rather than

trying to integrate new provisions into an antiquated structure, the Department should consider starting from scratch and reformatting Chapter 21 with input from both stakeholders and the General Assembly.

#### *Recordkeeping requirements*

Several commentators, including members of the General Assembly, expressed concern with the extensive recordkeeping requirements. They assert that the Department has exceeded its authority in requiring certain records to be kept, and contend that the recordkeeping requirements found in the Law are “straightforward as enumerated, and without an additional general provision for the secretary to require anything further...” Provisions related to recordkeeping include Sections 21.14(a)(5)(vii)(C) and (D), 21.23 (e)(v), 21.24(f)(8) and 21.41(e).

Other commentators claim that the extensive recordkeeping requirements in this proposed regulation would be onerous because of the need to increase staff, without adding any extra benefit.

Section 207(c) of the Law provides a specific list of the information that is to be maintained in records by a kennel. The Department should justify why it is adding to this list.

If these requirements are retained, the Department could accomplish its goal and reduce the burden on the regulated community by allowing kennels to create a standard operating procedure and using a checklist to ensure that those protocols are followed.

#### *Alternatives to reduce fiscal impact*

There are alternatives that the Department could examine to minimize the costs that will be imposed by this proposed regulation. These alternatives include the following:

*Grace period:* When new regulations require major renovations, promulgating agencies often give existing facilities a specific time period in which they can bring their operations into compliance with the new requirements. For example, USDA regulations included extended timeframes for compliance at 9 CFR 3.6(a)(2)(xii). In contrast, the Preamble of this proposed regulation states that its effective date will be upon publication of the final-form regulation in the *Pennsylvania Bulletin*. There is no mention of how soon existing facilities will be expected to comply with the new requirements.

*Grandfather clause:* Another method used in law and regulations is an exemption for existing facilities. Existing facilities would be allowed to operate under the current standards. When they renovate or expand their facilities, they would then be required to comply with the new regulations. Another option would be to require that an existing facility have a clean record without violations in order to qualify for the exemption.

*Plan of correction:* Another way to encourage cooperation between regulated entities and an agency is to provide for plans of correction. The plan would set forth a specific time period in which the kennel will correct deficiencies and bring its facility into compliance. If the kennel fails to complete the plan of correction within the specified time period, the Department could proceed with other enforcement options including court action and fines. This type of provision could be placed in Section 21.4 relating to penalties. An example is in the existing regulations of the Department of Health at 28 Pa. Code § 1009.4(c).

If the Department plans to promulgate this proposed regulation, it should consider moderating the costs of the transition. Any one or all of the above suggestions could be added to the final-form regulation to assist kennels in meeting the new standards.

### *Research facilities*

Section 218 of the Law provides:

Research facilities in the Commonwealth that are currently under Federal Government inspection shall be exempt from State inspection if they have undergone no less than one Federal Government inspection within the past 12 months.

Given this statement in the Law, the Department should explain its authority to inspect and establish new requirements for research facilities.

## **2. Section 21.1. Definitions. - Statutory authority; Fiscal impact; Reasonableness; Consistency with other regulations and statutes; Implementation procedure; Clarity.**

### *Establishment*

The proposed regulation adds a new definition for the term "establishment" to clarify the kennel requirements in Section 206 of the Law. However, many commentators found the definition of "establishment" to be "very convoluted," as it refers to both "premises" (including land and facilities) and a "person."

Along with the word "person," the new definition includes the words "individual, ... organization, business or operation." The use of these words is unnecessary since the term "persons" is defined in the Law (3 P.S. § 459-102) as including individuals, corporations or other associations.

Commentators question the need for this definition. We agree. The Law does not include a definition of "establishment." However, it does define "kennel" as:

Any establishment wherein dogs are kept for the purpose of breeding, hunting, training, renting, research or vivisection, buying, boarding, sale, show or any other similar purpose and is so constructed that dogs cannot stray therefrom.  
(3 P.S. § 459-102)

The Law also includes separate definitions for different types of kennels. Furthermore, Section 206(a) of the Law (3 P.S. § 459-206(a)) states:

A kennel license is required to keep or operate any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any one calendar year.

Since the Law delineates when a place or person needs a kennel license, we do not see the need for the definition of the term "establishment." In addition, the terms "kennel" and "establishment" are used interchangeably throughout the proposed and existing regulations. The Department needs to select one term when it is referring to a place that is or should be licensed as a kennel and use that term consistently. The final-form regulation should incorporate or cross-reference the statutory definitions and language set forth in the Law to clarify who and what is covered by the licensure requirements.

*Kennel, Boarding kennel, Breeding kennel, Dealer kennel, Nonprofit kennel, Pet shop-kennel, Private kennel, Research kennel*

Section 102 of the Law (3 P.S. § 459-102) contains a general definition for the term “kennel” and separate definitions for seven different types of kennels. However, none of these statutory definitions are included or referenced in the existing regulations or in this proposed regulation. These terms and their statutory definitions should be incorporated or cross-referenced into Chapter 21 to differentiate among the various types of kennels and the standards that apply uniquely to each type. The generic term “kennel” and its statutory definition could be used for requirements that apply to all kennels.

Commentators have also expressed concern with how long a dog needs to be in a kennel to be counted as one of the minimum of 26 dogs during a year. The definition of “boarding kennel” in the Law (3 P.S. § 459-102) states that it is a kennel where “dogs are housed or trained for compensation by the day, week or a specified or unspecified time.” Hence, the statute appears to give some latitude on this subject. As it reviews suggestions for setting a minimum time period for a dog to be counted as one of the minimum 26, the Department should consider the growing industry of “dog day care centers” where pet owners may leave their dogs while the owners go to work. If a place houses 26 or more dogs while the dogs’ owners go to work, and keeps no dogs overnight, should this business be licensed as a kennel and subject to inspection?

A related concern was also expressed by the Sporting Dog Defense Coalition (SDDC). What is the Department’s intent concerning licensure for kennels that house dogs temporarily for field trials, training or hunting events?

#### *Sanitize*

The Pennsylvania Society for Biomedical Research (PSBR), Merck & Co., Inc., Research Laboratories and GlaxoSmithKline recommend that the regulation use the definition of “sanitize” found in the federal regulations at 9 CFR 1.1. We agree.

#### *Temporary home*

Several commentators questioned the intent of this new definition. It is also unclear whether the Department would have authority to impose requirements on a place that does not house the minimum of 26 dogs at some point within a year. If a kennel owner or operator is placing some of its dogs in different facilities, then such a situation should be addressed through substantive provisions that apply to licensed kennels. Unless the Department can explain the need for this definition, it should be deleted from the final-form regulation.

### **3. Section 21.3. Enforcement and compliance. - Protection of public health and safety; Consistency with statute; Reasonableness.**

Some commentators suggested that Section 21.3 of the regulation be amended to allow police officers to enforce the regulations. Section 901(a) of the Law begins with this sentence:

The secretary, through State dog wardens, employees of the department and police officers, shall be charged with the general enforcement of this law.

Since the Law authorizes it, the Department should provide direction for the role of police officers in enforcement in the final-form regulation.



**4. Section 21.4. Penalties. - Statutory authority; Consistency with statute and regulation; Need; Reasonableness; Clarity.**

The proposed regulation amends this existing section in Chapter 21. In the Preamble, the Department states that the new language “is intended to clarify the Secretary’s powers, duties and enforcement options.” We have identified concerns with the following provisions.

*Subsection (1)(iii)*

We have four concerns with this subsection.

First, as noted by the Pennsylvania Federation of Dog Clubs (PFDC), this subsection conflicts with proposed Section 21.14(a)(3)(i). Subsection 21.4 (1)(iii) does not permit a facility to operate without first getting a license while Subsection 21.14(a)(3)(i) states that only upon reaching the 26 dogs per year threshold is a facility required to be licensed. The Department should reconcile the language in these sections for consistency. A similar concern applies to Section 21.14(a)(4).

Second, the Department should explain the need for and intent of the amendments to Subsection (1)(iii)(B). Specifically, what is the “issuance of a Notice of Violation and time period to comply, or an order, or both....”?

Third, we question the statutory authority for the new language in Subsection (1)(iii)(B) which would allow the Secretary to impose a fine with the issuance of an administrative order. In contrast, Section 207(a.1) of the Law (3 P.S. 459-207(a.1)) states that the Department may seek the imposition of a fine in a suit in equity in Commonwealth Court. The Department needs to explain its authority for this provision or delete the new language in Subsection (1)(iii)(B) from the final-form regulation.

Fourth, Subsections (1)(iii)(A), (B) and (C) are practically identical to Sections 21.14(a)(4)(i), (ii) and (iii). The only exception is that Section 21.14(a)(4)(ii) does not mention the possible imposition of a “fine of not less than \$100 and not more than \$500.” There is no need for this repetition. If necessary, other sections in the regulation can refer to the penalties provisions in Section 21.4.

*Subsection (1)(iv)*

We have three concerns with this subsection.

First, the proposed regulation is replacing “may” with “will” in Subsection (1)(iv). It is unclear why this change is being proposed. Section 211(a) of the Law reads:

**(a) General powers of secretary.**--The secretary **may** revoke or suspend a kennel license or out-of-state dealer license or refuse to issue a kennel license or out-of-state dealer license for any one or more of the following reasons: [Emphasis added.]

\* \* \*

(5) the person holding or applying for a license has been convicted of any law relating to cruelty to animals.

The proposed language change would force the Secretary to automatically revoke, suspend or deny a kennel license when a licensee or applicant was convicted of any violation of 18 Pa.C.S. § 5511. The proposed regulation would also automatically deny a license to anyone who was convicted of a violation of 18 Pa.C.S. § 5511 within the last ten years. The Department should provide a detailed justification for these changes. Alternatively, the Department could incorporate the statutory language from Section 211 of the Law.

Second, Representatives Bastian, Boback, Keller and Fleck expressed concerns with new language in this subsection. They noted that the main paragraph in Subsection (1)(iv) refers only to convictions under Pennsylvania law. They questioned whether this language would limit the ability of the Department to revoke, suspend or deny licenses for kennel operators convicted in other states. In contrast, the language in Section 211(a)(5) of the Law allows licensure revocation, suspension or denial when the applicant or license holder “has been convicted of any law relating to cruelty to animals.” The proposed regulation refers only to “any law relating to cruelty to animals” in Subsection (1)(iv)(E) pertaining to convictions that are more than ten years old. The Department should clarify the language to reflect the statute.

Third, the Department should explain whether a revoked license may be reinstated, and if so, how.

*Subsection (1)(v)(B)(I)*

We have three concerns with this subsection.

First, it is one long sentence and should be reformatted for clarity. The Department should refer to Chapter 7, entitled “Enumerations” in the *Pennsylvania Code and Bulletin Style Manual* for guidance in formatting this subsection. In this case, the subsection would use a list of items to enumerate the conditions for the return of a seized dog. There are other long paragraphs in the proposed regulation that could be reformatted into enumerated lists.

Second, the enumeration of this subsection would have to elaborate on several issues. As proposed, it reads:

If the person whose kennel license or out-of-State dealer license has been revoked, suspended or denied and whose dog has been seized and impounded provides the Department with satisfactory evidence or assurances that the dog will receive adequate care, **which may include an inspection by a State dog warden or employee of the Department of the premises and buildings in which the dog will be housed**, a plan of care and kennel maintenance, a signed sworn letter from a licensed veterinarian attesting to oversee the care, or other information related to care of the dog as the Department may reasonably require, and the person has paid all costs of transportation, care and feeding related to the seizure and impoundment of the dog, the Department may allow the person to retrieve the seized and impounded dog. [Emphasis added.]

It is unclear how an inspection by a state official could be “included” as a part of the “evidence or assurances” by the dog owner. In addition, what would constitute “assurances that the dog will receive adequate care”?

Finally, what “other information related to care of the dog” might the Department require? How will the regulated kennel or person be notified of the need for “other information”? A similar concern applies to Subsection (2)(iii)(C).

*Subsection (1)(v)(C)(II)*

Under this subsection, how can the facility be determined to be able to provide “adequate” care if its license has been revoked, suspended or denied?

*Subsection (1)(vi)(B)(III)*

This subsection contains the word “timely,” when referring to the payment of the reasonable costs. In order to provide guidance to the regulated community, the word “timely” should be replaced with a specific timeframe. The same concern applies to Subsection (2)(iii)(B).

*Subsection (2)(iii)*

Subsection (2)(iii)(C) contains the phrase: “the dangerous dog shall be forfeited to some entity other than the Department.” Does the term “entity” refer to facilities such as the Humane Society?

*Subsection (2)(v)*

Commentators have recommended that this subsection be amended to apply to attacks that are unprovoked. They also suggest that “unprovoked” be defined in the Definitions section. Did the Department consider adding “unprovoked” to this subsection?

**5. Section 21.14. Kennel licensure provisions. - Statutory authority; Fiscal impact; Consistency with statutes and regulations; Need; Reasonableness; Implementation procedure; Clarity; Legislative review.**

This is a new section that the Department is adding to Chapter 21. It addresses kennel licensure requirements in Sections 206 and 207 of the Law. As stated in the Preamble, “it provides more specifics with regard to the intent and enforcement of the kennel licensure provisions of the act and sets forth the substantive provisions of the regulations which relate to the new definitions of 'establishment' and 'temporary home' set forth in these regulations.” We identified the following concerns:

*Subsection (a)(1)*

This subsection references different classes of kennels that are listed in Section 206(a) of the Law. These different classes of kennels are not listed in the proposed or existing regulation. There is only a vague reference in Section 21.2 (relating to scope) of the existing regulation to the types of kennels in Section 206 of the Law. This new subsection should include a reference to the different classes of kennels in Section 206(a) of the Law.

Section 206(a) of the Law includes the following statement: “The application forms and kennel licenses shall be as designated by the secretary.” However, there is no mention of an application form in the proposed or existing regulations. The final-form regulation should set forth the contents of these forms and indicate the type of information that kennel applicants would need to

provide. The regulation should also indicate how potential applicants can obtain copies of the form.

*Subsection (a)(3)*

We agree with PFDC that this subsection should clarify whether dogs that stop by a kennel during the day, dogs that accompany their owner overnight or dogs that stay overnight without a fee be counted as part of the 26-dog threshold. We raised a similar question above in the discussion of the definition of "kennel." Also, can a dog be counted more than once towards the cumulative total regardless of how many times it returns in a year? This subsection should be amended to clearly state the Department's intent.

*Subsection (a)(3)(i), (ii) and (iii)*

We have three concerns with this subsection.

First, this subsection appears to require a kennel to have the capacity to keep the **total** number of dogs that would be kept, harbored, boarded, sheltered, sold, given away or in any way transferred annually, even though the facility may never have that number of dogs physically present at any one time. This raised a lot of concern from commentators including legislators. Does the Department intend for kennels to have facilities to keep the total numbers of dogs that it keeps in a year? If so, it should provide its authority to do so and explain why this is a reasonable requirement. If not, this subsection should be amended to clearly state the Department's intent.

Second, under this subsection, must these standards be met immediately upon the arrival of the 26<sup>th</sup> dog, or will the establishment be given a specific period of time to come into compliance? If it must immediately be in compliance, facilities that are below the 26-dog threshold will have to comply with these requirements by default because they potentially could reach the 26-dog threshold within the calendar year.

One possible solution is to amend the regulation to require that any facility, which plans to meet or exceed the 26-dog threshold in year, must apply for a kennel license at least 30 or 60 days (the regulation can specify a time period that the Department determines to be sufficient) before the date when it will meet the statutory minimum.

Third, what is the impact of this subsection and Subsections (a)(3)(iii) and (iv) on private homes? Given the statutory definitions of "nonprofit kennel" and "private kennel," it appears to be the intent of the Law that any residence or home that meets or exceeds the 26-dog limit in a year must obtain a kennel license. Hence, people, including volunteers in rescue organizations, who keep 26 or more dogs at their homes, need to obtain kennel licenses.

However, what is not clear is the authority of the Department to treat each "temporary home" as a "separate kennel location" when these homes do not have 26 or more dogs in a year. Furthermore, what authority does the Department have to inspect homes or places that do not meet or exceed the 26-dog limit? It is also unclear how the licensure provisions would cover a rescue network organization, which does not have a central kennel facility for housing dogs, but coordinates the assignment to separate foster homes of more than 26 dogs or puppies in a year. If none of the foster homes in the network kept 26 or more dogs in a year, what authority would the Department have to inspect any part of the network?

We understand the Department's need to monitor dogs that kennels or rescue networks may transfer to foster homes or temporary homes. However, the Department should work with stakeholder groups from kennels, shelters operated by local Humane Societies or Societies to Prevent Cruelty to Animals (SPCAs), and rescue networks, to develop a workable system that achieves the Department's objectives.

*Subsection (a)(5)*

We have four concerns with this subsection.

First, we agree with Representatives Bastian, Boback, Keller and Fleck who suggested that the Department replace the word "dispersed" with the term from the Law, "dispensed."

Second, the terms "stray dog" and "rescued dog" used in Subsection (a)(5) should be defined in the final-form regulation.

Third, this subsection should clearly state where records must be held. Must they be kept at the kennel or, for facilities with multiple locations, may they be kept at a central location?

Finally, do the requirements of this subsection apply to dogs that are bred internally and are not intended to be transferred to another location?

*Subsection (a)(5)(iii)(B)(III)*

This subsection requires a kennel to record the "...organization, agency or person that last owned the dog..." How would the kennel know who owned a stray dog in every instance? What if the dog does not have a collar, microchip or other identifying information? How does this affect shelters and Humane Societies who are expected to accept dogs with no questions asked?

*Subsections (a)(5)(vii)(C) and (D)*

The information required under these subsections should not be applied to boarding kennels that are returning a dog to its owner.

*Subsection (a)(5)(vii)(D)*

Commentators assert that the only veterinary record that matters is the **current** vaccination status of the dog and a certificate indicating the dog is in sound health at the time of surrender to the kennel. We agree.

*Subsection (b)*

This provision raises numerous questions. How can a kennel know if the other kennel is licensed in all cases? How are they to know if the other kennel is supposed to be licensed if they do not deal with 26 or more dogs in one year? How are shelters or rescue groups, that receive dogs at random, supposed to determine where a dog came from in all cases? In addition, shelters or rescue groups often provide shelter for dogs from places that are operating with suspended or revoked licenses or without any licenses at all. Where will these dogs go if the shelters cannot take them due to this provision? Will research facilities in Pennsylvania be prevented from sharing dogs with out-of-state research facilities?

Further, the commentators feel that it is not the responsibility of consumers to enforce compliance with the law. We agree. The Department should amend this section to eliminate the requirement that kennels verify that every kennel they deal with is licensed. Another alternative would be to require that kennels report such incidents if they are aware of them.

#### *Subsection (c)*

Under this subsection, a kennel must ensure that the dog entering the Commonwealth is accompanied by a health certificate and must keep a copy of that certificate in its records. What must the kennel do in circumstances when a dog does not have a health certificate, such as when dogs are seized out-of-state and brought to a rescue kennel or humane society in the Commonwealth?

Also, PFDC questions how recently the health certificate must have been issued. This should be clearly stated in the final-form regulation.

This section also requires that the dog with the health certificate be at least seven weeks of age and be vaccinated for rabies in accordance with the Rabies Prevention and Control in Domestic Animals and Wildlife Act (3 P. S. §§ 455.1-455.12). Under Section 455.8(a) of the Rabies Prevention and Control in Domestic Animals and Wildlife Act, dogs are required to be vaccinated when they are over three months of age. The Pennsylvania Professional Pet Breeders Association (PPPBA) questioned whether Subsection (c) is now requiring that dogs be vaccinated at seven weeks of age if they are being transported into the state or at over three months pursuant to state law. If it is the former, the Department needs to explain its authority for lowering the minimum age for vaccination. Either way, the provision needs to be clarified.

#### **6. Section 21.21. Dog quarters. - Need; Reasonableness; Implementation procedure; Clarity.**

The Pennsylvania Farm Bureau (PFB) stated that this section lacks a clear definition of “indoor facility” and “outdoor facility.” The Department should clarify these terms in the final-form regulation. In addition, this section includes statements about the following subjects:

- “sanitary conditions” and “readily sanitized.”
- standards for “primary enclosures” and other kennel facilities.
- drainage standards including “adequate drains and gutters.”

All these subjects are addressed in other sections. In the final-form regulation, the Department should streamline provisions to increase clarity and allow for easier implementation.

#### *Subsection (d)*

PPPBA, PFB and PFDC raised questions with this subsection. They stated that commercially produced exits are built to ensure that the entryway and exit is as tall as the dog’s shoulder. Would the Department consider this to be “unfettered clearance” out of an enclosure?

Also, PFDC asserts that this subsection is inconsistent with Subsection (e). It questions how a dog can have unfettered clearance out of a cage if it is stacked and recommends that cages not be stacked. Is there a way for a dog to have “unfettered clearance” out of an enclosure if the cages are stacked?

*Subsection (e)*

We have four concerns dealing with this subsection.

First, the Department should insert language that establishes the procedure for obtaining Department approval for an “other device approved by the Department.”

Second, can the Department’s intended goals be accomplished by permitting the stacking of cages? Some commentators suggested that the stacking of primary enclosures should be prohibited under this subsection.

Third, the SDDC also expressed concern as to whether its members could continue to use “airline style” crates for housing their dogs at hunting events and field trials?

Finally, does the Department anticipate any conflict between the trays, walls or partitions required in this section and the air flow requirements elsewhere in the proposed regulation? PPPBA and PFB stated that the requirements in this subsection would negatively impact the air flow requirements in Section 21.26, by restricting cross ventilation.

**7. Section 21.22. Housing. - Need; Reasonableness; Clarity.**

This is another example of an area that could be improved through reorganization of Chapter 21. The subject matter of this section is more related to the health and safety of dogs rather than “housing.”

*Subsection (d)*

PFDC questions what qualifies a dog as a puppy and further states that the American Kennel Club considers any dog less than one year of age to be a puppy. The Department should define “puppy” in the final-form regulation.

Also, commentators questioned why this subsection does not include a provision similar to Subsection (e) that allows for a release by the treating veterinarian. The Department should state why it includes a quarantine of 14 days for puppies when there is no specific quarantine period for dogs in Subsection (e).

**8. Section 21.23. Space. - Need; Reasonableness; Consistency with other regulations; Clarity.**

This is another existing section in Chapter 21. It is entitled “Space” and contains standards for “primary enclosures” even though Section 21.24, which is entitled “Shelters,” also contains provisions related to “primary enclosures.” Provisions for “primary enclosures” should be located in one section. We also question why the exercise requirements in Subsection (e) are in this section. For clarity, the Department should consider putting the requirements and standards for exercise into a separate section.

*Subsections (a), (b) and (e)*

These subsections deal with space requirements in primary enclosures and exercise requirements. Commentators, including legislators, raised numerous concerns with these subsections. In particular, the amendments to Subsection (b) relating to floor space generated concerns regarding

fiscal impact. The proposed regulation doubles the floor space and requires exercise time for dogs. In contrast, the federal regulations require additional floor space only if dogs are housed individually and do not have the opportunity for regular exercise. As stated above, the Department needs to explain the “compelling” reason for exceeding the federal requirements. What is the scientific or accepted animal husbandry basis for the new provisions in this section? This provision could also create difficulties for rescue organizations or foster homes that keep dogs in crates for a few hours during each day.

#### *Subsection (e)*

The Pet Industry Joint Advisory Council and members of the General Assembly questioned why the existing language granting space exemptions for certain pet shop kennels is being deleted. This is not specifically addressed in the Preamble. The Department should provide a clear explanation when it submits the final-form regulation.

Also, commentators expressed extensive concerns on the exercise provisions contained under this subsection. How did the Department choose 20 minutes as the amount of time a dog needs for exercise on a daily basis? How can facilities comply with these requirements during times of inclement weather? Did the Department consider requiring exercise to be tailored to the dogs and the conditions under which the exercise takes place? Were other methods of achieving exercise for dogs considered? Did the Department consider that different breeds of dogs require different types of exercise or exercise might include running on grass or near water? How is it inhumane to exercise a 35 pound dog with a 36 pound dog? Has the Department considered adding a waiver from the provisions of Subsection (e)(iii) for dogs of the same owner that are taken to a boarding kennel or doggie day care? Under Subsection (e)(iv), why is the Department the entity that gives an exemption from exercise for a dog? Wouldn't it be more appropriate for a veterinarian to do so?

If this subsection remains unchanged, we have three concerns.

First, Subsection (e)(ii)(B) is one of the first provisions to refer to fencing in the proposed regulation. This subsection begins with this standard: “Fencing must be adequate to prevent dogs from escaping from the exercise area....” There are no requirements for fencing in the existing provisions in Chapter 21. What is “adequate”? Dogs can find ways over, around, through or under a fence. Who will determine what is adequate to prevent dogs from escaping?

Second, Subsections (e)(iii)(A)-(D) delineate exercise areas for different sizes of dogs. Subsection (e)(iii)(D) is the only one that mentions “giant sized dogs” which are a separate category from “large” dogs. At the end of this subsection, it states that these dogs may not be put in the same exercise area with dogs from the other three categories. Subsections (e)(iii)(A), (B) and (C) exclude only two of the other categories but fail to mention “giant” dogs. For consistency, the term “giant” needs to be added to the end of Subsections (e)(iii)(A), (B) and (C).

Finally, under Subsection (e)(v), how long must a kennel operator maintain the daily records of exercise for each dog? To be consistent with proposed Section 21.14(a)(5) and Section 207(c) of the Law, which requires other kennel records to be maintained for two years, the Department should add a timeframe for maintaining records to this section.



**9. Section 21.24. Shelter, housing facilities and primary enclosures. - Consistency with other regulations; Need; Reasonableness; Clarity.**

In the proposed regulation, this section is entitled as “Shelter, housing facilities and primary enclosures.” However, extensive amendments to this section cover subjects related to “outdoor housing facilities.” This is another area that should be reorganized.

*Subsection (b)*

Under Subsection (b), how was the 50 degree temperature threshold for newborn or very young pups determined? PFDC states that this is too low for young dogs. The Department needs to reexamine this requirement and amend or delete it from the final-form regulation.

*Subsection (b)(1)*

Representatives for both dog rescue organizations and the commercial breeders have criticized this subsection as vague, subjective and unhelpful. Subsection (b)(1)(iv) is lengthy and confusing. The Department needs to delete or clarify the provisions under Subsection (b)(1) in the final-form regulation.

*Subsection (b)(2)*

This subsection contains contradictory provisions. How can exercise areas have both a “flat and level surface” and a 1/8 inch slope? The Department should amend this language to be consistent.

Also, other commentators have suggested that this subsection is too prescriptive and does not permit other methods of obtaining the goal. How did the Department determine the slope requirements contained in this provision? A similar concern also applies to Subsections (a)(3), (b)(8) and (f)(11)(vii).

*Subsection (b)(4)*

PFDC indicated that the requirement for dry bedding at all times is unreasonable. What happens if a dog is playing in the rain or decides to mark his territory? Would the operator be in violation without first having an opportunity to correct the situation? A similar concern applies to Subsection (b)(6)(iv).

*Subsection (b)(6)(iv)*

PPPBA and PFDC question what the Department means when it requires “additional clean and dry bedding.” For clarity, the Department should amend the language in this subsection to plainly state an achievable standard.

*Subsection (b)(7) and (b)(8)*

Both Subsections (b)(7) and (b)(8) consist of long and confusing paragraphs. If they are retained in the final-form regulation, they should be rewritten and reformatted as enumerated lists to clarify the Department’s objectives.

*Subsection (b)(9)*

This subsection contains one sentence: "Outdoor facilities must be fenced and be constructed to minimize or prevent vermin, animal, insect and pest infestation and other vectors of disease." It is unclear what type of fencing would meet this requirement. Does the Department plan to offer guidance to licensees so that they know when their outdoor facilities meet these criteria?

*Subsection (b)(10)*

How did the Department determine the standard of cleaning these facilities every 24 hours?

*Subsection (b)(11)*

Commentators question the Department's determination that grass runs and exercise areas, under this subsection, create inhumane conditions for the dogs. They claim that this provision has no basis in proper animal husbandry practices, serves no purpose and would be difficult to implement. It is a major concern for rescue groups and smaller breeding kennels that are raising and training dogs to be pets in homes with grass lawns. It may also create a major problem for sporting groups that engage in hunting events or field trials. The Department should explain why it is inappropriate for dogs to exercise on grass surfaces.

*Subsection (c)*

There were several comments on this subsection dealing with tethers. The USDA eliminated tethering from its regulations in 1997. Under current federal rules, only temporary tethering of a dog due to health or other reasons is permitted and the licensee must first obtain approval of the Animal and Plant Health Inspection Service. When it first proposed this approach in 1996, the USDA asserted:

Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. [*Federal Register*, July 2, 1996, 61 FR 34387]

The proposed regulation would allow a dog to be attached to a primary enclosure by a tether. Why are tethers used? How long or frequently is a dog attached to a tether? Is it necessary? Why would the reasons for the federal prohibition not apply to dogs in Pennsylvania? The Department should explain its rationale for retaining provisions for tethering in Chapter 21.

*Existing Subsection (d)*

Several groups and individuals, including members of the Dog Law Advisory Board and a veterinarian who is also a professor of behavioral medicine, expressed the opinion that the Department should not allow kennels to use metal strand or wire floors. Commentators offered research and other evidence that such flooring causes harm to dogs and their offspring. The Department should explain why it is retaining provisions that enable kennels to use metal strand or wire floors in primary enclosures.

*Subsections (f)(5) and (7)*

PSBR stated that these subsections are unreasonable because many facilities hold trash, waste and dead animals in a designated area or room in the "housing facility," but is separate from animal holding areas. It contends that this method would be prohibited if these rooms were emptied on an as-needed-basis and not necessarily every day. Compliance with the new standard would be costly and burdensome. It further suggests that if the intent is to merely keep contaminated materials separated from the dogs, then the Department should use more accurate language than "housing facility." We agree.

*Subsection (f)(8)(ii)*

Commentators expressed concern with the clarity of the term "housing facility" contained in this subsection. They asked if this is intended to mean the immediate area in which the dogs are housed or the entire facility. The Department should define this term and use it consistently throughout the regulation.

*Subsection (f)(9)*

PSBR questioned if all animal husbandry procedures will be required to use potable water. Since some procedures that can be done safely with non-potable water, the Department should explain what types of water are permitted to be used for certain procedures.

*Subsection (f)(11)*

The Humane Society of the Harrisburg Area (HSHA) stated that this subsection would single-handedly put it out of business because of the cost entailed in replacing its drainage system. Are there other ways to accomplish the Department's goal without imposing such burdensome requirements on the regulated community?

*Subsections (f)(11)(i) and (f)(16)*

These subsections use the vague term "adequate." This term should be replaced with language that will clearly guide licensees.

*Subsection (f)(11)(ii)*

Numerous commentators, including legislators, asserted that six inch drains are not needed in all instances in order to accomplish adequate drainage, and construction that would bring facilities into compliance with the proposed regulation would be costly. The Department should amend this subsection to allow various types of drainage to accomplish its intended goal. A similar concern applies to Subsections (f)(11)(iii) and (iv).

*Subsection (f)(11)(v)*

PSBR stated that sanitizing drains on a daily basis is not required to maintain the health of animals. Unless the Department has evidence to support its position, this requirement should be deleted.

Also, PSBR questions why flushing can only be done with potable water. Has the Department considered allowing the use of grey water, which is environmentally friendly?

*Subsection (f)(15)*

PFDC declared that this subsection is not reasonable in a licensed kennel in a home environment because such chemicals might be stored in a kitchen. The Department should consider providing an exception for such facilities.

*Subsection (f)(16)*

Commentators, including legislators, question what the need is for washing areas to specifically be required. This should be clearly explained in the final-form regulation.

*Subsection (f)(18)*

Commentators differed on the frequency of the sanitization of kennel facilities. The Department should explain the rationale for sanitation every 24 hours.

**10. Section 21.25. Temperature control. - Need; Reasonableness; Clarity.**

PPPBA and PFB suggested that the kennel's veterinarian determine and approve the temperature ranges mentioned under this section. We agree. This also applies to Sections 21.26, 21.27, 21.28 and 21.29.

Also, a commentator questioned what constitutes "outdoor and sheltered housing facilities." These terms should be defined in the final-form regulation.

*Subsection (c)*

Does the Department intend to prohibit the use of ventilation for cooling under this subsection?

Also, do the requirements of this subsection apply only to indoor facilities or do they also include outdoor facilities? This should be clearly stated in the final-form regulation.

*Subsection (d)*

Commentators have suggested that this subsection is too prescriptive, does not permit radiant heating and does not establish healthy standards for dogs. How did the Department determine the slab temperature requirements contained in this provision? Further, the Department should permit alternate types of heating sources, such as radiant heat.

**11. Section 21.26. Ventilation in housing facilities. - Need; Reasonableness; Clarity.**

Commentators, such as PFDC and HSHA, assert that this entire section is filled with engineering standards that are needlessly technical and confusing. We encourage the Department to simplify these requirements so they are easily understood by all members of the regulated community.

*Subsection (a)*

PFB stated that the term "Sheltered housing facility" is unclear and should be defined. We agree.

Commentators assert that Subsections (a)(1), (2), (3) and (4) are overly prescriptive, unclear and should be deleted. Further, they state that there are other methods available to accomplish the Department's intent. The Department should explain the rationale behind these provisions.

*Subsection (a)(2)*

The American SPCA suggested that this subsection should be amended to require 12-15 air changes per hour. How did the Department determine that the rule for six air changes per hour is appropriate?

*Subsection (a)(4)*

Why is a storage building required to have a ventilation system?

*Subsection (a)(5)*

PSBR asserted that the second sentence of this subsection is unreasonable for research facilities. These facilities are designed without windows for security, biosecurity and scientific reasons. They further stated that, for instances where systems malfunction, these facilities have a redundant system in place to ensure ventilation. We suggest that research facilities be exempted from this requirement.

*Subsection (b)*

How can outdoor facilities be required to have ventilation and cooling?

**12. Section 21.27. Lighting and electrical systems. - Reasonableness; Clarity.**

We have three concerns with this section.

First, how can people who operate their kennels in their homes comply with Subsection (a)(1), with regard to lighting levels? How did the Department determine the lighting levels contained in this subsection?

Second, under Subsection (a)(2), it is not apparent whether lighting must be available to see the dogs outside at night or if the outside area must be illuminated all night.

Finally, PSBR suggested that in Subsection (b) facilities should be held to the building code that was in place at the time that they were constructed or renovated. Has the Department based these standards on existing building codes?

**13. Section 21.28. Food, water and bedding. - Need; Reasonableness; Clarity.**

Commentators have offered several suggestions on this section, such as maintaining the current language on the frequency of providing water to dogs and the sanitization of self-waterers and self-feeders. How did the Department determine that the standards contained in the proposed regulation would best benefit dogs?

Another concern with format and structure is the opening paragraph of this section which reads:

Contagious diseases, including infectious canine hepatitis, leptospirosis and parvovirus are spread through the urine of dogs and rats and stools, vomit and urine of dogs. To protect the health, safety and welfare of dogs housed in kennels, the cleaning and sanitation requirements in this section shall be followed.

Because this narrative does not set forth any new specific requirements or standards for kennels, it belongs in the Preamble. The same clarity concern applies to the new opening paragraph for Section 21.29 relating to sanitation.

**14. Section 21.29. Sanitation. - Reasonableness; Clarity.**

*Subsection (1)*

PFDC questioned whether this subsection would include the entire house, if it is a home-based kennel, when it uses the term "all interior surfaces." This should be clearly explained in the final-form regulation.

*Subsection (4)*

This subsection requires that stool be removed from the kennel runs "as often as necessary." The same subsection requires stool to be removed from primary enclosures on a daily basis. Why not use the same standard for both runs and enclosures? Should both be cleaned whenever they are soiled?

*Subsection (7)*

Must the veterinarian approval be in writing?

**15. Section 21.30. Condition of dog. - Reasonableness; Clarity.**

PPPBA and PFDC stated that there are times when a dog shows signs of infectious or contagious disease, but is being treated for that condition. Consequently, they suggested that this section be amended to permit dog wardens to order veterinary checks only when the operator cannot provide proof of adequate, ongoing medical care. We agree.

**16. Section 21.41. General requirements. - Clarity.**

*Subsection (c)*

This subsection states that records shall be provided to the Department upon request. Will this request be written? What timeframe will the kennel be given to supply the records?

*Subsection (e)(3)*

PSBR indicated that the time is not typically noted in veterinary care records except for certain medications, such as analgesics. The time of veterinary care, under Subsection (e)(5), is also not typically noted. Why has the Department required that these times be recorded?

It further asserts that the information required by Subsections (e)(3), (4), (5) and (7) are already part of the veterinary record and are not needed as separate items. Why is the Department requiring these items to be separately recorded if they are readily available in the veterinary record?

**17. Section 21.42. Bills of sale. - Need; Reasonableness; Clarity.**

Regarding Subsection (b), commentators expressed concern that it will be extremely difficult for an operator to know whether the other person in a dog transaction should be licensed as a kennel.

They further state that unless the kennel has purchased, sold or transferred 26 or more dogs in a calendar year to the individual, it is impossible to know if the person is required to be a licensed facility. We agree. The Department should clearly state how it intends kennel operators to know that they are dealing with an unlicensed kennel.

Also, the Department should explain how it is reasonable for this provision to be applied to shelters and rescue groups. These types of kennels often receive dogs randomly, sometimes without knowing where they came from.

**18. Kennel employees - Consistency with other regulations; Need; Reasonableness; Clarity.**

Currently, there is no provision in Chapter 21 relating to employees or staffing at kennels. However, the federal regulations at 9 CFR 3.12 set forth this requirement:

Each person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

The Department should seek input from stakeholders representing the different types of kennels and experts in animal behavior on what would be the appropriate ratio of employees per number of dogs and include the minimum staffing levels in the final-form regulation.

**19. Section 23.6. Stray dogs. - Clarity.**

This section uses the terms “grant recipient,” “releasing agency” and “agency releasing the dog.” It appears that these are one in the same. If this is the case, a consistent term should be used throughout the section.

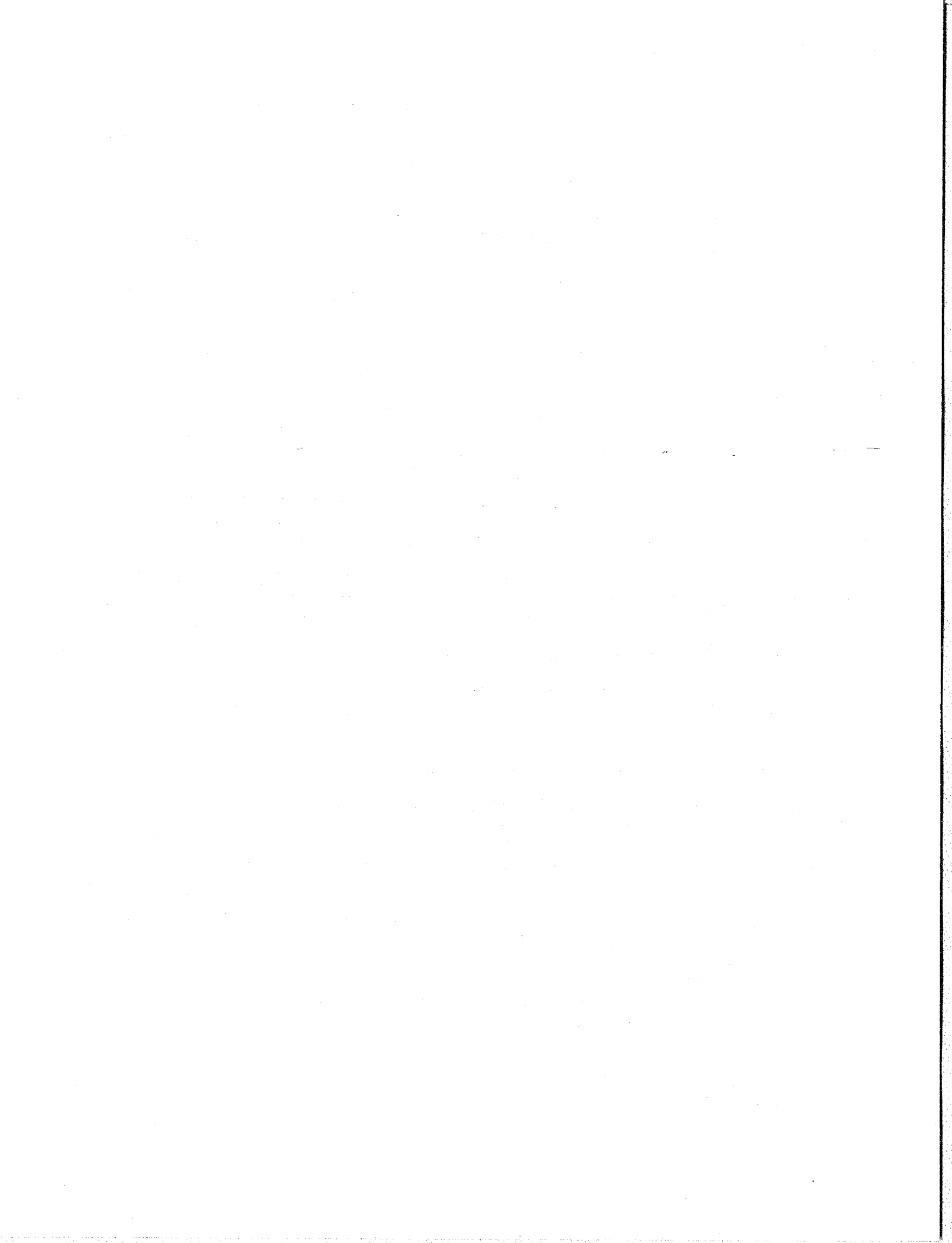
**20. Section 25.2. Dog Disposition Record. - Clarity.**

Subsection (2) requires that a form be completed by the enforcement officer and held on file by the kennel. The final-form regulation should specify how long a kennel must retain this form.

**21. Section 25.3. Claims for fees. - Need; Reasonableness; Clarity.**

This section starts with the phrase “The Department will develop a reimbursement form....” The Department should both develop the actual form and change the language to reflect this in the final-form regulation or delete the language altogether.

Subsection (2) references the Department’s website in Section 21.13. However, no website address is listed in the contact information in that section. We recommend the Department add the website address to Section 21.13.





## Facsimile Cover Sheet



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### INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** April Sparks  
**Agency:** Department of Agriculture  
**Phone:** 2-2853  
**Fax:** 5-8402  
**Date:** April 16, 2007  
**Pages:** 23

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-152 (IRRC #2559). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

*Judy B. Spahr*

Date:

*4/16/07*

