

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:
Pennsylvania Department of Agriculture, Bureau of Dog Law Enforcement

(2) Agency Number:

Identification Number: 2-170

IRRC Number:

2785

(3) Short Title: Canine Health Board Standards for Commercial Kennel Regulations

(4) PA Code Cite: 7 PA Code, Chapter 28a.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Special Deputy Secretary Jessie L. Smith Phone: (717) 214-3447 Fax: (717) 346-3301
2301 North Cameron Street Email: jlsmith@state.pa.us
Harrisburg, PA 17110

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(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation will set standards for Commercial Kennel operations regarding ventilation, lighting and flooring. More specifically, the ventilation standards are established to satisfy the directive of section 207(h)(7) of the Dog Law (3 P. S. § 459-207(h)(7)). The regulation delineates poor health conditions that occur in dogs as the result of poor ventilation, and then establishes specific ventilation standards that must be met to ensure that these health conditions do not develop. The specifics include that ventilation systems must provide a specific number of air changes per hour, keep consistent moderate humidity in the kennel, keep ammonia levels and particulate matter low, and minimize odor, as it is a sign of disease and bacteria growth. The regulation also addresses lighting standards of both natural and artificial light as required by section 207(h)(8) of the Dog Law. Finally, the regulation provides flooring standards approved by the Canine Health Board (Board) for use in Commercial Kennels as well as the flooring already approved in the legislation in accordance with 207(i)(3) of the act, and makes the flooring subject to microbial assessment.

(9) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | <u>45 day comment period for Proposed Regulation expected to end Sept 2009</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>during comment period</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>December 31, 2009</u> |
| D. The expected effective date of the final-form regulation: | <u>Immediately upon Publication in PA Bulletin</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>90 days</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(10) Provide the schedule for continual review of the regulation.

The Bureau of Dog Law Enforcement is required to inspect licensed kennels two times each year. The Bureau will continually evaluate if the regulations are effective and will suggest changes or report problems to the Canine Health Board. In addition, the Board has the authority, with regard to flooring, to review and approve new flooring systems that meet the criteria set forth in the Dog Law.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Canine Health Board was created under section 221(g) of the Dog Law (3 P. S. § 459-221(g)). Section 221(f) of the Dog Law charges the Board with the duty to determine standards to provide for the health and well being of dogs in the specific areas of lighting, ventilation and flooring in commercial kennels. The Board is to issue these temporary guidelines and the Department is to promulgate those guidelines as regulations under section 221(g) of the act. In addition, section 207(h)(7) of the Dog Law (3 P. S. § 459-207(h)(7)) establishes the specific authority of the Board to set ventilation standards in commercial kennels, including humidity and ammonia levels. Section 207(h)(8) of the Dog Law (3 P.S. § 459-207(i)(3)) empowers the Board to determine lighting standards in commercial kennels. Finally, section 207(i)(3) of Dog Law (3 P.S. § 459-207(i)(3)) provides the authority for the Board to both review and establish acceptable flooring standards in commercial kennels.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

There are no court orders or federal law or regulations which mandate this regulation.

The Pennsylvania Dog Law, pursuant to amendments made to it by Act 119 of 2008 (Act of October 9, 2008, P.L.1450, No.119), requires the Canine Health Board to establish criteria through regulation (or also possibly rulemaking with regard to flooring), regarding the ventilation, lighting and flooring standards required for commercial kennels. The Department of Agriculture is then required to promulgate those standards as regulations.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulations are mandated by statute. The Pennsylvania General Assembly, through the passage of Act 119 of 2008, specifically sections 207(h)(7) and (8) and 207(i)(3) and the creation of the Canine Health Board by section 221 (3 P.S. § 459-221), required the promulgation of these regulations to set the ventilation, lighting and flooring requirements for commercial kennels. The General Assembly in passing Act 119 of 2008 and specifically these standards, evidenced there is a public interest in protecting the health, safety and welfare of dogs housed in commercial kennels in this Commonwealth. These standards will improve the conditions under which dogs are housed and raised in commercial kennels and will thereby help to insure that the general public, in this state and others, will receive healthier puppies. In addition, it assures a healthier climate for adult and breeding dogs that are kept in commercial kennels their entire lives, which was shown to be a great public interest before and during the passage of Act 119 of 2008.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

The Canine Health Board (Board) is comprised of nine (9) licensed veterinarians and their education, expertise, background and knowledge was utilized in drafting the guidelines, which were required to be published as regulations.

A list of individuals with expertise consulted and documents reviewed by the Board including product information is attached.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The regulatory standards (ventilation, lighting and flooring) addressed in this regulation apply to commercial kennels. The Department estimates, from its 2009 license applications, that there are 350+ licensed commercial kennels in the Commonwealth. The regulated community is already required by the amended Dog Law statute to make changes related to ventilation, lighting and flooring. The Dog Law statute now requires that the Canine Health Board set the specific ventilation and lighting changes or requirements through this regulation. The new regulatory standards will require some commercial kennel owners to make changes to their kennels to assure they meet the ventilation (air exchange, humidity and ammonia level) and lighting requirements established by the regulation. This may require the addition of fans, filters or other ventilation equipment, the reconfiguration of some kennels to allow more air flow through the kennel and the addition of lighting sources and carbon monoxide detectors. The addition of mechanical ventilation, additional artificial and or natural lighting and flooring changes may require UCC permit and inspections.

The Dog Law itself, at section 207(i)(3) (3 P.S. § 459-207(i)(3)) establishes the basic criteria and required changes to the flooring systems. The regulations can only expand the type of flooring systems allowed within the scope of the act itself. Therefore, the flooring part of the regulation has no adverse effect, since the Dog Law statute requires the specific changes.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

As set forth in the answer to question 15, commercial kennel owners will be required to comply with the regulatory standards. The Department estimates that there are currently 350+ licensed commercial kennels in the Commonwealth. Commercial kennels represent about 15% of the total number of kennels regulated by the Department. Nearly all are in 10 of the 67 counties – more than half are in Lancaster County.

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SECTION III: COST AND IMPACT ANALYSIS

- (17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulations provide: "When employing mechanical means of ventilation and recirculating air, it shall be filtered with small particle, non-ozone producing air filters." For kennels that choose to mechanically circulate and filter their internal air as part of their ventilation system, circulation and filtration equipment is an option, at a cost of \$5000-13,000 per unit. The number of units needed will vary with the size of the kennel – the \$13,000 unit will provide 5700 cubic feet per minute of air flow and filtration. Most commercial kennels are less than 5000 square feet. The height dimension ranges from standard ceiling height to barn height. The estimate used for average optional cost of this equipment is \$10,000.

The proposed regulations provide: "All ventilation systems shall comply with the latest edition of applicable codes; All lighting shall comply with the latest edition of applicable codes; All floors and drains shall comply with the latest edition of applicable codes." There will be some cost to the kennel owners not currently in compliance to research these codes and do upgrades as necessary. This cost is estimated to be an average of \$5000 if some upgrade is required.

It is difficult to give a cost estimate for these items for the following reasons.

1. There is no way to easily ascertain which kennels would be required to make alterations to their facilities to meet these proposed regulations.
2. The amount of alterations required will vary greatly among kennels based on size, physical layout, age, an existing HVAC system, use or nonuse of electricity and prior renovations.
3. The fees necessary for compliance with the UCC are established by the local enforcing jurisdiction, with no standard set fees associated with application review and inspections.

Kennel owners are required to purchase carbon monoxide detectors: "Kennels shall install and maintain carbon monoxide detectors with the ability to monitor the Carbon Monoxide level throughout the entire facility. The detectors shall meet or exceed the UL standard 2034 or the IAS 6-96 standard, or its successor standards." Battery-operated detectors cost approximately \$20 each - \$30-35 for combination with smoke detector.

Although not specifically required, if kennel owners wish to purchase the same equipment the kennel inspectors would be using to assess temperature, humidity, ventilation, air velocity, ammonia, and particulates, the cost of this equipment per kennel would be approximately \$2955.

Total mandatory costs would be \$20. Total average cost for code upgrades would be \$5000. Total optional cost would be \$12,955, assuming \$10,000 spent on ventilation/filtration system.

See also Fiscal Note in Preamble for Proposed Regulations.

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- (18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The addition of mechanical ventilation, additional artificial and or natural lighting and flooring changes may require UCC permit and inspections. This should not specifically increase or decrease costs to local governments, however. The Department will provide documentation from the Center for Local Government Services, Department of Community & Economic Development (DCED), confirming that municipalities are collecting fees to cover the expenses of Pennsylvania Uniform Construction Code (UCC) administration and enforcement, so that these proposed regulations will not have a fiscal impact on municipalities. Any additional workload generated by these regulations would be offset by the fees collected in association with the specific permit.

The enforcement of the regulations will neither increase nor decrease any costs to local governments. Compliance with these ventilation, lighting and additional flooring standards for commercial kennels standards will be enforced solely by the Department. Local governments will have no role in enforcement or any other area associated with the regulation itself.

Most Pennsylvania municipalities do not have commercial kennels. Nearly all are in 10 of the 67 counties – more than half are in Lancaster County.

See also Fiscal Note in Preamble for Proposed Regulations.

- (19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

These costs will be paid for entirely from the Dog Law Restricted Account, which is primarily funded by license fees and receives no tax dollars. No General Fund monies will be used. See Fiscal Note in Preamble for Proposed Regulations.

Equipment:

The Department currently has 65 inspectors and supervisors - 20 at most will be equipped and trained for commercial kennel inspections including all supervisors and kennel compliance specialists. This group will be using additional equipment to assess temperature, humidity, ventilation, air velocity, ammonia, lighting and particulates. The equipment to assess humidity, ventilation and air velocity will cost \$259; the equipment to measure ammonia levels will cost \$496; light meters will average \$200; particulate concentration meters will average \$2000. The total cost to equip each inspector would average \$2955, with the total cost for 20 inspectors at \$59,100. TOTAL COST: \$59,100.

Additional Commercial Kennel Inspection Time:

The proposed regulations mandate additional measurements and waiting time. The relative humidity shall be measured 30 minutes after the completion of active cleaning at standing shoulder level of 10% of the dogs in the kennel, randomly selected from all rooms. The ammonia level shall be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel at standing shoulder height, randomly selected from all rooms, as well as on the floor of the four corners of the

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housing facility and at least one location on the floor along each wall of the facility. The particulate matter may be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel. Air velocity measurements will be taken at all intake vents or exhaust vents and at shoulder level of dogs housed in the primary enclosure for 10% of the dogs in the kennel randomly selected from each room. Indoor, daytime lighting shall provide full spectrum lighting between 50-80 foot candles at standing shoulder level of the dogs. Inspectors would calculate and verify net glazed area as part of assessing lighting; and verify that measurements provided to Department for assessment of air exchange are accurate. This will be done with existing staff if possible. It is not possible to assess whether the additional measurements and waiting time will require the Department to hire additional wardens to accomplish its duties as a whole. TOTAL COST: \$0.

On Call Assistance:

The proposed regulations provide: "In the event of a mechanical system malfunction the kennel shall contact the Bureau of Dog Law and consult on the steps to be taken to protect the health and well being of the dogs and shall take steps to correct the malfunction immediately." The Department's Dog Law Enforcement veterinarian would develop a response protocol for these calls. These calls would be handled by inspectors during normal working hours - Monday through Friday, 8:00 a.m. to 4:00 p.m. An answering service would be retained to take calls after hours, and supplied with the response protocol to provide information to callers. If a call requires Department action after hours, the Dog Law veterinarian would be contacted to respond further. An after-hours answering service would have an approximate cost of \$75 setup fee and \$600/yr given expected call volume. TOTAL COST: \$675/yr

Code Standard Collection and Analysis:

The proposed regulations provide: "All ventilation systems shall comply with the latest edition of applicable codes; All lighting shall comply with the latest edition of applicable codes; All floors and drains shall comply with the latest edition of applicable codes." The Department will need to collect and analyze the applicable building codes for the municipalities in which the 350+ commercial kennels are located. This would be done with existing staff if possible. TOTAL COST; \$0

Technical Assistance:

The proposed regulations provide: "The department may hire or consult with an engineer to recommend improvements to be made to kennels to come into compliance with this [air exchange requirements] paragraph." The cost of these optional engineering consults, assuming 25 per year for the first four years and five a year thereafter, and a \$3500 average fee and expenses per consult, is estimated to be \$87,500/yr for the first four years, or \$350,000, and \$17,500/yr thereafter. TOTAL COST: Mandatory \$0/yr; Optional \$87,500/yr; reducing to \$17,500/yr for Year 5 and beyond.

Training:

Training to effectuate the proposed regulations would include primarily include training on new equipment, obtaining correct measurements and calculations required. A focus of training would also be on code standards for ventilation, lighting and drains; on flooring substances toxic to dogs which are prohibited by the proposed regulations; on identification of the small particle, non-ozone producing air filters described in the proposed regulations; and on lighting and its effects on dogs. This would require two full days of training for up to 20 inspectors at a central location with associated travel costs, at an estimated cost of \$5000, assuming trainers can be obtained at no cost to the Department. TOTAL COST: \$5000.

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Computer Upgrade and Forms:

PA Dogs and PA DogWarden, the computer applications used by the Department's Bureau of Dog Law Enforcement to record kennel inspections, will require a major upgrade to capture the additional data the proposed regulations require. The form given to kennel owners at the completion of an inspection, prior to receiving the official inspection form by mail, will also have to be revised to reflect some of this data and reprinted in bulk. The computer software upgrade is estimated to cost \$20,000; the revision and reprinting of forms is estimated to cost \$10,000. TOTAL COST: \$30,000.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year(08-09)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	none	none	none	none	none	none
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	none	none	none	none	none	none
Total Savings	none	none	none	none	none	none
COSTS:						
Regulated Community	none	\$20 - \$17,995	\$0	\$0	\$0	\$0
Local Government For all years, there will be undetermined, variable cost per municipality ranging from \$0 - \$2500	none	none	none	none	none	none
State Government	None	\$94,775 (w/o optional costs)	\$675	\$675	\$675	\$675 + replace equipment.
Total Costs		\$94,795 - \$112,770	\$675	\$675	\$675	\$675 + replace equipment
REVENUE LOSSES:						
Regulated Community	None	None	None	None	None	none
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	none	none	None	None	None	none

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(20a) Provide the past three year expenditure history for programs affected by the regulation.

This is a new regulation, based on criteria and authority established through amendments to the current Dog Law. In addition, the regulations do not establish any new "program." Therefore, there is no past expenditure history for any "programs" or other criteria affected by this regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A – see above.				

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

These specific regulations are required by amendments to the Dog Law, effectuated by Act 119 of 2008. The regulations are based on guidelines established by the Canine Health Board, which is comprised of nine (9) veterinarians, is separate and apart from the Department and was established by legislation to address the very issues that are the subject of the regulations. The benefits of the regulation will be higher standards for dogs bred, housed and raised in commercial kennels. The benefit will accrue to the general public, who purchase the puppies, through healthier and better socialized puppies, and to the breeding dogs and other adult dogs housed their entire lives in commercial kennels. The general public and the legislature of the Commonwealth, through the passage of Act 119 of 2008, demonstrated that there is a compelling public interest in creating better standards for the care of dogs bred, housed and raised their entire lives in commercial kennels. These regulations effectuate that intent. Although the regulation imposes additional costs on the regulated community, the regulation merely effectuates the intent of the General Assembly and sets acceptable standards, as determined by a Board of licensed veterinarians, for ventilation and lighting and additional acceptable flooring alternatives.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Canine Health Board (Board) is comprised of nine (9) licensed veterinarians and their education, expertise, background and knowledge was utilized in drafting the guidelines. The composition of the Board was set by the Legislature, and the Board members were selected by the Governor (3), legislative leaders (4), the Pennsylvania Veterinary Medical Association (1), and the University of Pennsylvania School of Veterinary Medicine (1). The Board held six public meetings, five in Harrisburg and one in Chester County, and took public comments at each meeting. Also, the Board sought out twelve persons with varied relevant expertise, named in the attachment to Section 14 above, consulted with nine of them during Board meetings either in person or by teleconference, and with three of them via discussions with a Board member who then reported their input to the Board.

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- (23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The guidelines were published and comments were received from members of the regulated community and others. The Department is required to publish the guidelines as proposed regulations. The Department will hold a public hearing as required by the Dog Law and will receive comments during the public comment period. Alternative regulatory provisions or changes will then be considered and accepted or rejected. The Department and the Canine Health Board will then be able to determine if there are any less burdensome and acceptable alternatives.

Before Act 119 of 2008 was introduced, on December 16, 2006, the Department had published proposed regulations of broader scope that contained more specific and stringent provisions related to requirements for all licensed kennels - approximately 2700 kennels, rather than the 350+ kennels now defined as commercial. Based in part on public comments received from non-commercial kennel owners that the regulations would burden them and would not be consistent with their practices for the keeping and/or breeding of dogs, these regulations were withdrawn in May 2008. The current proposed regulations represent a less burdensome alternative.

- (24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This regulation is required by the Dog Law statute and is more specific with regard to ventilation and lighting standards – required by sections 207(h)(7) and (8) of the Dog Law (3 P.S. § 459-207(h)(7) and (8)) - than the comparable federal standards set by the Animal Welfare Act and its attendant regulations at 9 C.F.R., subpart A, sections 3.2 and 3.3. They may therefore be more stringent when it comes to enforcement. However, they will also add clarity with regard to the standards with which the industry must comply. The federal regulations are broad in nature and therefore may allow for enforcement standards that are more or less stringent than the specific standards set by the proposed regulation with regard to ventilation and lighting. Once again the flooring standards set by the regulation is a clarification of the specific provisions of the Dog Law statute at 207(i)(3) (3 P.S. § 459-207(i)(3)), which cannot be amended through regulation.

- (25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Most states either have no dog law regulating kennels, or regulate kennels based on criteria other than number of dogs, so comparisons are not readily made between Pennsylvania and other states.

This regulation is required by the Dog Law statute and is more specific with regard to ventilation and lighting standards and therefore may be more stringent when it comes to enforcement than some other states. The flooring part of the regulations is a clarification of the specific criteria set by the Dog Law statute itself. The initial additional cost that may be required for some commercial kennels to be able to comply with the ventilation requirements will raise their costs initially. The more specific lighting requirements will require some commercial kennels to add lighting. The commercial kennels do have the opportunity under section 207(j) of the Dog Law (3 P.S. § 459-207(j)) to request a waiver of up to three (3) years, and extension of that waiver, which may be granted if certain criteria are met, that will help the kennel owner to defray or spread out some of the initial costs associated with the regulation. The cost of compliance with the regulatory standards may raise the regulated communities overall cost of operation initially, but should not affect the long term competitiveness of the industry.

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(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No appreciable additional legal or accounting procedures are foreseen. As to consulting procedures, the proposed regulations provide: "The department may hire or consult with an engineer to recommend improvements to be made to kennels to come into compliance with this subparagraph (h), Air Exchanges." The cost of these optional engineering consults, assuming 25 per year for the first four years, five a year thereafter and a \$3500 average fee and expenses per consult, is estimated to be \$87,500/yr for the first four years, or \$350,000, and \$17,500/yr thereafter.

The additional regulatory requirements will have to be added to the State dog wardens' kennel inspection forms, to the Bureau's electronic data base and to the paper forms given to kennel owners on site after the inspection. Recordkeeping and paperwork, other than the additional reporting on the inspection forms, will be negligible. State dog wardens will require additional equipment to measure: (1) air velocity and exchange rates; (2) humidity; (3) temperature; (4) ammonia levels; (5) lighting; (6) particulate concentrations. Inspections will take longer to perform. Wardens will need to be trained to utilize the equipment and do the calculations required by the regulations.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This regulation pertains to commercial kennels, which are defined as: "A kennel that breeds or whelps dogs and: (1) sells or transfers any dog to a dealer or pet shop kennel; or (2) sells or transfers more than 60 dogs per calendar year." (3 P.S. § 459-102).

All commercial kennels, regardless of the nature of the business or group operating the business, must comply with the standards established by Act 119 of 2008 and set forth at sections 207(h) and (i) of the Dog Law (3 P.S. § 459-207(h) and (i)), including the regulations required by sections 207(h)(7) and (8) and 207(i)(3) (3 P.S. §§ 459-207(h)(7)(8) and 207(i)(3)). The statute does not set forth any special exemptions or exceptions - therefore, there are no special provisions or exceptions established by the regulation.

Attachment responsive to Section (14) of IRRC Regulatory Analysis Form for Proposed Regulations titled "Canine Health Board Standards for Commercial Kennel Regulations"

Individuals:

Art Dunham, PhD

Professor and Associate Chair of Biology, specializing in physiological and mathematical ecology; University of Pennsylvania

Bettye Goldentyer, DVM

Eastern Regional Director USDA, APHIS Animal Care
consulted by Board member Karen Overall with report to group

Jim Hanson, American Institute of Architects

Leadership Energy and Environmental Design
Facilities Services and Construction Management
Architect specializing in animals used in research facilities

Kate Hurley, DVM

Director of UC Davis Korat Shelter Medicine Program
Associate Clinical Professor in Department of Medicine and Epidemiology at UC Davis School of Veterinary Medicine.

C. Scott Learned, PE, President

Design Learned Inc.-- Specialists in Animal Care Facility Engineering
Mechanical Engineer, specializing in ventilation for animal facilities

Kevin McCarthy

Director of Facilities and Engineering for Clinical and Research
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Bob Mikesell, Jr, PhD

Senior Instructor
Dept. of Dairy and Animal Science, College of Agriculture Sciences, Penn State University

Lila Miller, DVM

Senior Director & Veterinary Advisor, ASPCA
Co-editor, "Shelter Medicine for Veterinarians and Staff"
Adjunct Assit.Professor at the University of Pennsylvania School of Veterinary Medicine
Consulted by Chair with report to group

Shlomo Rosenfeld

Shlomo Rosenfeld & Associates
Mechanical Engineer, specializing in ventilation systems

Lucinda Schlaffer, American Institute of Architects, LEED AP
ARQ Architects
Architect of Animal Care Facilities

Cristina M. Schulingkamp, MSEH
Environmental Engineer
Radon/Indoor Air Program Coordinator, U.S. EPA Region 3
Email communications recopied and distributed to Board

Steve Zawistowski, PhD
Senior Vice President & Science Advisor, ASPCA
Co-editor, "Shelter Medicine for Veterinarians and Staff"

Documents:

"Guide for the Care and Use of Laboratory Animals," Institute of Laboratory Animal Resources, Commission on Life Sciences, NRC, National Academy Press, Washington, DC
(<http://www.nap.edu/readingroom/nooks/labrats/>)

"Shelter Medicine for Veterinarians and Staff," Edited by Lila Miller and Stephen Zawistowski, Wiley - Blackwell Publishing, 2004, 1-546 pp.

Federal Code of Regulations, Title 9, Vol 1, 1 January 2005, Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture
(http://www.aphis.usda.gov/animal_welfare/downloads/awr/9cfr3.1.tx)

The Berlin Workshop Report on Laboratory Animal Housing 1996
(http://www.ebra.org/ebrabulletin-the-berlin-workshop-report-on-laboratory-animal-housing_13.htm)

NHMRC Policy on the care of dogs used for scientific purposes
(http://www.nhmrc.gov.au/health_ethics/animal/dogs.htm)

Nutrition Advisory Group Handbook, Fact Sheet 002, July 1997. Vitamin D and Ultraviolet Radiation: Meeting Lighting Needs for Captive Animals.

Animal Welfare Act (AWA), 7 U.S.C. §2131 *et seq.*

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 3 Standards; Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats H1 Facilities and Operating Standards; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 1 Definition of Terms;

LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart A – Licensing; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart B – Registration; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart C – Research Facilities; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart D – Attending Veterinarian and Adequate Veterinary Care; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart E – Identification of Animals; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart F – Stolen Animals; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart G – Records; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart H – Compliance with Standards and Holding Period; LexisNexis' Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

Title 9 Animals and Animal Products: Chapter 1 – Animal and Plant Health Inspection Service, Department of Agriculture; Subchapter A – Animal Welfare; Part 2: Regulations; Subpart I – Miscellaneous; LexisNexis’ Code of Federal Regulations, 2008, Matthew Bender and Company, current through 6 November 2008 Issue of the Federal Register.

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Product information:

Products: RKI Single Toxic Gas Detector SC01:

www.rkiinstruments.com

www.rkiinstruments.com/pages/sc01.htm?gclid=CLH9--Ldm

Products: Drager, ammonia probe

Products: SKC Gastec Color Detector Tubes (www.skcinc.com)

Products: Single gas detector (www.rkiinstruments.com/pages.sc01.htm?gclid=CLH9)

Products: Thermochron iButtons (www.embeddeddatasystems.com)

Products: Kenneldeck (<http://www.kenneldeck.com>)

Products: Particle Measuring Systems, Handheld particle counter (Handilaz Mini)

(<http://www.pmeasuring.com/particleCounter/air/mobile/handilazmini>)

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www.iacuc.org

From: Hoffman, Mitchell, Department of Community & Economic Development
Sent: Tuesday, June 02, 2009 3:38 PM
To: Davidson, D. Robert, PA Department of Agriculture
Subject: UCC - Building Permit Fees

Rob,

This e-mail is to provide confirmation of the information we discussed this morning regarding the PA Uniform Construction Code (UCC)/Building Permit Fees.

The construction of kennels would be required to comply with the PA Uniform Construction Code and therefore, subject to permit and plan review fees adopted by the municipality for OPT-IN townships, boroughs and cities and the Department of Labor & Industry for OPT-OUT municipalities which represent approximately 8% of the Commonwealth's local governments.

Although the fees vary among the OPT-IN municipalities, primarily differentiating by region, the fees adopted by municipalities must be in direct correlation with the costs associated of providing the plan review and inspection services required under the UCC.

I hope this information will be helpful to you. If you have any additional questions or comments, please feel free to contact me.

Mitch



Mitch Hoffman
Local Government Policy Manager
Department of Community & Economic Development
1-888-223-6837
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
www.newPA.com | www.visitPA.com

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.
Attorney General

By: Angela M. Elliott
(Deputy Attorney General)

AUG 27 2009

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-170

DATE OF ADOPTION 6-5-09

BY: D. D. Wolf

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY: Andrew C. Clark

JUN 16 2009

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

! Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

Department of Agriculture
Canine Health Board
7 Pa. Code Chapter 28a.
Canine Health Board Standards for Commercial Kennels

PROPOSED REGULATION

Title 7 - AGRICULTURE

CANINE HEALTH BOARD

[7 PA. CODE CH. 28a]

Canine Health Board Standards for Commercial Kennels

The Canine Health Board (Board), created under section 221 of the Dog Law (3 P.S. § 459-221), through the Department of Agriculture (Department), as set forth under section 221(g) of the Dog Law (act) (3 P. S. § 459-221(g)), proposes to create Chapter 28a of Title 7 of the *Pennsylvania Code*. Section 221(f) of the Dog Law (3 P.S. § 459-221(f)), charges the Board with the duty to determine standards to provide for the health and well being of dogs in the specific areas of ventilation, lighting and floors in commercial kennels. The Board was required to and did issue temporary guidelines (published in the January 17, 2009 Pennsylvania Bulletin at 39 Pa.B. 310), which are to be promulgated as regulation by the Department as set forth in section 221(g) of the Dog Law (3 P.S. § 459-221(g)). The Board hereby proposes to create specific standards that will protect the health and well being of dogs in commercial kennels (Class C kennels).

Background

The proposed regulation is required by the Dog Law at sections 207 and 221 (3 P.S. §§ 459-207(h)(6), (7) and (8), 459-207(i)(3) and 459-221). The intent of the regulation is to create ventilation, lighting and additional flooring standards that will protect the health and well being of dogs housed in Class C kennels. These provisions are necessary as the Dog Law created the Board and directed it to address these limited issues.

The major features of the proposed regulation are summarized as follows:

Summary of Major Features

Section 28a.1. Definitions.

This section defines various terms utilized in the body of the regulation in order to further clarify the regulations.

Section 28a.2. Ventilation.

Standards are established to satisfy the directive of sections 207(h)(6) and 207(h)(7) of the act (3 P. S. §§ 459-207(h)(6) and 459-207(h)(7)) regarding ventilation. Specifically, the proposed regulation addresses poor ventilation conditions that cause health and

welfare problems in dogs, by establishing specific ventilation standards that must be met to ensure that these health and welfare problems do not develop. The specifics include that ventilation must be achieved through a mechanical system that will allow for 8 - 20 air changes an hour, keep consistent moderate humidity, institute auxiliary ventilation when the temperature rises above 85 degrees Fahrenheit, keep ammonia levels and particulate matter at established levels and keep odor minimized as it is a sign of disease and bacteria growth.

Section 28a.3. Lighting.

The proposed regulation delineates lighting standards of both natural and artificial light in accordance with the Board's duty and requirements set forth at 207(h)(8) of the Dog Law (3 P.S. § 459-207(h)(8)).

Section 28a.4. Flooring.

The Board through this proposed regulation has approved solid flooring to be appropriate for use in Class C kennels as well as the flooring already approved in the legislation in accordance with 207(i)(3) of the act. The proposed regulations establish the standards to be met if solid flooring is utilized.

Fiscal Impact

Commonwealth

The proposed regulations, once published as final regulations, would impose additional fiscal impacts upon the Department's Bureau of Dog Law Enforcement (Bureau). Once the final regulations are in place additional fiscal impacts will be imposed. Those costs will be paid for entirely from the Dog Law Restricted Account. No general fund money will be used. The Department of Agriculture (Department), in the Regulatory Analysis Form that accompanies this proposed regulation, has set forth an estimate of costs to the Bureau to enact and enforce the new regulatory standards that would be imposed by the final regulation.

Political Subdivisions

The addition of mechanical ventilation, additional artificial and or natural lighting and flooring changes may require UCC permit and inspections. This should not specifically increase or decrease costs to local governments, however. Documentation from the Center for Local Government Services, Department of Community & Economic Development (DCED), confirms that municipalities are collecting fees to cover the expenses of Pennsylvania Uniform Construction Code (UCC) administration and enforcement, so that these proposed regulations will not have a fiscal impact on municipalities. Any additional workload generated by these regulations would be offset by the fees collected in association with the specific permit.

The enforcement of the regulations will neither increase nor decrease any costs to local governments. Compliance with the ventilation, lighting and additional flooring standards required of Class C kennels standards will be enforced solely by the Department. Local governments will have no role in enforcement or any other area associated with the regulation itself.

Most Pennsylvania municipalities do not have commercial kennels. Nearly all are in 10 of the 67 counties – more than half are in Lancaster County. Commercial kennels represent about 15% of the total number of kennels regulated by the Department.

Private Sector

The regulation once published as final will impose additional costs, at least for initial compliance, on the regulated community (Class C kennels). Class C kennels will likely have to make changes (some significant depending on the current state of their kennel operation) to comply with the ventilation and lighting provisions of the regulation. The flooring provisions of the regulation actually expand the type of flooring allowed by the Dog Law, at section 207(i)(3) and do not impose any new requirement. The costs to the regulated community will be varied, depending on the size and condition of the existing kennel. The Department has provided an estimate of costs to existing Class C kennels for compliance with the new standards in the Regulatory Analysis Form that accompanies this proposed regulation.

General Public

The regulation, once promulgated as a final regulation, may raise the cost of purchasing a dog and therefore may affect purchasers of dogs. However, the general public will benefit from the implementation of the standards set forth in the regulation, as the standards are intended, as were the amendments to the Dog Law that precipitated the regulation, to improve the health and welfare of the dogs and puppies that are sold to the general public. There are no mandatory requirements imposed on the general public by the regulation.

Paperwork Requirements

The Department will not have to develop a large array of new application forms or review procedures, but in some cases may want to amend current forms. The Department will have to develop forms related to ventilation calculations.

Effective Date

The proposed rulemaking will be effective 90 days after publication in the *Pennsylvania Bulletin* as final-form rulemaking.

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulation within 45 days following publication in the *Pennsylvania Bulletin*. Please note that these comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) website. The comments may be either: (1) mailed to the Canine Health Board, c/o Pennsylvania Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Room 102, Harrisburg, PA 17110; or (2) sent by e-mail, to: CHBComments@state.pa.us.

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on September 1, 2009, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days of the close of the public comment period.

The notification shall specify the regulatory criteria that have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

DENNIS C WOLFF, *Secretary*

Annex A

TITLE 7. DEPARTMENT OF AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

**CHAPTER 28a. CANINE HEALTH BOARD STANDARDS FOR
COMMERCIAL KENNELS**

GENERAL PROVISIONS

Sec.

- 28a.1 Definitions
- 28a.2 Ventilation
- 28a.3 Lighting
- 28a.4 Flooring

§ 28a.1 Definitions

The following words and phrases when used in this Chapter shall have, unless the context clearly indicated otherwise, the meanings given to them in this section:

Excessive light – Direct, undiffused light, from either the sun or a lighting fixture placed in such a manner that the light is shining directly into a primary enclosure of a dog.

Mechanical ventilation – Ventilation produced by operation of a machine. So long as its operation results in compliance with the standards established in this chapter, a mechanical ventilation system may range from very basic, such as an exhaust fan, to more sophisticated systems such a HVAC system with temperature and humidity controls.

ANSI/U.L. Standard 2034 and IAS 6-96 – Independent laboratory testing standards for carbon monoxide detectors.

Primary enclosure - The primary structure that restricts a dog's ability to move in a limited amount of space, such as a room, cage or compartment. The term does not include any run described in 3 P.S. 459-207(i)(6).

§ 28a.2 Ventilation

Proper ventilation helps ensure that dogs are healthy and not stressed. Each area of the kennel where dogs are present shall utilize a functional, mechanical ventilation system that provides ventilation in order to satisfy the requirements of this section. The following standards shall be met at all times a dog is present in the facility:

(1) When the ambient air temperature is 85 degrees Fahrenheit or higher, a form of mechanical ventilation capable of reducing air temperature shall be utilized to reduce air temperature where dogs are present. If the ambient air temperature in any portion of the facility is 86 degrees Fahrenheit or higher, despite mechanical ventilation utilized, dogs shall not be present in those portions of the facility. This paragraph shall not apply to outdoor exercise areas.

(2) When the temperature is 50-75 degrees Fahrenheit the relative humidity shall be in the range of 40-60%. The relative humidity shall be measured at standing shoulder level of 10% of the dogs in the kennel, randomly selected from all rooms. Relative humidity shall not be measured in a primary enclosure within 30 minutes of the completion of active cleaning of that primary enclosure.

(3) When the temperature is above 75 degrees Fahrenheit the relative humidity shall be 1%-50%. The relative humidity shall be measured at standing shoulder level of 10% of the dogs in the kennel, randomly selected from all rooms. Relative humidity shall not be measured in a primary enclosure within 30 minutes of the completion of active cleaning of that primary enclosure.

(4) Ammonia levels shall be less than 10ppm. The ammonia level shall be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel at standing shoulder height, randomly selected from all rooms, as well as on the floor of the 4 corners of the housing facility and at least one location on the floor along each wall of the facility. Ammonia in a primary enclosure shall not be measured within 30 minutes of the completion of active cleaning of that primary enclosure.

(5) The means of ventilation employed shall ensure that carbon monoxide shall be maintained below detectable levels in all areas of the kennel. Kennels shall install and maintain carbon monoxide detectors with the ability to monitor the Carbon Monoxide level throughout the entire facility. The detectors shall meet or exceed the UL standard 2034 or the IAS 6-96 standard, or its successor standards.

(6) In the event of a mechanical system malfunction the kennel must have windows, doors, skylights, or other openings in the structure that shall be operable to maintain ventilation. In the event of a mechanical system malfunction the kennel shall contact the Bureau of Dog Law and consult on the steps to be taken to protect the health and well being of the dogs and shall take steps to correct the malfunction immediately.

(7) The means of ventilation employed shall ensure that particulate matter from dander, hair, food, bodily fluids, and other sources in a primary enclosure shall be below 10 milligrams per meter cubed. The particulate matter shall be measured at shoulder level of dogs housed in the primary enclosure of 10% of the dogs in the kennel. The particulate matter shall not be measured within 30 minutes of the completion of active cleaning of that primary enclosure.

(8) Air changes. The following shall apply to air changes:

(i) The kennel shall provide between 8-20 air changes of 100% fresh air per hour in each room of the facility that houses dogs.

(A) The air changes shall be calculated using the following information supplied by the kennel to the department:

- (I). The volume of the facility,
- (II). The linear dimensions of the facility,
- (III). The number of primary enclosures,
- (IV). The cubic feet occupied by each primary enclosure and
- (V). The dimensions of all intake or exhaust vents of any fans as well as their capacity, or other system specifications.

(B) The information must be submitted to the department within 90 days of the notice of final rulemaking being published in the *Pennsylvania Bulletin*, and within 90 days of any change to the volume of the facility, the linear dimensions of the facility, the number of primary enclosures, or the dimensions of the opening and exhaust vents of any fans. The information submitted to the department shall be kept as part of the Kennel's records.

(ii) Air velocity measurements will be taken at all intake vents or exhaust vents and at shoulder level of dogs housed in the primary enclosure for 10% of the dogs in the kennel randomly selected from each room.

(iii) The kennel owner shall be in violation if:

(A) The computed air change rate based on the data submitted under (8)(i) is not 8-20 air changes per hour; or

(B) If the air change rate as measured at the vents is not 8-20 air changes per hour, and there is a simultaneous non-compliance with any of paragraphs (1)—(8) or (9) – (12).

(C) If the measured velocity reading at standing dog shoulder height does not result in a computation of 8-20 air changes in the primary enclosure and the air change in subparagraph (8)(i) is satisfactory there shall not be issued a violation unless there is a simultaneous non-compliance with any of paragraphs (1)—(8) or (9)– (12).

(iv) If a computation or measurement under subparagraph (8)(iii) is not satisfactory the kennel owner shall take the necessary steps to meet the requirements.

(v) The department may hire or consult with an engineer to recommend improvements to be made to kennels to come into compliance with this paragraph.

(9) Dogs shall not exhibit conditions or signs of illness or stress associated with poor ventilation, these include:

- (i) Excessive panting,
- (ii) Elevated body temperature,
- (iii) Active avoidance of areas of the kennel,
- (iv) Shivering,
- (v) Huddling of dogs 12 weeks of age or older,
- (vi) Mucous dripping from the nose of a dog,
- (vii) Redness or crusting of eyes or nose,
- (viii) Runny eyes,
- (ix) Blindness,
- (x) Coughing or sneezing,
- (xi) Moist areas of hair,
- (xii) Diarrhea,
- (xiii) Bloody diarrhea,
- (xiv) Vomiting,
- (xv) Listlessness,
- (xvi) Presence of blood,
- (xvii) Death.

(10) The air in the facility shall not have excessive dog odor, other noxious odors, stale air, moisture condensation on surfaces, or lack of air flow.

(11) When employing mechanical means of ventilation and recirculating air, it shall be filtered with small particle, non-ozone producing air filters.

(12) All ventilation systems shall comply with the latest edition of applicable codes.

§ 28a.3 Lighting

Natural lighting is important to the development of dogs; each kennel shall have a mix of natural and artificial light, provided in the following means:

(1) Natural light

(i) Each dog shall have exposure to light from natural sources passing through external windows, external sky lights or other external openings.

(ii) The minimum combined total of net glazed area of external windows, external sky lights or area of other external openings through which natural light passes within each room where dogs are housed shall not be less than 8% of the floor space. All external windows, external skylights and external openings shall be transparent and unobstructed to satisfy this section.

(iii) Dogs shall be protected from excessive light.

(iv) Outdoor exercise areas shall provide an area of shade large enough to protect all the dogs utilizing the exercise area from the direct rays of the sun.

(v) If a kennel is granted a waiver for indoor exercise under section 207(i)(6)(x)(B) the primary enclosure must be configured to allow natural light to come into each primary enclosure.

(vi) If a kennel is granted a waiver for indoor exercise under section 207(i)(6)(x)(B) full spectrum lighting shall be provided for the entirety of the daytime cycles in areas that house dogs.

(2) Artificial light

(i) Artificial, indoor, daytime lighting shall provide full spectrum lighting between 50-80 foot candles at standing shoulder level of the dogs for daytime lighting.

(ii) Night time artificial lighting shall be 1-5 foot candles at standing shoulder level of the dogs of lighting.

(iii) Artificial lighting provided shall approximately coincide with the natural diurnal cycle.

(iv) Lighting sources shall not have a visible flicker.

(v) Light sources, whether their primary purpose is to provide heat or light, shall be provided in a manner that prevents dogs from touching a light, fixture, bulb, switch or cord.

(3) All lighting shall comply with the latest edition of applicable codes.

§ 28a.4 Flooring

Proper flooring is essential for normal behavior and proper orthopedic development of the dogs. For dogs over twelve weeks of age, all flooring shall meet the standards in the legislation or as set forth below:

(1) In addition to the flooring already approved in the Dog Law (3 P.S. § 207(i)(3)), solid flooring is approved for use.

(2) Solid flooring must be sloped to a drain that is free of debris and in good repair.

(3) Drain covers shall be provided and shall be securely fixed and made of a non-corrosive substance.

(4) Flooring shall not be metal nor any other material with high thermal conductance. This shall not exclude the use of radiant heat flooring, or a flooring system to cool, provided that a dog has an area to escape the heat if it gets too warm or too cold.

(5) All floors and drains shall comply with the latest edition of applicable codes.

(6) The surface of the flooring shall provide the dogs with good footing. Examples include sealed concrete, painted concrete, epoxy flooring, sealed wood, textured and sealed tile.

(7) All flooring shall be cleaned in accordance with section 207(h)(14) of the Dog Law (3 P.S. § 459-207(h)(14)) and may be subject to microbial assessment.

(8) Flooring shall not be made of nor coated with materials that are toxic to dogs.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 1, 2009

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture, Canine Health Board
7 Pa. Code Chapter 28a
Canine Health Board Standards for Commercial Kennels
I.D. No. 2-170

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the September 12, 2009 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

David C. Kennedy
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

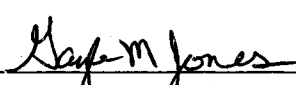
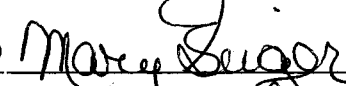



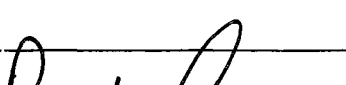
I.D. NUMBER: 2-170
 SUBJECT: CANINE HEALTH BOARD STANDARDS FOR COMMERCIAL KENNELS
 AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- X Proposed Regulation
 Final Regulation
 Final Regulation with Notice of Proposed Rulemaking Omitted
 120-day Emergency Certification of the Attorney General
 120-day Emergency Certification of the Governor
 Delivery of Tolled Regulation
 a. With Revisions b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
9/1/09		HANNA	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/1/09		MAHER	MAJORITY CHAIRMAN <u>HANNA</u>
9/1/09		BRUBAKER	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/1/09		O'PAKE	MAJORITY CHAIRMAN <u>BRUBAKER</u>
9/1/09		IRRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
9/1/09		LRB	LEGISLATIVE REFERENCE BUREAU (for Proposed only)