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August 17, 2010

Arthur Coccodrilli, Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Chairman Coccodrilli:

We submit the following comments related to the final-form rulemaking I.D. No. 2-170, Canine Health Board Standards for Commercial Kennels. Among those who have signed this letter are members of the House Agriculture and Rural Affairs Committee, which has the statutory authority to review this rulemaking, but these comments reflect the sentiments of additional legislators as well. The House Agriculture Committee was not able to assemble a quorum in the timeframe provided in order to consider this final-form rulemaking, but the undersigned committee members wish to transmit our comments and recommend disapproval.

This final-form rulemaking represents a significant improvement over the proposed rulemaking and we applaud the Department of Agriculture for responding to many of the concerns previously transmitted. However, we believe the rulemaking continues to include provisions that depart from the statutory authority and intent of the Dog Law.

Specifically, the flooring provision at Section 28a.8(b) of the rulemaking requires flooring with slats to meet *both* the provisions of Section 207(i)(3)(i) and (ii) of the act. These two provisions in the law are independent of each other. The exception at the beginning of subparagraph (ii) which states "Except as set forth in subparagraph (iii),..." supports this conclusion in that flooring approved under subparagraph (iii) shall meet the provisions of subparagraph (i). Therefore, the exception also applies to subparagraph (i) and flooring with slats is "acceptable" if it meets the provisions of subparagraph (ii) only. The department unambiguously has no statutory authority to require flooring with slats to also meet the flooring provisions of subparagraph (i).

In addition, the department has no statutory authority to make exceptions for type of flooring for adult dogs in commercial kennels. The flooring provision at Section 28a.8(e) of the rulemaking requires only 50% of the floor for a nursing mother to comply with the flooring standards for adult dogs in commercial kennels. Nothing in the statute provides authority for the department to create special flooring standards for nursing mothers, or for *any* adult dog.

Furthermore, in a July 29, 2010 letter from Special Deputy Secretary for Dog Law Enforcement Jessie Smith, to the Honorable James Casorio, Jr., Deputy Smith states that this provision of the rulemaking "mandate[s] a solid-floored whelping box that is at least 50% of the

total enclosure floor space.” The language in Section 28a.8(e) (below) does nothing of the kind. The language merely states that at least 50% of the flooring of a nursing mother’s *primary enclosure* shall meet the standards of Section 207(i)(3) of the act, which certainly does not require solid flooring for adult dogs in commercial kennels.

(e) *Nursing mothers.* Primary enclosures, including whelping boxes, housing bitches with nursing litters or housing dams or foster dams with puppies under 12 weeks of age shall be constructed so that at least fifty percent (50%) of the flooring of the primary enclosure shall comply with the standards established by section 207(i)(3) of the Dog Law(3P.S.§459-207(i)(3)).

The statute clearly makes special provisions for nursing mothers with regard to the amount of floor *space* (Section 207(h)(3)) they shall be provided, clearly prohibits *housing* mothers and puppies with other adult dogs (Section 207(h)(4)), and requires nursing mothers and their puppies to be *exercised* separately from other dogs (Section 207(i)(6)(viii)). Perhaps additional special provisions for nursing mothers and their puppies should be considered, but unless and until the statute is amended to that end, the department has no authority to invent such provisions by regulation.

We have reviewed quite a few of the comments submitted by the public and organizations on this final-form rulemaking. Many of them provide constructive recommendations regarding the details and practicality of the language. It is unfortunate, since the language of the final-form rulemaking represents such a significant modification from the proposed rulemaking, that the department did not publish an Advanced Notice of Final Rulemaking and invite additional comment before developing the final-form rulemaking.

We note that firm advocates for strict regulation of commercial kennels and the commercial kennel regulated community, usually at polar opposites, both agree that this final-form rulemaking is flawed. This fact should not be misconstrued to determine that the language of the final-form rulemaking represents a compromise; rather, it demonstrates that all parties still maintain that the rulemaking contains unacceptable or illegal provisions. While, as stated previously, we acknowledge that progress has been made, we argue that significant matters still remain unresolved.

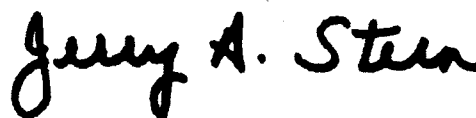
Since the regulatory review process does not provide for additional modification of a final-form rulemaking, and since the rulemaking clearly subverts the authority of the statute, we recommend that IRRC disapprove this regulation.

Thank you for your consideration.

Sincerely,



Sam Smith  
Republican Leader



Jerry A. Stern  
Republican Caucus Secretary

John A. Maher  
Republican Chairman  
Agriculture and Rural Affairs Committee

Samuel E. Rohrer  
State Representative

Scott E. Hutchinson  
State Representative

Jim Cox  
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Gordon R. Denlinger  
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Mark K. Keller  
State Representative

David R. Millard  
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Tina Pickett  
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Jeffrey P. Pyle  
State Representative

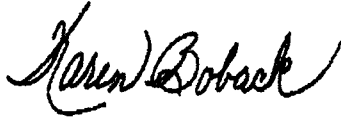
Michele Brooks  
State Representative

Michael E. Fleck  
State Representative

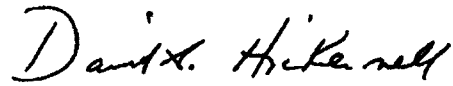
Carl Walker Metzgar  
State Representative

Richard R. Stevenson  
State Representative

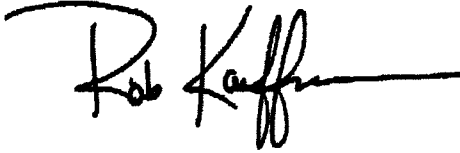
Martin T. Causer  
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Karen Boback  
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Robert Kauffman  
State Representative



Mike Reese  
State Representative

cc: Hon. Russell Redding  
Hon. Mike Hanna  
Hon. Mike Brubaker  
Hon. Mike O'Pake  
Hon. Tom Corbett