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**From:** Brownfield, Jill [jbrownfiel@state.pa.us] on behalf of AG, CHBcomments [CHBComments@state.pa.us]  
**Sent:** Tuesday, October 27, 2009 5:01 PM  
**To:** dhain@pahouse.net; IRRRC; kebersole@pasen.gov; Kennedy, David C. (AG); Kerry Golden; MULLER, JENNIFER; Smith, Jessie L; Thall, Gregory (GC); wgevans@pasenate.com  
**Subject:** FW: Proposed Commercial Kennel Regulations Public Comments  
**Attachments:** PA Rulemaking Comments 09.pdf

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**From:** Megan [mailto:Megan@puglieseassociates.com]  
**Sent:** Tuesday, October 27, 2009 4:53 PM  
**To:** AG, CHBcomments  
**Cc:** Dan Clark; Mike Maddox  
**Subject:** Proposed Commercial Kennel Regulations Public Comments

Attached please find public comments submitted on behalf of PIJAC. Please let us know if you have any questions or would like additional information. Thank you.

*Megan A. Milford*  
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October 26, 2009

Canine Health Board  
Bureau of Dog Law Enforcement  
Department of Agriculture  
2301 North Cameron St.  
Room 102  
Harrisburg, PA 17110-9408

**Re: Rulemaking in Regulation of Commercial Kennels**

The Pet Industry Joint Advisory Council (PIJAC) hereby submits its comments on the proposed rulemaking to adopt Standards for Commercial Kennels, published in the September 12, 2009 *Pennsylvania Bulletin* (Vol. 39, No. 37).

**I. Statement of Interest**

As the world's largest pet trade association, representing the interests of all segments of the pet industry throughout the United States, PIJAC counts among its thousands of members associations, organizations, corporations and individuals across the United States. More specifically, PIJAC represents manufacturers, distributors, breeders, boarding facilities and retailers throughout the state of Pennsylvania. Nobody cares more about healthy and safe pets, and the safety and welfare of the pet owning public, than does PIJAC. PIJAC has for many years provided a well respected animal care certification program that is widely utilized by not only persons in the commercial pet trade, but also shelters and humane societies as well. Our association has long been recognized as the voice for a responsible pet trade, and we routinely advocate legislative, regulatory and policy proposals that facilitate support by the pet trade for appropriate governmental mandates, whether they come from the international, federal or state level. PIJAC has routinely worked with the USDA to ensure effective enforcement of the federal Animal Welfare Act since its inception, and regularly works with the Centers for Disease Control and other federal and state agencies to promote responsible pet ownership while protecting the public health and safety.

PIJAC actively participated in the process of crafting the Dog Law amendments precipitating this action, and would hope that final regulations adopted by the Department of Agriculture (Department) are consistent with the intent and letter of that statute.

**PET INDUSTRY JOINT  
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## II. Introduction

As the Department notes, the Dog Law delegated to the Canine Health Board (Board) the responsibility for developing substantive standards. Various parties involved in the process of crafting House Bill 2525 (which ultimately became Act 119), including PIJAC, failed to reach agreement on certain standards in the bill, which resulted in this legislative mandate. The Board's mandate is specific in nature, and regulations stemming from the Board's recommendations should be consistent with such mandate.

PIJAC joins other stakeholders in its concern that the Board has exceeded its mandate, and that the Department's proposed rulemaking includes some provisions that are inconsistent with statutory law.

## III. Fiscal Impact

PIJAC questions the impact analysis put forth by the Department. All costs, it asserts, "will be paid for entirely from the Dog Law Restricted Account." Yet the additional inspection costs necessitated by this proposal would be substantial. Revenue will be significantly impacted as well, inasmuch as a sharp reduction in license fees must be anticipated from the substantial reduction in the number of regulated entities. There are already a large number of licensees who have announced they will relinquish their licenses as a result of the Department's new requirements. This number will undoubtedly increase. Finally, the cost impact to regulated entities themselves under the proposal is woefully understated. Indeed, it is this projected cost that is already driving countless numbers of licenses out of business.

## IV. Ventilation

The Act provides that "housing facilities for dogs must be sufficiently heated and cooled to protect the dogs from temperature or humidity extremes and to provide for their health and well-being. If dogs are present, the ambient temperature in the facility must not fall below 50 degrees F. The ambient temperature must not rise above 85 degrees F when dog are present, unless" specified requirements are met. Such requirements relate to ventilation of facilities, and the Act provides that:

"The Canine Health Board shall determine auxiliary ventilation to be provided *if* the ambient air temperature is 85 degrees F or higher. The appropriate ventilation, humidity and ammonia *ranges* shall be determined by the Canine Health Board."  
(Emphasis added)

While the proposed rule, pursuant to Section 28a.2(1), provides for the temperature conditions under which mechanical ventilation should be utilized, it improperly dictates that "each area of the kennel where dogs are present must utilize a functional, mechanical ventilation system..." Inasmuch as the underlying statute requires the availability of auxiliary ventilation only in facilities where statutory ranges of temperature are not met, the regulatory requirement for all facilities to maintain specific systems of ventilation is one which inappropriate exceeds the statutory standard. In other words, for those facilities maintaining the temperature range specified in statute, the Department is not authorized to require *any* systems of ventilation.

Section 221 of the Act, establishing the Board, provides its purpose as determining standards “to provide for the welfare of dogs under Section 207(H)(7) and (8).” In point of fact, Section 207(H)(7) does not even involve establishment of temperature levels. Those are set forth in Section 207(H)(6). The section applicable to the Board’s authority states that the Board shall determine auxiliary ventilation “**if the ambient air temperature is 85 degrees F or higher.**” Regulatory standards emanating from the Board should be limited to a requirement for auxiliary ventilation. It has no authority to regulate with regard to temperature at all; only as to ventilation. And with regard to ventilation, the Board is charged with establishing the level of **auxiliary ventilation** only where the temperature exceeds 85 degrees F. In such cases, the law does not authorize the Board to dictate how the level of ventilation is achieved.

Likewise, the proposed requirement under Section 28a.2(7) exceeds the statutory authority of the Board. Nowhere does the Dog Law charge the Board with measuring or regulating particulate matter. Indeed, Section 207(h) of the underlying statute already specifies standards as to kennel cleanliness without regard to specific measurement of particulate matter. Establishment of such a standard in regulation imposes a standard different from the statutory standard, thereby conflicting with and exceeding statutory requirements.

Specific air change requirements under 28a.2(8) are questionable in terms of sustaining a healthful environment for the animals.

#### V. Lighting

The Act, in Section 207(8) sets forth the requirement that facilities “must be lighted well enough to permit routine inspection and cleaning of the facility and observation of the dogs.” It goes on to require a “regular diurnal lighting cycle” and that “lighting must be uniformly diffused throughout housing facilities.” This section also states that dogs must be protected from excessive light.

The sole and exclusive charge under the Act relative to lighting was that the Board shall determine “lighting ranges.” The manner in which such ranges are achieved is beyond the scope of the Board’s authority. Further, the Board’s attempt to specify requirements for “natural light” are actually contravened by the statute. The Act explicitly states that animals must be provided “either natural or artificial light.” So long as a licensee provides either natural or artificial light, within “the appropriate lighting ranges” then it is in compliance with the law.

#### VI. Flooring

As with the other areas of responsibility in developing substantive standards, the authorization for “additional flooring options” that may be approved by the Board was inserted in the Act in order to address insufficiency of legislative amendments in legislating that issue. Specifically, it was recognized that safe, healthy and humane flooring options are available and the intent was that the Board would devise parameters for them. It is unfortunate that proposed regulations do not address this deficiency.

#### VII. Conclusion

PIJAC appreciates the efforts of the Board to provide greater detail in regulation with regard to specified

substantive standards. Regrettably, we believe that in proposing these regulations the Board has gone beyond that specific grant of authority by seeking to impose substantive requirements, or means for meeting standards, that are not authorized in the Dog Law. We believe that the work of the Board should be limited to those areas delegated to it by the statute, and that these proposed regulations should be revised to eliminate excessive requirements.

Respectfully Submitted,

Pet Industry Joint Advisory Council

By: Michael P. Maddox, Esq.