

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

RECEIVED
IRRC
2018 FEB 12 A 11: 01

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Pennsylvania Department of Agriculture

(2) Agency Number: 02

Identification Number: 190

IRRC Number: 3180

(3) PA Code Cite:

7 Pa. Code § 28a.8

(4) Short Title:

Commercial Kennel Canine Health Regulations

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

Primary Contact: Dwight Smith, 717-787-8744, dwsmith@pa.gov

Secondary Contact: Kristen Donmoyer, 717-705-8896, kdonmoyer@pa.gov

(6) 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

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

The regulation will rescind a single regulatory provision that the Commonwealth Court has determined contradicts the express statutory provisions of the Dog Law and violates the legislative intent behind the Dog Law.

The subject provision is at § 28a.8 (relating to flooring). Paragraph 5 of that section (relating to nursing mothers) effectively allows for up to 50% of the floor area in certain primary enclosures used to house dogs at commercial kennels to be of a type that does not comply with section 207(i)(3) of the Dog Law (3 P.S. § 459-207(i)(3)). In effect, § 28a.8(5) allowed a portion of the floor of a primary enclosure in which nursing mothers and puppies were housed to be more permeable than otherwise allowed under § 207(i)(3) of the Dog Law.

After the provision at § 28a.8(5) took effect, a lawsuit was brought against the Department, seeking a determination that this provision conflicts with the Dog Law. The lawsuit was brought in Commonwealth Court, and is captioned *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014). On September 9, 2016, Commonwealth Court granted

summary judgment for the Petitioners and specifically determined that § 28a.8(5) directly contradicts express provisions of the Dog Law and violates the legislative intent of the Dog Law.

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

The regulation is authorized under the Dog Law (3 P.S. §§ 459-101 – 459-1205). Section 902 of the Dog Law (3 P.S. § 459-902) authorizes the Department to promulgate regulations as necessary to carry out the provisions and intent of that statute.

(9) 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.

The regulation is driven by the Commonwealth Court's holding in *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014).

(10) 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 regulation will rescind a provision the Commonwealth Court has determined contradicts the express statutory provisions of the Dog Law and violates the legislative intent behind that statute.

No persons will benefit from this regulation.

(11) 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.

No, there are no provisions that are more stringent than federal standards.

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

The regulation rescinds a single regulatory provision that Commonwealth Court has determined contradicts the Dog Law and the legislative intent of the Dog Law. It will have no impact on the competitiveness of Pennsylvania's commercial kennels in interstate commerce.

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

No, the regulation will not affect any other regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department did not solicit input or comments from the referenced entities. As stated, the regulation rescinds a single regulatory provision that Commonwealth Court has determined contradicts the Dog Law and the legislative intent of the Dog Law.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulation will apply to certain operators of Department-licensed commercial kennels.

The regulation will apply to operators of Department-licensed commercial kennels. There are currently approximately 78 such licensees. The Department is aware, through on-site inspections, that these kennels are all in compliance with the flooring requirements such that no additional changes or expenses will result from the deletion of § 28a.8(5).

The size standards presented in the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) are the size standards that determine whether a business is a "small business" for purposes of the Regulatory Review Act. The applicable standards track with the North American Industry Classification System (NAICS) Codes, and are at 13 CFR § 121.201, in a chart titled *Small Business Size Standards by NAICS Industry*. The Department believes the following standard from that chart is applicable to the businesses and small businesses impacted by the regulation:

- Sector 11 (relating to Agriculture, Forestry, Fishing and Hunting), Subsector 112 (relating to Animal Production and Aquaculture), does not specifically address dogs, but under the category of "All Other Animal Production" provides that an animal production operation is a small business if its annual receipts are *\$750,000 or less*.

For purposes of this small business impact analysis the Department assumes that *all* Department-licensed commercial kennels are small businesses. There are currently approximately 78 such licensees. The Department is aware, through on-site inspections, that these kennels are all in compliance with the flooring requirements such that no additional changes or expenses will result from the deletion of § 28a.8(5).

Although none are known to exist, a noncompliant commercial kennel would have to bring that non-compliant flooring into compliance. Although there may be some expense associated with this, the Department cannot readily quantify these costs and believes these costs would be minimal. The

Department emphasizes that the regulation is driven by a Commonwealth Court determination that the Department lacked the statutory authority to promulgate § 28a.8(5) and that the provision violates the legislative intent of the Dog Law.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As stated, the regulation will apply to operators of Department-licensed commercial kennels. There are currently approximately 78 such licensees. The Department is aware, through on-site inspections, that these kennels are all in compliance with the flooring requirements such that no additional changes or expenses will result from the deletion of § 28a.8(5).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There will be minimal (or zero) financial, social or economic impact resulting from the regulation. The benefit of the regulation will be that the Department will have rescinded a regulatory provision that an appellate court has determined is contrary to its underlying statute.

Also, the Department emphasizes that the regulation is driven by a Commonwealth Court determination that the Department lacked the statutory authority to promulgate § 28a.8(5) and that the provision violates the legislative intent of the Dog Law.

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

The rescission of the subject regulatory provision is necessary to bring the Department's Commercial Kennel regulations into compliance with the Dog Law. This benefit outweighs whatever minimal costs might be imposed on commercial kennel licensees. In addition, the Department does not see that it has any option *other* than to rescind the subject regulatory provision.

(19) 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 Department does not expect the regulation will result in costs (or savings) to the regulated community, or in any new legal, accounting or consulting procedures. The regulation will apply to operators of Department-licensed commercial kennels. There are currently approximately 78 such licensees. The Department is aware, through on-site inspections, that these kennels are all in compliance with the flooring requirements such that no additional changes or expenses will result from the deletion of § 28a.8(5).

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

The regulation is not expected to result in savings (or costs) to local government.

(21) Provide a specific estimate of the costs and/or savings to the **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.

The regulation is not expected to result in savings (or costs) to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, 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 such procedures, reporting, forms or documentation shall be required by the regulation.

(22a) Are forms required for implementation of the regulation?

No forms are required in order to implement the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

No forms are required for implementation of the regulation.

(23) 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 2017-18 | FY +1 Year 2018-19 | FY +2 Year 2019-20 | FY +3 Year 2020-21 | FY +4 Year 2021-22 | FY +5 Year 2022-23 |
|------------------------|--|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| SAVINGS: | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Regulated Community | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Savings | 0 | 0 | 0 | 0 | 0 | 0 |
| COSTS: | 0 | 0 | 0 | 0 | 0 | 0 |
| Regulated Community | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Costs | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE LOSSES: | 0 | 0 | 0 | 0 | 0 | 0 |
| Regulated Community | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Government | 0 | 0 | 0 | 0 | 0 | 0 |
| State Government | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Revenue Losses | 0 | 0 | 0 | 0 | 0 | 0 |

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 FY 2014-15 | FY -2 FY 2015-16 | FY -1 FY 2016-17 | Current FY FY 2017-18 |
|---------------------|-----------------------------|-----------------------------|-----------------------------|----------------------------------|
| Dog Law Enforcement | \$7,814,724 | \$8,038,940 | \$7,172,200 | \$9,110,000 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation is not expected to have an adverse impact upon small businesses, as related in Response No. 15, above.

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

No such special provisions have been developed.

(26) 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.

No alternative regulatory provisions have been considered or rejected. The regulation simply rescinds a regulatory provision that an appellate court has determined is contrary to the Dog Law and the legislative intent of the Dog Law. This rescission is the least burdensome of the Department's regulatory options.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation will have no adverse effect on small businesses, obviating the need for the analysis described above.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for the regulation, obviating the need for the referenced description.

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

- | | |
|--|-------------------------|
| A. The length of the public comment period: | 30 Days |
| B. The date or dates on which any public meetings or hearings will be held: | None shall be held. |
| C. The expected date of delivery of the final-form regulation: | March 2018 |
| D. The expected effective date of the final-form regulation: PA Bulletin | Upon publication in the |
| E. The expected date by which compliance with the final-form regulation will be required: PA Bulletin | Upon publication in the |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Not applicable. |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

There is no such plan, given that the regulation is a rescission of a regulatory provision that an appellate court has determined is contrary to the Dog Law and the legislative intent of the Dog Law.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

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2018 FEB 12 A 11:01

DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

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:

(AGENCY) _____

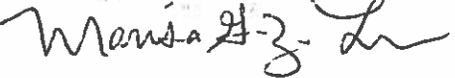
DOCUMENT/FISCAL NOTE NO. 2-190

DATE OF ADOPTION 11-29-17

BY 
RUSSELL C. REDDING

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY 

FEB 06 2018
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 Final Rulemaking

Title 7 – AGRICULTURE
Chapter 28a

Commercial Kennel Canine Health Regulations

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 28a]

Commercial Kennel Canine Health Regulations

The Department of Agriculture (Department) amends § 28a.8 (relating to flooring) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The regulation is authorized under the Dog Law (act) (3 P.S. §§ 459-101 – 459-1205). Section 902 of the act (3 P.S. § 459-902) authorizes the Department to promulgate regulations as necessary to carry out the provisions and intent of the act.

Background and Summary

The regulation will delete § 28a.8(5), as Commonwealth Court determined this paragraph contradicts the express statutory provisions of the act and violates the legislative intent of the act.

Section 28a.8(5), regarding nursing mothers, effectively allows for up to 50% of the floor area in certain primary enclosures used to house dogs at commercial kennels to be of a type that does not comply with § 207(i)(3) of the act (3 P.S. § 459-207(i)(3)). In effect, § 28a.8(5) allowed a portion of the floor of a primary enclosure in which nursing mothers and puppies were housed to be more permeable than otherwise allowed under § 207(i)(3) of the act.

After § 28a.8(5) became effective, a lawsuit was brought in Commonwealth Court against the Department seeking a determination that § 28a.8(5) conflicted with the act. See *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014). On September 9, 2016, Commonwealth Court granted summary judgment for the petitioners, and specifically determined that § 28a.8(5) directly contradicts express provisions of the act and violates the Legislative intent of the act.

Response to Comments

Notice of proposed rulemaking was published at 47 Pa.B. 5951 (September 23, 2017), with a 30-day public comment period. No comments were received from the public, the Independent Regulatory Review Commission or the General Assembly.

Fiscal Impact

Commonwealth

The regulation will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The regulation will have no appreciable fiscal impact on political subdivisions.

Private Sector

The regulation will apply to operators of Department-licensed commercial kennels. There are currently approximately 78 such licensees. The Department is aware, through on-site inspections, that these kennels are all in compliance with the flooring requirements such that no additional changes or expenses will result from the deletion of § 28a.8(5).

General Public

The regulation will have no appreciable fiscal impact on the general public.

Paperwork Requirements

The regulation will have no impact on the paperwork handled by the Department or by the impacted kennels.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2017, the Department submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 5951 (September 23, 2017), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department is required to submit to IRRC and the referenced Legislative Standing Committees copies of comments received during the public comment period, as well as other documents when requested. No such comments were received with respect to the proposed rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was deemed approved by the House and Senate Agriculture and Rural Affairs Committees. IRRC did not comment on, make recommendations regarding or object to any portion of the proposed regulation, and the Department did not make any changes to the proposed regulation. Thus, under section 5.1(e) of the Regulatory Review

Act (71 P.S. § 745.5a(e)), IRRC met on _____ and the final-form regulation was deemed approved pursuant to section 5(g) of the Regulatory Review Act.

Additional Information

Additional information may be obtained from Kristen Donmoyer, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 705-8896.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The amendments made to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 47 Pa.B. 5951 (September 23, 2017).

(4) The amendments to the regulations of the Department are necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under its authorizing statute, orders that:

(1) The regulations of the Department at 7 Pa. Code § 28a.8 (relating to flooring) are amended to read as set forth in Annex A.

(2) The Department shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this order and Annex A to IRRC, as required by law.

(4) The Department shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(5) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RUSSELL C. REDDING, *Secretary*

Annex A

TITLE 7 - AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 28a. COMMERCIAL KENNEL CANINE
HEALTH REGULATIONS

GENERAL PROVISIONS

§ 28a.8. Flooring.

For dogs over 12 weeks of age, the flooring in commercial kennels must meet the following standards:

* * * * *

(4) *Additional flooring requirements.*

* * * * *

(viii) Flooring may not be made of or coated with materials that can be chewed or easily ingested, or are toxic to dogs, or both.

[(5) *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 must be constructed so that at least 50% of the flooring of the primary enclosure complies with the standards established under section 207(i)(3) of the act.]

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 28a]

Commercial Kennel Canine Health Regulations

[47 Pa.B. 5951]

[Saturday, September 23, 2017]

The Department of Agriculture (Department) proposes to amend § 28a.8 (relating to flooring) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under the Dog Law (act) (3 P.S. §§ 459-101—459-1205). Section 902 of the act (3 P.S. § 459-902) authorizes the Department to promulgate regulations as necessary to carry out the provisions and intent of the act.

Purpose and Description of this Proposed Rulemaking

This proposed rulemaking will delete § 28a.8(5) as Commonwealth Court determined this paragraph contradicts the express statutory provisions of the act and violates the Legislative intent of the act.

Section 28a.8(5), regarding nursing mothers, effectively allows for up to 50% of the floor area in certain primary enclosures used to house dogs at commercial kennels to be of a type that does not comply with section 207(i)(3) of the act (3 P.S. § 459-207(i)(3)). In effect, § 28a.8(5) allowed a portion of the floor of a primary enclosure in which nursing mothers and puppies were housed to be more permeable than otherwise allowed under section 207(i)(3) of the act.

After § 28a.8(5) became effective, a lawsuit was brought in Commonwealth Court against the Department seeking a determination that § 28a.8(5) conflicted with the act. See *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014). On September 9, 2016, Commonwealth Court granted summary judgment for the petitioners, and specifically determined that § 28a.8(5) directly contradicts express provisions of the act and violates the Legislative intent of the act.

Section 902 of the act provides that regulations are to be promulgated "after due notice and a public hearing." In this instance—when Commonwealth Court has already determined that § 28a.8(5) is contrary to the act and the Legislative intent—the Department believes convening a public hearing on this proposed rulemaking would be unnecessary and contrary to the public interest. The Department published the intent to rescind § 28a.8(5) at 46 Pa.B. 6646 (October 22, 2016). Although the notice confirmed the Department did not believe it was necessary or in the public interest to convene a public hearing, it afforded interested persons a window within which to request a public hearing. The Department did not receive any requests for a public hearing.

Need for this Proposed Rulemaking

This proposed rulemaking will rescind § 28a.8(5), which Commonwealth Court determined contradicts the express statutory provisions of the act and violates the Legislative intent behind the act.

In summary, the Department is satisfied there is a need for this proposed rulemaking and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Persons Likely to be Affected

This proposed rulemaking will apply to operators of Department-licensed commercial kennels. There are currently about 68 licensees. The Department is aware, through onsite inspection, that: 1) 14 of these kennels are in compliance with flooring requirements so that a change or expense will not be necessary when § 28a.8(5) is rescinded; and 2) 26 of these kennels will have to make some changes to flooring when § 28a.8(5) is rescinded. The Department will be inspecting the remaining 28 kennels over the next several months. With respect to a licensed commercial kennel that needs to replace flooring when § 28a.8(5) is rescinded, the Department expects these costs to be modest and notes that to the extent a commercial kennel licensee bears costs associated with replacing flooring to bring it into compliance

with the requirements of the act, it is the act, rather than the regulation, which imposes these costs. This is particularly so when Commonwealth Court has effectively concluded that the Department lacked statutory authority to promulgate § 28a.8(5).

Fiscal Impact

Commonwealth

This proposed rulemaking will not have appreciable fiscal impact upon the Commonwealth.

Political subdivisions

This proposed rulemaking will not have appreciable fiscal impact on political subdivisions.

Private sector

This is addressed under the "Persons Likely to be Affected" in this preamble.

General public

This proposed rulemaking will not have appreciable fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will not have impact on the paperwork handled by the Department or the impacted kennels.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2017, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments,

recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Kristen Donmoyer, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 705-8896 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is Kristen Donmoyer, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 705-8896.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-190. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

**CHAPTER 28a. COMMERCIAL KENNEL CANINE
HEALTH REGULATIONS**

GENERAL PROVISIONS

§ 28a.8. Flooring.

For dogs over 12 weeks of age, the flooring in commercial kennels must meet the following standards:

* * * * *

(4) *Additional flooring requirements.*

* * * * *

(viii) Flooring may not be made of or coated with materials that can be chewed and readily ingested, or are toxic to dogs, or both.

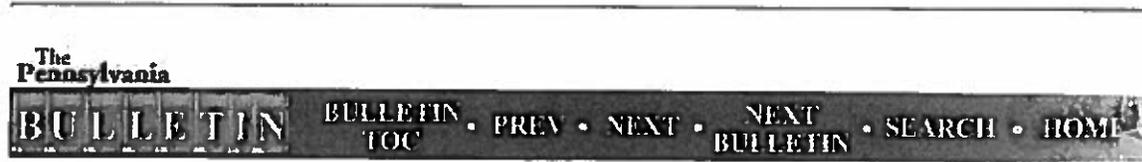
[(5) *Nursing mothers.* Primary enclosures, including whelping boxes, housing bitches with nursing litters or housing dams or foster dams with puppies under 12 weeks of age must be constructed so that at least 50% of the flooring of the primary enclosure complies with the standards established under section 207(i)(3) of the act.]

[Pa.B. Doc. No. 17-1575. Filed for public inspection September 22, 2017, 9:00 a.m.]

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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 12, 2018

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: NOTICE OF FINAL RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 28a
Commercial Kennel Canine Health Regulations
I.D. No. 2-190
Proposed Rulemaking: 47 Pa. Bulletin 5951 (September 23, 2017)
Approved by Office of General Counsel: February 6, 2018

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Face Sheet, Preamble and Annex A). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)).

No objections, comments or recommendations were received from the public, the Independent Regulatory Review Commission or the General Assembly with respect to the proposed rulemaking.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Respectfully,



Dwight-Jared Smith
Assistant Counsel

Enclosures

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

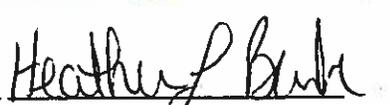
I.D. NUMBER: 2-190
SUBJECT: COMMERCIAL KENNEL CANINE HEALTH REGULATIONS
AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- Proposed Regulation
- X 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

| <u>DATE</u> | <u>SIGNATURE</u> | <u>DESIGNATION</u> |
|-------------|---|--|
| | | <i>HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i> |
| 2-12-18 |  | MAJORITY CHAIR <u>MARTIN T. CAUSER</u> |
| 2-12-18 |  | MINORITY CHAIR <u>EDDIE DAY PASHINSKI</u> |
| | | <i>SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i> |
| 2-12-18 |  | MAJORITY CHAIR <u>ELDER A. VOGEL, JR.</u> |
| 2-12-18 |  | MINORITY CHAIR <u>JUDITH L. SCHWANK</u> |
| 2-12-18 |  | <i>INDEPENDENT REGULATORY REVIEW COMMISSION</i> |
| | | <i>ATTORNEY GENERAL (for Final Omitted only)</i> |
| | | <i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i> |