

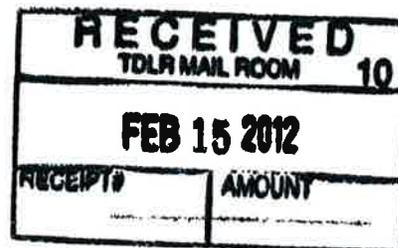


**THE HUMANE SOCIETY  
OF THE UNITED STATES**



February 13, 2012

Ms. Melissa Rinard, Legal Assistant  
General Counsel's Office  
Texas Department of Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711



**Re: Comments on the Texas Department of Licensing and Regulation (the "Department")  
Proposed New Rules Regarding the Licensing and Regulation of Dog or Cat Breeders**

Dear Ms. Rinard:

On January 20, 2012, the Department proposed new rules regarding the licensing and regulation of dog and cat breeders as required by the Dog or Cat Breeders Act (the "Act") enacted as HB 1451, 82<sup>nd</sup> Texas Legislature, Regular Session 2011. Pursuant to the Department's request, the Humane Society of the United States ("HSUS"), the Texas Humane Legislation Network ("THLN"), the American Society for the Prevention of Cruelty to Animals ("ASPCA") and our combined 600,000 Texas supporters respectfully submit these comments to the proposed rules.

The comments are submitted on a section-by-section basis using the section numbers in the proposed rules. In addition, we have attached a revised version of the proposed rules highlighted to show all of our requested changes.

We want to direct your attention to the following sections of our comments and strongly urge that you pay particular attention to these recommendations as these are critical to ensure the health and well-being of animals at breeding facilities: (1) Sec. 91.102 regarding wire flooring and temperature control; (2) Sec. 91.104 regarding wire flooring in primary enclosures, grandfathering cage size requirements, stacking of primary enclosures for dogs, and correcting the typographical error in the equation to determine required cage space; (3) Sec. 91.106 regarding exercise; and (4) Sec. 91.112 regarding veterinary care.

**A. Sec. 91.10. Definitions.**

A major portion of the proposed rules incorporate the federal regulations. Many of the terms used in these incorporated federal regulations are "defined" terms in 9 C.F.R. Part 1. To properly understand the meaning and context of those incorporated federal regulations the associated definitions must be included in the proposed rules. We have identified at least 10 "defined" terms in 9 C.F.R. Part 1 that should be included in the proposed rules. They are:

**Attending Veterinarian** - a veterinarian with whom the licensee has a veterinarian-client-patient relationship as required by Occupations Code Rule 801.351. The name and contact information of the attending veterinarian for each facility must be on file with the department.

**Carrier** - the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

**Impervious surface** - a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

**Indoor housing facility** - any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

- (1) it must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and
- (2) it must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and
- (3) it must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

**Intermediate handler** - any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

**Nonconditioned animals** - animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

**Outdoor housing facility** - any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the rules, and in which temperatures cannot be controlled within set limits.

**Positive physical contact**--Petting, stroking, or other touching, which is beneficial to the well-being of the animal.

**Sanitize** - to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

**Sheltered housing facility** - a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building,

or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

We recommend adding the above ten definitions to the proposed rules.

The definition of "Licensed breeder" should also include "licensee". The term "licensee" is used extensively throughout the proposed rules. We recommend the definition be amended as follows:

*Licensed breeder or licensee*--A dog or cat breeder who holds a license issued under this chapter.

The definition of "wire or wire mesh" should be amended for clarification and specificity. The correct industry name for plastic or rubberized coating is "bonded vinyl". We checked several fencing websites and that's how they define it. Also, the design should not be limited to just the floor because animals can also get caught in side openings as well. Thus, the reference to "floor" should be changed to "openings".

We recommend the definition be amended as follows:

*Wire or Wire Mesh*--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased ~~with~~ within a plastic or rubberized thick bonded vinyl coating and that cannot be damaged by an animal's chewing and that is designed so no part of the animal's toes or paws are able to extend through, or become caught in, the ~~floor~~ openings.

#### **B. Sec. 91.23. License Requirements – Dog or Cat Breeder.**

We recommend changes to Subsections (2) and (5). In subsection (2) the type of tax identification should be specific to sales tax. Texas has other types of taxes such as franchise tax, property tax, etc. We assume that the tax identification number referenced is for the sales tax. If true, there is no alternative for an "exemption certificate number". We checked with the Texas State Comptroller's Office and they verified that there is no exemption for the collection of sales tax for retail sellers of dogs and cats. Please see Comptroller's Letter Ruling No. 8204L0414E09 on the Comptroller's website.

We recommend Subsection (2) be amended as follows:

(2) provide a valid state sales tax identification number ~~or exemption certificate number~~;

Subsection (5) as written does not include all of the requirements in Section 802.103(e) of the Act. The items to be furnished under the Act are: (i) a copy of the Class A animal dealer's license; and (ii) a signed statement certifying that the applicant's facility meets the requirements of this chapter.

We recommend Subsection (5) be amended as follows:

(5) successfully pass a facility prelicense inspection conducted by a department approved inspector or, if applicable, provide the department with a valid copy of the applicant's Class A animal dealers license number; together with a signed statement certifying that the applicant's facility meets the requirements of this chapter; and

**C. Sec. 91.24. License Requirements – Dog or Cat Breeders License Renewal.**

In subsection (2) the type of tax identification should be specific to sales tax. Please see our discussion in Sec. 91.23 above. We recommend Subsection (2) be amended as follows:

(2) provide a valid state sales tax identification number ~~or exemption certificate number;~~

**D. Sec. 91.25. License Approval and Issuance.**

The introductory sentence of Subsection (b) should be amended as follows:

(b) The department may deny issuance of a license to, or refuse to renew the license held by a person who:

**E. Sec. 91.40. Inspector Registration Requirements.**

This section appears to deal with the registration requirements for third-party inspectors, but in the heading and throughout the section the reference is to "inspector". Unless the Department intends to impose these same requirements on employees of the Department who are assigned inspection duties, the references to "inspector" in this section should be changed throughout to "third-party inspector". If the Department intends to include its employees, the proposed rules should define "inspector" to include third-party inspectors and inspectors employed by the Department.

In Subsection (a)(4) there is a reference to the payment of the fee required under Sec. 91.80. However, Sec. 91.80 does not list a fee for a third-party inspector registration.

If a fee is to be charged, we recommend that Sec. 92.40 be amended as follows:

**91.40. Third-Party Inspector Registration Requirements.**

(a) An applicant seeking ~~an~~ a third-party inspector registration must:

- (1) be a state agency, local law enforcement agency, fire department; or
- (2) be an employee of an agency or department identified in subsection (a)(1);
- (3) submit a completed application on a department-approved form; and
- (4) pay the fee required under §91.80.

(b) An applicant seeking ~~an~~ a third-party inspector registration under subsection (a)(1) must:

- (1) submit the names of persons who will perform inspections on behalf of the registrant; and
- (2) submit proof that each person named in subsection (b)(1) successfully completed training required by §91.61.
- (c) An applicant seeking an a third-party inspector registration under subsection (a)(2) must:
  - (1) submit proof of current employment;
  - (2) successfully complete training required by §91.61; and
  - (3) successfully pass a criminal background check.

If no fee is to be charged, delete Subsection (a)(4).

**F. Sec. 91.41. Inspector Registration Renewal Requirements.**

We have the same comments and recommendations here as set forth in Sec. 91.40 above. In addition, we question the reference in (a)(4) to a required fee under Sec. 91.80. There is nothing in the Act or in the proposed rules that speaks to the expiration of a third-party inspector registration. Thus, if a third-party inspector registration does not expire there is no need for this section. If on the other hand, it is the Department's intent to have third-party inspector registrations expire the proposed rules must set forth both the initial registration term and the renewal terms. We see no reason to have third-party inspector registrations automatically expire. We do think that they should be terminated if the registrant does not meet the continuing education and other requirements that might be set by the Department.

In any event, unless Sec. 91.41 is deleted, we recommend that it be amended as follows:

**91.41. Third-Party Inspector Registration Renewal Requirements.**

- (a) To renew an a third-party inspector registration, an applicant must:
  - (1) be a state agency, local law enforcement agency, fire department; or
  - (2) be an employee of an agency or department identified in paragraph (a)(1);
  - (3) submit a completed application on a department-approved form; and
  - (4) pay the fee required under <\*>91.80.
- (b) An applicant seeking renewal under subsection (a)(2) must:
  - (1) submit proof of employment; and
  - (2) successfully pass a criminal background check.
- (c) To renew and maintain continuous registration, the renewal requirements under this section must be completed prior to the expiration of the registration. A late renewal means the third-party inspector will have an unregistered period from the expiration date of the expired registration to the issuance date of the renewed registration. During the unregistered period, a person may not perform the functions of an a third-party inspector under this chapter.
- (d) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

**G. Sec. 91.50. Inspections – Prelicense.**

The prelicense inspection fee referenced in Subsection (c) should make specific reference to the fee set out in Sec. 91.80. We recommend that Subsection (c) be amended as follows:

(c) Before the prelicense inspection may be conducted, applicant must pay to the department the required prelicense inspection fee under Section 91.80 and the reasonable expenses of the department related to its licensing and inspection duties under this chapter.

**H. Sec. 91.51. Inspections – Prelicense Exemption.**

The term “Animal Welfare Act” is not defined. We recommend that Subsection (1) be amended as follows:

(1) holds a current Class A animal dealers license issued by the United States Department of Agriculture under the Animal Welfare Act (7 U.S.C §2131, et seq.); and

The last phrase in Subsection 2(B) is duplicative and confusing. We recommend that Subsection 2(B) be amended as follows:

(B) on a form prescribed by the department, provide a statement certifying that the facility meets the requirements of this chapter ~~and rules adopted under this chapter.~~

**I. Sec. 91.52. Inspections – Periodic.**

Subsection (i) should be amended for clarity purposes and to require that the inspector leave a copy of the initial findings and not just a listing of rule sections. It is important that the licensee is made aware of the problems in more detail.

We recommend that Subsection (i) be amended as follows:

(i) On completion of the periodic inspection and ~~on a form approved by the department,~~ while ~~the inspector is~~ at the facility, the inspector shall leave ~~proof of inspection~~ with the licensee or representative of ~~the licensee~~ a preliminary report, on a form approved by the department, listing the ~~rule sections~~ items not meeting the requirements of this chapter. ~~The proof licensee or representative of the licensee shall sign a receipt of inspection required by this~~ the preliminary report. The signing of the receipt by the licensee or representative of the licensee shall not be deemed agreement to the findings in the preliminary report. The preliminary report required by this section is in addition to the ~~completed final~~ report required by this chapter and does not affect the validity of the ~~completed deleted~~ final report.

**J. Sec. 91.53. Out of Cycle Inspections.**

Several sections need to be amended to provide greater clarity to inspectors on what they are required to do during these out of cycle inspections and give inspectors the flexibility to inspect as often as necessary to ensure compliance. As the rule is currently written it is not clear that the inspectors have this ability and infers that inspectors are only permitted to inspect the number of times and frequencies listed in Figure 16 TAC §91.53(d). The Act, as set forth in Section 802.062, actually requires inspectors to inspect facilities at any time necessary to ensure compliance with the Act and the Rules and the proposed rules appear to be counter to the Act.

We recommend that Subsection (d) be amended as follows:

(d) Facilities subject to out-of-cycle inspections ~~may~~ **will** be scheduled for inspection based on the following risk criteria and inspection frequency:

Figure: 16 TAC §91.53(d)		
Tier	Criteria	Total Inspection Frequency (includes both periodic and out-of-cycle inspections)
Tier 1	<del>A</del> <b>Violation of the rules related to records required by this chapter.</b>	<del>At least Once</del> <b>At least Once</b> each year
Tier 2	<del>A serious or repeated violation relating to</del> <b>of the sanitation requirements of this chapter violations or</b> <del>Failure to timely remedy violations documented during periodic inspections, or investigations, or</del> <b>Failure to comply with a</b> <del>commission orders.</del>	<del>At least Twice</del> <b>At least Twice</b> each year
Tier 3	<del>Repeated, serious</del> <b>Violations related to shelter, food, water, safety or healthcare required by this chapter</b> <del>medical treatment or examinations.</del>	<del>At least Four</del> <b>At least Four</b> times each year

For the same reasons set forth above, under Sec. 91.52, we recommend that Subsection (f) be amended as follows in order to mirror the language:

(f) On completion of the out-of-cycle inspection and ~~on a form approved by the department,~~ while ~~the inspector~~ is at the facility, the inspector shall leave ~~proof of~~

~~inspection~~ with the licensee or representative of ~~the~~ licensee a preliminary report, on a form approved by the department, listing the ~~rule sections items~~ not meeting the requirements of this chapter. The ~~proof~~ licensee or representative of the licensee shall sign a receipt of inspection required by this ~~the preliminary report~~. The signing of the receipt by the licensee or representative of the licensee shall not be deemed agreement to the findings in the preliminary report. The preliminary report required by this section is in addition to the ~~completed final~~ report required by this chapter and does not affect the validity of the ~~completed deleted final~~ report.

Lastly, we think it is imperative to add to the rules that inspectors are permitted to inspect facilities as often as necessary as required by the Act.

We recommend that Subsection (i) be added as follows:

(i) Nothing in this section shall be deemed to prohibit additional out-of-cycle inspections as necessary to ensure compliance with this chapter.

#### **K. Sec. 91.56. Responsibilities of the Department – Disciplinary Database**

This database should include the date, nature and outcome of each action or sanctions. We recommend that Subsection (a) be amended as follows:

(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions; including the dates, nature, and outcome of such action or sanctions.

#### **L. Sec. 91.61. Responsibilities of the Department – Inspector Training.**

Please see our comments under Sec. 91.40 and 91.41. This section appears to apply only to third-party inspectors and it is unclear as to whether this section is intended to also include inspectors who are Department employees. The term “inspector” is not defined and, if the intent is to include only third-party inspectors, the section should be amended to read as follows:

§91.61. Responsibilities of the Department—Third-Party Inspector Training.

The department shall prepare and schedule training for applicants for third-party inspector registration and notify registered third-party inspectors of the availability of continuing education to ensure compliance with this chapter ~~and rules adopted under this chapter.~~

If this is intended to apply to all inspectors, the phrase “third-party” should be deleted in the heading and an additional sentence referring to department employees should be added to read as follows:

Department employees designated as inspectors must also be notified of the ability of continuing education as required by the department.

**M. Sec. 91.62. Responsibilities of the Department – Inspector Identification.**

It is uncertain as to whether this section and Sec. 91.40 referenced therein applies only to third-party inspectors or also inspectors who are employees of the Department. If only third-party inspectors it should read as follows:

*§91.62. Responsibilities of the Department - Third-party inspector Identification.*

The department shall issue photo identifications to each third-party inspector registered under Sec. 91.40.

If intended to encompass department employees, “third-party” should be removed from the heading and the phrase “and any department employee designated as an inspector” should be added to the end of the sentence.

**N. Sec. 91.66. Responsibilities of Inspectors – Inspections, Investigations and Reports of Animal Cruelty.**

There is no reference to “animal cruelty” in this Sec. 91.66 and “animal cruelty” should be deleted in the section’s title. We recommend a new separate section (Sec. 91.67) to require all inspectors to report animal cruelty to the appropriate law enforcement agency within 24 hours after discovering evidence of suspected animal cruelty or neglect as mandated by Sec. 802.064 of the Act.

The provisions and references to “investigations” in this Sec. 91.66 are out of place and confusing. Investigations and inspections are two different things. Investigations are normally conducted off premise and do not normally include an inspection of a licensed breeder’s facility. As written, this section will cause confusion and trouble with enforcement. We recommend that all references in this section to “investigation” be deleted and that requirements related to investigations be addressed in a separate section (Sec. 91.68) as contemplated by Section 802.063 of the Act.

In Subsection (g) there is a statement that the training procedures and protocols be approved by the Department. There are no provisions in the proposed rules that require TDLR to develop or approve training procedures or protocols. Who is going to do this within the Department? This should be spelled out and made clear elsewhere in the proposed rules so that inspectors know and understand the training procedures and protocols they are to follow.

Subsection (b) should be deleted in its entirety. It is proper protocol in virtually every regulatory program that inspections be unannounced. This is made expressly clear for USDA inspections under the Federal Animal Welfare Act. There should be no requirement that an inspector have to provide a reason for making an unannounced inspection. In fact, it should be the opposite. Having this provision in the rules is indirectly telling inspectors that they should not make unannounced inspections, but instead announce their inspection prior to reaching the facility. If this burden is placed on inspectors and inspections are announced it will render this regulatory program useless. Given prior warning, licensees can correct and/or hide

multiple violations that occur between inspections. This is backwards from the way it should function.

To accomplish the recommendations above, Sec. 91.66 should be amended as follows:

**§91.66. Responsibilities of Inspectors--Inspections, ~~Investigations~~, and Reports ~~of Animal Cruelty~~.**

(a) An inspector ~~or investigation~~ must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

~~(b) If an inspector determines it is not appropriate to provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility, the inspection report must describe the reasons supporting the determination.~~

~~(e-b)~~ In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity.

~~(d c)~~ An inspector may request that relevant documents or records be provided for inspection.

~~(e d)~~ Inspectors must submit inspection reports to the department not later than the 10th day after the date of the inspection on a form and in a manners prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

~~(f e)~~ An inspector may not perform an inspection authorized by ~~<\*>~~91.52 and ~~<\*>~~91.53 unless assigned or requested by the department.

~~(g-f)~~ Inspections must be conducted in accordance with:

(1) the training procedures and protocols approved by the department; or

(2) if good cause exist to deviate from the established procedures and protocols or if no procedure or protocol exist for the issues presented during the inspection ~~or investigation~~, the inspection report must contain an an explanation of the issues presented and procedures followed.

**O. Sec. 91.73. Responsibilities of the Licensee – Onsite Availability of Law and Rules.**

The reference to the “rules adopted by the department regulating licensed breeders” is confusing. The Department does not adopt rules, the commission adopts rules. The rules required to be kept at the breeder’s facility are these proposed rules.

We recommend that Sec. 91.73 be amended as follows:

A licensed breeder must maintain at each of the breeder's facilities a printed and current copy of Texas Occupations Code, Chapter 802 and these rules ~~adopted by the department regulating licensed breeders~~.

**P. Sec. 91.77. Responsibilities of Licensee – Animal Records Content, Availability and Retention Period.**

There is a conflict between the retention period set forth in Subsection (a)(1) – five years - and that set forth in Subsection (c) - two years. We recommend that the two year period be adopted.

In Sec. 91.77(a)(1) a Subsection (F) should be added to include “the disposition of each animal with date of disposition”. This requirement is currently set out in Subsection (a)(3); however, as written, (a)(3) is not a complete sentence. It should be moved to a new Subsection (F) in (a)(1) since it is one of the items that should be included in the records required by Sec. 91.77(a)(1).

In Subsection (c) there is some confusion as to when the two-year period starts. We recommend that this be clarified with some minor wording changes.

We recommend that Subsections (a) and (c) be amended as follows:

- (a) A licensed breeder shall maintain, at the licensed facility where the animal is kept, a separate record for each animal in the breeder's facility documenting the animal's care.
- (1) Records required by this section must ~~be maintained for at least five (5) years and must~~ include:
  - (A) the date on which the animal enters the facility or operation;
  - (B) the person from whom the animal was purchased or obtained, including the name, address and phone number of such person, and license or registration number if applicable;
  - (C) a description of each animal, including the species, color, breed, sex, date of birth (if not known, the approximate age) and weight;
  - (D) any tattoo, microchip, or other identification number carried by or appearing on the animal;
  - (E) for breeding females:
    - (i) breeding dates;
    - (ii) whelping or queening dates;
    - (iii) number of puppies or kittens per litter; and
    - (iv) sire or tom for each litter; and
  - (F) the disposition of each animal with date of disposition.**
- (2) Records required by this section are in addition to medical records related to preventative and therapeutic veterinary care provided each animal.
- ~~(3) The disposition of each animal with date of disposition.~~
- (b) The licensed breeder shall make the animal records available on request to the department or a third-party inspector designated by the department.
- (c) Records required by this chapter shall be kept at the licensed facility where the animal was last housed for two years from the date of the last entry in the records or the date the animal ~~is no longer housed at~~ left the facility, whichever is later.

**Q. Sec. 91.80. Fees.**

As noted by the department in the introductory determinations “the number of potential licensees is unknown”. We recommend there be a provision in Sec. 91.80 for adjusting these

fees on an annual basis to ensure that the costs of administration and enforcement are covered or, if the fee structure results in a surplus, the fees can be reduced.

As mentioned above, this section should clearly specify the fees for third-party inspector registrations and, if applicable, renewals as referenced in Sec. 91.40 and 91.41.

Subsection (b) references “revised/duplicate license, certificate/permit/registration”. It is unclear as to what Subsection (b) is referring to. The fee for a “duplicate license” is provided for in Subsection (a)(1)(E). There is no reference in the proposed rules to a “revised license” or a “certificate” or a “permit” and the only reference to a “registration” is for third-party inspectors. As mentioned earlier, there is no specific fee for third-party inspector registrations or, if applicable, renewals. It is our recommendation that Subsection (b) be changed to address the third-party inspector registration fee and, if applicable, the renewal fee and that the other terms and their fees either be moved to another subsection or deleted.

We recommend that Sec. 91.80 be amended as follows:

**91.80. Fees.**

(a) Application Fees

(1) Dog or Cat Breeder License (11-25 **Adult** Intact Female Animals):

(A) Prelicense Inspection Fee--\$175 per facility.

(B) Original Application--\$475.

(C) Renewal--\$475.

(D) Periodic and Out-of-Cycle Inspections--\$175.

(E) Duplicate License--\$25.

(2) Dog or Cat Breeder License (26-60 **Adult** Intact Female Animals):

(A) Prelicense Inspection Fee --\$350. per facility.

(B) Original Application-- \$950.

(C) Renewal--\$950.

(D) Periodic and Out-of-Cycle Inspections--\$350.

(E) Duplicate License--\$25.

(3) Dog or Cat Breeder License (61or more **Adult** Intact Female Animals):

(A) Prelicense Inspection Fee--\$700 per facility.

(B) Original Application--\$1,900.

(C) Renewal--\$1,900.

(D) Periodic and Out-of-Cycle Inspections--\$700.

(E) Duplicate License \$25.

(b) ~~Revised/Duplicate License/Certificate/Permit/~~ **Third-Party Inspector** Registration **(and “Renewal” if applicable)**--\$25.

(c) Late renewal fees for licenses under this chapter are provided under <\*>60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

**R. Sec. 91.90. Administrative Sanctions and Penalties.**

We believe the reference to “agency” in this section should instead reference “department”.

We recommend Sec. 91.90 be amended as follows:

A person that violates Texas Occupations Code, Chapter 802, a rule, or an order of the executive director or commission will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 802 and applicable **agency department** rules.

**S. Sec. 91.100. Standards of Care – Housing Generally.**

In Subsection (b) the reference to “research needs” should be deleted. Research is not an activity being regulated by these proposed rules. We recommend that Subsection (b) be amended as follows:

(b) Condition and site. Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices ~~and research needs~~. Housing facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks, and raccoons are prevented from entering it.

**T. Sec. 91.101. Standards of Care – Indoor Housing Facilities.**

Subsection (a) contains language allowing a licensed breeder to use their best efforts in maintaining the ambient air temperature at a specific level in the indoor housing facility. The federal regulations do not include the language “best efforts.” By adding this phrase, the department has significantly weakened the federal regulations which is prohibited under the Act. Section 802.201(b)(1) requires that the rules adopted by the commission at a “minimum” meet the federal regulations. Including this language in the rules further allows a licensee to fall below the requisite temperature so long as they can show they were doing their best to maintain the temperature.

In addition, the Advisory Committee at the January 4, 2012 meeting recommended removal of the language in subsection (a) relating to “4 consecutive hours.” Yet this language is included on the proposed rules. The department reinserted this language which is inconsistent with what was approved by the Advisory Committee. The “4 consecutive hours” provision should be removed to ensure that the temperature requirements of the law are enforceable. Licensed kennels already must have the mechanism in place to keep the temperature within the legally required range. Removing the 4 hour provision will simply allow inspectors to cite a violation when it is observed, rather than having to wait four hours to do so.

The Advisory Committee also recommended language in Subsection (a) which allowed the attending veterinarian to establish additional temperature controls based on the recommendations of the Tufts Animal Care and Condition Scale or equivalent. The department deleted this language which is inconsistent with what was approved by the Advisory

Committee. This is likely an oversight since the exact same language that was stricken was included in §92.102 (a) which is an identical provision to §91.101(a) but for Sheltered Housing Facilities.

We recommend that Subsection (a) be amended as follows:

(a) Heating, cooling, and temperature. Indoor housing facilities for dogs or cats must be sufficiently heated and cooled when necessary to protect the dogs or cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, ~~using best efforts~~, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs or cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). ~~Using best efforts, t~~The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85 °F (29.5 °C) ~~for more than 4 consecutive hours~~ when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

In subsection (b) the term “best efforts” is once again inserted into the rules and for the same reasons set forth above under subsection (a) must be removed because the term weakens the federal regulations which is contrary to the Act.

We recommend that Subsection (b) be amended as follows:

(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided ~~when using best efforts~~, when the ambient temperature is 85° F (29.5° C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.

#### **U. Sec. 91.102. Standards of Care – Sheltered Housing Facilities.**

For the exact same reasons as set forth above in §92.101 (a) we recommend that Subsection (a) be amended as follows:

(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs or cats must be sufficiently heated and cooled when necessary to protect the dogs or cats from temperature or humidity extremes and to provide for their health and well-being.

~~Using best efforts, t~~ The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) for dogs or cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). ~~Using best efforts, t~~ The ambient temperature must not fall below 45 °F (7.2 °C) ~~for more than 4 consecutive hours~~ when dogs or cats are present, and must not rise above 85 °F (29.5 °C) ~~for more than 4 consecutive hours~~ when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

Subsection (d) is confusing as written and subject to various interpretations as played out at the January 4, 2012 Advisory Committee. First, the phrase allowing free movement, etc. without the body being in contact with any shelter wall should be moved to the end of the sentence so that it applies to all movements. Second, the phrase fails to accomplish the intent behind the rule. During the discussion of this issue at the Advisory Committee meeting, no one could understand what this wording meant. It was, however, agreed that the intended requirement is that the animal be “allowed” (not required) but allowed if it so chooses to perform the various movements without any part of its body being in contact with any wall. This Subsection (b) needs to be rewritten to make that clear.

We recommend Subsection (d) be amended to read:

(d) Shelter from the elements. Dogs or cats must be provided with adequate shelter from the elements at all times to protect their health and well-being. The shelter structures must be large enough to allow ~~each all~~ animals simultaneously to sit, stand, and lie in a normal manner and turnabout freely without any part of their bodies ~~its body~~ being in contact with ~~at least one side of the~~ any shelter walls ~~in a normal manner and to turn about freely~~.

Under Subsection (e) Surfaces of Sheltered Housing facilities, the department placed a grandfather clause allowing for persons licensed before September 1, 2012 to house their animals on flooring consisting of 100% wire or wire mesh or slatted materials and required all persons licensed after September 1, 2012 to house their animals on flooring consisting of 50% solid flooring, exclusive of receptacles.

First, we are opposed to the grandfathering of wire or wire mesh flooring for facilities that obtain a license before September 1, 2012. Wire or wire mesh flooring has a negative impact on the health, safety, and welfare of the animals housed in this manner. It is critical that these rules do not place different health and well-being standards based solely on the timing of when a breeder obtains a license. This grandfathering clause is arbitrary and essentially dooms hundreds if not thousands of animals to substandard living conditions for the rest of their lives.

Second, this provision should not be addressed under 91.102(e) dealing with Sheltered Housing facilities, but rather under Section 91.104 which addresses Primary Enclosures. We assume this is a simple legislative drafting error on the part of the department. It is quite clear that the wire

flooring/sold flooring provisions must be placed in the section dealing with the Primary Enclosures which is where the animals spend the majority of their time. By placing this language here, the department has actually weakened the federal regulation which is prohibited by the Act. Specifically, Sec. 3.3 of the federal regulations requires that all indoor floor areas in contact with animals "must be impervious to moisture." Wire or mesh flooring is not fully impervious to moisture because, overtime, it rusts and corrodes and therefore allowing wire flooring lessens the federally mandated minimum standards.

At the January 4, 2012 Advisory Committee meeting, members discussed and agreed that solid or partially solid flooring was in the best interest of the animals based on the AVMA recommendations and standards. Yet a motion was made, which passed by a 4-3 vote, to grandfather existing facilities who obtained their license before September 1, 2012 on the premise that it was more important to get people licensed than to apply the humane care standards evenly. There need be no incentive to get breeders to apply for a license – **it's the law!** Why should we doom animals in breeding facilities to a life of pain and suffering for the sole purpose of encouraging a breeder to obey the state law? It was argued that if breeders had to upgrade their cage flooring they would not apply for a license. There is no basis in fact for this argument nor was one given. Also, if this argument is true why are we not eliminating this requirement for future breeders to encourage them to apply?

Given it was agreed that solid or partially solid flooring was in the best interest of the animals, based on the AVMA recommendations and standards, there is no reason not to implement this requirement immediately for all licensed facilities. If despite our concerns, the Commission rejects this recommendation, we strongly urge that the cage flooring requirements be applied to all licensed facilities regardless as to when the license is obtained and give the facilities licensed on or before September 1, 2012 a two year phase-in period to come into compliance. To allow them to operate under different standards in perpetuity will also create confusion for inspectors, as it may not always be immediately clear upon inspection what date the licensee obtained his/her original license under the Act.

Additional discussion about the health and welfare issues surrounding the use of wire and wire mesh flooring and the benefits of using partial or solid flooring can be found under Section 91.104 of these comments.

We recommend Subsection (e) be amended to read:

(e) Surfaces.

(1) The following areas in sheltered housing facilities must be impervious to moisture:

(A) Indoor floor areas in contact with the animals; ~~provided that:~~

~~(i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and~~

~~(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles.~~

(B) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(C) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, absorbent bedding, sand, gravel, concrete or grass.

**V. Sec. 91.103. Standards of Care – Outdoor Housing Facilities.**

Subsection (a)(1)(c)(2) should include a prohibition of animals being kept in an outdoor facility when the temperature reaches more than 90° F. The heat in Texas summers is extremely dangerous to animals kept outdoors.

We recommend Subsection (c)(2) be amended as follows:

(2) When their acclimation status is unknown, dogs or cats must not be kept in outdoor facilities when the temperature is less than 50°F (10°C) or more than 90°F (37.2°C).

Subsection (b) is confusing as written. First, the phrase allowing free movement, etc. without the body being in contact with any shelter wall should be moved to the end of the sentence so that it applies to all movements. Second, the phrase as worded is confusing and subject to various interpretations. During the discussion of this issue at the Advisory Committee meeting, no one could understand what this wording meant. It was, however, agreed that the intended requirement is that the animal be “allowed” (not required) if it so chooses to perform the various movements without any part of its body being in contact with any wall. This Subsection (b) should be rewritten to make that clear.

We recommend that Subsection (b) be amended as follows:

(b) Shelter from the elements. Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow ~~each~~ all animals in the shelter structure simultaneously to sit, stand, and lie in a normal manner, and turn about freely without any part of their bodies ~~its body~~ being in contact with ~~at least one side of the any shelter walls in a normal manner, and to turn about freely~~ structure wall. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must:

**W. Sec. 91.104. Standards of Care – Primary Enclosure.**

General Requirements – Subsection (1)

Subsection (1)(B)(x) should be expanded to require that wire or slatted floors not allow the dog's and cat's feet to “become caught in” any openings in the floor. This is required by Sec. 802.201(b)(5)(D) of the Act.

We recommend that Subsection (1)(B)(x) be amended as follows:

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of wire or wire mesh or slatted construction, do not allow the dogs' and cats' feet or any part of the foot to pass through or become caught in any openings in the floor; ~~and~~

Subsection (1)(B)(xi) is the appropriate place to address the type of flooring required in the animal's primary enclosure. As we mentioned in our comments to Sec. 91.102, the wire floor rules should be addressed in Sec. 91.104 dealing with Primary Enclosures and not in Sec. 91.102 dealing with Sheltered Housing Facilities. In Sec. 91.102 we strongly opposed the permanent "grandfathering" of existing facilities to allow them to have 100% wire flooring and we repeat that opposition here. We are opposed to animals being forced to stand on 100% wire or wire mesh flooring in perpetuity.

The commission is charged with adopting rules which ensure the overall health, safety, and well-being of each animal in the breeder's possession. Wire or wire mesh flooring does not meet this mandate as it neither promotes adequate health, proper sanitation, or safety for the animals, but instead harms them.

*Health Concerns:* Animals kenneled on wire flooring may remain standing longer because of the discomfort associated with lying down on this material. As a result, dogs may suffer damage to their paw pads from long-term contact with wire under the pressure of their body weight. It can cause painful cuts and cracks to their pads and put the dogs at risk of infection. In addition, dogs generally splay their paws in order to maintain their balance on wire flooring. As a result, they can develop painful inter-digital cysts and sores, which can disrupt their normal gait. Dogs' nails also overgrow--often in a curved manner--due to limited contact with solid surfaces and lack of pressure on the nails. With continued overgrowth, curved nails can become painfully embedded in the paw pads. Long nails also contribute to abnormal gait and can become caught in or around the wire. They may then be partially or completely torn off, causing bleeding and severe pain.

In addition, the size of the wire mesh can be a serious liability; entire paws and even limbs may slip through it, especially in the case of small puppies. If a dog struggles to pull a limb back through the mesh, it can cause severe lacerations, or broken bones or even unintentional amputation of that limb. In some cases, smaller dogs or puppies may get two or more limbs entrapped at once, and become unable to free themselves. Once trapped, these puppies' lives are in danger due to their inability to reach food, water and indoor shelter. In a kennel with stacked cages, dogs may injure or mutilate limbs of other dogs housed above.

The wire can also become extremely hot in warm temperatures or in sunlight. In cooler weather, wire mesh flooring allows for increased drafts in kennel cages. It is more difficult for dogs housed in drafty cages to thermo-regulate appropriately. The difficulties of moving naturally on grid flooring can cause animals to restrict their activity in order to avoid discomfort, and lead to anxiety, depression, frustration and other behavioral problems in animals denied solid resting surfaces.

*Sanitation Concerns:* Dog feces often stick to the wire or wire mesh material, becoming caked onto the wire. Once this fecal matter dries, it is very difficult to remove completely. The animals end up walking on fecal matter and mashing it through the openings with their feet resulting in unsanitary conditions, including that the disease-spreading fecal matter may become caked on the animals and their enclosures. In stacked-cage scenarios, wire mesh flooring amplifies the health risks for the dogs housed below.

*Safety Concerns:* Grid-style flooring frequently leads to entrapment or injury as dogs' and puppies' paws and toes become wedged or entangled in openings intended for feces. Unfortunately any gap large enough to allow fecal matter to drop through is large enough to entrap part of an animal's paw.

Grid flooring can bend and sag over time, leading to further safety issues. Wire coatings may be chewed off or crack and peel over time.

Even the USDA has found evidence that wire caging harms the health and well-being of the animals. Some examples from USDA inspection reports:

"During the inspection one cocker spaniel was not moving in the enclosure and upon closer observation it was evident that the pads of her right front foot were trapped in the wire mesh." (4/26/2010, #21-A-0135)

"Two puppies were observed with their feet passing through the mesh flooring. One puppy ... had its jaw actively stuck in the wire mesh. Both upper and lower jaw appeared stuck. Upon removal of the pup it was observed to be very weak and have a very slow heart rate and its breathing was extremely raspy. [...] The pup was taken to see the Attending Veterinarian ... The election to humanely euthanize this puppy was made."

Solid flooring is the standard flooring used in facilities housing dogs for an extended period of time, such as many boarding kennels and non-profit animal shelters. It is easier to clean and sanitize impermeable solid flooring than it is to remove feces that become caked on strand flooring. Solid flooring is more comfortable for animals, allowing them to play, jump and move about more naturally.

The rules should require at the very least that the floor include a resting board or sufficient solid floor space to allow each dog or cat to turn around freely, to stand, sit, lie in a comfortable position and to walk in a normal manner without any part of its body becoming in contact with the ceiling or any side of the enclosure. This is consistent with the requirement that at least 50% of the floor surface be solid flooring as stated elsewhere (Sec. 91.102) in these proposed rules.

We recommend that Subsection (1)(B)(xi) be amended to prohibit the use of wire or wire mesh flooring, or in the alternative be amended as follows:

(xi) Provide a resting board or sufficient solid floor space large enough to allow each dog or cat to turn about freely, to stand, sit, ~~and lie without its body being in contact with at least one side of the shelter walls~~ in a comfortable, normal position, and ~~to~~ walk in a normal manner, without any part of its body being in contact with the ceiling or any side

**of the enclosure. At least 50% of the floor space in the enclosure must be covered by a resting board or be a solid floor surface. The resting board must be of a non-toxic, durable, solid material that is impervious to moisture; easily cleaned and not susceptible to being chewed or destroyed by the animal; and**

The proposed rules fail to include Sec. 3.6(a)(2)(xii) of the federal regulations which imposes additional requirements and restrictions on the use of wire flooring. Failure to include these requirements and restrictions is a violation of the mandate in Sec. 802.201(b)(1) of the Act that the rules must include as a minimum the federal regulations. Thus, Subsection (1)(B)(xii) must be included in these proposed rules.

We recommend that it be added to read as follows:

**(xii) If any portion of the floor of a primary enclosure is constructed of wire or wire mesh, the metal strands must be greater than 1/8 of an inch in diameter (9 gauge) and coated with a bonded vinyl material such as plastic or fiberglass. Any suspended floor of a primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.**

#### **Additional Requirements for Cats – Subsection (2)**

Subsection (2)(E) must be changed to make the approval of less than 5% additional floor space be approved by the Department and not the attending veterinarian. Sec. 3.6(b)(1)(iii) of the federal regulations requires that any such lesser floor space must be approved by the “administrator” which is the federal counterpart to the “department”. It cannot be approved by the attending veterinarian. The reference in the federal regulations to the attending veterinarian applies only in the case of a research facility which is not applicable here. The federal regulations are clear that in the case of dealers (which are licensed breeders in the proposed rules) the approval must be by the “administrator” (which in the proposed rules is the “department”).

We recommend that Subsection (2)(E) be amended as follows:

(E) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices. If the additional amount of floor space for each nursing kitten is equivalent to less than 5 percent of the minimum requirement for the queen, such housing must be approved by the ~~attending veterinarian~~ **department**.

#### **Additional Requirements for Dogs – Subsection (3)**

Subsection (3)(A) and 3(B) deal with cage sizes for primary enclosures.

Subsection 3(B) establishes the desired minimum cage size recommended by the Advisory Committee which is two times the minimum cage size required by the federal regulations. We agree with and strongly support the minimum cage size requirements in (3)(B). However, these minimum cage size requirements apply only to dog breeder facilities licensed after September 1, 2012.

Subsection (3)(A) permanently “grandfathers” dog breeder facilities licensed on or before September 1, 2012, and allows those facilities to house dogs in smaller cages that meet the federal regulation cage size requirements in perpetuity. Thus, these breeders may continue to house their dogs in cages one-half the size recommended by the Advisory Committee as being the minimum to ensure the health and well-being of dogs in licensed breeder facilities.

According to the determinations set forth in the preamble to the proposed rules, this “grandfathering” was motivated to avoid the costs associated with bringing the existing cages into compliance. We understand the concern, but believe there should be a future time certain for the “grandfathering” to expire and all breeders be required to meet the enhanced standards and allow all animals in all licensed breeder facilities to have the same standards of housing. As stated above, varying requirements for breeders based on the date of the breeder’s original license will cause confusion for inspectors, who may not readily know which requirements apply to which breeders.

We recommend a “phase-in” period of two years – to wit, September 1, 2014 for all breeding facilities to meet the minimum cage size standards set forth in Subsection (3)(B). Also, we recommend that any primary enclosure built or installed at a “grandfathered” facility after September 1, 2012 must meet the cage size requirements in Subsection (3)(B).

To accomplish this, we recommend that the following paragraph (iv) be added to Subsection (3)(A) to read as follows:

**(iv) Notwithstanding the other provisions of this subsection (3)(A), a licensed facility covered by this subsection (3)(A) shall be required to meet the space requirements in subsection (3)(B) on or before September 1, 2014. Also, any primary enclosure constructed or installed at the facility after September 1, 2012 must meet the space requirements in subsection (3)(B).**

Also in Subsection (3)(B)(i), there is a critical typographical error in describing the method of calculation of the floor space. The “x2” referenced in the next to last sentence should be moved to the last sentence. We recommend that Subsection (3)(B)(i) be amended as follows:

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144 then multiply that result by 2. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) ~~x 2~~ = required floor space in square inches. Required floor space in inches/144 x 2 = required floor space in square feet.

Finally, both Subsections (3)(A)(ii) and (3)(B)(ii) should be changed to require the approval of less than 5% additional space come from the Department and not the attending veterinarian. Sec. 3.6(c)(1)(ii) of the federal regulations requires that approval come from the “administrator” which is the counterpart of the “department” in these proposed rules. Please see our comments under *Additional Requirements for Cats* above.

Subsection (3)(D) allows, upon approval of the attending veterinarian, the temporary tethering of dogs as a means of primary enclosure. Sec. 3.6(c)(2)(iv) of the federal regulations requires this approval be made by APHIS not a veterinarian. "APHIS" is the equivalent of the "department" and thus the department must make this determination and not the attending veterinarian.

We recommend that Subsection (3)(D) be amended as follows:

(D) Prohibited means of primary enclosure. Permanent tethering of dogs is prohibited for use as primary enclosure. Temporary tethering of dogs is prohibited for use as primary enclosure unless prior approval **by is obtained from the attending veterinarian department** and documented ~~by the attending veterinarian~~ in the medical records related to each dog to which the exemption applies.

Subsection (3)(E) allows the stacking of primary enclosures for dogs up to three enclosures high. Dog breeding facilities commonly use stacked cages to house more animals than a given space should reasonably hold. We recommend that no stacking of primary dog enclosures on top of one another in order to ensure and improve the health and well-being of the dogs for the following reasons:

First, stacking makes it more difficult for adequate lighting and air flow to reach all parts of the enclosures; in some cases some of the dogs in stacked cages have been found living in almost total darkness and neglect. Second, stacked cages encourage overcrowding. Third, dogs in stacked cages are often so high that caretakers or inspectors cannot easily observe the dogs to check on their well-being. The Sec. 2.40 of the federal regulations requires that every dog be observed every day. Allowing dogs to be stacked will, in some instances, make such observation impossible. Lastly, removal of the dogs and puppies from the highest or lowest tiers for maintenance or cleaning can be difficult and often leads to unsafe conditions or injury to the dogs.

Discussion of the recommendation at the Advisory Committee meeting to require "no stacking or limit stacking to only one tier" was dismissed based on the legal opinion of the department that the commission was not allowed to modify the stacking height restriction to a lesser height than that mentioned in Sec. 802.201(b)(7) despite the fact that Section 802.201(c) of the Act allows for modifications of the standards to protect the health and well-being of the animals, and the fact that Section 802.201(b) sets minimum, but not maximum, standards. The explanation given by the department was that the authority to modify standards in Section 802.201(c) applied only to the standards in the federal regulations. This interpretation is not in accordance with well-established rules of statutory construction. For example, if the Legislature had intended to limit the modification authority to only the "federal regulations," it would have used the defined term "federal regulations." Instead it used the term "existing standards."

We understand that additional legal opinions related to the department's interpretation of the Commission's authority to impose stricter standards than those specified in 802.201(b) are forthcoming. We also understand that the bill sponsor of HB 1451 has submitted a legislative intent letter confirming that the legislative intent was to give the Commission the authority to modify any standard set forth in the Act if needed to protect or improve the health and well-

being of the animals, and that the standards listed in 802.201(b) provide a floor, rather than a ceiling, for the humane care of the animals.

We recommend that Subsection (3)(E) be amended as follows:

(E) Prohibited stacking of primary enclosure ~~s~~. Primary enclosures for dogs may not be stacked ~~above three vertical levels one on top of another~~.

Alternatively, if any stacking is allowed it should be limited to only one cage on top of the bottom (ground) cage. At the very least, this allows the facility workers to view all the animals in the stacked cages to ensure that the cages are properly sanitized and cleaned, that the animals can be easily reached when necessary and that the animals are in good health.

#### **X. Sec. 91.106. Standards of Care – Exercise for Dogs.**

Sec. 802.201(b)(5) requires that unless otherwise certified by a veterinarian in a manner prescribed by the Department, a licensed breeder must provide each dog 12 weeks of age or older at least one hour of daily exercise in an area that is at least three times larger than the dog's primary enclosure. Sec. 91.106 of the proposed rules as currently written adopts some parts of the exercise provisions in Sec. 3.8 of the federal regulations, but does not clearly deal with all of the requirements of the Act. It also omits some minimum requirements in the federal regulations.

Also, in making references to cage sizes for primary enclosures, the proposed rules do not take into consideration that Sec. 91.104(3)(A) and (3)(B) require two different cage sizes.

Moreover, since the Act is specific as to minimum frequency (daily) and duration (one hour) of exercise, frequency and duration cannot be left to the attending veterinarian unless specific to a particular dog based on its health.

In order to bring the Act into harmony with the minimum requirements in the federal regulations, we recommend that Sec. 91.106 be amended as follows:

~~(a)~~ A licensee must develop, document, and follow an appropriate plan to provide dogs with the opportunity for at least one hour of daily exercise. In addition, the plan must be approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog. The plan must be made available to the department or an inspector on request. The plan must include written standard procedures to be followed in providing the opportunity for exercise.

(a) Dogs housed individually. An individually housed dog over 12 weeks of age, except bitches with litters, must be provided the opportunity for one hour of daily exercise unless the dog is kept in a primary enclosure that is at least three times the minimum required floor space for the dog's primary enclosure.

(b) Dogs housed in groups. Dogs over 12 weeks of age housed, held, or maintained in groups do not require additional opportunity for daily exercise if they are maintained in cages, pens, or runs that provide in total at least ~~300 percent of~~ three times the required

**primary enclosure** space for each dog if maintained separately. Such animals may be maintained in compatible groups, unless:

(1) In the opinion of the attending veterinarian, such housing would adversely affect the health or well-being of the dog(s); or

(2) Any dog exhibits aggressive or vicious behavior.

(c) Methods and period of providing exercise opportunity.

(1) The **method of providing exercise opportunity shall be determined by the attending veterinarian and documented by the attending veterinarian in the medical records of each dog. The frequency, method, and duration of the opportunity for exercise of a dog 12 weeks of age or older shall be ~~the~~ at least one hour each day unless a lesser frequency, method, and or duration is determined by the attending veterinarian and documented by the attending veterinarian in the medical records related to each that dog.**

(2) A licensed breeder must provide positive physical contact with humans that encourage exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily. The positive physical contact required by this section may be ~~concurrent~~ **provided concurrently** with the ~~required opportunity for dog's~~ daily exercise required in ~~subsection (a) this section~~.

(3) The opportunity for exercise required by this chapter may be provided in a number of ways, such as:

(A) Group housing in cages, pens or runs that provide at least ~~300 percent of three times~~ the required space for each dog if maintained separately under the minimum floor space requirements of §91.104(3)(A); **) or (B), as applicable;**

(B) Maintaining individually housed dogs in cages, pens, or runs that provide at least three times the minimum floor space required by §91.104(3)(A); **) or (B), as applicable;**

(C) Providing access to a run or open area that provides at least three times the minimum floor space required by §91.104(3)(A); **) or (B), as applicable;** provides adequate protection against harsh weather, including exposure to the sun; and has **solid** flooring with adequate drainage which may include natural turf or soil ~~at the frequency and duration prescribed by the attending veterinarian;~~ or

(D) Other similar activities approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog.

(4) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(d) Exemptions.

(1) If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the licensed breeder may be exempted from meeting the requirements of this section for those dogs. Such exemption must be documented by the attending veterinarian ~~and, unless in the medical records of each exempted dog. Unless~~ the basis for exemption is a permanent condition, **the exemption** must be reviewed at least every 30 days by the attending veterinarian.

(2) Records of any exemptions must be maintained separately for each dog and made available to the department ~~inspector~~ or ~~registered an~~ inspector upon request.

**Y. Sec. 91.107. Standards of Care – Feeding.**

Subsection (a) should require that any exception to the daily feeding of dogs and cats should be documented by the attending veterinarian in the medical records of the animal. We recommend that Subsection (a) be amended as follows:

(a) Dogs or cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care as documented by the attending veterinarian in the medical records of the animal. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet must be appropriate for the individual animal's age and condition.

**Z. Sec. 91.108. Standards of Care – Watering.**

The rules should require that potable water be made continually available to the dogs and cats unless restricted by the attending veterinarian and documented in the animal's medical records. Allowing one hour watering time twice daily is unenforceable. If an inspector arrives at the facility and there is no water, the breeder could simply say that the water was recently removed.

We recommend Sec. 91.108 be amended to read as follows:

**91.108. Standards of Care—Watering.**

~~If p~~ Potable, unfrozen water ~~is not~~ must be made continually available to the dogs or cats, ~~it must be offered to the dogs or cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time,~~ unless restricted by the attending veterinarian and documented in the animal's medical records. Water receptacles must be kept clean and sanitized in accordance with §91.109(b), and before being used to water a different dog or cat or social grouping of dogs or cats.

**AA. Sec. 91.109. Standards of Care – Cleaning, Sanitation, Housekeeping and Pest Control.**

Subsection (a) should require that any excreta and food waste must be removed at least once a day and more often as necessary regardless of the location of such waste. It is absurd to require removal from the primary enclosure daily but not under the primary enclosure. Feces that do drop through the wire or wire mesh accumulate on the floor below, attracting flies and other insects. These insects are not only a nuisance to the dogs, but can also pose a health risk to them. Fly strike can result in open wounds and insect bites and increase the likelihood of disease transmission. These facilities should be held to a high sanitation standard given the amount of animals housed within them.

Further, we recommend that when primary enclosures are being cleaned that the animals are removed from the enclosure during the cleaning process. Leaving animals in the cages causes stress to the animal and could be quite dangerous for the animals. Additionally, chemicals, hot water, and other solutions used to clean cages may be toxic to dogs. Exposure to them should be eliminated by removing the dogs from cages during cleaning.

We recommend Subsection (a) be amended to read as follows:

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures ~~daily~~ and from under primary enclosures as at least daily and more often as if necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, all dogs or cats must be removed, ~~unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process.~~ Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with wire or mesh type floors and the ground areas under raised runs with wire or mesh or slatted floors must be cleaned as at least daily or more often as if necessary to prevent accumulation of feces and food waste and to reduce disease hazards pests, insects and odors.

Subsection (b) should require that used primary enclosures and water and food receptacles be sanitized at least once a week. We recommend Subsection (b)(2) be amended to read as follows:

(b) Sanitization of primary enclosures and food and water receptacles.  
(2) Used primary enclosures and food and water receptacles for dogs or cats must be sanitized at least once every ~~2~~ weeks using one of the methods prescribed in subsection (b)(3), and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

Subsection (b) (3) should be amended to ensure that any wire and wire mesh flooring is also sanitized utilizing the methods set forth in the rule. Nowhere in the rule does it require wire and wire mesh flooring to be properly sanitized.

We recommend Subsection (b)(3) be amended to read as follows:

(3) Hard surfaces, including wire and wire mesh surfaces, of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

#### **BB. Sec. 91.110. Standards of Care – Onsite Personnel.**

Subsection (b) should require that the department approve all trainings to ensure that the subject matter taught is in compliance and consistence with these rules. Also, there are some clean-up amendments offered as well.

We recommend Subsection (b) be amended to read as follows:

(b) Each employee of a licensed facility whose duties or responsibilities include the handling of or caring for a dog or cat shall have the appropriate training approved by the

~~department and~~ documented by the licensee; ~~to include~~. The training must at ~~the a~~ minimum ~~subject matter covering~~ include basic animal care and handling, prevention of infectious disease, and kennel sanitization.

#### CC. Sec. 91.112. Standards of Care – Veterinary Care.

Under Subsection (b) the Rules should go farther in protecting animals from surgical procedures conducted by non veterinarians. The rule should only allow a licensed veterinarian to perform surgical procedures such as caesarian birth as well as debarking, tail docking, ear cropping, or claw removal. These procedures should not be conducted by untrained individuals as they involve complicated veterinary surgical skills that the average licensed breeder does not possess, as well as require anesthesia and prescription drugs a layperson cannot obtain or dispense legally.

Discussion of the recommendation at the Advisory Committee meeting to require additional procedures to be added to subsection (b) was dismissed outright based on the legal opinion of the department that the Commission was not allowed to include any other procedure except what is enumerated in Sec. 802.201(b)(11), despite the fact that Section 802.201(c) of the Act allows for modifications of the standards to protect the health and well-being of the animals, and despite the fact that the standards in Sec. 802.201(b)(11) provide a floor, rather than a ceiling, for animal care. We strongly disagree with the department's interpretation of the statute for the reasons stated in our comments on stacking under 91.104, which will also be further explained in forthcoming legal opinions.

We recommend Subsection (b) be amended to read as follows:

(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical procedure such as caesarian birth, debarking, tail docking, ear cropping, or claw removal.

Sec. 2.40 of the federal regulations requires that an attending veterinarian be employed by a licensee and that the attending veterinarian maintain a written program of veterinary care with regular visits to the facility. This same standard should be applied to licensed breeders under these rules. Sec. 2.40 of the federal regulations also sets forth other provisions governing the veterinary care of dogs and cats in breeding facilities which should be included in these rules.

Routine health care of animals at breeding facilities is imperative. The rules should require that all preventative health care and all care or treatment for injury, disease or illness is documented in the medical records of the individual animals and be made available to the department or inspector upon request. The records should be maintained at the licensed breeding facility for two years as consistent with Section 91.77 of the rules.

Basic routine preventative care should include flea, tick and heartworm prevention as many of the animals coming from these facilities have a high incident rate of these issues. Further, daily observation of all animals at breeding facilities should be required so that the licensed breeder can ensure that the animals are in good health and not in need of any medical attention.

We recommend Subsection (c) –(d) be amended to read as follows:

**(c) A licensed breeder shall employ an attending veterinarian under formal arrangements. In the case of a part-time veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the licensed breeder’s facility. The licensed breeder shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and oversee the adequacy of other aspects of animal care and use.**

**(d) Routine and preventative care. A licensed breeder shall develop and maintain at each of the breeder’s facilities a written health care management protocol approved by a veterinarian that addresses routine and preventative healthcare for each animal in the facility, including flea, tick, heartworm and parasite prevention. The protocol shall also include daily observation of all animals to assess their health and well-being; provided, however, that daily observation of animals may be accomplished by someone other than the attending veterinarian; and provided, further, that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian.**

**(1) The breeder shall ensure that the protocol is followed and that routine and preventive healthcare is provided to each animal in the facility and that each animal ~~received~~ receives prompt, appropriate care and treatment for any injury, disease, or illness that may affect the animal’s health or well-being. All preventative healthcare provided and all care or treatment for injury, disease or illness must be documented in the medical records of the animal and made available to the department or an inspector upon request.**

**(2) The written health care management protocol required by this section must contain all health care records required by this chapter including all exemptions authorized by this chapter and approved by the attending veterinarian. The protocol must be made available to the department or an inspector upon request.**

**(3) On transfer or sale of the animal, a copy of the written health care management protocol required by this section must be transferred with the animal and the original records retained by the licensee.**

**(4) Records required under this section shall be kept at the licensed facility where the animal is housed for two years from the date of the last entry in the records or the date the animal left the facility, whichever is later.**

**(e) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.**

#### **DD. Sec. 91.113. Standards of Care – Sales and Transfers**

As worded this section seems confusing and we recommend that some changes be made in the draft language to make it more clear. We recommend this Sec. 91.113 be amended as follows:

##### **91.113. Standards of Care--Sales and Transfers.**

A licensed breeder shall not sell, trade, or give away an animal before the animal **has been weaned and** is at least eight weeks of age and **weighs at least** two pounds or, **if less than two pounds, is at least** twelve weeks of age **and has been weaned.**

**EE. Sec. 91.202. Transportation Standards – Primary Enclosure Used to Transport Live Dogs or Cats.**

The wording in Subsection (9) is unclear and does not address the requirement for licensees who consign animals to others for transportation. The point to be made in Subsection (9) is that a licensee who consigns a dog or cat for transportation must use only carriers and intermediate handlers licensed to do so.

We recommend that Subsection (9) be amended to read as follows:

**(9) Consignment for transportation. A licensee who consigns a dog or cat for transportation shall use only carriers and intermediate handlers regulated by the United States Department of Agriculture under the federal regulations and ensure that such carrier or intermediate handler complies with all applicable provisions of the federal regulations. A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a license issued by the federal regulatory agency.**

**FF. Statutory Construction of Section 802.201 of the Act**

As noted above, at the Advisory Committee meeting of January 4, 2012, recommendations were made to strengthen the standards enumerated in Section 802.201(b), including the standards relating to the stacking of cages (802.201 (b)(7)) and veterinary care (802.201(b)(11)). The department dismissed those recommendations asserting that that Section 802.201(c), which allows the Commission to modify existing standards, was limited only to modifications to the federal regulations (802.201(b)(1)). Such a conclusion is not only erroneous, it also deprives the animals that are the beneficiaries of the statute the very protection the legislature intended to extend to them.

The Act provides clear guidance to the Commission on its role and latitude in adopting rules establishing minimum standards. Section 801.201(a) directs the commission to “adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety and well-being of each animal in the breeder’s possession.” Section 801.201(b) requires that any rules adopted by the Commission that pertain to subject matters covered by federal regulations must, at a minimum, meet those regulations. Subsections (b)(2)-(13) set forth standards related to subject matters addressed in our comments. These standards provide a baseline as to what subject matters must be included within the rules adopted by the Commission. It is clear, however, that the legislature intended these standards to only be the starting point for the Commission’s rule making duties. There is nothing in the statute that prevents the Commission from imposing standards that go beyond those provided in 802.201(b). Indeed, the Commission can only carry out the legislature’s directive in 802.201(a) by establishing rules that are more stringent than the baseline standards set out in (b)(2)-(13).

Further, Section 802.201(c) allows the commission to “modify existing standards as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public.” Thus, if the Commission finds that standards that go beyond those provided in

802.201(b) are necessary for such reasons, it may impose such stricter standards. If the legislature intended to limit the Commission's modification authority only to the federal regulations, it would have referenced the defined term "federal regulations" in subsection (c). Yet, the legislature chose to use the term "existing standards," without limitation.

Accordingly, and as will be further explained in forthcoming legal opinions, the department's interpretation of the Act limiting the Commission's rulemaking authority violates numerous rules of statutory construction and is both unreasonable and contradictory to the plain language of the Act.

The primary purpose of Chapter 802 is to improve upon the sub-standard living conditions of dogs and cats at breeding facilities throughout the state. This is evinced in the bill analyses in the House Committee Report, the Engrossed House Bill, and the Senate Committee Report, which highlight the plight of animals in these facilities that, in the words of the legislature, "do not provide adequate and humane care for the animals they are breeding, many times failing to keep animals properly sheltered or to provide adequate veterinary attention."<sup>1</sup> The Department's unlawful interpretation of the statute thwarts the Commission's ability to fulfill this purpose.

#### **GG. Closing.**

In closing, we wish to thank you for allowing us the opportunity to submit our comments and recommendations set forth above. We realize the complexity and detail of rules and regulations dealing with the housing, care, and transportation of dogs and cats. We further realize that compromise and accommodations are a necessary part of the administration and enforcement of new regulatory programs such as the one before us and hope that you will accept our comments and recommendations in the spirit given.

In that context, although we believe all of our comments and recommendations are important and need to be addressed, we strongly urge you to give your highest priority to our comments and recommendations in Sec. 91.102 regarding wire flooring and temperature control; in Sec. 91.104 regarding wire flooring in primary enclosures, grandfathering cage size requirements, correcting the typographical error in the equation to determine required cage space, and stacking of primary enclosures for dogs; in Sec. 91.106 regarding exercise; and in Sec. 91.112 regarding veterinary care.

---

<sup>1</sup> House Committee Report, C.S.H.B. 1451, *Bill Analysis: Background and Purpose*, (date not available), available at <http://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/HB01451H.pdf#navpanes=0>; Engrossed House Report, H.B. 1451, *Bill Analysis: Author's / Sponsor's Statement of Intent*, May 10, 2011, available at <http://www.capitol.state.tx.us/tlodocs/82r/analysis/pdf/HB01451E.pdf#navpanes=0>; Senate Committee Report, C.S.H.B. 1451, *Bill Analysis: Author's / Sponsor's Statement of Intent*, May 14, 2011, available at <http://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/HB01451S.pdf#navpanes=0>.

Should you have any questions or need additional information please contact Nicole Paquette with HSUS (Tel: 512/550-2150; Email: [npaquette@humanesociety.org](mailto:npaquette@humanesociety.org)), Skip Trimble with THLN (Tel: 214/855-2960; Email: [skip@catlyn.net](mailto:skip@catlyn.net)); or Cori Menkin with ASPCA (Tel: 212/876-7700-x4549; Email: [cori.menkin@aspca.org](mailto:cori.menkin@aspca.org)).

Respectfully submitted,



---

Nicole Paquette  
Texas Senior State Director  
The Humane Society of the United States



---

Skip Trimble  
Legislative Committee Chair  
Texas Humane Legislation Network



---

Cori Menkin  
Senior Director, Puppy Mills Campaign  
American Society for the Prevention of Cruelty to Animals

Enc: Attachment 1 -Red Lined Comments of the Draft Regulations

## **Attachment 1 -Red Lined Comments of the Draft Regulations**

**Submitted by: The Humane Society of the United States, Texas Humane Legislation Network,  
and the American Society for the Prevention of Cruelty to Animals  
February 13, 2012**

### **TITLE 16.ECONOMIC REGULATION**

#### **Part 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

##### **Chapter 91. DOG OR CAT BREEDERS PROGRAM**

**16 TAC §§91.1, 91.10, 91.20 - 91.25, 91.27 - 91.30, 91.40, 91.41, 91.50 - 91.62, 91.65, 91.66, 91.71 - 91.78, 91.80, 91.90 - 91.92, 91.100 - 91.113, 91.200 - 91.202**

The Texas Department of Licensing and Regulation (Department) proposes new 16 Texas Administrative Code (TAC) Chapter 91, §§91.1, 91.10, 91.20 - 91.25, 91.27 - 91.30, 91.40, 91.41, 91.50 - 91.62, 91.65, 91.66, 91.71 - 91.78, 91.80, 91.90 - 91.92, 91.100 - 91.113, and 91.200 - 91.202, regarding the licensing and regulation of the dog and cat breeders program.

These proposed new rules are necessary to implement House Bill 1451, 82nd Legislature, Regular Session, 2011 regarding the licensing and regulation of certain dog and cat breeders.

Proposed new §91.1 provides the authority under which the rules are authorized.

Proposed new §91.10 defines the following terms in the rules: Adult animal, Animal, Cat, Commission, Controlling person, Department, Dog, Dog or cat breeder, Facility, Federal regulations, Intact female animal, Kitten, Licensed breeder, Possess, Primary enclosure, Puppy, Third-party inspector, Veterinarian, and Wire or Wire Mesh.

Proposed new §91.20 establishes the applicability of the rules.

Proposed new §91.21 creates presumptions about each adult intact female animal.

Proposed new §91.22 requires a license for certain persons and facilities engaged in the breeding of dogs and cats.

Proposed new §91.23 establishes the requirements to obtain a breeding license.

Proposed new §91.24 establishes the requirements to renew a breeding license, the consequences for allowing a license to lapse, and the responsibility for tracking the expiration date.

Proposed new §91.25 explains the permissible and mandatory reason a license could be denied.

Proposed new §91.27 provides due process requirements when a license is denied.

Proposed new §91.28 prescribes the methods for notice of Department action.

Proposed new §91.29 establishes the term of a license at one year.

Proposed new §91.30 sets forth the circumstances under which a license is not required and provides examples of evidence which might satisfy the burden of proving entitlement to the exemption.

Proposed new §91.40 establishes the requirement for registering as a third party inspector.

Proposed new §91.41 establishes the requirement to renew a third party inspector registration.

Proposed new §91.50 describes the requirements to obtain a precicensing inspection of breeding facilities.

Proposed new §91.51 provides an exemption to the requirement for obtaining a precicensing inspection of breeding facilities.

Proposed new §91.52 requires that each licensed facility be inspected in defined intervals for those and the procedures for conducting those inspections.

Proposed new §91.53 provides for additional inspections of facilities that fail to comply with the established rules of conduct or standards and prescribes the intervals for those additional inspections.

Proposed new §91.54 describes the procedures following a periodic or out-of-cycle inspection.

Proposed new §91.55 establishes a directory of licensed breeders and of third-party inspectors.

Proposed new §91.56 creates a database of dog or cat breeders who have been subject to disciplinary action or sanctions.

Proposed new §91.57 requires the Department to engage in certain consumer information activities.

Proposed new §91.58 authorizes the Department to accept certain donations and limits the purpose or manner the donations may be expended.

Proposed new §91.59 requires the design and creation of an online complaint reporting system.

Proposed new §91.60 authorizes the Department to make payment for information leading to final orders finding unlicensed activity.

Proposed new §91.61 mandates that inspectors complete training or continuing education.

Proposed new §91.62 requires third party inspectors be issued photo identification.

Proposed new §91.65 discusses the purpose, composition and powers of the advisory committee.

Proposed new §91.66 establishes the responsibilities of inspectors, the scope of inspections and investigations, and requires the reporting of animal cruelty.

Proposed new §91.71 establishes the advertising standards for licensed breeders.

Proposed new §91.72 requires the open display of licenses issued to breeders.

Proposed new §91.73 requires that licensed breeders have a copy of the law and rules related to dog and cat breeders on site at each facility.

Proposed new §91.74 describes certain provisions which are required in every contract for the sale or transfer of animals.

Proposed new §91.75 requires 10-days notice after changes occur in the address, name, management, or controlling person of the business or operation of a licensee.

Proposed new §91.76 describes the requirements related to the annual inventory of animals that a licensee must keep.

Proposed new §91.77 describes the content of certain records as well as the storage of and retention period for those records.

Proposed new §91.78 requires a licensee to assist and cooperate with inspectors upon request.

Proposed new §91.80 establishes fee schedules for inspections, initial and renewal applications, and other license related fees.

Proposed new §91.90 provides for the imposition of administrative penalties and sanctions.

Proposed new §91.91 states the statutory authority to enforce the chapter.

Proposed new §91.92 provides for license revocation and suspension.

Proposed new §91.100 establishes general requirement for the construction of housing conditions of the site, maintenance and replacement of surfaces, cleaning, shelter utilities, storage, drainage and waste disposal, and washroom and sinks.

Proposed new §91.101 establishes the standards of care for indoor housing facilities related to heating, cooling and temperature control, ventilation, lighting, and interior surfaces.

Proposed new §91.102 establishes the standards of care for sheltered housing facilities related to heating, cooling and temperature control, ventilation, lighting, shelter from the elements, and surfaces.

Proposed new §91.103 establishes standards of care for outdoor housing facilities with certain restrictions, shelter from the elements, and construction requirements.

Proposed new §91.104 establishes general standards of care related to primary enclosures for dogs and cats. There are additional requirements for cats related to space, compatibility, litter, resting surfaces. There are additional requirement for dogs related to space and compatibility.

Proposed new §91.105 establishes standards of care related to animal grouping compatibility.

Proposed new §91.106 establishes exercise requirements of dogs and provides for limited qualified exceptions.

Proposed new §91.107 provides the standards of care regarding animal feeding.

Proposed new §91.108 provides the standard of care regarding the provision of water to animals.

Proposed new §91.109 establishes the standards of care for cleaning, sanitization, housekeeping and pest control in primary enclosures.

Proposed new §91.110 requires a licensee maintain sufficient trained onsite personnel at each licensed facility.

Proposed new §91.111 establishes a requirement for the grooming of animals.

Proposed new §91.112 requires an annual examination and preventative care, provides for rest between breeding cycles and prohibits euthanasia and certain surgical procedures unless performed by a licensed veterinarian.

Proposed new §91.113 establishes requirements related to the sale and transfer of animals.

Proposed new §91.200 establishes food and water requirements for animals in transport.

Proposed new §91.201 establishes transportation requirements related to heating, cooling and temperature, ventilation and lighting.

Proposed new §91.202 establishes standards related to the primary enclosure used to transport live animals with respect to construction of the enclosure, cleaning, ventilation, animal compatibility, space, and placement.

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed new rules are in effect, there will be costs to the Department to enforce and administer these proposed rules. The expected cost is approximately \$565,000 per year. Fees, which are included in the proposed new rules, have been set to generate revenues sufficient to cover these costs. There is no anticipated fiscal implication for units of local government.

Mr. Kuntz has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will be the licensing of dog and cat breeders engaged in the breeding and sale of dog and cats ensuring the quality of life of the animals is maintained at a safe and humane level. In addition, the proposed new rules will more clearly level the competitive field between regulated breeders by requiring they maintain records and provide medical care for each animal thus standardizing basic levels of care.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, beyond the license fees discussed below, there will be no new economic costs imposed on businesses that comply with the licensing on or before the September 1, 2012 effective date for obtaining a breeders' license. Since the number of potential licensees is unknown as well as whether those potential licensees currently operating within the standards established by these rules, the Department is without information to quantify the potential cost increases. In consideration of the potential cost increases and balancing the interests and welfare of the animals, the Department believes that grandfathering the size of the enclosures (§91.104(3)) and the required solid flooring (§91.102(e)(1)) will minimize eliminate those potential cost increase to persons complying with the licensing requirements by September 1, 2012, the date of statutory compliance. For those potential licensees who choose not to obtain a license on or before the licensing effective date, the Department believes those additional costs are voluntarily assumed by the licensee's failure to obtain a license within the statutory timeframe. Persons required to obtain a license under the new employee licensing requirements will be subject to new fees; however, those fees are imposed by statute and not a result of this chapter. Except for the licensing fees, the Texas Department of Licensing and Regulation request that interested parties provide additional costs estimates for implementation of these proposed rules and suggest alternative less costly methods for compliance.

In drafting the proposed rules, and consistent with other regulated programs, the Department minimizes any adverse economic effect by allowing for electronic registrations and filings. There is no anticipated negative impact on local employment.

Comments on the proposal may be submitted by mail to Melissa Rinard, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; by facsimile to (512) 475-3032; or by email to [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapter 802 which directs the Department's governing body, the Texas Commission of Licensing and Regulation, to adopt rules to implement the licensed breeders program, and Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 802. No other statutes, articles, or codes are affected by the proposal.

***§91.1.Authority.***

This chapter is adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 802.

***§91.10.Definitions.***

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult animal--An animal six months of age or older.
- (2) Animal--A dog or a cat.

~~(3)~~ Attending Veterinarian--A veterinarian with whom the licensee has a veterinarian-client-patient relationship as required by Occupations Code Rule 801.351. The name and contact information of the attending veterinarian for each facility must be on file with the department.

~~(4)~~ Carrier--The operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

~~(5)~~ Cat--A mammal that is wholly or partly of the species Felis domesticus.

~~(6)~~ Commission--The Texas Commission of Licensing and Regulation under Texas Occupations Code, Chapter 51.

~~(7)~~ Controlling person--An individual who:

- (A) is a partner, manager, director, officer, or member of a dog or cat breeder;
- (B) possesses the authority to set policy or direct management of a dog or cat breeder; or
- (C) possesses a direct or indirect control of 25 percent or more of a dog or cat breeder.

~~(8)~~ Department--The Texas Department of Licensing and Regulation under Texas Occupations Code, Chapter 51.

~~(9)~~ Dog--A mammal that is wholly or partly of the species Canis familiaris.

~~(10)~~ Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for

consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.

**(911) Facility**--The premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property, and confinement areas used to conduct the breeding business.

**(1012) Federal regulations**--The specifications for the humane handling, care, treatment, and transportation of dogs and cats set forth in 9 C.F.R. Part 3, Subpart A.

**(11)(13) Impervious surface**--A surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

**(14) Indoor housing facility**--Any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(A) it must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(B) it must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(C) it must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

**(15) Intact female animal**--A female animal that has not been spayed and is capable of reproduction.

**(12)(16) Intermediate handler**--Any person, including a department, agency, or instrumentality of the United States or of any State or local government, who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

**(17) Kitten**--A cat less than six months old.

**(1318) Licensed breeder or licensee**--A dog or cat breeder who holds a license issued under this chapter.

**(14)-(19) Nonconditioned animals**--Animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

**(20) Outdoor housing facility**--Any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in this rule, and in which temperatures cannot be controlled within set limits.

**(21) Positive physical contact**--Petting, stroking, or other touching, which is beneficial to the well-being of the animal.

**(22) Possess**--To have custody of or control over.

~~(1523)~~ *Primary enclosure*--Any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.

~~(1624)~~ *Puppy*--A dog less than six months old.

~~(1725)~~ *Sanitize*--To make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

~~(26)~~ *Sheltered housing facility*--A housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

~~(27)~~ *Third-party inspector*--Any of the following entities with which the department contracts under Texas Occupations Code, §802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

~~(1828)~~ *Veterinarian*--A veterinarian in good standing and licensed to practice veterinary medicine in this state.

~~(1929)~~ *Wire or Wire Mesh*--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with within a plastic or rubberized thick bonded vinyl coating and that cannot be damaged by an animal's chewing and that is designed so no part of the animal's toes or paws are unable to extend through, or become caught in, the floor openings.

#### *§91.20. Applicability.*

(a) This chapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state.

(b) This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats.

(c) This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

#### *§91.21. License Required--Presumptions.*

For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

#### *§91.22. License Required--Dog or Cat Breeder.*

(a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state.

(b) A license for a single facility may cover more than one building on the same premises.

(c) For purposes of this section, each noncontiguous premise or physical location is a separate facility and must obtain a license under this chapter.

***§91.23. License Requirements--Dog or Cat Breeder.***

To be eligible for a Dog or Cat Breeders license, an applicant must:

- (1) submit a completed application on a department approved form;
- (2) provide a valid state sales tax identification number ~~or exemption certificate number;~~;
- (3) provide the name, and address of each controlling person;
- (4) successfully pass a criminal background check for each applicant and controlling person;
- (5) successfully pass a facility prelicense inspection conducted by a department approved inspector or, if applicable, provide the department with a valid copy of the applicant's Class A animal dealers license number, together with a signed statement certifying that the applicant's facility meets the requirements of this chapter; and
- (6) pay the fee required under §91.80.

***§91.24. License Requirements--Dog or Cat Breeders License Renewal.***

(a) To renew a breeder license, an applicant must:

- (1) submit a completed application on a department approved form;
- (2) provide a valid state sales tax identification number ~~or exemption certificate number;~~;
- (3) provide the name, and address of each controlling person;
- (4) successfully pass a criminal background check for each applicant or controlling person;
- (5) be in compliance with all Commission Orders directed to applicant or a controlling person; and
- (6) pay the fee required under §91.80.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal--the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.

(c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

***§91.25. License Approval and Issuance.***

(a) The department shall deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.

(b) The department may deny issuance of a license to, or refuse to renew the license held by a person who:

- (1) fails to meet the requirements of this chapter and rules adopted under this chapter;
- (2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;
- (3) has falsified any material information requested by the department;
- (4) has failed to meet a standard adopted by rule under this chapter; or
- (5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

***§91.27. License or Registration--Notice of Proposed Denial, Opportunity to Comply.***

(a) If the department recommends denial of an application for a license or registration under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

***§91.28. Department Notifications to Licensee or Registrant.***

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

***§91.29. License or Registration--Term.***

A license or registration issued by the department is valid only for the person named on the license or registration; applies only to the single facility, agency, department or person named on the license or registration; is nontransferable and is valid for 12 months from the date of issuance.

***§91.30. Exemptions.***

(a) This section applies only to a dog bred with the intent that it be used primarily for:

- (1) herding livestock, as defined by §1.003, Agriculture Code, or other agricultural uses;
- (2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or
- (3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by subsection (a).

(c) Notwithstanding subsection (b), a person described by subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by §91.10(8).

(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

- (1) evidence of agriculture activity or business operations using a dog described by this section;
- (2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

***§91.40. Third-Party Inspector Registration Requirements.***

(a) An applicant seeking ~~ana~~ third-party inspector registration must:

- (1) be a state agency, local law enforcement agency, fire department; or
- (2) be an employee of an agency or department identified in subsection (a)(1);
- (3) submit a completed application on a department-approved form; and
- (4) pay the fee required under §91.80.

(b) An applicant seeking ~~ana~~ third-party inspector registration under subsection (a)(1) must:

- (1) submit the names of persons who will perform inspections on behalf of the registrant; and
- (2) submit proof that each person named in subsection (b)(1) successfully completed training required by §91.61.

(c) An applicant seeking ~~ana~~ third-party inspector registration under subsection (a)(2) must:

- (1) submit proof of current employment;
- (2) successfully complete training required by §91.61; and
- (3) successfully pass a criminal background check.

**§91.41. Third-Party Inspector Registration Renewal Requirements.**

(a) To renew ~~an~~ third-party inspector registration, an applicant must:

- (1) be a state agency, local law enforcement agency, fire department; or
- (2) be an employee of an agency or department identified in subsection (a)(1);
- (3) submit a completed application on a department-approved form; and
- (4) pay the fee required under §91.80.

(b) An applicant seeking renewal under subsection (a)(2) must:

- (1) submit proof of employment; and
- (2) successfully pass a criminal background check.

(c) To renew and maintain continuous registration, the renewal requirements under this section must be completed prior to the expiration of the registration. A late renewal means the third-party inspector will have an unregistered period from the expiration date of the expired registration to the issuance date of the renewed registration. During the unregistered period, a person may not perform the functions of ~~an~~ third-party inspector under this chapter.

(d) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

**§91.50. Inspections--Prelicense.**

(a) Except as provided by §91.51, the department shall inspect a facility before a license is issued for the facility.

(b) The department may not issue a license to a breeder until the department receives a prelicense inspection report from the inspector in a format approved by the department certifying that the facility meets the requirements for a license.

(c) Before the prelicense inspection may be conducted, applicant must pay to the department the required prelicense inspection fee under Section 91.80 and the reasonable expenses of the department related to its licensing and inspection duties under this chapter.

(d) An applicant whose facility does not meet the requirements of this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department.

**§91.51. Inspections--Prelicense Exemption.**

The department may not require a prelicense inspection of a facility for an applicant who:

(1) holds a current Class A animal dealers license issued by the United States Department of Agriculture under the Animal Welfare Act (7 U.S.C. §2131, et seq.); and

(2) submits to the department:

(A) a copy of the license; and

(B) on a form prescribed by the department, provide a statement certifying that the facility meets the requirements of this chapter ~~and rules adopted under this chapter.~~

**§91.52. Inspections--Periodic.**

(a) Each facility of a licensed breeder shall be inspected at least once in every 18-month period.

- (b) The inspection must be conducted during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.
- (c) If necessary to adequately perform the inspection, the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility. The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.
- (d) An inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals.
- (e) The inspector may request that relevant documents or records be provided for inspection.
- (f) The inspector shall submit an inspection report to the department not later than the 10th day after the date of the inspection on a form prescribed by the department and provide a copy of the report to the licensed breeder or its representative.
- (g) Based on the results of the periodic inspection, a licensed facility may be moved to an out-of-cycle inspection provide for in §91.53. The department will notify the owner of the facility, in writing, if the facility becomes subject to out-of-cycle inspection and the scheduled frequency of inspections.
- (h) The licensee, manager, or representative must, upon request, make available to the inspector all records and other documents required by this chapter.
- (i) On completion of the periodic inspection and ~~on a form approved by the department, while the inspector is~~ at the facility, the inspector shall leave ~~proof of inspection~~ with the licensee or representative of ~~the licensee~~ a preliminary report, on a form approved by the department, listing the ~~rule sections/items~~ not meeting the requirements of this chapter. ~~The proof/licensee or representative of the licensee shall sign a receipt of inspection required by this~~ the preliminary report. The signing of the receipt by the licensee or representative of the licensee shall not be deemed agreement to the findings in the preliminary report. The preliminary report required by this section is in addition to the ~~completed/final~~ report required by this chapter and does not affect the validity of the ~~completed~~ detailed/final report.
- (j) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations.
- (k) The department may assess administrative penalties and/or administrative sanctions for violations disclosed during inspections under this chapter.

*§91.53. Out-of-Cycle Inspections.*

- (a) Out-of-cycle inspections are those required in addition to periodic inspections required under §91.52 for licensed facilities to ensure compliance with this chapter.
- (b) To determine which licensee will be subject to out-of-cycle inspections, the department has established criteria and frequencies for inspections.
- (c) The owner of the facility shall pay the fee required under §91.80 for each out-of-cycle inspection.
- (d) Facilities subject to out-of-cycle inspections ~~may~~will be scheduled for inspection based on the following risk criteria and inspection frequency:

Figure: 16 TAC §91.53(d)		
Tier	Criteria	Total Inspection Frequency (includes both periodic and out-of-cycle inspections)
Tier 1	<del>A</del> <u>Violation</u> of the rules related to records required by this chapter.	<del>At least Once</del> <u>At least Once</u> each year
Tier 2	<del>A serious or repeated</del> <u>violation relating to of the sanitation requirements of this</u>	<del>At least Twice</del> <u>At least Twice</u> each year

	<del>chapter violations or</del> Failure to timely remedy violations documented during <del>periodic</del> inspections, <del>or</del> investigations <del>of</del> . <del>Fails to comply with a</del> commission orders.	
Tier 3	<del>Repeated, serious v</del> iolations related to shelter, food, water, <del>and</del> safety, or healthcare required by this chapter. <del>medical treatment or examinations.</del>	At least <del>F</del> four times each year

(e) At the time of inspection of a licensee, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) On completion of the out-of-cycle inspection and ~~on a form approved by the department, while the inspector is~~ at the facility, the inspector shall leave ~~proof of inspection,~~ with the licensee or representative of ~~the~~ licensee, ~~a preliminary report, on a form approved by the department~~ listing the ~~rule sections~~ items not meeting the requirements of this chapter. ~~The~~ ~~proof~~ licensee or representative of ~~the licensee shall sign a receipt of inspection required by this~~ the preliminary report. ~~The signing of the receipt by the licensee or representative of the licensee shall not be deemed agreement to the findings in the preliminary report. The preliminary report required by this~~ section is in addition to the ~~completed~~ final report required by this chapter and does not affect the validity of the ~~completed~~ ~~detailed~~ final report.

(g) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations identified during the out-of-cycle inspection.

(h) Facilities on an out-of-cycle inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent out-of-cycle inspection schedule or returned to a periodic schedule of inspections. The department will notify the licensee, in writing, if there is a change in the facility's out-of-cycle schedule or if the facility is returned to a periodic inspection schedule.

(i) Nothing in this section shall be deemed to prohibit additional out-of-cycle inspections as necessary to ensure compliance with this chapter.

*§91.54. Corrective Actions Following Periodic or Out-of-Cycle Inspections.*

(a) When corrective actions to achieve compliance are required:

- (1) the department shall provide the licensee a list of required corrective actions; and
- (2) within 15 calendar days after receiving the list of required corrective actions, the license shall complete all corrective actions and provide written verification of the corrective actions to the department.

(b) The department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(c) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to timely complete corrective actions or timely provide written verification of the completion of corrections to the department.

*§91.55. Responsibilities of the Department--Directory.*

(a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

(b) The department shall make the directory available to the public.

***§91.56. Responsibilities of the Department--Disciplinary Database.***

- (a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions, including the dates, nature, and outcome of such action or sanctions.
- (b) The department shall make the information maintained in the database available to the public.

***§91.57. Responsibilities of the Department--Consumer Interest Information.***

- (a) The department shall prepare information of consumer interest describing:
  - (1) the functions performed by the department under this chapter; and
  - (2) the rights of a consumer affected by this chapter.
- (b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department.
- (c) The department shall make the information available to the public.

***§91.58. Responsibilities of the Department--Donations, Disbursements and Reporting.***

- (a) The executive director shall develop procedures for the acceptance, conversion, and deposit of all donations offered by individuals, clubs, organizations, and all other sources.
- (b) Conversion of donations of real or personal property into United States currency shall be accomplished by the executive director or designee.
- (c) Donations received shall be deposited in a dedicated training and enforcement account in the general revenue fund to the credit of general revenue subject to exemption from the application of §403.095, Government Code.
- (d) The executive director shall approve in writing all disbursements from the training and information account.
- (e) A disbursement under this section may include but is not limited to promotional costs to enhance the fund.
- (f) All donations may be used for these purposes unless otherwise specifically prohibited by the donor.
- (g) All disbursements from the accounts will be by check signed by the director.
- (h) The commission will be furnished a quarterly report detailing all deposits into and expenditures from the fund.

***§91.59. Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.***

- (a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.
- (b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.
- (c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.
- (d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.
- (e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.

***§91.60. Responsibilities of the Department--Payment of Rewards.***

- (a) The amount of reward granted to eligible applicants may not exceed \$1,000 and shall be determined on a case by case basis by the executive director.
- (b) In the event two or more eligible applicants furnish information pertaining to unlicensed activity, the reward may be divided among the eligible applicants in an amount determined by the executive director.

- (c) A reward under this section must be authorized by the executive director in writing stating the public purpose served by the payment.
- (d) A decision by the executive director to pay or otherwise allocate reward payments is within the sole discretion of the executive director and this chapter in no way provides an independent right to such payments, if any.
- (e) If the commission issues a final order finding unlicensed activity by a person named in the complaint submitted under this section, the department shall issue payment to the person or persons providing the information as soon thereafter as is practical.

*§91.61. Responsibilities of the Department—~~Third-Party~~ Inspector Training.*

The department shall prepare and schedule training for applicants for third-party inspector registration and notify registered third-party inspectors of the availability of continuing education to ensure compliance with this chapter ~~and rules adopted under this chapter.~~

*§91.62. Responsibilities of the Department—~~Third-Party~~ Inspector Identification.*

The department shall issue photo identification to each third-party inspector registered under §91.40. and any department employee designated as an inspector.

*§91.65. Advisory Committee.*

- (a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards.
- (b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:
- (1) two members who are licensed breeders;
  - (2) two members who are veterinarians;
  - (3) two members who represent animal welfare organizations each of which has an office based in this state;
  - (4) two members who represent the public; and
  - (5) one member who is an animal control officer as defined in §829.001, Health and Safety Code.
- (c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.
- (d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.
- (e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.
- (f) Except for the members described by subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:
- (1) is required to be licensed under this chapter;
  - (2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;
  - (3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or
  - (4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

- (g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under subsection (f).
- (h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.
- (i) A decision of the advisory committee is effective only on a majority vote of the members present.
- (j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

*§91.66. Responsibilities of Inspectors--~~Inspections, Investigations, and Reports of Animal Cruelty.~~*

(a) An inspector ~~or investigation~~ must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

~~(b) If an inspector determines it is not appropriate to provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility, the inspection report must describe the reasons supporting the determination.~~

~~(b)~~ In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity.

~~(c)~~ An inspector may request that relevant documents or records be provided for inspection.

~~(d)~~ Inspectors must submit inspection reports to the department not later than the 10th day after the date of the inspection on a form and ~~manner~~ in a manner prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

~~(e)~~ An inspector may not perform an inspection authorized by §91.52 and §91.53 unless assigned or requested by the department.

~~(f)~~ Inspections must be conducted in accordance with:

- (1) the training procedures and protocols approved by the department; or
- (2) if good cause exist to deviate from the established procedures and protocols or if no procedure or protocol exist for the issues presented during the inspection ~~or investigation~~, the inspection report must contain an n explanation of the issues presented and procedures followed.

*§91.71. Responsibilities of Licensee--Advertising.*

- (a) A licensed breeder may not engage in false, misleading, or deceptive advertising.
- (b) Each advertisement must conspicuously include the facility license number in font clearly distinguishable from the background.
- (c) For purposes of this section, a website and any offer to sell is considered advertising.

*§91.72. Responsibilities of Licensee--Display of Breeders License.*

A licensed breeder shall prominently display at the breeder's facility, in an area readily accessible to the public, a copy of the department issued breeders license.

*§91.73. Responsibilities of Licensee--Onsite Availability of Law and Rules.*

A licensed breeder must maintain at each of the breeder's facilities a printed and current copy of Texas Occupations Code, Chapter 802 and ~~these rules adopted by the department regulating licensed breeders.~~

*§91.74. Responsibilities of Licensee--Mandatory Contract Provisions.*

A licensed breeder must include in each contract for the sale or transfer of an animal:

- (1) the license number; and
- (2) the following statement: "Dog and cat breeders are regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, [www.license.state.tx.us](http://www.license.state.tx.us)" or a similar statement adopted by commission rule that includes the department's name, mailing address, telephone numbers, and Internet website address.

*§91.75. Responsibilities of Licensee--Change in License Information.*

A licensed breeder must notify the department in writing not later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

*§91.76. Responsibilities of Licensee--Annual Inventory.*

- (a) Not later than February 1 of each year, a licensed breeder shall submit to the department, on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year.
- (b) The licensed breeder shall keep copies of the items described by subsection (a) at the licensed breeder's facility and shall make them available on request to the department or a third-party inspector designated by the department.
- (c) A licensed breeder that has more than one facility shall:
  - (1) keep separate records for each facility; and
  - (2) submit a separate accounting of animals for each facility.

*§91.77. Responsibilities of Licensee--Animal Records Content, Availability, and Retention Period.*

(a) A licensed breeder shall maintain, at the licensed facility where the animal is kept, a separate record for each animal in the breeder's facility documenting the animal's care.

(1) Records required by this section must ~~be maintained for at least five (5) years and must~~ include:

- (A) the date on which the animal enters the facility or operation;
- (B) the person from whom the animal was purchased or obtained, including the name, address and phone number of such person, and license or registration number if applicable;
- (C) a description of each animal, including the species, color, breed, sex, date of birth (if not known, the approximate age) and weight;
- (D) any tattoo, microchip, or other identification number carried by or appearing on the animal;
- (E) for breeding females:
  - (i) breeding dates;
  - (ii) whelping or queening dates;
  - (iii) number of puppies or kittens per litter; and
  - (iv) sire or tom for each litter; ~~and~~
- ~~(F) the disposition of each animal with date of disposition.~~

(2) Records required by this section are in addition to medical records related to preventative and therapeutic veterinary care provided each animal.

~~(3) The disposition of each animal with date of disposition.~~

(b) The licensed breeder shall make the animal records available on request to the department or a third-party inspector designated by the department.

(c) Records required by this chapter shall be kept at the licensed facility where the animal was last housed for two years from the date of the last entry in the records or the date the animal ~~is no longer housed at~~ left the facility, whichever is later.

(d) When an animal subject to this chapter is transferred from one licensed facility to another licensed facility, a copy of records related to that animal and required by this chapter must be transferred contemporaneously with the transferred animal.

*§91.78. Responsibilities of Licensee--Inspections.*

The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.

*§91.80. Fees.*

(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Adult Intact Female Animals):

(A) Preliminary Inspection Fee--\$175 per facility.

(B) Original Application--\$475.

(C) Renewal--\$475.

(D) Periodic and Out-of-Cycle Inspections--\$175.

(E) Duplicate License--\$25.

(2) Dog or Cat Breeder License (26-60 Adult Intact Female Animals):

(A) Preliminary Inspection Fee--\$350 per facility.

(B) Original Application--\$950.

(C) Renewal--\$950.

(D) Periodic and Out-of-Cycle Inspections--\$350.

(E) Duplicate License--\$25.

(3) Dog or Cat Breeder License (61 or more Adult Intact Female Animals):

(A) Preliminary Inspection Fee--\$700 per facility.

(B) Original Application--\$1,900.

(C) Renewal--\$1,900.

(D) Periodic and Out-of-Cycle Inspections--\$700.

(E) Duplicate License \$25.

(b) ~~Revised/Duplicate License/Certificate/Permit/Third-Party Inspector~~ Registration--\$25.

(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

*§91.90. Administrative Sanctions and Penalties.*

A person that violates Texas Occupations Code, Chapter 802, a rule, or an order of the executive director or commission will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 802 and applicable agency department rules.

*§91.91. Enforcement Authority.*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 802 and any associated rules may be used to enforce Texas Occupations Code, Chapter 802 and this chapter.

*§91.92. License Revocation and Suspension.*

(a) The department shall revoke a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction.

(b) The department may revoke or suspend a license held by a person who:

- (1) fails to meet the requirements of this chapter and rules adopted under this chapter;
- (2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;
- (3) has falsified any material information requested by the department;
- (4) has failed to meet a standard adopted by rule under this chapter; or
- (5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

***§91.100. Standards of Care—Housing Generally.***

(a) Structure; construction. Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

(b) Condition and site. Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices ~~and research needs.~~ Housing facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) Surfaces.

(1) General requirements. The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled.

Interior surfaces and any surfaces that come in contact with dogs or cats must:

(A) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(B) Be free of jagged edges or sharp points that might injure the animals.

(2) Maintenance and replacement of surfaces. All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) Cleaning. Hard surfaces with which the dogs or cats come in contact must be spot-cleaned daily and sanitized in accordance with §91.109(b) to prevent accumulation of excreta and reduce disease hazards. Floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material must be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in §91.109(b)(3) for primary enclosures.

(d) Water and electric power. The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this chapter. The housing facility must provide adequate running potable water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

(e) Storage. Supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Foods requiring refrigeration must be stored accordingly, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is

currently being used may be kept in the animal areas. Substances that are toxic to the dogs or cats but are required for normal husbandry practices must not be stored in food storage and preparation areas, but may be stored in cabinets in the animal areas.

(f) Drainage and waste disposal. Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

(g) Washrooms and sinks. Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

#### *§91.101. Standards of Care--Indoor Housing Facilities.*

(a) Heating, cooling, and temperature. Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, ~~using best efforts,~~ the ambient temperature in the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). ~~Using best efforts,~~ the The ambient temperature must not fall below 45° F (7.2° C) ~~for more than 4 consecutive hours °C~~ when dogs or cats are present, and must not rise above 85° F (29.5° C) ~~for more than 4 consecutive hours~~ when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions— established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when ~~using best efforts,~~ the ambient temperature is 85° F (29.5° C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.

(c) Lighting. Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Interior surfaces. The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture or be replaceable (e.g., a suspended ceiling with replaceable panels).

*§91.102. Standards of Care--Sheltered Housing Facilities.*

(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. ~~Using best efforts, the~~ The ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). ~~Using best efforts, the~~ The ambient temperature must not fall below 45° F (7.2° C) ~~for more than 4 consecutive hours~~ when dogs or cats are present, and must not rise above 85° F (29.5° C) ~~for more than 4 consecutive hours~~ when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

(b) Ventilation. The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when using best efforts, the ambient temperature is 85° F (29.5° C) or higher.

(c) Lighting. Sheltered housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Shelter from the elements. Dogs and cats must be provided with adequate shelter from the elements at all times to protect their health and well-being. The shelter structures must be large enough to allow ~~each all~~ each all animals simultaneously to sit, stand, ~~and lie in a normal manner and turn about freely~~ without ~~any part of its their bodies body~~ being in contact with ~~at least one side of the any~~ shelter walls ~~in a normal manner and to turn about freely~~.

(e) Surfaces.

(1) The following areas in sheltered housing facilities must be impervious to moisture:

(A) Indoor floor areas in contact with the animals; ~~provided that:~~

~~(i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and~~

~~(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;~~

(B) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(C) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, absorbent bedding, sand, gravel, concrete or grass.

**§91.103. Standards of Care--Outdoor Housing Facilities.**

**(a) Restrictions.**

(1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog or cat to which the exemption applies:

(A) Dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(B) Breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(C) Sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities when the temperature is less than 50° F (10° C) or more than 90° F (37.2° C).

(b) Shelter from the elements. Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each all animals in the shelter structure simultaneously to sit, stand, ~~and~~ lie in a normal manner, and turnabout freely without any part of its body-their bodies being in contact with ~~at least one side of the any shelter walls in a normal manner, and to turn about freely-structure wall.~~ In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must:

(1) provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) be provided with a wind break and rain break at the entrance; and

(4) contain clean, dry, bedding material if the ambient temperature is below 50° F (10° C). Additional clean, dry bedding is required when the temperature is 35° F (1.7° C) or lower.

(c) Construction. Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cans, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, concrete or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities--including houses, dens, etc.--that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

**§91.104. Standards of Care--Primary Enclosure.**

Primary enclosures for dogs and cats must meet the following minimum requirements:

**(1) General requirements.**

(A) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair and shall not be placed on top of another primary enclosure unless an impervious barrier designed to prevent the transfer of fluid or animal waste separates the two primary enclosures.

(B) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats;

(ii) Protect the dogs and cats from injury;

(iii) Contain the dogs and cats securely;

(iv) Keep other animals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to all the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;  
(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with §91.109(b), or be replaceable when worn or soiled;  
(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of wire or wire mesh or slatted construction, do not allow the dogs' and cats' feet or any part of the foot to pass through or become caught in any openings in the floor; ~~and~~

(xi) Provide a resting board or sufficient solid floor space large enough to allow each dog and cat to turn about freely, to stand, sit, ~~and lie without its body being in contact with at least one side of the shelter walls~~ in a comfortable, normal position, and ~~to walk in a normal manner-~~ without any part of its body being in contact with the ceiling or any side of the enclosure. At least 50% of the floor space in the enclosure must be covered by a resting board or be a solid floor surface. The resting board must be of a non-toxic, durable, solid material that is impervious to moisture; easily cleaned and not susceptible to being chewed or destroyed by the animal; and

(xii) If any portion of the floor of a primary enclosure is constructed of wire or wire mesh, the metal strands must be greater than 1/8 of an inch in diameter (9 gauge) and coated with a bonded vinyl material such as plastic or fiberglass. Any suspended floor of a primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

## (2) Additional requirements for cats.

(A) Space. Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space in accordance with this chapter.

(B) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm).

(C) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 ft<sup>2</sup> (0.28 m<sup>2</sup>).

(D) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft<sup>2</sup> (0.37 m<sup>2</sup>).

(E) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices. If the additional amount of floor space for each nursing kitten is equivalent to less than 5 percent of the minimum requirement for the queen, such housing must be approved by the ~~attending veterinarian-~~department.

(F) The minimum floor space required by this section is exclusive of any food or water pans. The litter pan may be considered part of the floor space if properly cleaned and sanitized.

(G) Compatibility. All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under 6 months of age may not be housed in the same primary enclosure with adult cats, other than the dam or foster dam. Cats with a vicious or aggressive disposition must be housed separately.

(H) Litter. In all primary enclosures, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(I) Resting surfaces. Each primary enclosure housing cats must contain a resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture, and be able to be easily cleaned and sanitized, or easily replaced when soiled or worn. Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the floor space.

## (3) Additional requirements for dogs.

(A) Space--Facilities Licensed on or before September 1, 2012.

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of

the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the ~~attending veterinarian and documented in the medical records related to each dog.~~ department.

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(iv) Notwithstanding the other provisions of this subsection (3)(A), a licensed facility covered by this subsection (3)(A) shall be required to meet the space requirements in subsection (3)(B) on or before September 1, 2014. Also, any primary enclosure constructed or installed at the facility after September 1, 2012 must meet the space requirements in subsection (3)(B).

(B) Space--Facilities Licensed after September 1, 2012.

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144 then multiply that result by 2. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) ~~x 2~~ = required floor space in square inches. Required floor space in inches/144 x 2 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the ~~department~~ attending veterinarian ~~documented by the attending veterinarian in the medical records related to each dog.~~

(iii) The interior height of a primary enclosure must be at least 12 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(C) Compatibility. All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under 6 months of age may not be housed in the same primary enclosure with adult dogs, other than the dam or foster dam. Dogs with a vicious or aggressive disposition must be housed separately.

(D) Prohibited means of primary enclosure. Permanent tethering of dogs is prohibited for use as primary enclosure. Temporary tethering of dogs is prohibited for use as primary enclosure unless prior approval ~~by is obtained from~~ the attending veterinarian ~~and~~ department and documented ~~by the attending veterinarian~~ in the medical records related to each dog to which the exemption applies.

(E) Prohibited stacking of primary enclosures. Primary enclosures for dogs may not be stacked ~~above three vertical levels, one on top of another.~~

#### *§91.105. Standards of Care--Compatible Grouping.*

Dogs and cats that are housed in the same primary enclosure must be compatible, with the following restrictions:

(1) Females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes;

(2) Any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

- (3) Puppies or kittens 6 months of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams or foster dams, except when permanently maintained in breeding colonies;
- (4) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible; and
- (5) Dogs and cats that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony, as directed by the attending veterinarian. When an entire group or room of dogs and cats is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

*§91.106. Standards of Care--Exercise for Dogs.*

~~(a)~~ A licensee must develop, document, and follow an appropriate plan to provide dogs with the opportunity for at least one hour of daily exercise. In addition, the plan must be approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog. The plan must be made available to the department or an inspector on request. The plan must include written standard procedures to be followed in providing the opportunity for exercise.

(a) Dogs housed individually. An individually housed dog over 12 weeks of age, except bitches with litters, must be provided the opportunity for one hour of daily exercise unless the dog is kept in a primary enclosure that is at least three times the minimum required floor space for the dog's primary enclosure.

(b) Dogs housed in groups. Dogs over 12 weeks of age housed, held, or maintained in groups do not require additional opportunity for daily exercise if they are maintained in cages, pens, or runs that provide in total at least ~~300 percent of~~three times the required primary enclosure space for each dog if maintained separately. Such animals may be maintained in compatible groups, unless:

(1) In the opinion of the attending veterinarian, such housing would adversely affect the health or well-being of the dog(s); or

(2) Any dog exhibits aggressive or vicious behavior.

(c) Methods and period of providing exercise opportunity.

(1) The method of providing exercise opportunity shall be determined by the attending veterinarian and documented by the attending veterinarian in the medical records of each dog. The frequency, ~~method,~~ and duration of the opportunity for exercise of a dog 12 weeks of age or older shall be ~~the~~ at least one hour each day unless a lesser frequency, ~~method, and or~~ duration is determined by the attending veterinarian and documented by the attending veterinarian in the medical records related to ~~each~~that dog.

(2) A licensed breeder must provide positive physical contact with humans that encourage exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily. The positive physical contact required by this section may be ~~concurrent~~provided concurrently with the ~~required opportunity for dog's~~ daily exercise required in ~~subsection (a)-this section.~~

(3) The opportunity for exercise required by this chapter may be provided in a number of ways, such as:

(A) Group housing in cages, pens or runs that provide at least ~~300 percent~~three times of the required space for each dog if maintained separately under the minimum floor space requirements of

§91.104(3)(A)-) or (B), as applicable;

(B) Maintaining individually housed dogs in cages, pens, or runs that provide at least three times the minimum floor space required by §91.104(3)(A)-) or (B), as applicable;

(C) Providing access to a run or open area that provides at least three times the minimum floor space required by §91.104(3)(A)-) or (B), as applicable; provides adequate protection against harsh weather,

including exposure to the sun; and has solid flooring with adequate drainage which may include natural turf or soil ~~at the frequency and duration prescribed by the attending veterinarian; or; or~~

(D) Other similar activities approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog.

(4) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(d) Exemptions.

(1) If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the licensed breeder may be exempted from meeting the requirements of this section for those dogs. Such exemption must be documented by the attending veterinarian ~~and, unless in the medical records of each exempted dog. Unless~~ the basis for exemption is a permanent condition, the exemption must be reviewed at least every 30 days by the attending veterinarian.

(2) Records of any exemptions must be maintained separately for each dog and made available to the department ~~inspector or registered an~~ inspector upon request.

#### *§91.107. Standards of Care--Feeding.*

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care ~~as documented by the attending veterinarian in the medical records of the animal.~~ The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet must be appropriate for the individual animal's age and condition.

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain, sleet and snow. Feeding pans must either be made of a durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable they must be kept clean and must be sanitized in accordance with §91.109(b). Sanitization is achieved by using one of the methods described in §91.109(b)(3). If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used they must be kept clean and must be sanitized in accordance with §91.109(b). Measures must be taken to ensure that there is no molding, deterioration, and caking of feed.

#### *§91.108. Standards of Care--Watering.*

~~If p~~otable, unfrozen water ~~is not must be made~~ continually available to the dogs and cats, ~~it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time,~~ unless restricted by the attending veterinarian, and documented in the animal's medical records. Water receptacles must be kept clean and sanitized in accordance with §91.109(b), and before being used to water a different dog or cat or social grouping of dogs or cats.

#### *§91.109. Standards of Care--Cleaning, Sanitization, Housekeeping, and Pest Control.*

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as at least daily and more often as if necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, all dogs or cats must be removed, ~~unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process.~~ Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with wire or mesh type floors and the ground areas under raised runs with wire or mesh or slatted floors must be cleaned as at least daily or

**more** often **asif** necessary to prevent accumulation of feces and food waste and to reduce disease hazards pests, insects and odors.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) Used primary enclosures and food and water receptacles must be cleaned and sanitized in accordance with this section before they can be used to house, feed, or water another dog or cat, or social grouping of dogs or cats.

(2) Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every **2-weeksweek** using one of the methods prescribed in subsection (b)(3), and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

(3) Hard surfaces, **including wire and wire mesh surfaces**, of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(A) Live steam under pressure;

(B) Washing with hot water (at least 180° F (82.2° C)) and soap or detergent, as with a mechanical cage washer; or

(C) Washing all soiled surfaces with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral buildup, and to provide sanitization followed by a clean water rinse.

(4) Pens, runs, and outdoor housing areas using material that cannot be sanitized using the methods provided in subsection (b)(3), such as gravel, sand, grass, earth, or absorbent bedding, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this chapter, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

(d) Pest control. An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

#### *§91.110. Standards of Care--Onsite Personnel.*

(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

(b) Each employee of a licensed facility whose duties or responsibilities include the handling of or caring for a dog or cat shall have the appropriate training **approved by the department and** documented by the licensee; ~~to include. The training must, at thea~~ minimum ~~subject matter covering, include~~ basic animal care and handling, prevention of infectious disease, and kennel sanitization.

#### *§91.111. Standards of Care--Grooming.*

A licensed breeder shall provide basic grooming to each animal as needed to prevent soiling and matting of the fur, curled or splayed toenails, and other conditions that can hamper an animal's ability to maintain health and cleanliness.

**§91.112. Standards of Care--Veterinary Care.**

(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.

(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical procedure such as caesarian birth-, debarking, tail docking, ear cropping, or claw removal.

(c) A licensed breeder shall employ an attending veterinarian under formal arrangements. In the case of a part-time veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the licensed breeder's facility. The licensed breeder shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and oversee the adequacy of other aspects of animal care and use.

(ed) Routine and preventative care. A licensed breeder shall develop and maintain at each of the breeder's facilities a written health care management protocol approved by a veterinarian that addresses routine and preventative healthcare for each animal in the facility-, including flea, tick and parasite prevention. The protocol shall also include daily observation of all animals to assess their health and well-being; provided, however, that daily observation of animals may be accomplished by someone other than the attending veterinarian; and provided, further, that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian.

(1) The breeder shall ensure that the protocol is followed and that routine and preventive healthcare is provided to each animal in the facility and that each animal ~~received~~receives prompt appropriate care and treatment for any injury, disease, or illness that may affect the animal's health or well-being. All preventative healthcare provided and all care or treatment for injury, disease or illness must be documented in the medical records of the animal and made available to the department or an inspector upon request.

(2) The written health care management protocol required by this section must contain all health care records required by this chapter including all exemptions authorized by this chapter and approved by the attending veterinarian. The protocol must be made available to the department or an inspector upon request.

(3) On transfer or sale of the animal, a copy of the written health care management protocol required by this section must be transferred with the animal and the original records retained by the licensee.

(4) Records required under this section shall be kept at the licensed facility where the animal is housed for two years from the date of the last entry in the records or the date the animal left the facility, whichever is later.

(de) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

**§91.113. Standards of Care--Sales and Transfers.**

A licensed breeder shall not sell, trade, or give away an animal before the animal has been weaned and is at least eight weeks of age and weighs at least two pounds or-, if less than two pounds, is at least twelve weeks of age ~~and has been weaned.~~

**§91.200. Transportation Standards--Food and Water Requirements.**

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. Each

dog and cat must be offered potable water at least once every 12 hours. Each dog and cat must be offered food and potable water within 4 hours before being transported in commerce.

(b) A licensed breeder offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the dog or cat, written instructions for the in-transit food and water requirements for a 24-hour period for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed and read.

(c) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

***§91.201. Transportation Standards--Mobile or Traveling Facilities.***

(a) Heating, cooling, and temperature. Mobile or traveling housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the mobile or traveling housing facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not exceed 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.

(b) Ventilation. Mobile or traveling housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for the health and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Ventilation must be provided by means of windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when using best efforts, the ambient temperature within the animal housing area is 85° F (29.5° C) or higher.

(c) Lighting. Mobile or traveling housing facilities for dogs and cats must be lighted well enough to permit proper cleaning and inspection of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals.

***§91.202. Transportation Standards--Primary Enclosure Used to Transport Live Dogs and Cats.***

Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

(1) Construction of primary enclosures. The dog or cat must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport dogs and cats must be constructed so that:

(A) The primary enclosure is strong enough to contain the dogs and cats securely and comfortably and to withstand the normal rigors of transportation;

(B) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(C) The dog or cat is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animals nearby;

(D) The dog or cat can be easily and quickly removed from the enclosure in an emergency;

(E) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(F) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 in. (2.5 cm) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(G) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(H) Proper ventilation is provided to the animal in accordance with paragraph (3); and

(I) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. Unless the dogs and cats are on raised slatted floors or raised floors made of mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(2) Cleaning of primary enclosures. A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in §91.109(b)(3). If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes. If it becomes necessary to remove the dog or cat from the enclosure in order to clean, or to move the dog or cat to another enclosure, this procedure must be completed in a way that safeguards the dog or cat from injury and prevents escape.

(3) Ventilation.

(A) Unless the primary enclosure is permanently affixed to the conveyance, there must be:

(i) Ventilation openings located on two opposing walls of the primary enclosure and the openings must be at least 16 percent of the surface area of each such wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(ii) Ventilation openings on three walls of the primary enclosure, and the openings on each of the two opposing walls must be at least 8 percent of the total surface area of the two walls, and the ventilation openings on the third wall of the primary enclosure must be at least 50 percent of the total surface area of that wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(iii) Ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each of the four walls must be at least 8 percent of the total surface area of each such wall, and the total combined surface area of the openings must be at least 14 percent of total combined surface area of all the walls of the primary enclosure; and

(iv) At least one-third of the ventilation area must be located on the upper half of the primary enclosure.

(B) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 in. (1.9 cm) between the primary enclosure and anything the enclosure is placed against.

(C) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(4) Compatibility.

(A) Live dogs or cats transported in the same primary enclosure must be of the same species and be maintained in compatible groups, except that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported in the same primary enclosure.

(B) Puppies or kittens 6 months of age or less may not be transported in the same primary enclosure with adult dogs or cats other than their dams.

(C) Dogs or cats that are overly aggressive or exhibit a vicious disposition must be transported individually in a primary enclosure.

(D) Any female dog or cat in heat (estrus) may not be transported in the same primary enclosure with any male dog or cat.

(5) Space and placement.

(A) Primary enclosures used to transport live dogs and cats must be large enough to ensure that each animal contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

(B) Primary enclosures used to transport dogs and cats must be positioned in the primary conveyance so as to provide protection from the elements.

(6) Transportation by air.

(A) No more than one live dog or cat, 6 months of age or older, may be transported in the same primary enclosure when shipped via air carrier.

(B) No more than one live puppy, 8 weeks to 6 months of age, and weighing over 20 lbs (9 kg), may be transported in a primary enclosure when shipped via air carrier.

(C) No more than two live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lbs (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier.

(D) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities.

(7) Transportation by surface vehicle or privately owned aircraft.

(A) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) or privately owned aircraft, and only if all other requirements of this section are met.

(B) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met.

(8) Accompanying documents and records. Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely. Food and water instructions must be attached must be securely attached to the outside of the primary enclosure in a manner that makes it easily noticed and legible.

(9) Consignment for transportation. A licensee who consigns a dog or cat for transportation shall use only carriers and intermediate handlers regulated by the United States Department of Agriculture under the federal regulations and ensure that such carrier or intermediate handler complies with all applicable provisions of the federal regulations. ~~A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a license issued by the federal regulatory agency.~~

**This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.**

**Filed with the Office of the Secretary of State on January 9, 2012.**

**TRD-201200087**

**William H. Kuntz, Jr.**

**Executive Director**

**Texas Department of Licensing and Regulation**

**Earliest possible date of adoption: February 19, 2012**

**For further information, please call: (512) 463-5386**

---

February 18, 2012

Melissa Rinard, Legal Assistant  
General Counsel's Office  
Texas Department of Licensing & Regulation  
PO Box 12157  
Austin, Texas 78711



Re: COMMENTS, Proposed Rules, Chapter 91, DOG OR CAT BREEDERS PROGRAM

Gentlemen:

**Our membership includes a diverse group of animal “owners,” not only pet breeders.** Some of our home based breeders have devoted 40 years developing their bloodlines for many activities besides dog or cat shows. The human/animal bond with our pets *and* “working” dog breeds is legend, dating back to pioneer days. Animals have served their masters in many ways but now there are those who want to end all our interaction with animals. Pet ownership is under a vicious public relations attack from extreme “animal rights” organizations that strive to end all dog and cat breeding and subsequent pet sales through legislation and regulations. Brief major points are listed below with more extensive Public Comments to follow:

- **No Economic Impact Report** on the state and on breeders themselves **has been prepared.**
- **With estimates of \$35,000 - \$50,000 for new facilities** to comply with new regulations, smaller breeding facilities plan to cease operations.
- **Pet ownership** is a major income generator for many businesses in Texas.
- **This is not a “breeder” issue.** It is a “pet” issue.
- **Conflict of TDLR interest:** Della Lindquist, TDLR Assistant General Counsel, is a very active Austin “Animal Rights” Activist with “Emancipet,” an Austin nonprofit organization whose website clearly states that they are seeking comments to TDLR which are identical to HSUS and Texas Humane Legislative Network demands (“Animal Rights” organizations).
- **Breeder definition threshold** is too low -- deliberately to eliminate home based breeders.
- **Word “commercial” breeders is not found anywhere in the Anti-Breeder Bill HB 1451.**
- **One Strike and breeders are out! No appeals, no Review Process, no Complaint Process for Inspectors.** Demonstrates what we are telling you about eliminating breeders.
- **All Fees are astronomical** as TDLR administration of HB 1451 is required to be self funding.
- **With Annual Budget of \$565,000 divided by 150 Licensed Breeders? \$3.766.00!**
- **Vagueness of many sections** allows TDLR inspectors too much discretion.
- **Regulations must work for all sizes** of dogs and cats, dog breeds are from 2 lbs to 150 lbs.
- **Rewards for “Snitches” should require that complainants pay all TDLR costs if proven to be malicious or frivolous.** TDLR will be flooded with anonymous complaints. If breeders have to pay, so should these radical extremists.

*Sincerely,*  
Mary Beth Duerler  
Executive Director

February 18, 2012

Melissa Rinard, Legal Assistant  
General Counsel's Office  
Texas Department of Licensing & Regulation  
PO Box 12157  
Austin, Texas 78711



**Re: COMMENTS, Proposed Rules, Chapter 91, DOG OR CAT BREEDERS PROGRAM**

Director William Kuntz statements regarding "grandfathering" the size of the enclosures and the type flooring in dog and cat breeding facilities should be included in Section §91.23.License Requirements--Dog or Cat Breeder and clarified.

**§91.10.Definitions.**

Primary importance that everyone is aware that the definitions and all content of HB 1451 were written by "Animal Rights" Activists with an agenda. These extremist radicals have publicly stated they want to "end all breeding and sales of pets." Responsible Pet Owners has participated in Focus Groups with them for over 20 years and know them well.

**(1) Adult animal--An animal six months of age or older.**

Statute but: Puppies and kittens are NOT adults at six months of age. One year is closer.

**(8) Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.**

Although this is in Statute, it clearly states that the breeder is breeding 11 or more adult intact female animals and selling 20 or more animals in EACH calendar year. What happens for borderline dog/cat breeders who may barely meet this standard one year and NOT QUALIFY the next year? Once licensed, always licensed? There is no process to have your case reviewed.

**(14) Possess--To have custody of or control over.**

Many AKC show/hobby breeders co-own dogs in Texas. "Handlers" for Conformation Show dogs have many dogs in their "possession" that they don't own. What about stud service where the female is boarded for a while? This is a very bad definition.

**(15) Primary enclosure--Any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.**

Vague definition. Makes "everything" primary.

(17) Third-party inspector--Any of the following entities with which the department contracts under Texas Occupations Code, §802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

TDLR employees should be only Inspectors allowed due to state liability and training issues. Allows TDLR to contract with another Texas Department, not just an individual. Can be any employee of a state agency or the agency itself, any local law enforcement agency itself or even the local Fire Department.

(19) Wire or Wire Mesh--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor.

We agree with American Kennel Club: "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."

§91.21. License Required--Presumptions.

For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

Vague. Difficult to prove a negative! Specifically state what "reasonably acceptable evidence" is acceptable to TDLR to prove a female dog/cat was not bred. Would "no records" suffice? It does not give the breeder clear directions for compliance.

§91.22. License Required--Dog or Cat Breeder.

- (a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state.

Vague. This rule (per statute) is confusing to breeders who may not qualify for licensing under the statute. We agree with American Kennel Club: a person may not present themselves as a "Licensed Breeder" in Texas unless they hold a license under this chapter.

§91.23. License Requirements--Dog or Cat Breeder.

(4) successfully pass a criminal background check for each applicant and controlling person:

Vague: "Successfully" used here does not contain Statute wording in Sec. 802.107 which is very explicit. Same applies to "successfully" in §91.24 (b) below.

§91.24. License Requirements--Dog or Cat Breeders License Renewal.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal--the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.

“Can’t perform any functions of a breeder” during this time. Has anyone given this deep thought? Bred females may have their litters and a myriad of actions will have to be taken care of for the health and safety of the breeding stock.

§91.25(b)(2) (4) and (5):

The department may deny issuance to, refuse to renew the license held by a person who (2) has had a similar license issued by a federal, state or local authority denied, revoked or suspended; ... (4) has failed to meet a standard adopted by rule under this chapter; or failed to comply with any corrective action required under an inspection report in the time provided by the report.

ONE STRIKE AND YOU’RE OUT! License to be revoked for failure to meet one standard “OR” has failed to comply with any corrective action required under inspection report in time provided. Shouldn’t this be changed to say “AND” instead of “OR?”  
Isn’t the purpose to “keep” breeders licensed for the Fees?

§91.28. Department Notifications to Licensee or Registrant.

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

Sending an email is definitely not satisfactory and it must be sent by registered mail.

§91.30. Exemptions.

(a) This section applies only to a dog bred with the intent that it be used primarily for:

- (1) herding livestock, as defined by §1.003, Agriculture Code, or other agricultural uses;
- (2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or
- (3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by subsection (a).

(c) Notwithstanding subsection (b), a person described by subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by §91.10(8).

(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

- (1) evidence of agriculture activity or business operations using a dog described by this section;

(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

(d) (e) and (f): This is unenforceable and was defeated in a California state law proposal by state working dog organizations for that very reason. The animal owner has to “prove” EVERY YEAR when purchasing license renewal that the law doesn’t apply to them: requires entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events. It is impossible to document all these exemptions because some activities have NO organized performance events! What about a year the specific dog does not participate for some reason – not in condition, has litter, minor injuries? Best to clarify that “dog” here refers to Intact Female, if that is the intent. Not just a “dog.” Exemptions aren’t necessary for male dogs here, or are they?

§91.40. Inspector Registration Requirements.

(a) An applicant seeking an inspector registration must:

(1) be a state agency, local law enforcement agency, fire department; or

(2) be an employee of an agency or department identified in subsection (a)(1);

(c)(3) An applicant seeking an inspector registration ...must...(3) successfully pass a criminal background check.

No criteria to “successfully pass the criminal background check.”

§91.52. Inspections--Periodic.

(c)(d)(e)(f)(h)(i)(k) “(c) if necessary...the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder...before arriving at the facility...”

What are the guidelines for “appropriate not to provide advance notice to licensed breeder? Entering our private homes for any reason without permission or a Search Warrant is not permissible.

“(e) The inspector may request that relevant documents or records be provided for inspection.”

Relevant documents should be listed specifically by examples. Too broad. You cannot violate individual privacy rights under the Constitution.

(h) The licensee, manager, or representative must, upon request, make available to the inspector all records and other documents required by this chapter.

Relevant documents should be listed by examples. Too broad.

(k) The department may assess administrative penalties and/or administrative sanctions for violations disclosed during inspections under this chapter.

This authorization for administrative penalties or sanctions for violations disclosed during inspections is not granted in Statute and if it is to be included should include set penalties or it reverts to \$5,000 per day. Occupations Code sec. 51.302 Amount of Penalty. Sets the

administrative penalty at \$5,000 per day with no limit on days if the amount of penalty is not otherwise stated else where in the regulations.

<http://www.bing.com/search?q=texas+administrative+code+penalty+%245%2C000&qs=n&form=QBRE&pq=texas%2520administrative%2520code%2520penalty%2520%25245%252C000&sc=0-0&sp=-1&sk=>

This is in addition to refusing a license renewal, etc.

**§91.55. Responsibilities of the Department--Directory.**

**(a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.**

**(b) The department shall make the directory available to the public.**

Will lead to harassment and possible vandalism from animal rights activists

**§91.59. Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.**

**(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.**

There should be an appeal or review process for a breeder before being placed on the list and to for them to be removed from the list at a later time.

There should be an online complaint reporting system for reporting inspectors and their findings.

**(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.**

Any complaints that are investigated and proven to be frivolous or malicious should require the complainant to pay all TDLR costs of investigation. TDLR will receive countless such reports due to radical "animal rights" extremists who want to stop all dog and cat breeding. Or even from other breeders who want to put each other out of business.

**(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.**

**(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.**

**(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.**

All complaints that have been investigated and proven to be frivolous or malicious should require the complainant to pay all TDLR costs of investigation. There will be many such claims for harassment. TDLR will receive countless such reports due to radical "animal rights" extremists who want to stop all dog and cat breeding.

§91.66. Responsibilities of Inspectors--Inspections, Investigations, and Reports of Animal Cruelty.

(a) An inspector or investigation must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(b) If an inspector determines it is not appropriate to provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility, the inspection report must describe the reasons supporting the determination.

There is too much left to the discretion of the inspector regarding "given a reasonable opportunity to be present during the inspection."

(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity.

Major point of contention: Inspectors may not access private residences of a licensed breeder for any reason without breeder's permission.

§91.72. Responsibilities of Licensee--Display of Breeders License.

A licensed breeder shall prominently display at the breeder's facility, in an area readily accessible to the public, a copy of the department issued breeders license.

There is nowhere in private homes to hang this license and there are no "hours" that private homes are open to the public. These USDA regulations are written originally for animal research facilities, then commercial breeding facilities were added later. Now HSUS says they want ALL breeders licensed under the Animal Welfare Act.

§91.80. Fees.

All of these fees are astronomical and deliberately designed to close down all dog and cat breeders in Texas. Responsible Pet Owners Alliance has heard from breeders who are leaving the state or reducing numbers of Intact Female Dogs and/or Cats to under 11 Intact Females. Others are shutting down their breeding operations completely. You'll be lucky to get over 150 Licensed Breeders total. With a \$565,000 Annual Budget, divide that by 150 Breeders and what do you get per breeder? \$3,766.66 Annual Breeders License! Statute requires that TDLR set fees to cover all expenses! These fee amounts are so preposterous they truly don't merit comment.

(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Intact Female Animals):

(A) Preliminary Inspection Fee--\$175 per facility.

(B) Original Application--\$475.

(C) Renewal--\$475.

(D) Periodic and Out-of-Cycle Inspections--\$175.

(E) Duplicate License--\$25.

(2) Dog or Cat Breeder License (26-60 Intact Female Animals):

(A) Preliminary Inspection Fee--\$350 per facility.

(B) Original Application--\$950.

(C) Renewal--\$950.

Add them all up: Pre-inspection Fee, Re-Inspection Fee (if fails), Annual License Fee, "Department Related Expenses," and what do you get?

(D) Periodic and Out-of-Cycle Inspections--\$350.

(E) Duplicate License--\$25.

(3) Dog or Cat Breeder License (61 or more Intact Female Animals):

(A) Prelicense Inspection Fee--\$700 per facility.

(B) Original Application--\$1,900.

(C) Renewal--\$1,900.

(D) Periodic and Out-of-Cycle Inspections--\$700.

(E) Duplicate License \$25.

(b) Revised/Duplicate License/Certificate/Permit/Registration--\$25.

(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

§91.92. License Revocation and Suspension.

(b) The department may revoke or suspend a license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

(4) ONE STRIKE AND YOU'RE OUT! License to be revoked for failure to meet one standard "OR" has failed to comply with any corrective action required under inspection report in time provided. Shouldn't this be changed to say "AND" instead of "OR?"

§91.100. Standards of Care--Housing Generally.

(c) Surfaces.

(1) General requirements. The surfaces of housing facilities--including houses, dens, and other furniture-type fixtures and objects within the facility--must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(f) Drainage and waste disposal. Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and

animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry.

(g) Washrooms and sinks. Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

In private homes, once again. Are the showers, basins and washrooms in private homes acceptable? Is an elaborate drainage system a basic requirement for small kennels? Or are these rules not written for small kennels in the first place?

WE'D LIKE TO ADDRESS ALL THESE STANDARDS OF CARE AS BEING SO FAR OVER THE TOP FOR HOME BASED DOG AND CAT BREEDING. THAT TO ADDRESS THEM LINE BY LINE OR EVEN UNDERSTAND THEM IS MINDBOGGLING !

(d) BELOW: REQUIRES ALL FLOORS, WALLS AND CEILINGS TO BE IMPERVIOUS TO MOISTURE IF THEY COME IN CONTACT WITH THE ANIMALS (PER USDA). THIS ONE PROVISION ALONE OUTLAWS HOME BASED FOR MOST DOG AND CAT BREEDERS.

**NO ANIMALS IN THE HOUSE  
unless it's built like a commercial kennel!**

§91.101. Standards of Care--Indoor Housing Facilities.

(a) Heating, cooling, and temperature. Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, using best efforts, the ambient temperature in the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.

(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when using best efforts, the ambient temperature is 85° F (29.5° C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.

(c) Lighting. Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Interior surfaces. The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture or be replaceable (e.g., a suspended ceiling with replaceable panels).

(3) Additional requirements for dogs

(A) Space ---Facilities Licensed on or before September 2, 2012

(B) Space – Facilities Licensed after September 1, 2012

§91.106.Standards of Care--Exercise for Dogs.

(a) A licensee must develop, document, and follow an appropriate plan to provide dogs with the opportunity for daily exercise. In addition, the plan must be approved by the attending veterinarian and documented by the attending veterinarian in the medical related to each dog. The plan must include written standard procedures to be followed in providing the opportunity for exercise.

§91.107.Standards of Care--Feeding.

§91.108.Standards of Care--Watering.

§91.109.Standards of Care--Cleaning, Sanitization, Housekeeping, and Pest Control.

§91.111.Standards of Care--Grooming.

§91.112.Standards of Care--Veterinary Care.

(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.

(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

§91.113. Standards of Care--Sales and Transfers.

A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned.

This should be deleted: "two pounds or twelve weeks of age" as many toy dog breeds and kittens are ready to go and is TDLR going to be there to check the scales on each puppy/kitten sale?

§91.200. Transportation Standards--Food and Water Requirements.

§91.201. Transportation Standards--Mobile or Traveling Facilities.

Heating, cooling, and temperature. Not below 45 degrees for more than four hours.

Nor more than 85 degrees F for more than four hours.

Ventilation

Lighting

§91.202. Transportation Standards--Primary Enclosure Used to Transport Live Dogs and Cats.

We agree with American Kennel Club Comments regarding:

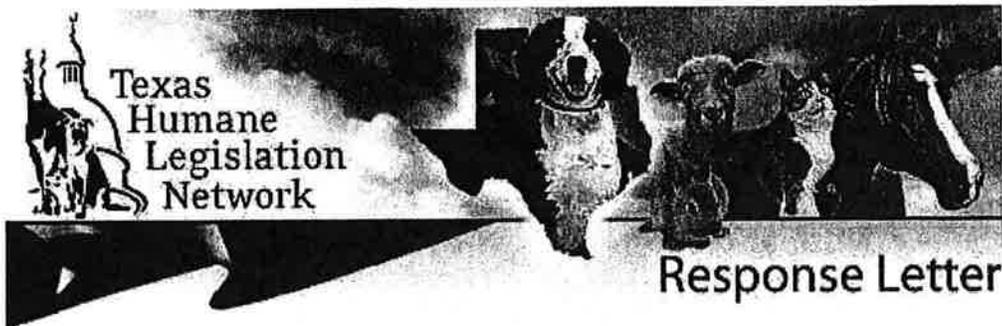
Section 91.104 Standards of Care –Primary Enclosure;

Section 91.112 Standards of Care – Veterinary Care;

Section 91.113 Standards of Care Sales and Transfers;

Section 91.202 Transportation Standards;

These are all "unclear and should be either edited or deleted."



**Please strengthen proposed licensed breeder regulations**

To the Texas Department of Licensing and Regulations,

Thank you for allowing me to comment on the proposed Rules governing licensed dog and cat breeders in Texas. My concerns are as follows:

100% wire flooring (◆91.102 and ◆91.104). Having an animal spend its entire life on a wire floor is unquestionably ◆cruel confinement◆. The proposed Rules should be changed to prohibit 100% wire flooring and there should not be any grandfathering of existing facilities.

Cage Stacking (◆94.104). There should be no stacking of primary enclosures for dogs. This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the upper tier cages. As an alternative, you should limit only one primary enclosure on top of the other.

Cage Sizes (◆91.104). I agree with the increased cage sizes for dogs, but I disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451 which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. If you grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures (◆91.112). Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking.

Respectfully submitted,

**Elizabeth Dinges**



SENT 02.28.12 at 8:40:02 AM

This response was facilitated by Texas Humane Legislation Network ([www.thln.org](http://www.thln.org)).

[Return To Top](#) ↗

**Erule Comments**

---

**From:** Charles Bell [REDACTED]  
**To:** "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>  
**Date:** 2/28/2012 12:24 AM

---

Dear Ms. Rinard:

I am writing today to urge you to strengthen the proposed dog and cat breeder regulations as published in the Texas Registry on January 20<sup>th</sup>.

1. Please prohibit the use of wire flooring for all facilities. Having animals spend their entire lives on a wire floor is cruel and inhumane.
2. Please prohibit the stacking of cages above one level. This is unhealthy and unsanitary and allows feces and urine to fall on the animals below.
3. Please prohibit non-veterinarians from performing surgical procedures such as ear cropping, tail docking, debarking, and dew claw removal. These are surgical procedures and should be performed by a licensed veterinarian.
4. Please remove all references to a licensed breeder to use their "best efforts" regarding temperature control. This phrase is vague, ambiguous and unenforceable. It also weakens the federal regulations which are the minimum standards and can only be strengthened, NOT weakened.

In addition, there should be no "grandfathering" of existing breeder mills. Dogs and cats currently living in these horrific conditions, rampant in Texas, should not be sentenced to a future of suffering and painful death at the hands of individuals who consider animals a "cash crop."

Thank you for allowing my comments and for your consideration.

Respectfully,

Charles Bell  
[REDACTED]  
[REDACTED]

Ms. Melissa Rinard  
Texas Department of Licensing and Regulation  
Email: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us)

Thank you for allowing me to comment on the proposed Rules governing licensed dog and cat breeders in Texas. My concerns are as follows:

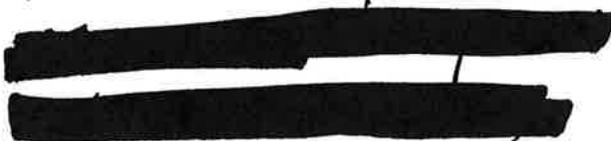
100% wire flooring (§91.102 and §91.104). Having an animal spend its entire life on a wire floor is unquestionably "cruel confinement". The proposed Rules should be changed to prohibit 100% wire flooring and there should not be any grandfathering of existing facilities.

Cage Stacking (§94.104). There should be no stacking of primary enclosures for dogs. This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the upper tier cages. As an alternative, you should limit only one primary enclosure on top of the other.

Cage Sizes (§91.104). I agree with the increased cage sizes for dogs, but I disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451 which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. If you grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures (§91.112). Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking.

Respectfully submitted,



RECEIVED	
TDLR MAIL ROOM 13	
FEB 27 2012	
RECEIPT#	AMOUNT

**From:** [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/8/2012 4:32 PM  
**Subject:** Breeding Mill Laws

Melissa Rinard, Legal Assistant  
General Counsel's Office  
Texas Department of Licensing and Regulation  
Email: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us)

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

*100% wire flooring (§91.102 and §91.104):* The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

*Cage Stacking:* There should be no stacking of primary enclosures for dogs as allowed in §91.104. This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

*Cage Sizes:* I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

*Veterinary Procedures:* Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

*Temperature:* Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts." It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,

Diane Kelly, CPA/Attorney at Law

**Erule Comments - URGENT**

---

**From:** Megan Cary [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/27/2012 3:57 PM  
**Subject:** URGENT

---

Dear Ms. Rinard:

I am writing today to urge you to strengthen the proposed dog and cat breeder regulations as published in the Texas Registry on January 20th.

Please prohibit the use of wire flooring for all facilities. Having animals spend their entire lives on a wire floor is cruel and inhumane, and is also very uncomfortable.

Please prohibit the stacking of cages. This is unhealthy and unsanitary and allows feces and urine to fall on the animals below. How would you like spending your entire life being pooped upon?

Please prohibit non-veterinarians from performing surgical procedures such as ear cropping, tail docking, debarking, and dew claw removal. These are *surgical* procedures and should be performed by a licensed veterinarian.

Please remove all references to a licensed breeder to use their "best efforts" regarding temperature control. This phrase is vague, ambiguous, and unenforceable. It also weakens the federal regulations which are the minimum standards and can only be strengthened, ***NOT*** weakened.

In addition, there should be no "grandfathering" of existing breeder mills. Dogs and cats currently living in these horrific conditions, rampant in Texas, should not be sentenced to a future of suffering and painful death at the hands of individuals who consider animals a "cash crop."

Thank you for allowing my comments and for your consideration.

Respectfully,

Megan Cary  
[REDACTED]

*THANKS for considering my comments. PLEASE help us protect these animals!!!!*