

Feb 9, 2012

Melissa Rinard

I would like to respectfully respond to a couple items in the HB1451 bill...There are so many vague requirements that I hope will be clarified as time goes on. It would be nice to have workshops in many different locations so that we breeders wishing to obtain a license can pass inspection upon first visit.

I would also like to address the exam required yearly for perfectly healthy dogs. Please reconsider this. I do not have a problem keeping record of vet visits and care of the dogs but the expense to having each one looked at yearly in addition to the other care required will be so high that it may force those of us that skip heats for the well being of the dog to now breed more frequently to be able to afford all the extra fees this new bill proposes..or to increase the number of dogs to more than we would normally be comfortable caring for to help offset expenses..

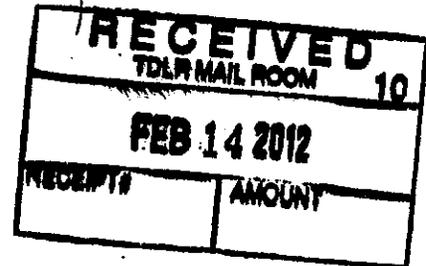
Please don't punish those of us that have always taken the best of care of our dogs .

Thank you



Debbie Schrenk

[REDACTED]



William J. Rowell
[REDACTED]
[REDACTED]
[REDACTED]

February 8, 2012

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

RE: Considerations for the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

The people of Texas try to appropriately care for their own including our pets and livestock. I am therefore very interested in having enforceable and effective rules and standards specified by your organization for HB1451. I ask that you consider these recommendations to clearly spell out the rules and standards:

- One hundred percent wire flooring should be prohibited for dog and cat enclosures. Existing facilities should not be grandfathered to allow 100% wire flooring.
- Cage stacking should be limited to two vertical units. Can you imagine stacked cages with wire flooring and animal waste dripping through layers of cages?
- The cage sizes specified by §91.104 should be enforced for all breeders with no grandfathering, except for a reasonable transition period to the new cage size. I see no way to determine that a non-conforming cage was or was not in prior existence which allows a large loophole to avoid compliance.
- Civilians and lay persons should not be allowed to perform surgical procedures like tail docking, ear cropping, declawing and debarking. Licensed veterinary professionals have invested their time and resources to gain the skills needed for these procedures. The rules should allow only licensed veterinary professionals to perform these procedures.
- The phrase "using best efforts" should be removed from §91.101 and §91.102 concerning regulation of temperature unless the standards also unambiguously specify what is a "best effort."
- Pertaining to temperature regulation, the phrase "for four consecutive hours" should be changed to "for fifteen consecutive minutes." Adequate heating or cooling equipment should be able to noticeably alter the temperature within that period. The fifteen minute interval would provide evidence to an inspector that appropriate environmental controls exist at the facility being inspected.

Thank you for considering my comments and recommendations. If I may be of assistance to you, please let me know and I will be glad to help.

Sincerely,



JPS
Contractor

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

February 3, 2012

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TDLR MAIL ROOM	MS
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Dear Ms Rinard

I have the following comments regarding the proposed breeder regulations. In general, I disagree with the "Grandfathering" provision. After all, the existing conditions are what prompted this new legislative proposal, so those exceptions simply perpetuate the abhorrent conditions. Furthermore, I suspect that the determination of validity of the waiver claimed by a particular breeder will require much more detailed inspection and research than the department can provide. A cutoff date for all provisions should be established, after which, all conditions must be met. Anything else renders the bill largely a toothless exercise written by lobbyists.

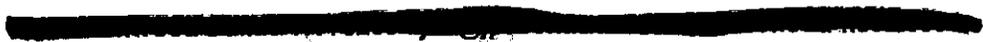
Specifically, I also disagree with the limitations specified regarding intervention by a veterinarian. Tail docking, ear cropping and declawing should not be done by a licensed veterinarian. Breeders no doubt would like to avoid the cost of these procedures, but I believe that they can be classified as surgical, and, if improperly done, perhaps without the proper local anesthetic or asepsis, risk undue suffering of the animal.

I visualize stacking of cages as an arrangement whereby the feces of the animal in the upper cage drop down upon the animals in the lower cage. I think that the animals deserve better from us.

I would appreciate acknowledgement of this letter. Thank you.

Respectfully,


James Stevens



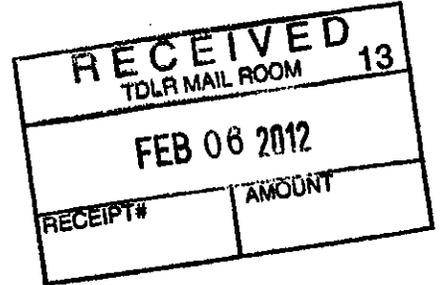
Donna Y. Shelton

22101 [redacted]

Montgomery, Texas 77350-8570

[redacted]

February 3, 2012



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

Re: H.B. 1451
Licensed Breeder Bill

Dear Ms. Rinard:

While House Bill 1451 is a step toward forcing people who breed companion animals to adhere to practices that are not cruel, it is simply not nearly enough.

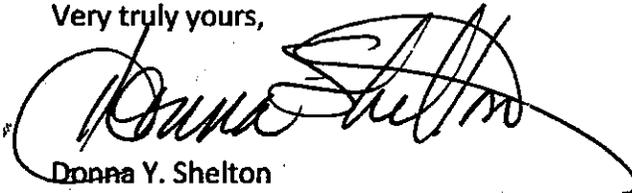
It is time to put an end to puppy mills period, however, our country is light years behind in this regard and spay/neuter laws as well.

The fact that thousands of animals suffer on a daily basis at the hands of greedy breeders is simply heinous and the fact that our government ignores the plight of indefensible animals is unbelievable to me. We must stop the cruelty and stop it now.

Knowing the United States killed more than eight million dogs last year is astounding yet the greed of puppy mill owners continues to grow. No longer can we allow lay persons to perform what should be considered medical and surgical procedures on animals. This is a criminal act and should be treated as such. That includes not only vocal cord cutting and C-sections on dogs that can't give birth, but also tail docking, ear trimming and dew claw removal ~ all without benefit of pain medication and antibiotics. I can't imagine the pain and suffering so many dogs are forced to endure.

Please pass this along to anyone who might make a difference in the lives of these helpless animals. To allow this to continue is to know we are truly not a civilized nation at all.

Very truly yours,



Donna Y. Shelton

DYS:ms

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

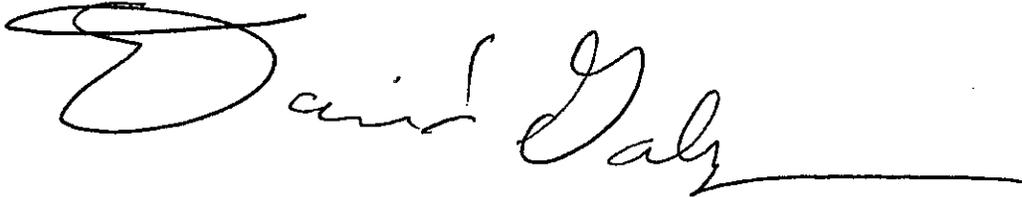
Regard: HB 1451 Regulations

My parents have been breeding puppies for many years. Their animals receive the very best of care. They have buyers that are returning for their second and third puppy. They have been licensed by USDA for all of those years. The USDA guideline have served them well.

Some of the rules that are proposed would create a hardship for them and could potentially put them out of business.

I urge you to adopt the minimal USDA guidelines.

Thank you,
David E. Galyon

A handwritten signature in black ink that reads "David Galyon". The signature is written in a cursive style with a long horizontal line extending to the right.

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

Regard: HB 1451 Regulations

My husband's parents have been breeding puppies for many years. Their animals receive the very best of care. They spend countless hours cleaning and caring for their dogs.

There is no way their kennel could be called a puppy mill.

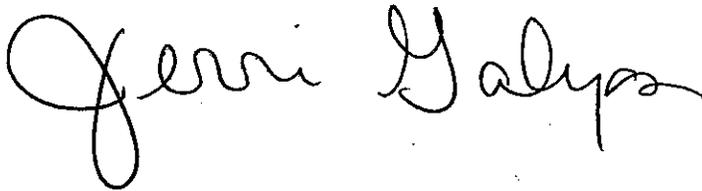
They receive e-mails and letters along with pictures of the puppies that they have sold from the new owners. In fact they have people coming back for their second and thirds puppies.

Some of the rules that are proposed would create a hardship for them and could potentially put them out of business.

I urge you to adopt the minimal USDA guidelines.

Thank you,

Jerri Galyon



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

Regard: HB 1451 Regulations

I have know Mr. and Mrs. Galyon for several years. They are not only neighbors but clients at the veterinary clinic where I work.

I see all of their puppies when they brings them in for their 8 week check up. They produce healthy quality puppies.

They have always been very diligent in caring for their animals and keeping a clean kennel.

We do not hesitate to recommend them to anyone that calls looking for good healthy puppies.

Our clinic inspects their kennel each year. There kennel and dogs have always been found to be in the best of condition.

They have been licensed by USDA from the time they started breeding. Those guidelines have served them well. Many of the new regulations would be to expensive for them to comply with.

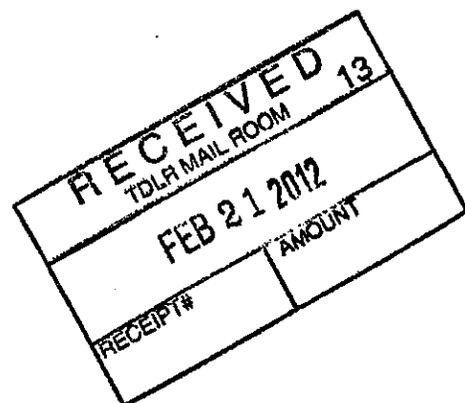
I personally know how much money our office would loose if they were forced to cut back on the number of dogs they have or to go out of business.

We have several other breeders that these rules would affect.

Please adopt the minimal USDA guidelines.

Thank you,

Lori Pettit



RECEIVED	
TDLR ENFORCEMENT	
FEB 17 2012	
INITIAL	AUSTIN

I know that I am young and a minor. I know my voice doesn't count for much. I asked my grandmother if I could write and she said it wouldn't hurt. My grandparents have been raising puppies all my life. When I was just 6 years old my Nanny finally let me start helping her with the puppies. She and Paw have taught me so much about dogs and puppies. She and Paw gave me my first puppy. He is a poodle and his name is Bazooka. Nanny and Paw have always taken care of their puppies and they always will. I have overheard her and Paw talking about the new laws. I really don't know why anyone would want to pass such laws. Please keep the laws they and all of the other breeders have always used. I was there when the inspector came last year. I heard him say that he never found anything wrong with their kennel and loved coming. Dog's are man's best friend for a reason. Please, ask yourself this. Would you really want to make mankind go lonely? Do you want to be responsible for doing that?

your friend, ~~Steve~~ Troy Galyon

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

Regard: HB 1451 Regulation

I live next door to my in-laws. They have had a kennel for 11 years.

I personally know that they spend many hours each day caring for and cleaning their kennel. Their dogs are always well groomed and receive the best of care.

They produce healthy well socialized puppies.

My daughter is 13 years old and has helped in the kennel from the age of 6. For the first few years she was paid to play with the puppies so that they would be well socialized and use to being around children. Then she graduated to learning how to clean the kennel and care for the dogs and puppies. This has been an invaluable experience for her.

I have personally read many of the letters that they have received from owner of their puppies. The letters have always been positive. There have been many buyers that come because a friend or relative had bought a puppy and were so happy with it.

Although they have been licensed by USDA for all of that time they do not sell to brokers or pet shops. Most of their puppies are sold before they are 8 weeks old. They have a waiting list for many of their puppies. Some buyers have waited from 6 months to a year to get one of their puppies.

The new regulations will be cost prohibitive for them. They would be forced to cut back on the number of breeders or to close their kennel. This would be a loss not only to them but the buyers that are wanting their puppies, their vet and their kennel suppliers.

Please adopt the minimal USDA guidelines.

Thank you,

Kathleen J. Deby

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P.O. BOX 93475 – LUBBOCK, TX 79493

February 17, 2012

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

Dear Ms. Rinard,

I am writing you to make comment that the TDLR's requested regarding the Draft Rules for implementing the Dog or Cat Breeder Program after HB1451 was enacted into law. I and my organization are interested parties.

The exemption included in HB1451 for dogs bred with the intent to be used primarily for hunting, tracking, or retrieving game has been narrowed by stipulations in the Draft Rules. The Rules now state a dog is presumed to count toward licensing requirements unless evidence such as entry registration forms or event receipts are submitted to TDLR to prove these hunting dogs qualify for exemption from kennel licensing. Eroding this exemption is unacceptable.

This Rule doesn't take into consideration the many working dogs in the state of Texas that do a day to day job on a ranch for the rancher himself or the cowboys that use them. A ranch is a 24/7/365 day operation that cannot take time out of their busy schedules to bring each one of their working dogs into town and have them certified to appease your requirements for their exemption or existence.

Guardian dogs, how do you propose to "trial" them? These dogs spend their entire lives living with livestock, protecting them against predators. The owners of these dogs will never ask them to load up and come to town for a "mock trial" because it will not be a fair assessment of the job they inherently perform.

Those that help eradicate feral or wild hogs from our Texas habitat will not be able to perform a trial to certify their dogs due to the fact that a portion of it is illegal in this state to perform. How do you expect to accomplish that? With all of the Animal Rights Activists knocking on the doors of those that use dogs to hunt hogs because these people think it's cruel, regardless of the fact that these people and their dogs are helping to bring the feral hog population under control as the dogs are the only known predator for the hogs. This in turn helps with our white deer populations, our ground nesting bird populations, and our natural habitation. Feral hogs are not indigenous to our state – they are a destructive non-inhabitant that was introduced into our state ecosystem.

Clarification is needed desperately on how you intend on certifying ALL types of working and hunting dogs. I and my concerned members want to know as this entire deal looks like the beginning of the end for ALL working and hunting dog owners.

Sincerely,

Jo Lynne Stark
President, Lone Star Working Dog Association

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

Regard: HB 1451 Regulations

We have lived next to door to our neighbor for a several years. They have a kennel that is very well cared for. Their animals are always clean and well cared for. Their kennel could not possibility be considered a "puppy mill." They produce some of the nicest puppies we have ever seen.

The cost of fees associated with the rules as proposed would be cost prohibitive for them. They have been licensed by USDA for many years and the minimal USDA guidelines have served them well. If the new rules are adopted they would have to either give up their kennel or cut back on the number of dogs they have.

There are many breeder in the same position that they are in. If all of these kennels were to go out of business that would have a devastation effect on many other business in our state. It would mean a loss of revenue their veterinarians, dog food suppliers, medical supplies. Not to mention their will be a loss of quality puppies for the public.

PLEASE ADOPT THE MINIMAL USDA STANDARDS.

Thank you,

Mr. Bill Johns

Bill Johns

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FEB 15 2012	
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Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulations
P.O. Box 12157
Austin, TX 78711
Regard: HB 1451 Regulations

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FEB 15 2012	
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GC

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PLEASE ADOPT THE MINIMAL USDA STANDARDS.

Thank you,
Mrs. Betty Johns

Betty Johns

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TDLR ENFORCEMENT	
FEB 16 2012	
INITIAL	AUSTIN

• Saturday, February 11, 2012 CARL AND REBECCA

[REDACTED]

TO WHOM IT MAY CONCERN
THE NAMES BELOW ARE PEOPLE CONCERN
THE NEW RULES AND REGULATIONS .

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WE OPPOSE THE NEW RULES AND REGULATIONS RE:
SIZE OF CAGES, COST OF
IMPROVEMENTS, COST OF ADDED VET
FEEES, LICENSE AND INSPECTION FEEES.
WE THINK THAT THE ORIGINAL USDA RULES AND
REGULATIONS SERVES EVERYONE (breeders / dogs /
puppies) WELL. DON'T NEED MORE RULES OR
REGULATIONS IT WILL ONLY CAUSE MANY SMALL
BREEDERS TO GO OUT OF BUSINESS AND MANY WILL
NOT BE ABLE TO RENEW THEIR LICENSE. THERE IS
GOOD AND EVIL IN ALL WALKS OF LIFE WHY WOULD
YOU WANT TO PUNISH EVERYONE BECAUSE WHERE
EVER YOU GO WHAT EVER YOU DO NO MATTER IF
YOU ARE RAISING PUPPIES / DOGS OR CARING FOR
BABIES OR OUR SENIOR CITIZENS YOU WILL FIND
BAD AND GOOD IN EVERYTHING. THERE ARE GOING
TO BE A LOT OF BUSINESSES AND PEOPLE REALLY
AFFECTED AND PUT OUT OF BUSINESS BY THIS .
PLEASE HELP US ! ANYTHING MORE THAN THE
STANDARD USDA REGULATOINS WOULD NOT BE A
WORKABLE THING !!! THANK YOU FOR YOUR TIME .
SINCERELY,

Carl Allen
Rebecca Allen
Bob [unclear]
April [unclear]

John Maxon
John Maxon
Michael Maxon

Melissa Rinard, Legal Assistant
General Counsel's Office
P. O. Box 12157
Austin, TX 78711

Regard: HB 1451 Regulations

My wife and I have been breeders for the past 11 years. We have been licensed by USDA for that period of time. The USDA guidelines have served us well.

We have never had to pay for an inspection fee. Our license has always been based on half of the price of the total sales of our puppies. Our license has never been over \$300. Because of the quality of care we give our dogs and puppies we operate on a very close profit and loss margin.

The fees and expenses that we would have under the proposed rules would be very burdensome for us. We would have no option but to cut back on the number of breeders or to go out of business.

We know several other breeders that are in the same position that we are.

If your goal is to have as many breeders as possible to apply for licenses please **ADOPT THE MINIMUM USDA STANDARDS.**

Respectfully yours,
Charles R. Galyon

Charles R. Galyon

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FEB 16 2012	
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Dianne Urey

[REDACTED]

[REDACTED]

Frank Denton:

Thank you for working on the Commercial Dog and Cat Breeders Act. I think this is a very necessary piece of legislation. However, I feel it is much too weak.

Please ban the use of wire floor cages, and the stacking. Also, please get a humane regulation on temperature extremes. It should read "NO EXTREME TEMPERATURES", not "four hours of extreme temperatures".

As we all know common sense is not common. It is up to people like you to help balance the ship.

Thank you



Dianne Urey

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It's bad enough that pet overpopulation is so bad in Texas, and all over America, that despite progress, we are still killing 6 million animals a year in so-called 'shelters'.

But worse still, our efforts to make a difference are stymied by a clueless and corrupt legislature, who could care less about alleviating the suffering of animals. Instead, they are only concerned with serving the lobbyists who fill their campaign coffers.

The undermining of the Puppy Mill Bill is the latest attempt by special interests to override the will of the voters. A bill passes that has the clear support of the people, but once again, the legislature tries to grandfather out all the provisions that matter.

I can't believe I would have to sit down and write a letter explaining why dogs should not spend their entire lives standing with bare paws on a wire cage floor, until it deforms their flesh. Cages that are stacked upon each other, so that urine and waste and vomit drip down from one of these helpless creatures onto another.

I can't believe I would have to explain that dogs should have a crate at least large enough so they can turn around and lie down.

I can't believe I have to explain that dogs should not be outdoors, unprotected, when it is 4 degrees or when it is 113 degrees, both of which temperatures we reached last year in Texas.

But we **do** have to explain, apparently. Because here I am, one of thousands spending time I can't really spare, to make a case so basic it defies logic.

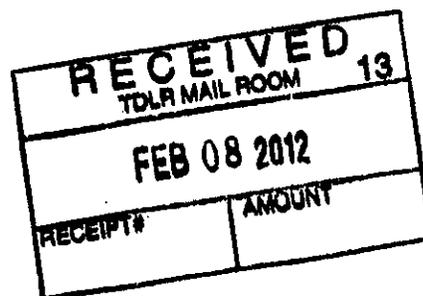
The suspected terrorists at Guantanamo live under better conditions than the dogs in Texas puppy mills.

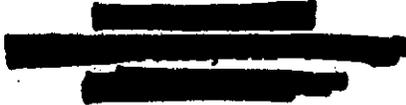
I'm not interested in the breeder's boo-hoo stories about the cost of implementing these changes. (in fact, the cost would be modest spread over several years) If such horrible cruelty is what it takes to stay in business as a puppy mill, then perhaps they shouldn't be in business.

But if they *are* going to operate, they should at least treat the dogs (and cats) as well as we treat those on death row or in a prison camp.

Please do not let the intent of this bill be subverted. If you exempt current breeders from the requirements, the bill is useless. I think you know this. So I pray that Texas will, for once, do the right thing.

Juli Roland
[REDACTED]
[REDACTED]



EDOM VETERINARY SERVICE**Dr. Dwayne Collins, D.V.M.**


January 30, 2012

Reference: Veterinary Examination of Dogs or Cats for Licensed Kennels

If each animal in a licensed kennel must have an individual annual examination, these are my conclusions along with estimated cost of such a procedure. There will of course be a variance depending on the requirements of the examination.

The standard cost of an examination in my office is \$42.00 which includes checking the temperature, pulse, respiration as well as weighing the animal. Also the heart and lungs are auscultated. The eyes, ears, nose, throat and teeth are examined along with a general palpation of the entire body for abnormalities such as swollen nodes or growths. Any lab test such as fecal or heartworm screening is extra and if it is the animal's first visit, a complete history is taken.

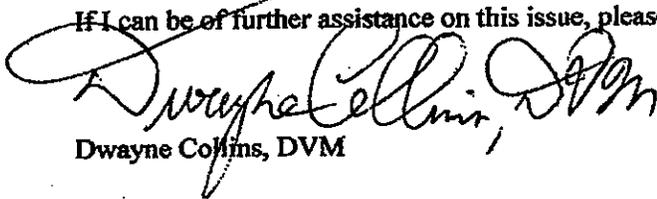
The above examination will take as much as 15 to 20 minutes. If there was adequate help from technical assistants, the time could be shortened to 10 minutes. That would mean as many as 6 animals could be examined in an hour. Extrapolating that out at a charge of \$42.00 per examination would mean a kennel with 48 dogs will take 8 hours at a cost of \$2016.00.

Many veterinarians base their services on an hourly rate. A professional with the expertise of a veterinarian should earn no less than \$400.00 an hour. If that figure were used as a cost basis, the charges a kennel of 48 animals would incur will be substantially higher at \$3,200.00.

My conclusion and recommendation would be to use the standards of the USDA kennel inspection. The veterinarian visually examines all the animals in the kennel on a walk through and if he observes any perceived problems, that animal is individually examined. I have personally conducted USDA inspections and found that those requirements are quite adequate. If those procedures are implemented on a kennel of 48 dogs the estimated cost would be \$400.00 or less.

To reiterate what I said in front of Rep. Thompson's committee in Austin, this is an unnecessary bill that simply adds another layer of government. If it were mandated that kennels abide by USDA rules and have only one inspection agency, the problem would be solved and save money for both the tax payers and kennel operators.

If I can be of further assistance on this issue, please do not hesitate to contact me.


Dwayne Collins, DVM

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CARL AND REBECCA ALLEN

[REDACTED]
[REDACTED]
SATURDAY, FEBRUARY, 11, 2012

MELISSA RINARD, LEGAL ASSISTANT
GENERAL COUNSEL'S OFFICE
TEXAS DEPARTMENT OF LICENSING AND REGULATIONS
P.O. BOX-12157
AUSTIN, TEXAS 78711

AFTER GOING THRU AND READING HB 1451 AND SOME OF THE GUIDELINES BEING REVIEWED , I WOULD LIKE TO NOTE HOW WONDERFUL FEDERAL USDA GUIDELINES HAVE SERVED ANIMAL WELFARE AND THE PET INDUSTRY FOR MANY YEARS. MINIMAL USDA REQUIEMENTS WILL CONSTITUTE THE VERY BEST IN ANIMAL WELFARE MAKING IT FEASIBLE FOR MANY BREEDERS TO COMPLY WITH THE LICENSING PROCEDURES. HOWEVER, EXPANDING ON THE FEDERAL GUIDELINES WILL NOT IMPROVE ANIMAL WELFARE... ALL IT WILL DO IS DISCOURAGE MANY BREEDERS FROM BECOMING LICENSED." THE COST OF THE FEES AND RENOVATIONS / MODIFICATIONS WILL BE TOO EXPENIVE FOR THOSE WISHING AND WILLING TO BECOME LICENSED AS WELL AS FORCING THEM TO EITHER QUIT OR RELOCATE. IN ORDER TO GET MOST BREEDERS TO COMPLY AND APPLY FOR A LICENSE, PLEASE USE THE MININAL USDA REQUIEMENTS THAT HAVE DONE WELL IN THE PAST THE FEES ASSOCIATED WITH THE LICENSE ARE COMPLETELY UNACCEPTABLE AND IS COST PROHIBITED FOR ANY PROFESSIONALDOG BREEDER. WHY ARE WE HAVING TO PAY FOR AN INSPECTION WHEN NO OTHER OCCUPATION INSPECTED UNDER TDRL PAYS FOR INSPECTIONS? THE AMOUNT FEES INVOLVED, VET INSPECTIONS, CURRENT MONTHLY EXPENSES, AND THE UPGRADES THAT WILL BE REQUIRED WILL PUT ME OUT OF BUSINESS OR I WILL CONTINUE MY BUSINESS IN ANOTHER STATE "

SINCERELY,
CARL AND REBECCA ALLEN

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FEB 15 2012	
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EDWARD AND MARY FORSYTH

[REDACTED]
[REDACTED]
SATURDAY, FEBRUARY, 11, 2012

MELISSA RINARD, LEGAL ASSISTANT
GENERAL COUNSEL'S OFFICE
TEXAS DEPARTMENT OF LICENSING AND REGULATIONS
P.O. BOX-12157
AUSTIN, TEXAS 78711

AFTER GOING THRU AND READING HB 1451 AND SOME OF THE GUIDELINES BEING REVIEWED , I WOULD LIKE TO NOTE HOW WONDERFUL FEDERAL USDA GUIDELINES HAVE SERVED ANIMAL WELFARE AND THE PET INDUSTRY FOR MANY YEARS. MINIMAL USDA REQUIEMENTS WILL CONSTITUTE THE VERY BEST IN ANIMAL WELFARE MAKING IT FEASIBLE FOR MANY BREEDERS TO COMPLY WITH THE LICENSING PROCEDURES. HOWEVER, EXPANDING ON THE FEDERAL GUIDELINES WILL NOT IMPROVE ANIMAL WELFARE... ALL IT WILL DO IS DISCOURAGE MANY BREEDERS FROM BECOMING LICENSED." THE COST OF THE FEES AND RENOVATIONS / MODIFICATIONS WILL BE TOO EXPENIVE FOR THOSE WISHING AND WILLING TO BECOME LICENSED AS WELL AS FORCING THEM TO EITHER QUIT OR RELOCATE. IN ORDER TO GET MOST BREEDERS TO COMPLY AND APPLY FOR A LICENSE, PLEASE USE THE MININAL USDA REQUIEMENTS THAT HAVE DONE WELL IN THE PAST THE FEES ASSOCIATED WITH THE LICENSE ARE COMPLETELY UNACCEPTABLE AND IS COST PROHIBITED FOR ANY PROFESSIONAL DOG BREEDER. WHY ARE WE HAVING TO PAY FOR AN INSPECTION WHEN NO OTHER OCCUPATION INSPECTED UNDER TDRL PAYS FOR INSPECTIONS? THE AMOUNT FEES INVOLVED, VET INSPECTIONS, CURRENT MONTHLY EXPENSES, AND THE UPGRADES THAT WILL BE REQUIRED WILL PUT ME OUT OF BUSINESS OR I WILL CONTINUE MY BUSINESS IN ANOTHER STATE "

SINCERELY,

EDWARD AND MARY FORSYTH

*Edward And Mary
Forsyth*

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FEB 15 2012	
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BILLY AND BETTY BARRON

[REDACTED]
[REDACTED]
SATURDAY, FEBRUARY, 11, 2012

MELISSA RINARD, LEGAL ASSISTANT
GENERAL COUNSEL'S OFFICE
TEXAS DEPARTMENT OF LICENSING AND REGULATIONS
P.O. BOX-12157
AUSTIN, TEXAS 78711

AFTER GOING THRU AND READING HB 1451 AND SOME OF THE GUIDELINES BEING REVIEWED , I WOULD LIKE TO NOTE HOW WONDERFUL FEDERAL USDA GUIDELINES HAVE SERVED ANIMAL WELFARE AND THE PET INDUSTRY FOR MANY YEARS. MINIMAL USDA REQUIEMENTS WILL CONSTITUTE THE VERY BEST IN ANIMAL WELFARE MAKING IT FEASIBLE FOR MANY BREEDERS TO COMPLY WITH THE LICENSING PROCEDURES. HOWEVER, EXPANDING ON THE FEDERAL GUIDELINES WILL NOT IMPROVE ANIMAL WELFARE... ALL IT WILL DO IS DISCOURAGE MANY BREEDERS FROM BECOMING LICENSED." THE COST OF THE FEES AND RENOVATIONS / MODIFICATIONS WILL BE TOO EXPENIVE FOR THOSE WISHING AND WILLING TO BECOME LICENSED AS WELL AS FORCING THEM TO EITHER QUIT OR RELOCATE. IN ORDER TO GET MOST BREEDERS TO COMPLY AND APPLY FOR A LICENSE, PLEASE USE THE MININAL USDA REQUIEMENTS THAT HAVE DONE WELL IN THE PAST THE FEES ASSOCIATED WITH THE LICENSE ARE COMPLETELY UNACCEPTABLE AND IS COST PROHIBITED FOR ANY PROFESSIONALDOG BREEDER.WHY ARE WE HAVING TO PAY FOR AN INSPECTION WHEN NO OTHER OCCUPATION INSPECTEDUNDER TDRL PAYS FOR INSPECTIONS? THE AMOUNT FEES INVOLVED, VET INSPECTIONS, CURRENT MONTHLY EXPENSES, AND THE UPGRADES THAT WILL BE REQUIRED WILL PUT ME OUT OF BUSINESS OR I WILL CONTINUE MY BUSINESS IN ANOTHER STATE "

SINCERELY,
BILLY AND BETTY BARRON

February 11, 2012

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

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Dear Ms. Rinard:

IN RE: Proposed Rules Governing Licensed Breeders in Texas

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. The Texas Department of Licensing and Regulation's proposed rules, however, have me very concerned that the goals of HB 1451 will not be realized given certain weak and unenforceable provisions currently contained in the proposed Rules.

The major problem areas as I see them are:

1. allowing the use of 100% wire flooring (§91.102 and §91.104)
2. allowing stacking of primary enclosures of dogs (§91.104) more than 2 deep
3. grandfathering existing breeder's cage sizes for dogs (§91.104)
4. requiring only a "best efforts" standard for temperature requirements (§91.101 and §91.102), and
5. allowing lay persons to perform veterinary procedures (§91.112).

1. 100% wire flooring constitutes "cruel confinement" and is responsible for most health and injury issues. The proposed rules must be changed to **prohibit 100% wire flooring**.

2. The Cage Stacking practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. **Limit stacked cages to no more than 2 high.**

3. All breeding facilities should be treated equally. **Existing facilities should be required to meet the higher standards currently proposed for future licensed facilities.** Current breeders must NOT BE EXEMPTED from the requirement for cage sizes. 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.

4. **Strike the term "using best efforts"** in §91.101 and §91.102 as this is a catch-all/hide-all description that cannot be enforced. Please **remove the language "for four consecutive hours"** in regulating temperature requirements. The four hour standard similarly is unenforceable as inspectors will not wait at a facility for four hours to determine compliance with the rule.

5. **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.

I shall appreciate receiving your thoughts and actions with respect to the foregoing changes.

Yours truly,


Eralyn McLarty

• Saturday, February 11, 2012 MARY FORSYTH

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TO WHOM IT MAY CONCERN
THE NAMES BELOW ARE PEOPLE CONCERN ABOUT
THE NEW RULES AND REGULATIONS .

WE OPPOSE THE NEW RULES AND REGULATIONS RE:
SIZE OF CAGES , COST OF THE NEW IMPROVEMENTS,
COST OF THE ADDED VET FEES, LICENSE AND
INSPECTIONS FEES. WE THINK THAT THE ORIGINAL
USDA RULES AND REGULATIONS SERVES EVERYONE
WELL DON'T NEED MORE RULES OR REGULATIONS IT
WILL ONLY CAUSE MANY SMALL BREEDERS TO GO OUT
OF BUSINESS AND MANY WILL NOT BE ABLE TO RENEW
THEIR LICENSE. THERE IS GOOD AND EVIL IN ALL
WALKS OF LIFE WHY WOULD YOU WANT TO PUNISH
EVERYONE BECAUSE WHERE EVER YOU GO WHAT
EVER YOU DO NO MATTER IF YOU ARE RAISING
PUPPIES / DOGS OR CARING FOR BABIES OR OUR SENIOR
CITIZENS YOU WILL FIND BAD AND GOOD IN
EVERYTHING. PLEASE HELP US ! THANK YOU FOR YOUR
TIME . SINCERELY,

Mary Forsyth	Noby Forsyth	Johnny Jones
Edward L. Forsyth	Dale Handen	Dexter Miller
Sherry A. Ramirez	Bob Bateman	Bette Henry
Randall Ramirez	Brandon Wallace	Nancy Clark
Judith Ramirez	Calby Wallace	Tony Dyer
Connie L. Wallace	Carolyn Dannee	Ross Dyer
Dea Kyla Smith	Lara Barnes	Justin Dyer
Steve Amigo	Tommy Barnes	Michael Dyer
Christie Skinson	Daniel Briggs	Jo Eubanks
Heagan Eubanks	Betty Barron	Mary Eubanks
Curry Skinson	Billy Barron	Eddie Forsyth
Addison Skinson	Casey Allen	Connie Forsyth
Darren Amigo	Rebecca Allen	Breanna Forsyth
	Connie Forsyth	Clara Rhea
	Mike Clark	Linna Rhea

2/15/2012

Melissa Rivard

The USDA guidelines have saved animal welfare and the Pet industry for decades. Angles and the Statute Requirements cannot be met.

Any more only appeal to the emotion of the Ala that have absolutely no expertise in Kennel Management or what constitutes

the Very Best animal welfare in a breeding Kennel operation. Expanding on the federal guidelines will not only improve animal welfare it will discourage some may breeders from becoming licensed that it will make the cost of fees and modifications too expensive for those wishing/willing to become licensed to do so.

We need fair and balance and USDA guideline is the fair + balance. We can do USDA and they are very good

Melissa Rivard

[Redacted signature]

BILL PFLUGER
~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

February 15, 2012

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

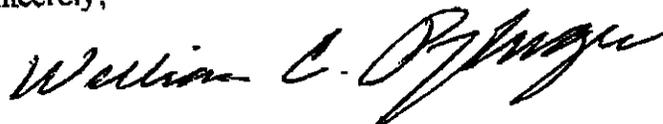
Dear Ms. Rinard:

These comments are offered in order to strengthen the Texas Department of Licensing and Regulation proposed Rules and Standards following H. B. 1451.

1. The "grandfathering" of wire or wire mesh flooring in Section 91.102 should be removed.
2. As to cage sizes, "grandfathering" existing breeders from increased cage sizes ignores the will of the Legislature. This should be phased in over a period of time.
3. Cage stacking should be eliminated from the proposed rules.

I appreciate this opportunity to make these comments in regard to H. B. 1451 and would appreciate a reply. My fax number is 325-942-8090.

Sincerely,



William C. Pfluger

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

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February 13, 2012

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I have watched the Senate and Representative hearings on HB1451 as well as the committee meetings setting regulations. This was a mean spirited bill presented from the premise that all breeders are bad people and prone to abuse their dogs. That sentiment has been carried on by the backers of the bill, HSUS and THLN, into the regulations process. I am pleased to see that TDLR staff and committee members seem to over all feel otherwise and want workable regulations for the breeders that come under the statutes definitions. The statute based on USDA regulations were meant for large commercial breeders and not meant for private in-home breeders. The statute has thresh-holds so low that private in-home breeders are now defined as a business. This in itself is a flaw of the statute. I beseech you not to listen to the voices that would prefer to see these regulations 'strengthened' and used to suppress dog breeders.

Unfortunately, you will probably hear by far fewer voices against some of the changes HSUS and THLN would like to make because of fear. Real fear of them getting names and addresses to use to harass and turn in invalid complaints as has been seen all over the United States. I fear this, too, even though the thresh-holds have not been reduced so low that they include me, yet. I have been showing dogs since 1987 and have had 6 carefully planned litters over that time. I understand that Senator Whitmire has said he would like to lower the statute's numbers in coming sessions.

That being said, I trust that the TDLR will view breeders as a needed part of our society and set clear workable regulations that are based on common sense and not anti-breeder sentiments. I was going to go down a list item by item, but there are so many I will give a few examples.

91.102 (e) (A) (ii) There is no support that solid flooring is better than wire or wire mesh if the regulations for the wire as defined in 91.10 (19) are enforced. The only reason given for the 50% was a TVMA recommendation. TVMA did not produce any basis for their recommendation or evidence that solid flooring is better than wire for 100% use. The statute is chock-full of cleaning and exercise requirements that the choice of solid or wire flooring should be left up to the kennel owner.

91.112 (a) the regulation calling for hands on examinations by a veterinarian presumes to know more than the attending veterinarian. The ability of the breeder to know when his dogs need an exam was dismissed when annual exams were added to the regulations. Therefore, how can the breeder be held responsible for the veterinarians hands on exams, per Attorney Charles Johnson, and be expected to have the ability to judge the attending veterinarians performance and accuracy of compliance? This is problematic.

91.104 (E) Limiting the stacking of crates to three vertical levels is a reasonable number and has been proven to be safe for the dogs and thus is a common practice among many including kennels, shelters, dog events and veterinarian offices.

91.106 (D) (4) just the language 'Forced exercise methods' is very negative. Treadmills are an excellent way to give dogs necessary exercise at times such as during inclement weather when the normal required exercise is not possible.

These regulations involve living beings and the statute needs to be flexible enough that the owner is allowed to take appropriate action for any unforeseen situation that may arise. Kennel owners need to be able to act for the safety and well being of the animal without holding their feet to the fire if exceptions are needed to the regulations. USDA regulations are not meant for and are not possible for a home environment. Expanding USDA regulations based on impulse, chance, whim, or caprice and not by necessity, reason or principle is not in the best interest of the animal nor the person active in the rearing of animals.

Respectfully,



Barbara McNeil

[REDACTED]
[REDACTED]

Cc: Senator Dan Patrick
House Representative Bill Callegari

February 15, 2012

As a dog rescue volunteer and owner of a "puppy mill" dog, I am writing in support of strong commercial pet breeder regulations. The current draft regulations allow dogs to be forced to live on wire flooring which causes damage to the dog's feet and causes the dogs to suffer terrible pain. I would ask that the regulations require at least half of the required floor space to provide a solid surface. Any and all cages should be large enough for the dog to stand up and turn around in so they are not confined in one position for life. This requirement should apply immediately for all puppy mills.

I also ask that the temperature requirement not allow dogs to suffer and die in extreme heat. The temperature should be maintained at the temperature that would be considered "comfortable" for a human in the same facility wearing a fur coat. I would think that would not be less than 45 degrees in the winter and never over 80 degrees in the summer.

The practice of puppy mills stacking cages of dogs on top of each other is unsanitary and certainly not considered to be humane treatment. There is no acceptable reason why dogs should be covered in feces and urine for their entire lifetime. This practice also causes diseases and much suffering to the dogs. There is no way to have clean water and clean food for the dogs if feces and urine is falling from cages. Even though puppy mill owners will profess they have arranged the cages in order to keep this from happening, most often it has been found to be a serious problem. The dogs need to be where there is air movement in a well ventilated area. I can't imagine fresh air being too much to ask for in these conditions.

Regulations should demand that puppy mill owners maintain complete records of vet care and any and all surgeries be done by a vet as well as demanding all injuries/illnesses be treated by a vet. These owners should not be allowed to do any procedure/treatment that results in pain for the dog or may cause an infection. All dogs should be given heartworm and flea preventive.

My adopted , puppy mill dog spent 4 years in a puppy mill cage and had many fears when I got her, it was obvious she had not been treated well. She had arthritis and weakness in her back end due to being cramped in a cage for 4 years. She had heartworms and a mammary tumor. She was afraid to approach her food bowl, expecting to have to compete for food and water. She did not know how to play with toys or enjoy a walk on a nice day in fresh air. In spite of all of the misery she endured she has a beautiful, loving personality and loves everyone, especially children! When I adopted her I had prepared a "safe place" for her to retreat to when she was insecure, she stayed there for 2 weeks and at night would go the toy basket and bring stuffed toys to her "safe place" and soon had them stacked about half way up the wall. No dog should suffer what my wonderful dog and countless other dogs suffer, they are innocent victims. The State of Texas must keep this from happening.

With the law passed in Texas, the Department of Licensing & Regulation will represent the people of Texas in protecting these helpless animals from the torture they endure. Any puppy mill owner not providing the care mentioned above and not in compliance with the regulations of the agency, should not be allowed to keep any animals and should be charged with animal cruelty.

I recently read articles about a kennel in Floyd County and found letters from people who had bought a dog from or had seen the kennel and they described horrific conditions. All of the facilities doing business in this way should be closed and the owner should never own animals again in this state.

Please consider my concerns when regulating puppy mills. Thanks for your consideration in this matter.

Sincerely,



Suzanne Schreve

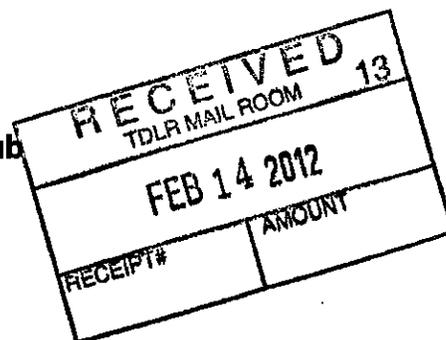
[Redacted address line]

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FEB 21 2012	
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Galveston County Kennel Club

**Pat Goodale
GCKC Secretary**



February 7, 2012

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

Dear Ms. Rinard,

After the membership at Galveston County Kennel Club reviewed the Texas Department of Licensing and Regulations Regulatory proposal, we would like to respectfully submit some suggested changes as follows:

Section 91.21 License Required – Presumptions.

- We propose that if an animal is declared by the owner that it is not used for breeding (could be an intact older female, for example) to get a signed affidavit from the owner that the female is intact, but will not be used for reproduction.

Section 91.23 License Requirements- Dog or Cat Breeder

- (4) We think that there should be consideration of replacing the statement with:
Successfully pass a criminal background check that proves the applicant has never pled guilty to, been convicted of, or received adjudication for animal cruelty or neglect in this state or any other in the five years preceding the persons initial license application for each applicant and controlling persons.

Section 91.24 License Requirements – Dog or Cat Breeders License Renewal

- (4) We think this should also be replaced with the statement:
Successfully pass a criminal background check that proves the applicant has never pled guilty to, been convicted of, or received adjudication for animal cruelty or neglect in this state or any other in the five years preceding the persons initial or renewal license application for each applicant and controlling persons.

Section 91.27 Licenses or Registration – Notice of Proposed Denial, Opportunity to Comply

- (c) We think you should change that the department MAY approve the application to the department, to SHALL approve the application. It states that the department will approve the application if all rules are met.
- We also wish that you would consider a Tier for the amount of days that an applicant has to address the deficiencies, for instance: Tier One – food, water, and health issues of the dog/cat – 7 days to comply; Tier 2 – Records Deficiencies – 14 days to comply; and Tier 3 – Structural Deficiencies – 30 days to comply.

Section 91.28 Department Notifications to Licensee or Registrant

- We agree that you should notify an application by email, but should add at the end of the statement:
And also by certified mail, return receipt requested.

Section 91.30 Exemptions

We think that show dogs and cats should be exempted since it specifically says "similar organized competitive events". Also there is no exemption for breeding of service animals, such as seeing eye dog facilities, hearing dog training facilities that also breed dogs, government service dogs such as police dogs, narcotic dogs, PTSD dogs used by returning military veterans, seizure detecting dogs, cancer detecting dogs, search and rescue dog facilities, and any other dogs used to benefit humans. We believe that all of these are beneficial and purposeful breedings and already have regulations and standards to comply with for the care of these animals.

Section 91.54 Out of Period Inspections:

- We also wish that you would consider a Tier for the amount of days that an applicant has to address the deficiencies, for instance: Tier One – food, water, and health issues of the dog/cat – 7 days to comply; Tier 2 – Records Deficiencies – 14 days to comply; and Tier 3 – Structural Deficiencies – 30 days to comply.

Section 91.59 Responsibilities of the Department – Reporting Violations; Eligibility of Applicant

- While we understand that reporting violations by others is an important way for the organization to look for violations, we are in agreement that some guidelines should be prepared and records of each complaint and informant maintained and reviewed for malicious intent.

Section 91.66 Responsibilities of Inspectors – Inspectors, Investigators, and Reports of Animal Cruelty

- (c) Inspecting without an application's consent or a warrant goes against our constitutional amendment IV.

Section 91.112 Standards of Care – Veterinary Care

- Rest between breeding cycles- We think this should be left out and let veterinarian's decide what is adequate for a healthy breeding dog or cat.
- Also having a veterinarian to check a dog or cat once per year is excessive. Most breeders know how to give their own immunizations and see the veterinarian when the animal is sick. Since there will be yearly inspections, if a dog or cat looks like they are sick or not cared for, this would in itself, go against the regulations.

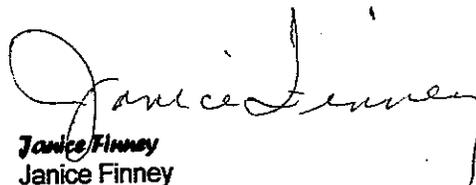
Section 91.202 Transportation Standards – Primary Enclosure Used to Transport Live Dogs and Cats

- We think that rules are already in place at with the airlines to provide safe travel.

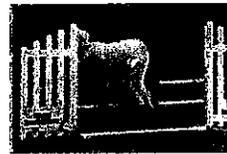
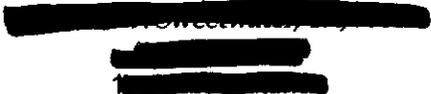
We hope that you will consider the comments and changes that the Galveston County Kennel Club has submitted. Should you have any further questions, please feel free to contact either one of us.

Respectfully Submitted,

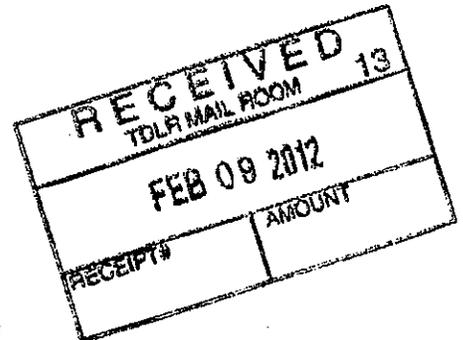
Cathy De La Garza
Cathy De La Garza
President
[REDACTED]


Janice Finney
Janice Finney
Legislative Liaison
[REDACTED]

Lisa L. Peterson
Fantasee Samoyeds

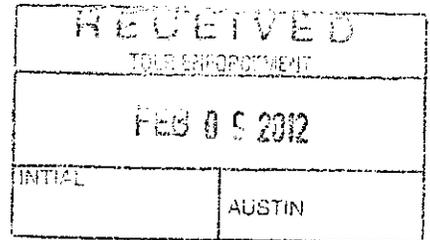


February 7, 2012



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

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations



Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

I have been involved with the sport of purebred dogs for over fifty years – dating back to my high school days. For the last thirty years, I have been involved with Samoyeds, competing in herding, obedience, agility, the conformation ring and taking them to nursing homes and hospitals as therapy dogs. In addition, when appointed to serve as an Attorney ad Litem for children or the elderly, I often use them to help me "reach" the proposed ward. In the years I have had Samoyeds, I have been responsible for five litters of puppies.

I take pride in being a conscientious breeder of dogs. §91.22 lends itself as easily to deny me that designation as not. It is vague as written; please consider clarifying it to read that "(A) person may not act as, or represent that the person is a licensed dog or cat breeder in this state..."

Showing dogs is a relaxing hobby for me, providing relief from my "real" task as an elected prosecutor. It is not unusual for me to keep an animal intact so that I can continue to show, despite not intending to breed it, or, if male, allow him to be used as a stud. §91.21 appears to require that I either breed the animal or have it altered. This section requires that I prove a negative in order to be able to keep my dog eligible to be shown. In the courtroom, we presume a person to be honest under oath until shown otherwise; surely an affidavit could be used here.

As I mentioned, I am a prosecutor. Because of that, I am very aware that people 'report' violations for myriad reasons, not all of which will withstand scrutiny. The process outlined in §91.59 lends itself to malicious reporting. If I cause a court to revoke the probation of an individual, or cause the loss of a job because of my prosecution of a criminal matter, should the family of the defendant be able to simply

make calls concerning my animals and then face no repercussion when they are not legitimate? How many times may they make these calls? This may sound farfetched, but – like most prosecutors – I have been sued in federal court for doing my job; shall I now face this scrutiny as well? There needs to be a consequence for malicious reports, and a means of keeping records to avoid habitual reporting in hopes of earning the promised reward.

I am part of the law enforcement community, with a strong belief in our justice system. However, any provision which allows for warrantless entry – absent a danger to human safety – sends chills up my spine. §91.66 unnecessarily makes that provision. There should be no ability to enter a private residence without a warrant.

In closing, my dogs are my stress relief and my hobby. On the rare occasions that I whelp a litter, the puppies are handled daily, prepared for their new homes in every possible way, and the homes are carefully screened. I stay in touch with the owners, and, a decade or so later, am often talking to them about another puppy. Part of my statutory job includes working with the department formerly known as Child Protective Services. As I work with those families and children I could wish that they had the care I give my dogs.

Please give consideration to my concerns, which are raised both as a member of the law enforcement community and as an aficionado of the sport of pure bred dogs. Feel free to contact me either at the above e-mail or my office, [REDACTED] I remain,

Yours truly,

A handwritten signature in black ink, appearing to be 'Lisa L. Peterson', with a long horizontal line extending to the right.

Lisa L. Peterson

February 8, 2012

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

RE: Dog & Cat Breeders Program

Dear Ms. Rineard:

As a kennel owner and breeder of dogs for over twenty years I have experienced many adjustments and adaptations to a variety of different situations regarding the health and welfare of my dogs. I am always seeking better alternatives and useful information for their well being. After having objectively studied the new proposed licensing regulations I have some concerns that I would like to address that I think would directly effect me as a breeder.

It appears that the costs of enforcing and administrating the new proposed rules is going to be covered by the fees imposed on the breeders. The additional costs of implementing changes to comply with the standards set forth are wholly on the part of the responsible breeders. This will result in the increase in prices to the potential buyer, thus preventing the average person from being a pet owner. In the depressed economy we as Texans are experiencing, it has become very difficult if not impossible to market a puppy for profit. There are many costs that have escalated in the past few years (Labor, Feed, Medical Supplies, Cleaning Supplies, Advertising, Professional Care, Utilities, Maintenance, etc.). I believe the added burden of expenses incurred with the new proposed dog breeders program will result in many people making the hard decision to not continue in their chosen profession. Unfortunately, the majority of our placements comes from the families that wish to add a companion to their lives and the additional costs involved in the purchase and care of that pet will prevent them from purchasing a puppy.

I would like to address some of the specific areas that I am concerned with, and I appreciate your taking the time to respond to them.

SECTION 91.10 - Definitions

(19) Wire or Wire Mesh.....flooring or walls or ceilingsmust be completely encased with a plastic or rubberized coating.

QUESTION: What about the outside pens constructed with wall and gate panels of heavy duty panels that are welded to 1 ½ x 1 ½ square tubing (this product is not available in coated material) Also, outside areas that are attached to structures by doggy doors?

SECTION 91.21 - License Required - Presumptions

For the purpose.....presumed to be used for breeding purposes unless the person

establishes to the satisfaction of the department.....reasonably acceptable to the department....

QUESTION: What is the "satisfaction" of the department and "reasonably accepted" definitions?

SECTION 91.28 - Department Notifications to Licensee or Registrant unless otherwise.....

QUESTION: Should this not be mailed with return receipt requested due to the frequent problems with internet service?

SECTION 91.30 - Exemptions

(a)

(2) hunting.....

QUESTION: What would the follow-up procedures be to see if a dog is being trained and used for hunting?

(e) For purposes....acceptable to the department.

QUESTION: What is "acceptable to the department"

(f) All evidence.....Uniquely and conclusively.

Question: What is "uniquely and conclusively"?

SECTION 91.50 - Inspections - Prelicense

(c) pay to the department the required inspection fee and the reasonable expenses.

QUESTION: what are the "reasonable expenses"?

(d)request another prelicense inspection by paying the required fee to the department.

QUESTION: Does the "reasonable expenses" wording apply to the reinspection?

SECTION 91.52 - Inspections - Periodic

(a) Each.....at least once in every 18 month period.

QUESTION: Does this mean it could be more often, and if so, how many more times and for what reasons?

(d) An inspector.....except as necessary to access animals or other property relevant to the care of the animals.

QUESTION: What is necessary to access animals or other property relevant to the care of the animals?

(k) The department may assess administrative penalties and/or administrative sanctions.

QUESTION: What type of penalties and sanctions may be assessed?

SECTION 91.53 - Out-of-Cycle Inspections

(h) Facilities on anin four consecutive inspections,.....

QUESTION: Are four consecutive inspections necessary once a compliance has been made?

SECTION 91.59 - Responsibilities of the Department - Reporting Violations

SECTION 91.60 - Responsibilities of the Department - Payment of Rewards

QUESTION: What about breeder protection against "grudge" or "nuisance" reports? And are inspection fees incurred for investigation of such reports?

SECTION 91.65 - Advisory Committee

(h)

(1) A decisionof the members present.

QUESTION: Should there not be a minimum number of committee members present or a quorum met for such decisions?

(g)

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

QUESTION: What are the procedures and protocols of the department?

CHAPTER 91.77 - Responsibilities of Licensee

a. A licensed.....a separate record....documenting animal care.

QUESTION: Can this be kept with the ownership records or is it required that there is a completely separate file for such records?

(c)a description...and weight.

QUESTION: Can the "weight" portion be deleted due to the variance in a dog's weight at different times?

(iii)number of puppies.....

QUESTION: Is this the number of puppies at birth or at weaning (there can be death loss in newborn puppies)?

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

QUESTION: Are there going to be approved forms and can these records be kept in one ownership file?

SECTION 91.80 - Fees

QUESTION: The fees are quite expensive and will put quite a hardship on most breeders. Could you explain the basis for the cost. Also, is there any provisions for changing fees if the number of animals changes during the course of the year? It would be beneficial to also know if the proposed fees will be based on numbers in the future and if the number of breeders and number of dogs will affect the basis of the cost.

SECTION 91.90 - Administrative Sanctions and Penalties

QUESTION: What administrative sanctions/penalties?

SECTION 91.100 - Standards of Care - Housing Generally

b. Condition and site.....Housing facilities must be physically separated.....

QUESTION: What determines "physically separated"?

c. Surfaces

1. General Requirements

Be free of excessive rust

QUESTION: Materials that come in contact with cleaning requirements and urine will rust in time. These materials can be painted over to allow proper cleaning, is this method of control acceptable?

SECTION 91.101 - Standards of Care - Indoor Housing Facilities

(a) Heating, cooling, and temperature.(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperatures does this also apply to them?

SECTION 91.102 - Standards of Care - Sheltered Housing Facilities

(a) Heating, cooling, and temperature(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperature does this also apply to them?

SECTION 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.....

(B) Breeds.....

QUESTION: Should the (short-haired breeds) that are acclimated to the temperatures prevalent to the area be included?

In closing I would like to say that I know in starting a new program there will always be questions and problems as well as solutions to those problems. It will be beneficial to know as much as possible about the procedures and any changes that occur due to any modification of the rules. As always, change can be quite a challenge, there will be breeders that just cannot make the adjustments that the program will require. Our

To Melissa Rinard
Legal assistant,
General Counsel's office,
Texas Department of Licensing &
Regulation.

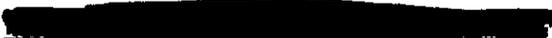
I have read your article on "White Rock Lake Weekly "and I did not hastate to write my comment.

I am a 21 years old college student at El Cento College in Dallas. 2 years ago I was asked to research a topic that I could educate my classmates. I spoke to 50 people about puppy mills I showed him tons of pictures, and videos. I was shocked to know that not one person knew about the horrible thing that is happening in our backyards. I want to help in any way I can, ever since that day I have not stopped talking about it .I take my dog to the dog park and always ask "where did you get your puppy from?" the look I get from people is shocking . I hope we all have the heart to speck up and stand up to put an end to this. Hope puppy mills owners get the punishment they desire.

I'm trying to do my part and spared the world. This information should me everywhere. Billboards, TV, flyers and radio.

If I can be of any help feel free to contact me at any time.

- Evelyn Montoya

- 

Margaret Neale
[REDACTED]
[REDACTED]

February 9, 2012

RECEIVED TDLR MAIL ROOM 20	
FEB 13 2012	
RECEIPT#	AMOUNT

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

Dear Ms. Rinard and the members of the Texas Department of Licensing and Regulation,

I am writing as a concerned citizen and owner of companion animals to encourage the TDLR to pass stronger regulations in addressing the activities of licensed breeding facilities. As when new regulations are proposed, those organizations which about to be regulated have a loud voice with the policy makers. In particular, in this case, those the regulations are designed to protect have no capacity for voice. Their concerns and conditions can only be heard through third parties such as me. It is for this reason that I want to convey to you and members of the Department that stronger, not weaker regulations should be passed.

1. I am concerned that existing breeding facilities will be 'grandfathered' and allowed to have 100% wire mesh flooring and larger cages for the animals. I strongly urge that the regulations do not allow such dispensation to current breeding facilities. Of course, they will complain that they cannot do business profitably if such changes are required of them. To allow this complaint to have influence the TDLR is implicitly favoring existing breeding facilities over ones that will be licensed under the new regulations AND siding with the existing breeding facilities that such conditions are not inhumane. By nature of Texas passing the law that for which these regulations provides the infrastructure, the legislature has already indicated that the current treatment of animals by breeding facilities is not humane and needs to be controlled via licensing.
 - a. While I do not believe the argument that providing solid flooring on 50% of the surface of the cage is cost prohibitive, the breeders cost concern is more reasonable for the requirement to increase cage sizes. I encourage the TDLR regulations to allow existing facilities time to transition to the new cage size requirements under (for example) the following timeline: all cages new to the facility (I specifically worded this one to remove the possibility that old cages will be traded from one facility to another so that they are not "new" but used and thus escape the intent of the regulation) will meet the TDLR requirements and 33% of the existing cages will be replaced with the mandated larger cages each year with all cages meeting the mandated size three years from the implementation date of these regulations
2. The TDRL's proposed regulations require that only a veterinarian be allowed to euthanize an animal or perform a surgical birth procedure. I strongly urge the TDRL to include any surgical

alternative of an animal (tail-docking, ear cropping, or claw removal) in the requirement that it be done by a veterinarian. The humane necessity for anesthesia or pain medication (not available to the layperson) for these procedures should make their inclusion obvious. As to the argument that such procedures would be too costly if they were performed by a veterinarian – well, to me that is an unintended positive consequence. Perhaps we will see less of these procedures done if the costs become prohibitive.

I am pleased that the Texas legislature saw fit to license breeding facilities. I urge you to discount the arguments of the current breeders to water down the regulations. They and what they have chosen to do is the reason the legislature saw fit to pass the legislation. Had they been treating their animals humanely in the first place, this law would not need to be passed and the regulations not need to be promulgated. Obviously, this is not the case.

Other states are experiencing similar pressures and responding with similar measures. California recently passed requirements that egg-laying facilities have more space per chicken (so that they could spread their wings). The industry cried loudly that this would cripple the California egg-laying industry's competitiveness and raise the price of eggs. The law passed and neither of the dire predictions seems to have come to pass. Eggs are the same price they were before – and there have not been mass shutdowns of egg producing facilities.

Please keep in mind that those who are the beneficiaries of these grandfathering options and milder regulations are the very folks who are the reasons why this legislation was required. They have a vested economic interest in the status quo. Please do not let their voice drown out the impact of the silent suffering of the animals under their care.

Sincerely,



Margaret A. Neale



February 8, 2012

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

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RECEIPT#	AMOUNT

Dear Ms. Rinard,

Members of the Siberian Husky Club of Metropolitan Dallas have reviewed the Texas Department of Licensing and Regulations Regulatory proposal, and we have several areas of concern where we would like to respectfully submit some suggested changes. Our comments are as follows:

1. Section 91.10 Definitions.

- (19) Wire or Wire Mesh – We feel a statement such as “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.” would be a reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness.

2. Section 91.21 License Required – Presumptions.

- We propose that if an animal is declared by the owner that it is not used for breeding (could be an intact older female, for example) to get a signed affidavit from the owner that the female is intact, but will not be used for reproduction.

3. Section 91.22 License Required—Dog or Cat Breeder.

- This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves “dog breeders”, even though they otherwise would. Further clarification is necessary. A better alternative would read, “A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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.”

4. Section 91.27 Licenses or Registration – Notice of Proposed Denial, Opportunity to Comply.

- We think you should change that the department MAY approve the application to the department, to SHALL approve the application. It states that the department will approve the application if all rules are met.

5. Section 91.28 Department Notifications to Licensee or Registrant.

- We agree that you should notify an application by email, but should add at the end of the statement: “And also by certified mail, return receipt requested.”

6. Section 91.30 Exemptions.

- We think that show dogs and cats should be exempted since it specifically says “similar organized competitive events”. Also there is no exemption for service animals, such as seeing eye dog facilities, hearing dog training facilities that also breed dogs, government service dogs such as police dogs, narcotic dogs, or search and rescue dog facilities.

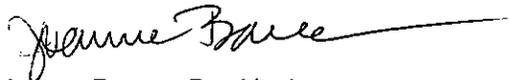
7. Section 91.59 Responsibilities of the Department – Reporting Violations; Eligibility of Applicant.

- Stronger protections for breeders should be included, to prevent malicious complaints. While we understand that reporting violations by others is an important way for the organization to look for violations, we are in agreement that some guidelines should be prepared and records of each complaint and informant maintained and reviewed for malicious intent.

8. Section 91.66 Responsibilities of Inspectors – Inspectors, Investigators, and Reports of Animal Cruelty.
 - The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.
9. Section 91.112 Standards of Care – Veterinary Care.
 - This section is superfluous and vague. We believe that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. We recommend removal of this section.
10. Section 91.113 Standards of Care—Sales and Transfers.
 - The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. We recommend that the rule read, “A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age.”
11. Section 91.202 Transportation Standards – Primary Enclosure Used to Transport Live Dogs and Cats.
 - We think that rules are already in place at with the airlines to provide safe travel.

We hope that you will consider the comments and changes that the Siberian Husky Club of Metropolitan Dallas has submitted. Should you have any further questions, please feel free to contact us.

Respectfully Submitted,



Joanne Barnes, President
Siberian Husky Club of Metropolitan Dallas





Wherever you are, you're in TICA's world.

February 20, 2012

Vickie Fisher, President
[REDACTED]
[REDACTED]
[REDACTED]

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

Dear Ms. Rinard:

The International Cat Association (TICA), is the world's largest genetic registry of purebred and household pet cats, with individual and club members worldwide. TICA promotes caring, responsible ownership and breeding of cats, working together to promote the preservation of pedigreed cats and the health and welfare of all domestic cats. TICA is a resource for information related to cat genetics and better breeding practices, promoting healthy, happy pet cats. Our members and exhibitors have a vested interest in how Texas chooses to implement the Texas Dog and Cat Breeders Act (Breeder Law) now and in the future.

Breeders and TDLR are stuck with the requirements of the ill-considered law. TICA understands that many of the problems with the law can only be changed by legislation and that everyone must make the best of a bad situation. TDLR has the opportunity to make the best of a bad situation as it makes and implements the rules currently being considered. TICA is submitting its comments on the rules in the hope that it will help TDLR in this endeavor.

TDLR may or may not be aware that proponents of the Breeder Law assisting in the development of the rules recommended by the advisory committee generally have little knowledge about dog and cat breeding, especially in the home. Some would prefer that no breeding were allowed in Texas at all. Those who are knowledgeable about in home breeding operations would never suggest the Code of Federal Regulations for Standards (CFR or USDA standards) requirements as a minimum as they are inappropriate standards in the bedrooms of America. Others will want to make the Texas standards more restrictive than the USDA standards.

TDLR needs to be aware of where these additional restrictions are occurring and their effect as many will be counterproductive to TDLR's statutory mandate of being self-funding. Why? The harder and more expensive the standards and licensing process are to meet, the fewer breeders will be willing to undergo licensing process and the less revenue for TDLR's enforcement of this legislation.

Even among breeders who choose to keep breeding operations at a level that would require licensing, excessive regulations and costs run the risk of causing the strategic purpose of the breeding program to be consumed in excessive efforts and costs of compliance. Eventually such breeders who strive for great compliance may quit breeding as their strategic purpose gets lost in the efforts of compliance.

Many requirements of the CFR presume a business operation, not hobbyists who may get caught up by the Breeders Act definitions of dog or cat breeder. For example, mandated engineering standards (frequently not suitable for a home environment), allowing enhancement without considering practical implementation or costs, passing a pre-license inspection when what it will take to pass such inspection is not clear in either the law or the proposed rules, and requiring documented training of employees (or family members for the hobbyist).

Many of the rules are vague or unclear making it difficult for the average person to know if they are required to be licensed or even what it will really take to become compliant so a license could be obtained.

Much of the statutory language is included in the regulations. This enables TDLR to essentially enforce laws that would otherwise require the level of due process an accused would be entitled to in a criminal investigation, law enforcement and the courts. Again, to encourage greater participation in the licensing program, TDLR should look to make rules now that would make participation easier and in the future encourage legislative changes that would understand the one size fits all approach will not work in such a diverse "industry".

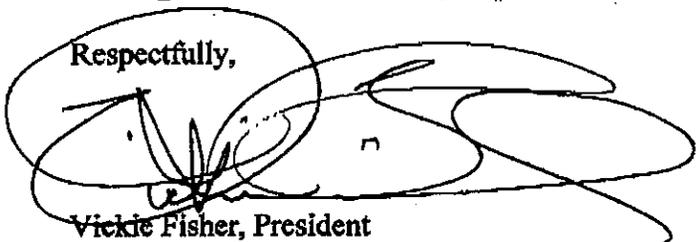
Rewriting the CFR into the rules makes it incumbent upon TDLR to have someone constantly monitoring the CFR for changes to notify TDLR whenever there is a change so that the process of rewriting the rules to accommodate CFR changes can occur.

This adds to the expense of the program as the federal government will not forego making changes because it inconveniences the state.

Also TDLR should consider whether anyone considered whether the requirements in the rules will be compatible with the International Air Transport Associations (IATA) Regulations rather than merely copy them from the CFR? Carriers commonly allowed for air transport should be allowable. Also IATA allows use of absorbent diaper padding in the bottom of the carrier which can be safer and certainly less messy than litter.

Attached are TICA's specific comments regarding our concerns or objections to the proposed rules and the rule involved. Please give them careful consideration as we feel they will help clarify how the Breeder Law will be enforced and the standards that will be applied as well as increase the likelihood of TDLR meeting its mandated statutory requirements.

Respectfully,



Vickie Fisher, President
The International Cat Association, Inc.
www.tica.org

The International Cat Association, Inc. Comments

§91.10. Definitions.

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

This is defined too vaguely to adequately determine which animals count towards the 11 female limit. Many dogs or cats not owned by a person will count in this definition without additional consideration. As one example, females are frequently sent to the males for breeding purposes and may well be boarded by the stud's owner for weeks or even months until breeding and pregnancy has been accomplished. Yet the stud's owner has no ownership interest in the female.

§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.

Again there is the issue of what is possessed which can be addressed by fixing the definition of possess. Also there is the issue of how to prove a female will not be used for breeding purposes. One of the reasons for "innocent until proven guilty" directive in criminal cases is that it is extremely difficult to prove a negative. TDLR needs to provide better guidance as to what proof would be required to prove an animal is not to be used for breeding. As suggested by the American Kennel Club an attestation that a particular animal will not be used for breeding that year would be reasonable alternative evidence. Also TDLR needs to define the time frame during which the female will not be used for breeding. It should be limited to the year for which the license is being applied for or renewed only.

§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.

This could be interpreted to mean that even breeders who are not required to be licensed under state law may not refer to themselves as breeders. Unlike "software engineers" who have alternate titles to use, such as software developer, there aren't too many terms for breeder. However, it would be appropriate to say a breeder could not call themselves a "licensed dog or cat breeder" in Texas. Changing this rule will also help to ensure that complaints based upon this rule will be less likely to arise out of a misunderstanding of this rule. Such investigation will utilize TDLR resources and funds that can better be used elsewhere.

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

Some home hobby breeders work together under one cattery/kennel name yet reside separately in noncontiguous premises. A better alternative would be to allow one license but require separate inspection fees for each noncontiguous area.

§91.23. License Requirements--Dog or Cat Breeder.To be eligible for a Dog or Cat Breeders license, an applicant must:(4) successfully pass a criminal background check for each applicant and controlling person:

Successfully passing a background check is defined in the Breeder Law section 802.107 and is used with explicit clarification in rule 91.25(a). To use "pass a criminal background check" without the qualifications in the statute or used elsewhere in the rules implies this utilizes a much broader standard. Animal cruelty is a crime which would be directly relevant to whether a person should be utilized by a breeder, yet there are many crimes which have no relevance to taking appropriate care of an animal and under this rule they could be used against the applicant or applicant's employees. Adding "in accordance with section 802.107" to this sentence clarifies this issue and prevents the potential for misunderstanding.

§91.24. License Requirements--Dog or Cat Breeders License Renewal.(a) To renew a breeder license, an applicant must:(4) successfully pass a criminal background check for each applicant or controlling person:

See comment to 91.23 as this is the same issue.

(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.

There are many unexpected situations that may interfere with a person's ability to file a timely renewal. There could easily be a hurricane, wildfire or any number of other possibilities disrupting a person's ability to comply strictly or a death in a family may occur that could cause a complete disruption in a hobbyist's household or even a business if the person is a key person. As it is hard to tell a pregnant queen to not have its babies, and it would behoove the breeder to place kittens or puppies already born, there should be a mechanism whereby the breeder can obtain an extension that would cover females already pregnant or existing animals while not allowing additional breeding during the extension time period. Also there is no provision for when the lapse is caused by TDLR during which the breeder should be able to continue operation.

§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.

Neither the statute nor the rules provide a potential licensee sufficient guidance to ensure that reasonable people will be able to meet all requirements of the pre-license the first time. Allowing for a conditional approval gives the applicant the opportunity to come into compliance, however, there is no guarantee with the poor guidance available that all issues will be fixable in 14 days, especially if licensee must wait on contractors to do the work. The time frame should be more flexible and consider the entirety of the situation. Also if a denial is based on inability to complete the work in the timeframe allowed by TDLR, will this count as a denied license in the case of reapplication as the statute and these rules indicate it might?

§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.

To help prevent unknown notice failure, emails should be sent read receipt requested. If no read receipt is received or no email is provided, written notice should be sent by certified mail with at least delivery verification required. In the alternative the email should be sent as a courtesy with everyone receiving written notice sent by certified mail with at least delivery verification required.

§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.

This subjects both TDLR and breeders to abuses from people with malicious intent. It is one thing to honestly report alleged abuses because a person lacks knowledge to know if a place is truly noncompliant, it is quite another to use anonymous reports as a form of harassment. Not only is this unfair and costly to the breeder but it is costly for TDLR as well. Anonymous should only mean not publicly disclosed. TDLR should keep a record for internal purposes of the identification of otherwise anonymous reports in order to identify individuals who demonstrate malicious intent. TDLR should also have the ability to sanction/fine individuals who use the system with malicious intent. For on-line submissions, a record of the IP address of the computer used to submit reports would also be useful.

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

(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.

The last sentence of this section should be removed. Alternatively it should be clarified that investigation of unlicensed activity that requires access to private property must do so pursuant to a search warrant.

§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.

In a private home, there is no area readily accessible to the public. Alternative language should be provided for home hobbyists that get caught up in the Breeding Law.

§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;

There should be some requirement for reinstatement if breeder is successful on appeal or a decision is overturned. The breeder should be allowed to sell or place animals conceived but not born prior to the revocation or existing at the time of revocation.

§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 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 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.

To encourage compliance and licensing, TDLR needs to clearly set out what is expected and simplify it as much as possible. The TACC scale is not in the Breeder Law and is difficult to understand. TDLR should remove this reference to facilitate licensing and compliance.

§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:

The Breeder Law does not require documentation by the attending veterinarian in the records of the animal. Many times the breeder is far more familiar with what is best for their particular breed than veterinarians, especially the more rare breeds. Requiring veterinarian documentation in the medical records just unnecessarily adds to the cost of compliance.

§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:

(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:

CFR only requires a 4 month age limit. Kittens need to interact with other cats for better cat to cat socialization and at 16 weeks would have all their distemper vaccinations except the final vaccination recommended to occur after 16 weeks to ensure lasting protection. TICA recommends changing the age limit back to 4 months.

§91.112. Standards of Care--Veterinary Care.

(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.

This section is vague and may cause more harm than good. What is adequate rest? How is breeding cycle defined? When a cat develops pyometria, it is generally recommended she be bred on her next heat cycle. This may fall into an "adequate rest" period.

§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 far exceeds the statutory section 802.201 (13) and CFR which both require only that a breeder shall not sell, trade, or give away an animal before the animal is at least 8 weeks of age. Many breeds of cats and dogs frequently are not 2 pounds at 8 weeks of age. Among breeds of cats these would include the Singapura, Burmese, Peterbald, Siamese, Balinese, Oriental Shorthair, Oriental Longhair, Colorpoint Shorthair (a CFA breed), Devon Rex, Cornish Rex, Sphinx, and Japanese Bobtails as a start. In fact most breeds of cats, exclusive of the large breeds, are likely to fall into this category, especially the females.

Wes Archer, DVM [licensed in TX and other States]
[REDACTED]

Feb 17, 2012

Melissa Rinard,
Legal Assistant,
General Counsel's Office,
Texas Department of Licensing and Regulation

Re: Dog and Cat Breeders Program

Dear Ms. Melisa Rinard:

As a licensed veterinarian I have been professionally involved with dog breeders over a wide spectrum, from the one pet owner to the 300+ operators over about 35 years.

I am concerned that the proposed Chapter 91. Program is attempting to do too much and is cost prohibitive to most if not all breeders with less than 30 or 40 females. Even those small breeders with 10 qualifying females are limited to 1, 2 or 3 litters that might hit the 20 puppy limit for sale in a year.

The USDA believes that about 5 puppies are raised on an average from each litter. I have attended continuing education courses for veterinarians and listened to veterinary PhD's in reproduction teach that the healthy intact female dog is meant to be bred at each cycle and not breeding can lead to various reproductive problems including uterine infections and death or hormonal imbalances that negatively affects the female's health and breeding value.

I suspect that a lot of well intentioned people tried to draft a good program, but it appears to me that improperly informed individuals and others with attitudes that are out to destroy quality professional dog breeders that own the great genetics of the many breeds raised in Texas have played an excessive role in the draft I have read.

I strongly suggest that NO USDA standards be exceeded by any parts of Chapter 91.

I suggest that exempt breeders with less than 11 adult breeding females be allowed to sell as many puppies from their 10 or less females as they produce without being licensed. I know of an English Mastiff that had 16 puppies a litter after raising 12 puppies seven months earlier and this was one female. Under the proposed Program this owner would have to put a number of valuable dogs to sleep. What if this individual had only 3 females??

There are breeders that have less than 11 intact females that are raised in facilities less than those required by Chapter 91 that do a great job raising puppies and caring for their dogs. Many of these people are retired or partially disabled and need the income from the fruits of their labor. This Program will seriously jeopardize their income or make them criminals. For good reproductive health of ten females whelping twice a year about 100 puppies should be produced. The 20 puppy limit means either unhealthy females or euthanizing 81 puppies each year. How can such an inadequate law be written and passed? I suggest the solution is to exempt the 20 limit number for at least all breeders over 62 or disabled breeders if not completely eliminate the puppies sold limit for breeders with less than 11 intact females.

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Another really glaring error in the Chapter is the many requirements for temperature controls for all dogs and cats. Different species and breeds of species have different thermal neutral zones. [A thermal neutral zone is the ambient temperature range at which they don't have to expend energy to raise or lower their body temperature.] The Chapter 91 lumps together all dogs including the Chinese Crested Hairless and the Saint Bernard and all are treated the same. It appears that whoever provided the temperature zones was either just pulling these temps out of the air or was using human values. I recommend that USDA levels and requirements be used in the program.

Last I heard this was America and people that are accused are allowed to know who their accusers are. That in America people and small businesses are allowed to live and work privately and the pursuit of happiness. This program makes all licensed dog breeders targets of misguided individuals and terrorist groups such as PETA.

Lastly, while there are a lot more areas of the proposed Program I believe are excessive, unnecessary and over regulated, I am surprised and disappointed that this type of poorly written Program would seriously be enacted. Many Veterinary kennels would not meet these standards.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wes Archer DVM". The signature is fluid and cursive, with the "DVM" part being more distinct and larger than the name.

Wes Archer, DVM



HUNTON & WILLIAMS LLP

FAX

TO FAX: [REDACTED]

FROM NAME: McOlgan, Letitia A.

RECIPIENT: Ms. Melissa Rinard, Legal Assistant, General Counsel's Office - Texas Dept. of Licensing and Regulation

IF PROBLEM WITH TRANSMISSION, PLEASE CONTACT THE SENDER

DATE/TIME: 2012-02-17 17:09:05 EST

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[REDACTED]

[REDACTED]

February 17, 2012

Ms. Melissa Rinard, Legal Assistant
General Counsel's Office
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PO Box 12157
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erule.comments@license.state.tx.us
(512) 475-3032 -fax

Re: Adoption of Rules under the Dog or Cat Breeders Act, Texas Occupations Code § 802.201

Dear Ms. Rinard:

I write on behalf of The Humane Society of the United States ("HSUS"), in reference to the recent Dog or Cat Breeders Act (the "Act"), enacted as Texas Occupations Code § 802.001-.251. At the January 4, 2012 Advisory Committee meeting, the HSUS's comments on the rules to be adopted to regulate the care and confinement of animals under § 802.201(b)(2)-(13) were not given full consideration due to the Commission's view that the Commission could not modify those standards. As discussed below, the Commission's statutory interpretation is incorrect.

Background

Section § 802.201 directs the Commission to adopt rules necessary to protect the health and well-being of the animals covered by the statute, including the ability to improve and elaborate upon the standards in (b)(2)-(13). The statute provides that:

The commission *shall* 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.



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TEX. OCC. CODE § 802.201(a) (emphasis added). In furtherance of the rulemaking process, § 802.065 mandates that “[t]he commission *shall* establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter.” TEX. OCC. CODE § 802.065 (emphasis added). The Commission established an Advisory Committee as directed, and divided that Committee into three work groups. Each work group was delegated the responsibility to discuss and agree on proposed rules related to a designated category. One work group had the responsibility for agreeing on proposed rules for the minimum standards for the care and confinement of animals that the legislature directed be adopted under 802.201(b).

The procedure the Commission must follow when adopting such rules is found in the Texas Administrative Procedure Act, codified as Texas Government Code § 2001. Section 2001.029 mandates that the Commission take into consideration public comments.

During the Advisory Committee meeting of January 4, 2012, various members of the Advisory Committee and the public expressed views that the minimum standards to be adopted by the Commission should be more stringent than those listed in (b)(2)-(13). For example, Nicole Paquette of the Human Society of the United States offered comments regarding evidence that wire flooring and the stacking of cages are detrimental to the animals’ health. Other members of the public and representatives of other public organizations also expressed views on the standards covered by (b)(2)-(13).

Full consideration and discussion of the comments made by the Advisory Committee and the public was precluded by the Commission Assistant General Counsel Charles Johnson’s repeated insistence that the Commission cannot modify the standards listed in (b)(2)-(13) in any way because “that would in essence be legislation through rulemaking.” [transcript p. 223]. The following exchange between Sherry Ferguson, the executive director of the Houston Humane Society and an Advisory Committee member and Charles Johnson is illustrative:

- Sherry Ferguson: Can we discuss the prohibitive stacking?
- Charles Johnson: We can but there’s not a lot to do about it because that’s in the statute. The statute allows.
- Sherry Ferguson: The statute says we can allow three but we can improve on the statute and that would be lowering it.



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Charles Johnson: We can improve on USDA [the federal regulations]. What's in the statute is done. The statute allows us to improve USDA standards, but the standards that are in the statute [(b)(2)-(13)] those are legislative.

[transcript p. 193]. Further discussion of how and why the Commission should adopt more stringent minimum standards than those listed in (b)(2)-(13) was raised by members of the Advisory Committee as well as members of the public. However, those discussions were consistently cut off by Johnson's misinterpretation of § 802.201. From the meeting of January 4, 2012, it is clear that the Commission is interpreting the statute to mean that the federal regulations in (b)(1) can be improved upon, but the standards listed in (b)(2)-(13) cannot. This interpretation is incorrect.

Discussion

The objective in construing a statute is to give effect to the legislature's intent. *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002). The entire purpose of the Act is to ~~personally updating minimum standards~~ ~~and~~ ~~bring~~ ~~through~~ ~~the~~ ~~legislative~~ ~~process~~, the Texas Legislature delegated that job to the Commission. Indeed, the very first mandate of the statute is that "[t]he commission shall adopt rules establishing *minimum standards*" to protect the health and well-being of the animals. Restricting the Commission from considering or adopting rules related to the specific provisions of (b)(2)-(13) would frustrate the entire purpose of the Act, as well as the purpose of the Legislature's delegation to the Commission.

When construing a statute, the statute must also be read as a whole. The Texas Supreme Court has succinctly expressed that rule of construction by stating that legislative intent is determined from "the entire act and not just its isolated portions." Thus, we read the statute as a

¹ See 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." 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>.



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whole and interpret it to give effect to every part. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). Reading the statute as a whole, the standards set forth in (b)(2)-(13) are simply minimum standards, as stated in (a). These specific standards are a starting point for the Commission in fulfilling the mandate of subsection (a), and are not simultaneous minimum and maximum standards that cannot be altered. While the Commission may not enact rules that require less than the standards in (b)(2)-(13), there is nothing in the statute to prohibit the Commission from requiring more if deemed necessary to protect the health and well-being of the animals.

The text of the standards in (b)(2)-(13) themselves support this conclusion. Each is phrased in terms of a *minimum* standard, e.g., "at least one hour of daily exercise" in (b)(2), "at least one regular veterinary examination a year" (b)(8). More importantly, if the Commission does not elaborate on these standards as worded, they are currently so vague that they are inherently unenforceable: "adequate drainage" (b)(2)(A); "adequate protection against harsh weather" (b)(2)(B); "an adequate period between breeding cycles" (b)(3); "basic grooming" (b)(4); "routine and preventative care" (b)(9)-(10); "appropriate training" (b)(12). Each of these terms need to be elaborated upon by Commission rules so that breeders are aware of the guidance and objectives with respect to their own judgments as to compliance, a result contrary to the entire purpose of the legislation.

Even if the Legislature had intended (b)(2)-(13) to be the original standards, the Commission is empowered to modify by the express grant of authority in subsection (c):

The commission by rule may 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.

TEX. OCC. CODE § 802.201(c). This grant of authority to modify existing standards makes no mention of being limited by sections (b)(2)-(13). Johnson would read this limitation into the text of subsection (a) as well as subsection (c). If the Commission is actually limited from establishing or modifying the standards listed in (b)(2)-(13), then subsection (c) is meaningless. Simply put, subsection (c) would not mean what it clearly says.

The natural reading of all three sections (a, b, c) together demonstrates that the Legislature intended the Commission to have the authority to promulgate the rules that it deems necessary to protect the health and well-being of the animals. Thus, the Commission's reading of the words "require that" in (b)(2)-(13) to mean that the Commission cannot improve upon

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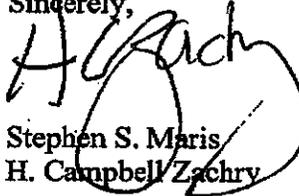
Ms. Melissa Rinard, Legal Assistant
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these standards not only goes against the purpose of the statute, but ignores the statute's use of "minimum standards" in subsection (a), the inherent need for elaboration of undefined terms in (b), and the general authority to improve all standards granted in subsection (c).

We recognize that the Commission is currently following the process of adopting rules outlined in the Texas Administrative Procedures Act, including public comment. However, the Commission's current interpretation of the statute has greatly diminished the purpose of the Advisory Committee and effectively prohibited the right of members of the public, including representatives of the Humane Society of the United States and other like-minded organizations, to comment on (and suggest improvements to) the standards listed in (b)(2)-(13). This is a right conferred on the HSUS and other interested members of the public by the Texas Administrative Procedures Act and the Dog or Cat Breeders Act. Interpreting the statute as the Commission apparently does makes it impossible for the Commission to fulfill the legislative mandate of subsection (a) to adopt minimum standards. It also forecloses the ability of the Commission to continuously modify those standards under the authority of subsection (c) as changes become necessary in order to protect the health and well-being of the animals or the public.

Accordingly, we respectfully request that you comply with legislative intent and text of the statute. We note that the Texas Administrative Procedure Act provides a cause of action which allows the court to settle matters of statutory construction in this context. *See* TEX. GOV'T. CODE § 2001.038. Our interest is simply to effect the statute as it has been enacted, and to further the statute's purpose of protecting the health and well-being of the animals. Thank you for your consideration in this matter, and please do not hesitate to contact me if there is any other information I can provide to you.

Sincerely,



Stephen S. Maris
H. Campbell Zachry

HCZ:tm

cc: Charles Johnson, Assistant General Counsel – via email: CharlesJ@license.state.tx.us

Melissa Rinard
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Re: Comments to TDLR regs re: Dog and Cat Breeder Licensing Regulations pursuant to 16 TAC Chapter 91

The Texas legislature passed 1451 to regulate the treatment of dogs and cats in breeding programs. Under the law many dog and cat breeders with 11 in tact females and who engage in the sale of animals will now be subject to USDA regs meant for large commercial breeding operations under TDLR and not the Agriculture Department. TDLR's proposed regulations actually go further than the USDA requirements, and leave quite a lot of subjective room for inspectors.

TDLR is in a position to ensure that dog and cat breeders can continue to conduct business responsibly in the State of Texas. To that end TDLR is faced with a difficult situation in that the USDA regs assume the licensee is a commercial breeder, breeding far in excess of what most owners with 11 in tact females breed, selling 20 plus a year. The difficulty is that most breeders who breed to enhance the lines and to improve health and temperament of their lines are now caught in this requirement to be licensed. The small breeder options are to stop breeding altogether or significantly change their operation that is a part of their daily home lives to look like a commercial breeding establishment. Let's not forget that some breeders are heavily involved in rescue efforts as well. If we continue to force their hand, they will bow out of rescue as well.

As the author, I am not a breeder. Therefore, I will leave most of the actual requirements for cleaning, housing, and transporting to the folks in the trenches with far more expertise than I. The commentary contained here focuses on the following:

- Request TDLR address the regulations that will lead to violation of the Constitution, including illegal searches, taking of property, invasion of privacy and failure to provide due process.
- Request TDLR add protection to the breeders re: inspectors complying with breeders' sanitary protocol
- Request TDLR add protection to breeders by providing a legitimate way for breeders to appeal decisions and address issues with inspectors behavior and decisions
- Request additional definitions and narrowing of scope of several provisions to make the breeder requirements more clear, and eliminate unintended consequences to breeders and other animal owners

91.10 Definitions

“5(A) Controlling person..... or member....”

I assume this member is a member of an LLC. Otherwise member is too broad. I suggest adding “LLC” prior to member.

“(9) 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.”

This is too broad to claim exceptions later on. So if breeder’s child sleeps with a pup, or breeder brings pups in home to socialize, these areas are subject to search. If a breeder normally has a kennel operation until the bitch is ready to deliver and brings the bitch in the home, then the home is subject to search. What if the breeder normally shows a dog in the home to a prospective purchaser so the purchaser can envision how the pup will do in a home? Perhaps business accounting records are kept on a laptop that is in the home when the inspector arrives. This would also make the home subject to an illegal search. Or the consequence will cause problems during the field inspection. What happens when the breeder refuses to allow the inspector in the house? What happens if it is the breeder’s employee or child who is present during the inspection and allows the inspector in the house?

“(14) Possess—To have custody of or control over”

What about co-owned dogs? Two people can possess an animal. If a co-owner has 2 intact females of his own and doesn’t sell 20 animals year, now this regulation applies to his facility. What if dog is boarded at breeder’s kennel but owned by another dog owner? This latter situation can come into play if the breeder also owns a kennel for boarding. The boarding facility may not meet USDA guidelines, but has personal dogs or other’s dogs that the breeder now possesses. Clearly this was not the intent of the legislature. The rules need to specifically address that kennel or daycare operations are excluded from the search.

“(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.”

This definition is problematic and broad. What is primary? If dogs are moved from a kennel into the home for socialization and back again, is the home or a room in the home now the primary enclosure? The primary enclosure is going to change as the pups age and may change when the bitch is in heat, with pups or has weaned the pups. Also primary enclosures can change when kennels are being sanitized. What if during cleaning the animals are moved to a much smaller area while their usual primary enclosure is being sanitized? If the inspector comes during that time there could be issues with the exercise areas.

“(17)(A) (B) 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.”

This allows for TDLR to appoint an entire department or agency, not just a specific employee as an inspector. Furthermore, if TDLR seeks to appoint an employee only as an inspector, this provision

allows for any employee of a department or agency to be appointed. For example a dispatcher, administrative assistant, file clerk and the Chief of Police are all treated as having the same qualifications to be a third party inspector. Likewise any state agency as a whole can be appointed as an inspector, and any employee of any state agency. Texas State Agencies include TABC, Education, Agriculture, Banking, Water Authorities, and endless others and all their employees.

“(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.”

This will invalidate the use of most commercial crates and play pens that are readily available and reasonably priced. It’s interesting that every rescuer and pound and shelter, many vets and most owners use materials which TDLR is saying are not valid. Again the issues exist when moving animals to be shown by purchasers, for cleaning or just to allow for exercise. It’s one thing not to want a dog’s pads to get hurt or cut on metal flooring, and completely another to say no metal. Why are breeders’ animals subject to a substantially higher standard than everyone else’s animals?

91.20 Applicability.

Shouldn’t the exemption for herding, hunting and field dogs provided for in the original legislation go here?

“91.22 License Required—Dog 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.” According to this rule no one who breeds can claim to be a breeder unless licensed. So all of the exempt breeders are no longer breeders according to this provision?
- (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.”

I find it difficult to understand exactly when a breeder with more than one building needs more than one license here. Reading b, it sounds as if breeders with 2 acres with several buildings may only need one license. But reading c clouds the issue. If contiguous is sharing a boundary or touching, where is the line drawn? What if a breeder has multiple tracts of land that adjoin (or one is across the road from another) which can happen in rural communities? In fact what if it’s all one tract of land but in two counties? Can TDLR eliminate “c”, and just have “b”? Maybe expand

the definition of premises to include tract of land, adjoining tracts of land or lands within 500 feet?

“91.23(3) To be eligible for a Dog or Cat Breeders license, an applicant must.....(3) provide the name, and address of each controlling person.”

According to the definitions section a Controlling Person could be a supervisor/manager of the breeder. So under the statute employers are required to provide employee’s personal information. I would suggest eliminating the supervisor/manager’s from this section. While employees may have to pass criminal background checks which require giving an address, those are not done through TDLR.

“91.23(4) To be eligible for a Dog or Cat Breeders license, an applicant must:(4) successfully pass a criminal background check...”

What does successfully pass mean? Can they have a misdemeanor theft, or a DUI, public intoxication, shop lifting, or a theft by check issue in their background or do any/all of those exempt the person from being a licensed breeder or managing a facility? What offenses are permissible and for what time frame? How onerous is this burden? What relevance does this have in the care of animals? The underlying statute just calls for the background to be run.

“91.24(a)(3)(4)(5) To renew a breeder license, an applicant must:...(3) provide the name and address of each controlling person; (4) successfully pass a criminal background check...(5) be in compliance with all Commission Orders directed to applicant or a controlling person.”

See response to 91.23(3 and 4) above. And, “Commission Orders” is an undefined term. What does this mean? Is there a time frame for compliance?

“91.24(b)...During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.”

“Any functions” is too broad here. The regulations don’t speak to what functions of a breeder are addressed. Should we assume it’s just the act of breeding? Is it caring for the dogs, the pups, is it helping the dog deliver pups? If all of this is regulated, I assume it’s all part of the function that requires a license under the chapter. Surely the breeder is to continue all functions other than the actual act of breeding two or more dogs, or is it just selling? And what happens to the breeder if there is an unfortunate incidental pairing? Under this section, would the breeder lose his license for one slip up? I suggest tightening this section or eliminating it. If TDLR chooses not to eliminate, I also request that a breeder does not lose a license for one negligent breeding. What if a litter is presold which is often the case? Can purchaser still take delivery during an unlicensed period?

“91.25(b)(2)and(4) The department may deny issuance of a license 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...”

This provides too much power to deny a license. Other state and local entities regulations may be more strict than in the State of Texas. The State of Texas should stand on their regulations. Texas should make their own determination. Failing to issue a license based on the failure to meet a single standard is denying a person from making a living based on a very slim margin, especially since the standards are quite subjective in places. Does anyone see this as a restraint of trade? What about due process? Perhaps a Constitutional lawyer should be consulted.

“91.28 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.”

This came as quite a surprise to me. Email is not secure. Spam is a large problem. Emails often do not arrive and the recipient has no clue that he has not received a notice. All communication re: actions or decisions should be sent by certified mail to ensure the breeder has notice. Of course email can be used as an additional method of communicating for everyone’s convenience.

“91.29 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.”

If the license is only valid for the breeder, then how are you holding non-owner employees accountable under this particular regulation?

“91.30(d)(e) Exemptions. This section applies only to a dog bred with the intent that it be used primarily for...(d) Dogs described by subsection (1) 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) ...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....”

Since when does a person have to prove a law doesn’t apply to them? The legislature exempted certain breeds. Perhaps TDLR should list all the breeds that are exempt under this provision instead of subjecting breeders to prove their breed falls within the exemption. The breed list should not be exclusive, as breeds and uses change. Furthermore, the regs only exempt the dogs from counting as one of the 11 intact females. The legislation says they are exempt which means none of this section applies to the maintenance of the dogs. Finally what evidence is sufficient to show a herding dog herds and a hunting dog hunts? These are not show dogs. These are dogs working with their human in the field. There are no ribbons, contests, etc. I suggest moving the exemption to 91.20 “applicability” section so as to eliminate any confusion and ensure not to regulate more than the legislature intended.

91.40 Inspector Registration Requirements (a)(1)(2) “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).”

This is too broad for the inspector base. This allows for TDLR to appoint an entire department or agency, not just a specific employee as an inspector. Furthermore, if TDLR seeks to appoint an employee only as an inspector, this provision allows for any employee of a department or agency to be appointed. For example a dispatcher, administrative assistant, file clerk and the Chief of Police are all treated as having the same qualifications to be a third party inspector. Likewise any state agency as a whole can be appointed as an inspector, and any employee of any state agency. Texas State Agencies include TABC, Education, Agriculture, Banking, Water Authorities, and endless others and all their employees.

91.40(b)(1) "An applicant seeking an inspector registration under subsection (a)(1) must: (1) submit the names of persons who will perform inspections on behalf of the registrant;"

While breeder supervisors must give personal addresses, the inspectors do not have to provide the same identifying information. Here is an example of the agency applies to be an inspector and then just list the employees the registration will cover. How are all these people going to qualify to be inspectors?

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

What criteria will pass? Does the record have to be spotless? Offenses exempt? Length of time from the offense? Give some criteria here.

91.41(a)(1)(2)(b)(2) Inspector Registration Renewal Requirements

See prior three paragraphs for 91.40. All the same provisions/discussion apply.

91.50(c) Inspections—Prelicense. "Before the prelicense inspection may be concluded, applicant must pay to the department the required inspection fee and the reasonable expenses of the department related to its licensing and inspection duties under this chapter. "

What is the precedent to charge an inspection fee, a license fee and reasonable department related expenses? Is TDLR going to publish all expenses before a breeder requests to be licensed?

91.50(d) Inspections—Prelicense. "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."

Shouldn't TDLR want the breeder to fix the problems and do the second inspection without an additional charge? Otherwise, does it give a perception that there is no incentive to pass a breeder on the first time around? If this inspection process is designed to keep animals safe and breeders in business wouldn't you want to encourage breeders to fix problems and stay in business? Isn't this particularly true in the first year a business is licensed as no one has any clue what to expect? Maybe you should waive this on a first time ever inspection?

91.51(2)(B) "The department may not require a prelicense inspection of a facility for an applicant who... (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."

In reality, how does someone holding a Class A dealers license know if they meet TDLR's expanded requirements? There's no history and no real way for a breeder to know this. This requirement should be deleted. You are either going to recognize the breeder's license as valid or not.

91.52(c)(d)(e)(f)(h)(i)(k) Inspections—Periodic. "(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...."

No guidelines are issued as to when TDLR or the third party inspector is permitted to inspect without notice.

"(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."

While this is part of the underlying statute, entering the home should not be permissible by any inspector. This is not only a violation of the Constitution, but it also is going to create problems in the field. If there is documented evidence in order for law enforcement to get a warrant due to inhumane treatment, then the police should pursue a claim. TDLR could make a regulation that inspectors report potential inhumane treatment to TDLR and TDLR contacts local authorities. Otherwise the statement that the inspector is not to enter the house is made irrelevant by the exception. If a breeder refuses to allow inspector to enter the house, then what happens? If the breeder is forced to allow an inspector into the house, the inspector will say he had an invitation, thus trying to usurp Constitutional rights. Finally, what if the breeder is not present at the time of inspection? No other person should be authorized to accompany an inspector inside the house (including a member of the breeder's family or an employee). At a minimum the rules should say that without the breeder/owner present and without the breeder/owner's permission, no inspector may enter the home. A clause should also be added that prevents inspector retaliation against breeder for not allowing inspector into the home.

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

This is too broad. Give examples of relevant documents and examples that are not. What happens if inspector requests financials and breeder refuses? Certainly requesting vet records may be appropriate, but guidelines should be developed to eliminate problems in the field that will potentially violate individual privacy rights. The fact that a breeder must now be licensed does not eliminate underlying Constitutional rights.

"(f) The inspector shall submit an inspection report...and provide a copy of the report to the licensed breeder..."

Is it the inspector providing a copy or TDLR? If it is the inspector what is the consequence of failure to provide the breeder the report? Does the breeder get a report within 10 days too? What happens if the breeder doesn't receive a copy of the report?

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

Again this is too broad. Give examples of documents that are required by this chapter.

"(i) On completion of the periodic inspection...the inspector shall leave proof of inspection...listing the rule sections not meeting the requirements...The proof of inspection...does not affect the validity of the completed detailed report."

If the inspector has to cite the sections violated at the time of the inspection, then this has to be the basis of the detailed report. This first inspection report is nearest at time to the inspection and should be the basis of the detailed report. Additional violations cited in the detailed report should be disallowed.

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

I did not find this authorization in the underlying statute. Some could argue it gives the appearance that TDLR has an incentive to make a business fail. Finally, given that the breeder is already subject to inspection fees, reasonable expenses and license fees, this hardly seems appropriate. Is this instead of refusing to license or in addition to the refusal to license?

91.53(e)

Same comment as 91.52(h) above

91.53(f)

Same comment as 91.52(i) above

"91.53(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."

This regulation seems a bit onerous. I would recommend after two additional inspections the breeder is moved to a regular periodic schedule. I'm not sure what the rationale for making a breeder go through four additional inspections is.

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

I did not find that the underlying legislation provided this authority. The fees are quite extensive already for licensees. Is this in addition to failure to renew license or in lieu of?

"91.55(b) The department shall make the directory [of licensed breeders and third party inspectors] available to the public."

If the directory is available, then why only third party inspectors are listed? What about inspectors that are employees of TDLR? Why is it necessary to make the directory public information? I understand this is part of the underlying statute. Two years ago at Westminster some animal rights advocates made a scene on national television. What is the public policy necessity to provide easy accessibility to breeders to potentially make them targets? Is it only breeders or their employees as well? Is it going to contain contact information as well? With identity theft a way of life, many people try to keep all of their information as private as possible.

"91.56(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions." (b) The department shall make the information maintained in the database available to the public."

It is unclear what or how much authority exists for sanctions. However, assuming authority exists, since under these rules any violation can result in loss of license, failure to renew or other issues, it seems that the list of breeders subject to disciplinary actions or sanctions could be long. What is the level of detail provided to the public? Is there a review process a breeder can go through in order to avoid being placed on the list or in order to be removed from the list? And, can a reasonable time limit to review this information be placed on TDLR? I understand this is similar to the wording in the underlying legislation, but more detail is needed.

"91.57(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."

The underlying legislation did authorize this section, but more detail is needed. Certainly these complaints must not be anonymous. Is a breeder allowed a hearing or is there some investigation and appeal for to ensure the breeder is protected? What is the level of detail of the information that will be available to the public?

"91.58 Responsibilities of the Department—Donations, Disbursements and Reporting."

I suggest adding (i) The department will make available to the public a monthly accounting of all donations, grants and revenue received. The report will detail the donor and grantor's name address and amount of the donation or grant.

New section should be added giving the breeder a right to challenge inspector's findings and a right to appeal. A process to complain about inspectors should be developed. Inspectors should be evaluated by the department annually and the evaluation should be made public.

"91.59 Responsibilities of the Department—Reporting Violations, Eligibility of Applicant."

This section allows for the anonymous tip. It is difficult to imagine that someone could report breeder violations anonymously. Breeders livelihoods are at stake, and with very little room for error as these regulations are written—and no appeals process. How does a breeder defend against a faceless complainant?

“91.61 Responsibilities of the Department—Inspector Training. The department shall prepare and schedule training for applicants for inspector registration and notify registered inspectors of the availability of continuing education to ensure compliance with this chapter and rules adopted under this chapter.”

Since it is unlikely that any inspector will have much knowledge of animal husbandry, these regulations or breeding, it is imperative that more detail is provided in the level of training and certification required to be an inspector. Also, the need for annual continuing education especially this early in the process is paramount. The rules are vague, the applications endless and the discretion vast. Much more details about qualifying and training inspectors should be provided here.

“91.66(a) An inspector or investigat[or] 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.”

What is reasonable opportunity? If the breeder is unavailable will time be permitted for his attorney to stand in his place or another breeder of his choosing? Is it possible to reschedule until later in the day if he is away from the business or later in the week? Since these regulations now regulate folks with 20 pups for sale a year which could be only 2 litters, not all the breeders are going to keep office hours. It’s possible they tend to their animals and leave and return a few hours later, especially if there are no litters at the time of the inspection.

I suggest adding a section allowing the breeder to record the inspection with video, audio and pictures. While this is certainly the right of any breeder, making it part of the rules will prevent inspectors from challenging breeder’s activities.

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

This allows an awful lot of discretion with an inspector. Under what circumstances might this arise? What if no one is at the facility? What if only a kennel worker is at the facility and the facility is not open to the public? Who will produce documents requested?

91.66(c) discusses entering private residence again.

While this is part of the underlying statute, entering the home should not be permissible by any inspector. This is not only a violation of the Constitution, but it also is going to create problems in the field. If there is documented evidence in order for law enforcement to get a warrant due to inhumane treatment, then the police should pursue a claim. TDLR could make a regulation that inspectors report

potential inhumane treatment to TDLR and TDLR contacts local authorities. Otherwise the statement that the inspector is not to enter the house is made irrelevant by the exception. If a breeder refuses to allow inspector to enter the house, then what happens? If the breeder is forced to allow an inspector into the house, the inspector will say he had an invitation, thus trying to usurp Constitutional rights. Finally, what if the breeder is not present at the time of inspection? No other person should be authorized to accompany an inspector inside the house (including a member of the breeder's family or an employee).

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

This is too broad. Give examples of relevant documents and examples that are not. What happens if inspector requests financials and breeder refuses? Certainly requesting vet records may be appropriate, but guidelines should be developed to eliminate problems in the field that will potentially violate individual privacy rights. The fact that a breeder must now be licensed does not eliminate underlying Constitutional rights.

"91.66(e) Inspectors must submit inspection reports to the department not later than the 10th day after the date of the inspection...and provide a copy of the report to the licensed breeder...."

Is it the inspector providing a copy or TDLR? If it is the inspector what is the consequence of failure to provide the breeder the report? Does the breeder get a report within 10 days too? What happens if the breeder doesn't receive the report?

"91.66(g)(2) if good cause exist[s] to deviate from the established procedures and protocols, or if no procedure or protocol exist[s] for the issues presented during the inspection or investigation, the inspection report must contain a[n] explanation of the issues presented and procedures followed."

This places an incredible amount of discretion to expand the rules and requirements in the hands of an inspector. Perhaps a better way to handle this is to have the inspector document what he sees with pictures and a report and consult with an expert with TDLR on how to handle in the future.

"91.71 Responsibilities of Licensee—Advertising. (a) A licensed breeder may not engage in false, misleading or deceptive advertising."

Where is the authority in the underlying legislation that creates this rule? Obviously no one wants a vendor to create false advertising, but there are other statutes that cover this. Is there anything to indicate that such advertising even is happening? How much advertising do most breeders have? Who is authorized to determine what is a false claim?

"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 rules adopted by the department regulating licensed breeders."

In this electronic age, wouldn't a link to the website suffice? Are all the department rules going to be published to everyone? Do these include advisory statements in inspector meetings?

"91.76(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."

TDLR needs to make some exceptions here. What about the breeder who also has a boarding facility, day care facility or a training facility? What about the breeders who assist in rescue. The rescue animals should not be part of this report. Finally what about the animals exempted from these regulations? The animals not associated with the breeding business should not be included in this report.

"91.77(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."

See comments to 91.76(a) above.

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

What if the fees were not accurately calculated or someone accidentally paid an invoice twice? What if an appeals process is implemented and the decision is overruled?

"91.92(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."

Other jurisdictions may define neglect or cruelty differently than this state. TDLR might consider removing other jurisdiction in current language and adding the language: "Licensee shall report a conviction for animal cruelty or neglect under any jurisdiction within 60 days of conviction to the department. The department will review the case within other jurisdictions to determine what action, including license revocation will be taken." Furthermore, the language should be based on a final determination of guilt, i.e. the breeder has exhausted all appeals before the license is revoked.

"91.92(b)(2) The department may revoke or suspend a license held by a person who: (2) has had a similar license issued by a federal, state or local authority denied, revoked or suspended;"

The other authorities, in particular local or other states, may have different regulations than Texas. Texas should make its own determinations.

"91.92(b)(4) The department may revoke or suspend a license held by a person who (4) has failed to meet a standard adopted by rule under this chapter;"

It is unimaginable that if a person does not meet a single rule the department has the authority to shut the breeder down. I suggest broadening this. Failure to correct violations within 60 days after notice or violations of rules after four inspections or other such language should be included. And TDLR needs to add a provision to appeal decisions.

“91.92(b)(5) The department may revoke or suspend a license held by a person who (5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.”

See comments to 91.92(b)(4).

“91.106(c)(3)(A)(4) Forced exercise methods or devices such as swimming, treadmills or carousel-type devices are unacceptable for meeting the exercise requirements of this section.”

I do not understand why these methods do not satisfy the exercise requirements. Trainers and vets often recommend these exercises to maintain a healthy dog. What about exercising dogs when the weather is not conducive to regular outdoor activities?

TDLR should add a section to protect the animals at a breeder’s facility from contamination. The inspector should be required to follow the breeder’s sanitary protocol that may include parking on the street and placing covers over shoes, wearing a lab coat, scrubbing hands and arms, wearing gloves, etc.

TDLR should add a section to keep inspectors from being bitten. Even well socialized dogs of certain breeds will react to certain people. Inspectors must follow safety precautions at the breeder facilities. Since many facilities are not open to the public and the inspectors are coming unannounced, inspector should be required to call at least 10 minutes before entering the facility so that any animals that are on the property unrestrained may be placed in an enclosure or on a leash.

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Re: Comments—pertaining to TDLR Regulations Dog and Cat Breeder Licensing under 16 TAC Chapter 91

TDLR rules have gone way beyond the requirements of the statute. By extending the rules, they are eliminating the ability of small to mid-size breeders to raise and socialize litters appropriately. Furthermore, they are eliminating hobby breeders and small breeders altogether. Finally, they are raising the costs of housing and state fees so as to eliminate the ability to breed. Below are but a few examples of the over zealous regulations that will put responsible breeders out of business. While this author understands that a few of the rules come from the USDA regulations, TDLR can define terms and narrowly define some key phrases in order to allow successful and responsible breeding. Furthermore, many rules outlined by TDLR go beyond what the codified USDA regulations require.

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.”

Eliminate vague standard “good repair”. Consider some “housing facilities” will be a person’s home or a separate building. The definition of facility within the TDLR rules is “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.” Housing facility is not separately defined by TDLR. Good repair requirements are problematic. What happens if a house/building needs paint, or maybe some foundation work. If a gutter or shutter is hanging from the building, does the breeder lose a license because of disrepair. This section allows way too much leeway in the hands of the inspector. Considering there is no appeal process for a breeder either, you have to wonder where is the due process.

“Protect the animals from injury” should be eliminated. There are details on what not to use for housing animals throughout the rules. There is absolutely no way to provide exercise and a life for an animal or a person in a facility that “protects the animal from injury”. An animal can be playing, swinging a toy around and hit its head on a wall. An animal can choke on food or toys. An animal can slide on a surface and injure itself. While this may sound ridiculous to the reader, remember that these are rules that must be enforced. It is one thing to make broad requirements like providing shelter and nutritious food. However, blanket statements of protecting an animal from injury are too broad.

“Restrict other animals from entering” is too broad. Remember the definition of facility includes all buildings and property. I suggest either changing the definition of facility or removing this language. A literal interpretation of the rule (and this is legal language so a literal interpretation is in order), you couldn’t have more than one animal in a building. Perhaps facility here really means primary kennel. But that is not what is used. Besides, even

if the definition is primary kennel, the litter could not be kept together, nor could it be kept with the dam.

"Contain the animals securely" won't work with the broad definition of facility either. Consider that the definition includes the entire property. So if someone has acreage, are they to place board on board 8 foot fencing with a concrete bottom around the entire property to meet the definition?

"(b) Condition and site. Housing facilities and areas used for storing animals' 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."

"...Free of any accumulation of trash...junk...other discarded materials" and "Animal areas...must be kept neat and free of clutter" is a huge standard. In the food or bedding area, it is possible that someone would want to keep items such as stacked newspapers or recycling. Perhaps this particular breeder actually uses mats and or towels and blankets. Remember the bedding is not just for the litters, but for all animals at the facility. When it is time to throw away the blankets, they may be washed and placed in garbage bags. They are then trash, junk or discarded materials. Perhaps a breeder stacks unused toys in the food or bedding area. Would that be considered junk? Some breeders may reuse toys and have a bin of toys needing repair. That would be considered junk. Maybe the toys have been picked up and are awaiting laundering. Would that be considered junk? Certainly you can see that these type items could be considered clutter. The regulations are going to require quite a bit of paperwork and documentation in order to comply. Therefore in the animal areas there will need to be computer equipment and/or paper records easily accessed. While these documents are waiting to be scanned or entered into their notebooks or onto the computer, certainly you could have a cluttered appearance.

I suggest deleting "clutter", "junk" and "discarded materials". These rules assume large commercial settings which is not the case in many of the now regulated breeders.

"Housing facilities must be physically separated from other business...." "Housing facility" is an undefined term. And "facility" means the entire premise as discussed earlier. Certainly a breeder who breeds in their home or in a kennel attached or adjacent to their home may have another business related or unrelated. The breeder may work from home in some capacity, and these regulations would not easily permit that. What of the breeder that sells pet supplies or food? What of the breeder who has a kennel? I suggest eliminating the two sentences discussing physically separate.

91.100(c)(3) Cleaning. Hard surfaces with which the dogs or cats come in contact must be spot-cleaned daily and sanitized...."

I'm not sure why something must be spot cleaned daily, nor do I know what that means. Clearly if an animal has relieved himself, that should be cleaned. But what about on rainy days? I can envision floors not being spot cleaned until the grounds are no longer damp.

How often do all the hard surfaces have to be sanitized? And does this include the walls? After all animals can come in contact with walls. Are these to be sanitized daily?

"91.100(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...The housing facility must provide adequate running potable water..."

"Housing facility" is not defined, but "facility" includes the entire premise. For the cleaning regs to make sense, the housing facility might be a kennel type setting. However, some breeders use rooms in their facilities. And what about outdoor facilities?

As for requiring adequate power, heating, cooling, ventilation and lighting, I suppose TDLR may be qualified since they do license HVAC technicians. However, I don't see third party inspectors qualified to do electrical power studies. Are they going to turn on all the lights, the a/c, run the washer, dryer, laser printers, space heaters all at once and see what happens? Really this wording is again way too encompassing.

If the housing facility is where the animal is kept (or a subset) where do you judge the ventilation and lighting? And would you really want electrical plugs in the kennel? What if the housing facility is a room or two of a house or a separate large room built on the breeder's property. Must water lines be run to that room? Finally these requirements are overbearing for the small breeder.

"91.100(e) Storage. ...All open supplies of food and bedding must be kept in leak proof 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."

The requirement of "leak proof" and "tightly fitting lids" for both food and bedding is excessive. Using plastic containers with lids should suffice for food. Most owners and kennels do not use leak proof containers. The requirement for bedding is outrageous. There are so many different kinds of bedding solutions that do not require this application. The regs are overreaching.

Storage of cleaning materials in cabinets in animal areas, but not in food/bedding storage areas is not practical in smaller settings. While this may be in the USDA requirements, it adds an extra burden in keeping the food areas clean.

Toxic is not defined. Is that toxic to human or animal? Since not all cleaning materials are toxic, the inspectors will have to know which materials are considered toxic. If toxic is defined as capable of causing injury that is too broad. If toxic is deadly to the animal this makes more sense. But then it becomes deadly at what level? Clarification is needed here. What about medications and vaccinations? Are they considered toxic? If they are refrigerated in the room is that allowable? If they are in the cabinet with the food is that permissible? According to the

rules as currently written, medications would probably have to be kept in a different room. They could be in the animal area in a cabinet which dogs could open, but not in the food area.

"91.100(f) Drainage and waste disposal. ...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. ...All drains must be properly constructed, installed and maintained....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."

The rulings only provide for large scale kennel operations in the assumption of use of drainage systems. How does a small breeder meet the drainage and disposal system?

"Animal areas" is an undefined term. If appropriate protocol is to place dead animals in a freezer until the bodies can be picked up for removal, and the freezer cannot be placed in the food area, then where can it be placed? Is everything else considered an animal area?

"91.101(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)."

"Housing facilities" is an undefined term. A smaller scale breeder is not going to be able to meet these standards if housing facility is a broad term. Making all surfaces an animal comes in contact with impervious to moisture is impractical in many facilities. If "housing facilities" encompasses the breeder's home, the breeder will not be able to meet the requirement. The effect of this ruling is to discourage/eliminate housing the animals in a well socialized environment. For breeders that rotate the animals into their homes and into a kennel setting, this rule eliminates the ability to do so. Requiring a dropped ceiling or an impervious ceiling seems arbitrary and capricious standard.

"91.104 Standards of Care—Primary Enclosure

(3)(B)(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."

This requirement is completely arbitrary. No scientific, medical or veterinary evidence or practice that I am aware of supports this ruling. Traditional enclosures are not 12 inches taller than large and giant breeds. An owner might use a 48 inch wire crate which is typically 32 inches in height. Most large breeds will only have a few inches head room with these large crates. Why is a crate that is used by hundreds of thousands of people across the U.S. not sufficient for a breeder?

"(3)(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....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."

I must admit ignorance on what nonconditioned dog means here. In training that would be a dog that is not trained to a particular routine. For show purposes that might be a dog with a coat

not in shape for showing. And for health purposes that might refer to a dog that is not in good physical shape. Since I am not a commercial breeder, I don't know how to respond to this. Perhaps the term "nonconditioned dog" should be defined. Is it a dog not conditioned to living with the particular group of dogs?

Puppies under six months are old enough to be placed with other dogs for socialization. What happens when most of the litter is transferred leaving one or two. These pups would benefit from activity with other dogs or pups. Some breeders would want the pups weaned from the dam and experiencing life with other dogs long before six months in order to properly socialize the dog.

"Compatible as determined by observation" is too vague. Different breeds play differently. To expect an inspector to judge compatibility during a walk thru is unrealistic. Furthermore, when strangers walk through a facility, and breeders are tense, the dogs are likely to act out. Barking, jumping and climbing on one another might be considered incompatible by inspectors. Dogs that are compatible in some breeds will have discussions occasionally that do not result in injuries, but could be considered incompatible behavior. Determining compatibility reaches beyond the underlying statutory requirements. A breeder has no incentive to keep non-compatible dogs in the same area. I suggest deleting the compatibility sentence.

"91.106 Standards of Care—Exercise for Dogs

(b) Dogs housed in groups. Dogs over 12 weeks of age...may be maintained in compatible groups, unless...(2) Any dog exhibits aggressive or vicious behavior."

Expecting an inspector to properly identify aggressive or vicious behavior is outside the scope of training for inspectors, and outside the scope of the underlying legislation. See above explanation on compatibility.

"91.107 Standards of Care—Feeding

(a) ...The food must be uncontaminated, wholesome, palatable..."

I suggest removing "palatable". How does an inspector determine if the food is palatable?

"91.108 Standards of Care—Watering. If potable water is not 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,...Water receptacles must be kept clean and sanitized...before being used to water a different dog or cat or social grouping..."

The one hour offering is arbitrary. What medical and scientific basis is used here? If water is offered for 5 or 10 minutes and the animal is not drinking, the animal is not thirsty. The problem with leaving water out for long periods is a puppy (and even some dogs) will play in the water, dump the water bowl over, place toys in the water bowl, etc. Absent a scientific basis for this requirement, I suggest decreasing the offering time to a maximum of 15 minutes.

"91.109 Standards of Care—Cleaning, Sani[tation], Housekeeping and Pest Control

- (a) **Cleaning of primary enclosures...When steam or water is used to clean the primary enclosure...dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process."**

I suggest removing "distressed". The cleaning process is brief. Determining if the animal is more distressed during cleaning or if the animal is more stressed when moved in another area and moved again seems like a decision best left to the breeder, and is quite subjective in nature. This rule exceeds the underlying statutory guidelines, and is overreaching.

"(b) 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."

Since premises is the entire breeder's property, this requirement is too broad. For a facility with acreage, the inspector can shut down a breeder for leaving a pasture in hay. If breeder accumulates recycling or bulk trash, the inspector could shut the breeder down. If there is an old fence in a pasture not in use, this would violate the good repair criteria. If this paragraph is to be included (and I suggest deleting it), then TDLR should add a limit of within 30 feet of a primary enclosure.

Requiring surrounding grounds to be kept clean and in good repair is over reaching and unreasonable. It is also broader than the scope of the underlying statute.

"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."**

What are "these standards" in the last line referring to?

Why do all employees need to perform to "these standards"? Does this mean that a breeder can't have part time kennel help or maintenance help that may need to move dogs around? As long as the breeder and supervisor have an appropriate skillset, they should be able to train/delegate certain tasks to basic laborers.

"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."

Again this section is too broad. Basic grooming does not necessarily prevent soiling and matting if dogs are exercising outside and have long fur. Grooming can address these issues, but at any given time there are going to be dogs that need baths or brushing. In long haired dogs, even with regular grooming, an inspector would be able to find a matt or two. Is that enough to shut down a breeder? The current rules say the inspection fails if there are any violations and there is no appeals process for the breeder.

Curled toenails should be trimmed, but unless they are curled under and touching a pad, this is too broad. The nails naturally curl on some dogs prior to touching the ground. Most owners do not trim the dog's nails adequately. If this is going to be a criteria to fail an inspection, I suggest the standard be more than just curled. I have seen some pretty nasty dog nails in the shelters, but the rule's language is too broad.

"Other conditions that can hamper an animal's ability to maintain health and cleanliness" is too broad a catch all. Many things might "hamper" an ability to maintain health, and yet the animal still is healthy. Deleting this sentence is appropriate.

"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. ..."**

Requiring a breeder to provide any treatment recommended is taking away the breeder/owner's ability to make decisions. Vets can recommend, but it is the owner's decision as to what procedures and tests to perform. How often does a vet recommend a blood panel or dental work that could be considered optional? If a senior animal has cancer and vet recommends radiation/chemo is the breeder obliged to give this treatment to a senior dog? The vet decisions should remain with the breeder.

"(b) Routine and preventive 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 health care for each animal in the facility.

- (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 appropriate care and treatment for any injury, disease, or illness that may affect the animal's health or well-being....**
- (2) 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."**

See response to (a) above.

This section goes even further by attempting to regulate all animals at the facility. Animals not under the jurisdiction of TDLR are non-owned animals such as animals in boarding facility or training facility, breeder's and breeder's family's personal dogs not in fact.

"Care and treatment for any injury, disease or illness" is too broad. A dog may receive a minor scratch that can heal on its own. A breeder should be allowed to decide what dental care (if any)

the breeder wants to perform on the animal. In senior animals, different owners would make different decisions regarding care and treatment of issues in an aging animal.

How long does a breeder have to maintain the original records post transfer/death of the animal?

One final observation: The TDLR rules assume vets are available and willing to make "house calls" in rural and city settings. Are there enough qualified vets who are willing to come to the facilities as required in this statute?

February 13, 2012

Melissa Rinard
Legal Assistant
General Council's Office
Texas Department of Licensing and Regulation
PO Box 12157
Austin, TX 78711

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Dear Ms Rinard,

As a member of Nolan River Kennel Club, based in Johnson County, and the German Shepherd Dog Club of Dallas, based in Dallas County, I have several areas of concern for which I respectively would like to submit some suggested remedies.

Section 91.10 Definitions

Wire or Wire Mesh—I suggest changing this to “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 to be contained therein to best prevent injury, especially to the feet. This would be a reasonable alternative that balances the need to protect the animal with the need to maintain cleanliness.

Section 91.21 License Required—Presumptions

This is a serious concern because it has the potential to sweep into regulation many hobby breeders who were not intended targets. We, as dog show participants, often have adult intact females who we do not intend to breed, as well as having elderly females, still intact, who will not be bred. Instead of presuming such animals are to be bred, there should be a provision to allow the owner to attest under the threat of disciplinary actions under the law as to whether an individual dog will not be used for breeding.

Section 91.22 License Required—Dog or Cat Breeder

This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed from calling themselves “dog breeders”. A better wording would read “A person may not act as, offer to act as or represent that the person is a licensed (underlined for emphasis) 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.”

Section 91.27 Licenses or Registration—Notice of Proposed Denial, Opportunity to comply

Per statute 802.104, you should change the wording from the department MAY approve the application to the department SHALL approve the application.

Section 91.28 Department Notifications to Licensee or Registrant

In addition to notification by email, please require that in addition, applications should be notified as well by certified mail, return receipt requested.

Section 91.30 Exemptions

This section is vague and does not indicate how individuals will be able to prove their dogs are exempt. For example, how can one prove a dog is kept for hunting, tracking, retrieving or such if those activities are not done as part of a competitive event? Also, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events but the statute and proposed regulations are unclear. Could TDLR please provide specific guidance on this issue?

Section 91.59 Responsibilities of the Department—Reporting Violations; Eligibility of Applicant

Strong protections for breeders should be included, to prevent malicious complaints. There is nothing in the rules that ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. I strongly urge the Department to keep detailed records of all complaints and to maintain on file the personal identification information of the complainant, not to be made public, so that adequate tools are available to detect patterns of complaints and to record whether or not each complaint was substantiated by inspection on investigation. Also the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submissions.

Section 91.66 Responsibilities of Inspectors

Subpart (c) The last sentence of this part should be removed. The rules should require that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a properly issued warrant.

Section 91.112 Standards of Care-Veterinary Care

This is redundant and is provided for in other sections of the law.

I hope you will consider the changes I've suggested. If you would like further input from me, please contact me.

Sincerely,



Laurie Telfair

CC: Senator Royce West
Representative Helen Giddings

DeKalb Animal Hospital

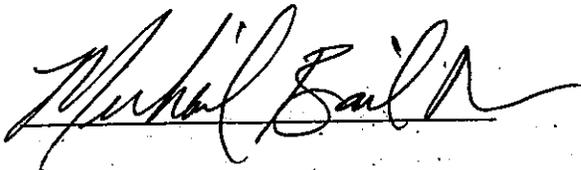
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[REDACTED]

Michael Baird DVM
David Murphy DVM

2/7/12

I feel that a ruling making it mandatory for Mrs. Galyon to bring in each and every one of her dogs to our clinic for an extensive yearly examination is excessive and unnecessary. Our clinic makes yearly visits to her kennel and we perform health inspections, vaccinations and routing procedures on her dogs on a very regular basis. My clients are perfectly capable of determining for themselves whether or not their dogs need medical attention without being made to do so. This is just another example of big government that has become malignant in our nation and there is no place for it as far as I am concerned.

Michael Baird DVM



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William Parrish
[REDACTED]
[REDACTED]

February 6, 2012

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711



Dear Sir or Madam,

PROPOSED LICENSED BREEDER REGULATIONS

I am a dog owner and a citizen and voter who is concerned about the welfare of animals. I write to you today about the current proposed licensed breeder regulations. Although I am glad to see that the proposed regulations do address some important issues, I do not feel that they go far enough. Like many other citizens, I believe that the proposed regulations should be significantly strengthened.

I am concerned that the provisions regarding wire flooring do not apply to existing breeder facilities. Under 91.102(e), please prohibit the use of wire flooring for all facilities. If wire flooring is to be allowed, then at a minimum require that at least half of the floor area consists of solid flooring. 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. Existing breeder facilities could relatively easily and cheaply provide 50% solid flooring by putting bedding, a rubber mat or a board inside existing cages.

Please consider the issue of cage stacking more carefully. Imagine the problems that are likely when cages are stacked 3 deep. Urine, feces and other material from the top cage can flow down on the two dogs below. Airflow and light to the middle and lower cages is reduced. Allowing stacking to 3 levels invites over-crowding. Under 91.104, please prohibit the stacking of cages above one level.

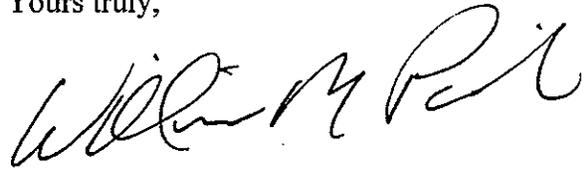
It seems logical to me that only licensed veterinarians should be allowed to perform certain procedures. Under 91.112(b), please prohibit licensed breeders from performing additional surgical procedures such as ear cropping, tail docking, debarking, and claw removal. These are painful procedures that should be conducted by a licensed veterinarian who can provide appropriate anesthesia and pain medication.

I urge you to make these relatively simple and straightforward changes in the regulations as a matter of basic decency and compassion.

Please respond and let me know whether you are willing to make these changes and, if not, why not.

Thank you for your attention to the above.

Yours truly,

A handwritten signature in black ink, appearing to read "William Parrish". The signature is written in a cursive style with a large, sweeping initial "W".

William Parrish

February 8, 2012

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Re: Proposed licensed animal breeder regulations

To Whom It May Concern:

I am writing to you today to strongly urge you to impose stricter requirements for the dog and cat breeders in Texas. The proposed legislation is a good start but it sadly lacks language that would greatly increase the quality of life of the dogs and cats being housed in these places. You have the ability to make a huge difference in the lives of hundreds of animals by putting into place more stringent requirements than are being provided in this proposed legislation. The proposed legislation does not address too many of the basic needs of dogs and cats at these facilities. I urge you to strengthen these provisions:

- (1) Under 91.102(e), I urge you to prohibit the use of wire flooring for all facilities. This type of flooring causes many problems – puppies' paws and toes often get lodged in the wiring causing severe pain and other problems. If you cannot see your way to prohibiting the use of wire flooring, then at the least see to it that a minimum of half of the floor area has solid flooring.
- (2) Under 91.104, please stop the stacking of cages above one level. When stacked cages are used there is overcrowding making it harder for adequate lighting and air to get to all the animals.
- (3) Under 91.112(b), please stop licensed breeders from conducting such surgical procedures as ear cropping, tail docking, debarking and removal of dew claws. These surgeries are terribly painful as no anesthetic is used. If they must be done, only licensed veterinarians should do these surgeries.
- (4) Under 91.101(a) and 91.102(a), I urge you to take out the sentence that allows breeders to use their best efforts in keeping the air temperature from going below 45 degrees for more than 4 consecutive hours and above 85 degrees for more than 4 consecutive hours. Federal requirements are stricter than this and according to state statutes these state requirements should be consistent with federal requirements.

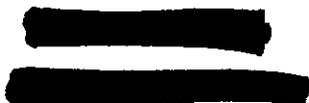
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By incorporating this stricter language you will have reduced the misery of so many animals and made their lives more bearable. Please search your conscious and make the right decision.

Sincerely,



Karen Blaesing, Ph.D.



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From:  Betty Flowers 

Subject:

To:

Cc:

Melissa Rinard
Legal Assistant
General Counsel's Office
Texas Dept. of Licensing & Regulations

Dear Ms. Rinard-

I a longtime member of the Central Texas Humane Society, formerly the Waco Humane Society & although I have rotated off that board, I am still very active in attempting to give aid/support to animals in my area.

I have just read, with utter disbelief some of the issues that ^{are} "on the table" that completely gut the intent of the Puppy Mill bill!

There were untold hours of effort by untold numbers of people who love animals that worked through 2 sessions of the Texas legislature to finally get something passed to regulate these breeders and now, there is the danger that ALL of this will be undone!

If you had ever served on the board of an animal shelter, you would see first hand the incredibly pitiful condition of some of the dogs brought in that are the product of puppy mills. People unwittingly purchase from these places not realizing how sick, demented, etc. these puppies are & when they realize what the amount of the vet bills will be, GUESS where these dogs wind up?

There are breeders all over our area in McClennan county that HAVE to be regulated or there will never be an end to the misery.

Can your agency actually believe that it's acceptable to allow "tail docking", "ear cropping" & debarking to be performed by a breeder?
god in heaven, what are you people thinking????

Please take just a moment to read the Texas Humane Legislative Network's responses to what this committee that was formed is proposing.

Please consider that power your agency has to make a difference in the lives of these animals who cannot speak for themselves!

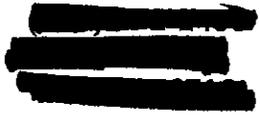
"If we do not do something to help these creatures, we make a mockery of the whole concept of justice". -Jane Goodall

I would greatly appreciate a response from you or someone in your agency to see what can be done to prevent the total mockery of HB 1451, the Puppy Mill bill

Thank you for your time,

Sincerely,
Betty E. Flowers

Betty Flowers



February 8, 2012

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

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RE: Dog & Cat Breeders Program

Dear Ms. Rineard:

As a kennel owner and breeder of dogs for over twenty years I have experienced many adjustments and adaptations to a variety of different situations regarding the health and welfare of my dogs. I am always seeking better alternatives and useful information for their well being. After having objectively studied the new proposed licensing regulations I have some concerns that I would like to address that I think would directly effect me as a breeder.

It appears that the costs of enforcing and administrating the new proposed rules is going to be covered by the fees imposed on the breeders. The additional costs of implementing changes to comply with the standards set forth are wholly on the part of the responsible breeders. This will result in the increase in prices to the potential buyer, thus preventing the average person from being a pet owner. In the depressed economy we as Texans are experiencing, it has become very difficult if not impossible to market a puppy for profit. There are many costs that have escalated in the past few years (Labor, Feed, Medical Supplies, Cleaning Supplies, Advertising, Professional Care, Utilities, Maintenance, etc.). I believe the added burden of expenses incurred with the new proposed dog breeders program will result in many people making the hard decision to not continue in their chosen profession. Unfortunately, the majority of our placements comes from the families that wish to add a companion to their lives and the additional costs involved in the purchase and care of that pet will prevent them from purchasing a puppy.

I would like to address some of the specific areas that I am concerned with, and I appreciate your taking the time to respond to them.

SECTION 91.10 - Definitions

(19) Wire or Wire Mesh.....flooring or walls or ceilingsmust be completely encased with a plastic or rubberized coating.

QUESTION: What about the outside pens constructed with wall and gate panels of heavy duty panels that are welded to 1 ½ x 1 ½ square tubing (this product is not available in coated material) Also, outside areas that are attached to structures by doggy doors?

SECTION 91.21 - License Required - Presumptions

For the purpose....presumed to be used for breeding purposes unless the person

establishes to the satisfaction of the department.....reasonably acceptable to the department.....

QUESTION: What is the "satisfaction" of the department and "reasonably accepted" definitions?

SECTION 91.28 - Department Notifications to Licensee or Registrant unless otherwise.....

QUESTION: Should this not be mailed with return receipt requested due to the frequent problems with internet service?

SECTION 91.30 - Exemptions

(a)

(2) hunting.....

QUESTION: What would the follow-up procedures be to see if a dog is being trained and used for hunting?

(e) For purposes.....acceptable to the department.

QUESTION: What is "acceptable to the department"?

(f) All evidence.....Uniquely and conclusively.

Question: What is "uniquely and conclusively"?

SECTION 91.50 - Inspections - Prelicense

(c) pay to the department the required inspection fee and the reasonable expenses.

QUESTION: what are the "reasonable expenses"?

(d)request another prelicense inspection by paying the required fee to the department.

QUESTION: Does the "reasonable expenses" wording apply to the reinspection?

SECTION 91.52 - Inspections - Periodic

(a) Each.....at least once in every 18 month period.

QUESTION: Does this mean it could be more often, and if so, how many more times and for what reasons?

(d) An inspector.....except as necessary to access animals or other property relevant to the care of the animals.

QUESTION: What is necessary to access animals or other property relevant to the care of the animals?

(k) The department may assess administrative penalties and/or administrative sanctions.

QUESTION: What type of penalties and sanctions may be assessed?

SECTION 91.53 - Out-of-Cycle Inspections

(h) Facilities on anin four consecutive inspections,.....

QUESTION: Are four consecutive inspections necessary once a compliance has been made?

SECTION 91.59 - Responsibilities of the Department - Reporting Violations

SECTION 91.60 - Responsibilities of the Department - Payment of Rewards

QUESTION: What about breeder protection against “grudge” or “nuisance” reports? And are inspection fees incurred for investigation of such reports?

SECTION 91.65 - Advisory Committee

(h)

(1) A decisionof the members present.

QUESTION: Should there not be a minimum number of committee members present or a quorum met for such decisions?

(g)

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

QUESTION: What are the procedures and protocols of the department?

CHAPTER 91.77 - Responsibilities of Licensee

a. A licensed.....a separate record....documenting animal care.

QUESTION: Can this be kept with the ownership records or is it required that there is a completely separate file for such records?

(c)a description....and weight.

QUESTION: Can the “weight” portion be deleted due to the variance in a dog’s weight at different times?

(iii)number of puppies.....

QUESTION: Is this the number of puppies at birth or at weaning (there can be death loss in newborn puppies)?

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

QUESTION: Are there going to be approved forms and can these records be kept in one ownership file?

SECTION 91.80 - Fees

QUESTION: The fees are quite expensive and will put quite a hardship on most breeders. Could you explain the basis for the cost. Also, is there any provisions for changing fees if the number of animals changes during the course of the year? It would be beneficial to also know if the proposed fees will be based on numbers in the future and if the number of breeders and number of dogs will affect the basis of the cost.

SECTION 91.90 - Administrative Sanctions and Penalties

QUESTION: What administrative sanctions/penalties?

SECTION 91.100 - Standards of Care - Housing Generally

b. Condition and site.....Housing facilities must be physically separated.....

QUESTION: What determines "physically separated"?

c. Surfaces

1. General Requirements

Be free of excessive rust

QUESTION: Materials that come in contact with cleaning requirements and urine will rust in time. These materials can be painted over to allow proper cleaning, is this method of control acceptable?

SECTION 91.101 - Standards of Care - Indoor Housing Facilities

(a) Heating, cooling, and temperature.(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperatures does this also apply to them?

SECTION 91.102 - Standards of Care - Sheltered Housing Facilities

(a) Heating, cooling, and temperature(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperature does this also apply to them?

SECTION 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.....

(B) Breeds.....

QUESTION: Should the (short-haired breeds) that are acclimated to the temperatures prevalent to the area be included?

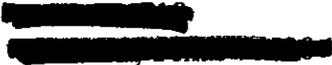
In closing I would like to say that I know in starting a new program there will always be questions and problems as well as solutions to those problems. It will be beneficial to know as much as possible about the procedures and any changes that occur due to any modification of the rules. As always, change can be quite a challenge, there will be breeders that just cannot make the adjustments that the program will require. Our

economy certainly affected many of the things we took for granted several years ago, and we are restricted in some aspects of our profession. Any consideration on the cost effectiveness that will be incurred by the breeders will be appreciated.

Respectfully submitted,



Paula Kay Callahan
Cowboy Kennel



Puppy Mills

From: **Cindy Browne** [REDACTED]
Sent: Wed 2/15/12 8:57 AM
To: erule.comments@license.state.tx.us

Dear Ms. Rinard,

I am a long time and faithful member of the Humane Society and would ask that you strengthen the proposed dog and cat breeder regulations as were published in the Texas Registry on Jan. 20th.

The use of wire cages should be prohibited in all cases. Urine and feces running down onto other animals is not acceptable.

The cages need to be stacked on one level only.

Also, we would like to ban non-veterinarian personnel from performing any surgical procedures.

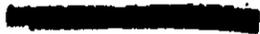
Please disregard all reference all references to all breeders to use "their best efforts" regarding temperature control. This phrase is too vague and needs to be told in a more stern manner. We want the federal regulation strengthened not weakened.

We do not want existing breeders that are forcing dogs and cats to live in these terrible conditions to get away with they way they are treating these animals. The animals are suffering and are only a cash crop to the breeders.

I does not seem that the breeders are taking this legislation seriously and we must make it mandatory by law and close the loopholes they are using to keep treating poor animals this way.

Thank you,
Cindy Browne

[REDACTED]
[REDACTED]
[REDACTED]



TEXAS ANIMAL CONTROL ASSOCIATION

- Est. 1974 -

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

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RE: **Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas**

Ms. Rinard:

The comments and recommendations in this letter are submitted on behalf of the Texas Animal Control Association ("TACA"), an association committed to the advancement of all animal control and animal welfare professionals through education, leadership, and advocacy. Our members deal with the fallout from substandard breeding facilities on a daily basis. The heart breaking scenarios we see not only affect the animals, but also affect the customers who buy the sick, injured and inbred puppies and kittens and rescue groups who try and save the sick, injured and filthy animals removed from these facilities under the civil seizure provisions of the Texas Health and Safety Code.

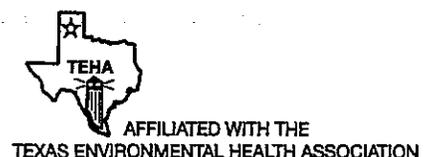
TACA strongly supported HB 1451 and believed that its passage would go a long way in helping the helpless animals in these facilities. However, our review of the proposed Rules has us very concerned that the good intentions of HB 1451 will not be realized using the weak and possibly unenforceable provisions contained in the proposed Rules.

We have numerous concerns, but in terms of priorities, there are four major areas that we consider to be contra to the legislative intent of HB 1451. They include grandfathering 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); and requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102.

100% wire flooring (§91.102 and §91.104). The single most health and injury issue we see 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.

Other states that have addressed this issue have either eliminated wire flooring all together or enacted requirements that at least a portion of the flooring be large enough for each animal to sit, lay, stand and turn around and consist of a solid surface. Installing a partial solid surface is an easy and inexpensive fix and should be required of all licensed breeders, whether they get their license before or after September 1, 2012. If you allow grandfathering, the dogs and cats in the facilities that are grandfathered will suffer forever and this inhumane practice will remain rampant in Texas indefinitely.

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TEXAS ANIMAL CONTROL ASSOCIATION

- Est. 1974 -

We absolutely need to change these Rules to provide for a space where dogs and cats can find relief from the wire flooring. This can be accomplished through the use of a wood, plastic or rubber resting board with very little cost.

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. Unfortunately, some of the facilities of TACA members have stacked cages and it creates issues in observation and sanitation. It also increases our operating expenses. With that said, our facilities are only temporary holding areas and thus the dogs and cats in our facilities do not suffer the consequences of lifetime confinement under those circumstances. An example of the difficulty from cage stacking includes the difficulty in removing an animal for exercise if the cage is head tall or higher and inspecting animals in the top tiers becomes difficult with the lighting and ventilation being impaired. As an alternative, although a poor 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. We would like to address the cage sizing requirements in §91.104. We agree with and commend you for increasing the cage sizes for dogs from that mandated in the USDA Regulations but we disagree with your 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. Our members often get animals from those situations and they are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside time, not to exceed two years, for them to come into compliance.

Temperature. Lastly, we question the use of the term "using best efforts" in §91.101 and §91.102 and we also recommend you remove "four or more hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations and there is no reference 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 or are not. 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 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.

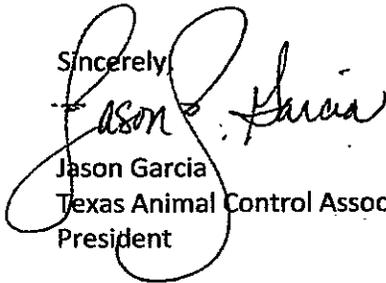


TEXAS ANIMAL CONTROL ASSOCIATION

- Est. 1974 -

In closing, if your intent in the proposed rules is to carry out the purpose and intent of HB 1451, the areas of concern in this letter must be addressed. Thank you for allowing us to submit our comments and recommendations. We would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,



Jason Garcia
Texas Animal Control Association
President



AFFILIATED WITH THE
TEXAS ENVIRONMENTAL HEALTH ASSOCIATION

HOUSTON HUMANE SOCIETY



16 February 2012

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

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Re: Comments on the proposed rules regarding Licensing and Regulation of Dog and Cat Breeders.

Dear Ms. Rinard,

I am a member of the Breeder Advisory Committee. There are multiple items that I take issue with and would like to make known to the Commissioners and others involved.

Too much emphasis has been given to the "for profit" breeders opinions. The commission, with input from the Advisory Committee, is charged with adopting measures that will "ensure the overall health, safety and well-being of each animal in the breeder's possession". We are not charged with making it more affordable for breeders to make more money while breeding animals suffer their entire lives. A bitch can produce hundreds of puppies over a lifetime and bring thousands, if not hundreds of thousands, of dollars to the breeder. The least that can be done is to care for her humanely throughout her life. The Texas Legislature has been compassionate enough to assign us the duty to make that happen and I feel we should take it seriously for the sake of the animals.

Wire flooring. During the discussions about wire flooring the main issue considered was the cost to breeders to make changes. No actual costs were given by the breeders as what would be "cost prohibitive" for them to carry on their business. There were also alternatives offered such as rest boards, mats, bedding, etc. which could be sanitized and would be a small expense and yet offer relief for the animals. Many instances and examples were given how it is painful and cruel to keep animals on wire flooring for their entire lives, such as paw damage, drafty conditions which will spread airborne diseases, bone malformations, and the high probability of waste materials leaking thru to caging underneath. We must "ensure the overall health, safety and well-being of each animal in the breeder's possession" and require that at least 50% of the flooring be solid and of sanitizable, impermeable materials. This requirement is one of the minimum standards recommended by the American Veterinary Medical Association.

I have, on many occasions, witnessed the destruction caused by wire flooring from animals with broken legs and gangrenous paws that had to be amputated, to a little dog that could not walk on a floor properly until after being rehabilitated.

Mailing Address:

Shelter Location:

Grandfathering. This issue was focused on keeping down costs for the breeders and as an incentive to get breeders to license. Again, no actual costs were given by the breeders as what would be “cost prohibitive” for them to carry on their for profit business. The incentive is a non-issue as it is the law for breeders described in the statute to have their businesses licensed.

The Advisory Board determined sizing and caging composition for breeders that apply after the Sept 1st deadline. If this is the minimal standard to house an animal after Sept. 1st, should the animals whose owners license before Sept. 1st be doomed to misery? Not only will the current stock suffer, any and all they purchase in the future will be forced to undergo lifelong distress as well.

As a compromise I request that, if we grandfather in those breeders, we must require them to come up to the determined lowest standards adopted by the group, within a 2 year period on both the wire flooring and caging size issues. Breeders can set aside business profits or take out small business loans for these changes as other trades, large and small, do to improve their companies.

Stacking of cages. The problems caused by stacking cages was discussed and the committee was told by the general counsel that no changes could be made to the statute itself. However, the entire statute was written to “ensure the overall health, safety and well-being of each animal in the breeder’s possession”. Texas case law provides that the primary objective in construing a statute is to determine and give effect to the legislature’s intent. I spoke with Rep. Thompson about the bill on several occasions and am sure her intent in promoting this bill was exactly that, therefore the Commission should be presumed to have the authority to modify standards that are more stringent than those set forth in Section 802.01(6) if those changes were to protect or improve the health and well-being of animals. Stacking cages is detrimental to the health and well-being of the animals in a number of significant ways. To name a few: contaminants inevitably fall below regardless of the tray or divider between the layers; it is much harder to observe the animal’s health and clean caging that is on the bottom or above a person’s view; stacking impedes the light needed to observe the animals and clean properly; and allows the spread of airborne and waste material transmitted diseases.

I have enclosed examples of stacked caging and wire flooring in breeding establishments that were investigated by the Houston Humane Society. All of the cases resulted in seizure and civil charges against the owners. While the pictures don’t share the smell, filth or the redness and soreness of legs and feet, they do depict the conditions we see frequently in private homes and in other breeding ‘businesses’.

Temperature Control. At the meeting on January 4th the committee voted to delete the phrase “for more than 4 consecutive hours” and it is still in the published report. There is no way to enforce a set time period. Whether the inspector saw the violation one minute after 4 hours or one minute after 5 hours or one minute after no hours the result is still the same. The breeder or rep can say it just happened. Worse a caretaker could feel they have 4 hours to correct and postpone getting the problem corrected. The reinsertion of this phrase is inconsistent with the Advisory Board vote and needs to be removed.

In addition, the phrase “when using best efforts” should be removed because the term weakens the federal regulations and is a deviation from the Act. It is also not a defined term and could be misconstrued to mean inappropriate actions.

Veterinary procedures. In Section 91.112 (b) the veterinary procedures *debarking, tail docking, ear cropping and claw removal* were deleted as they were not included in the Act. However, as mentioned above, I spoke with Rep. Thompson about the bill on several occasions and am sure her intent in promoting this bill was to improve the welfare of the animals, therefore the Commission should be presumed to have the authority to modify standards that are more stringent than those set forth in Section 91.112(b) if those changes were to protect or improve the health and well-being of animals. Veterinary medicine should be practiced by licensed veterinarians in good standing. Again I have witnessed the results of non-veterinarian performed procedures where the animal has developed severe infections and maiming which caused unnecessary and preventable pain

However, heartworm, flea/tick and parasite prevention need to be included under 91.112(c) as routine and preventative healthcare. These small precautions make for healthier and happier animals while they live in their cages and for more satisfied purchasers.

In closing, there are still numerous smaller revisions that are important and should be addressed which I am sure will come from others' input to this bill. I urge the Commissioners to please consider the reason the law was brought about to "ensure the overall health, safety and well-being of each animal in the breeder's possession" and will adopt the minimal standards suggested here and those of others who have the animals welfare at heart.

This Advisory Board has been a real experience and I am grateful to have had the opportunity to participate. I will be happy to speak with any or all of the Commissioners and invite each of you to visit the Houston Humane Society and learn more about how we provide for the large numbers of animals we handle each year.

Highest regards,



Sherry Ferguson
Executive Director

Office: 713-341-3304

Fax: 713-433-4325

Attached: HHS Cage Stacking and Wire Flooring pictures
List of States that do not allow wire flooring as sole flooring
Wire flooring quotes from USDA reports
Statement of the HSVMA on wire flooring in dog kennels
AVMA model bill and regulations to assure appropriate care for dogs
HSUS Veterinary Medical Issues in Puppy Mill Dogs

cc: Frank Denton, Chair

Mike Arismendez, ViceChair

LuAnn Roberts Morgan

Fred N. Moses

Lillian Norman-Keeney

Deborah Yurco

Ravi Shah

Cage stacking and wire flooring

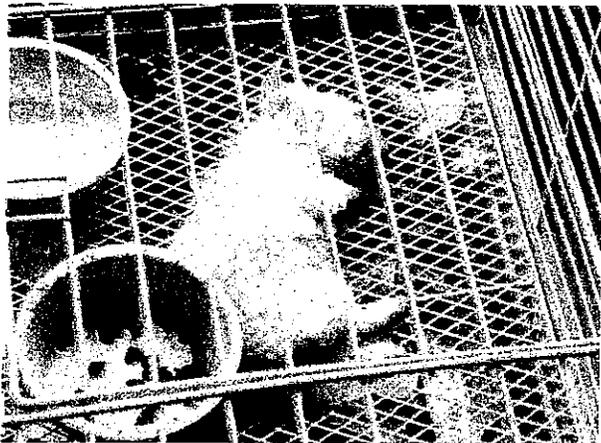
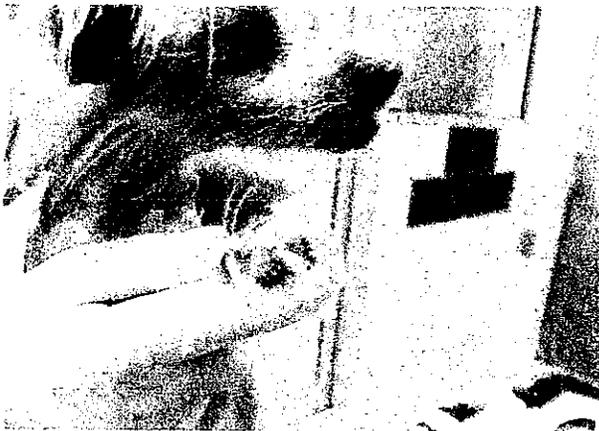
Stacked crating prohibits proper determination of animal health. Even with barriers between stacks it's next to impossible to clean without contaminating lower cages. Toenails, paws and toes can get stuck in wire mesh. Here are just a few of examples of these issues we've seen at Houston Humane Society.



This nail couldn't get caught because it had already grown into the foot pad



Typical nail length.



This puppy died even tho there were two living adults in the same cage with him.

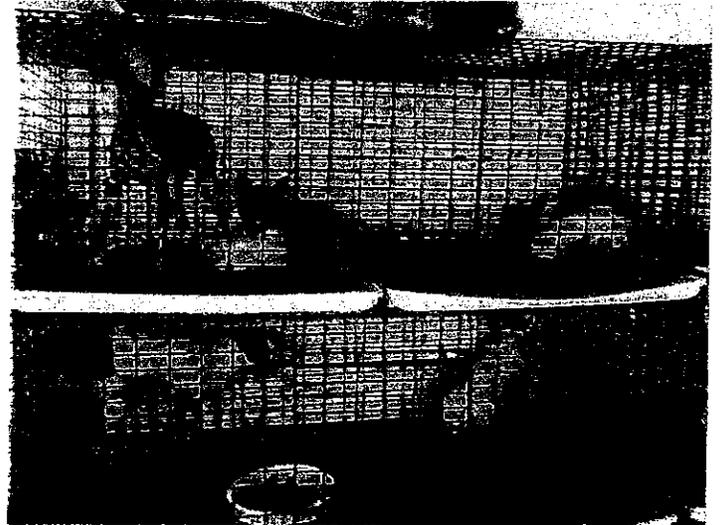
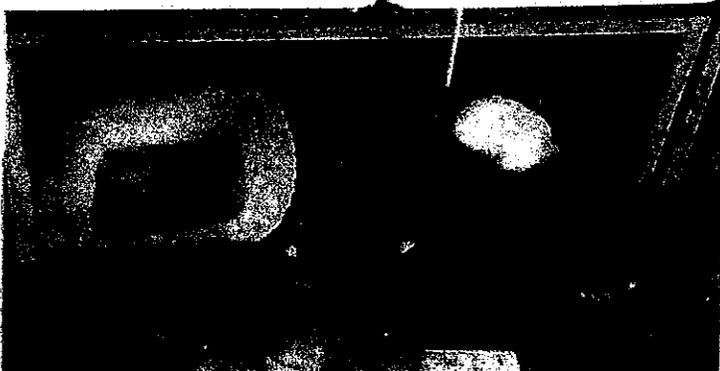




Cages stacked in utility room of mobile home. Others stacked throughout home.

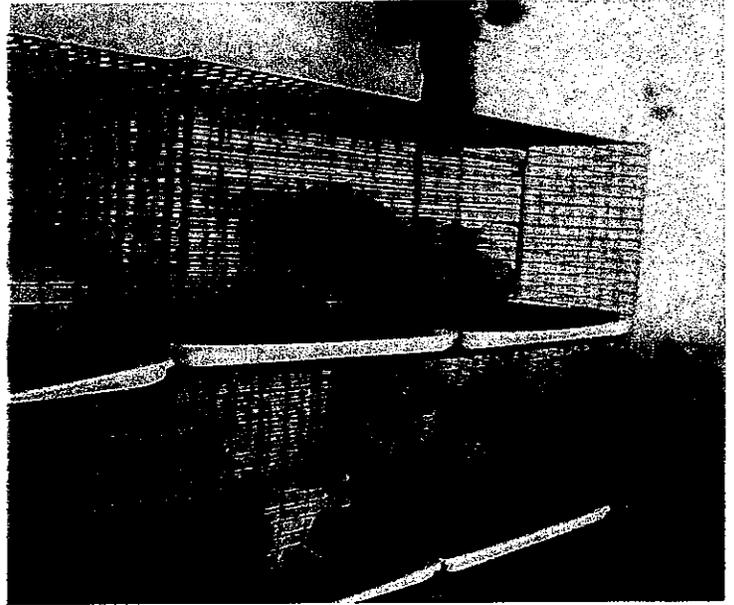


Wire flooring with impervious barrier





No relief from the wire causes irritation and soreness of the paws and legs as is easily seen in this picture. Varying degrees of medical ailments plagued all the animals in these pictures.



States that do not allow wire flooring as the sole flooring in a primary enclosure:

Virginia: requires a resting surface in enclosures so the animals can get off the wire if they choose to:

“Adequate shelter” means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, **for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner.** Under this chapter, shelters whose wire, grid, or slat floors: (i) permit the animals' feet to pass through the openings; (ii) sag under the animals' weight; or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter

California: § 122065.5. Housing dogs on wire flooring- “It shall be unlawful for a breeder to primarily house a dog on wire flooring.”

Indiana: 15-21-4-1 Standards of care- “Sec. 1. (a) A commercial dog breeder shall comply with the standards of care set forth in 9 CFR 3.1 through 9 CFR 3.12. (b) A commercial dog breeder: (1) may not house a dog in a cage containing a wire floor unless the cage contains an accommodation that allows the dog to be off the wire floor;

Missouri : 273.345. Canine cruelty prevention act- “For any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, wire strand flooring shall be prohibited and all enclosures shall meet the flooring standard set forth by rule of the Missouri department of agriculture.”

Nevada: Senate Bill 299 (passed in 2011)- bans cage stacking and wire flooring.

Pennsylvania : Class C commercial kennels in Pennsylvania (house or sell more than 26 dogs a year) are prohibited from placing dogs on wire flooring (coated or not), hog flooring, or floors with poorly spaced slats. If slatted flooring is used in class C commercial kennels the spacing between slats must be less than half an inch with the slat dimensions at least 3.5 inches wide. Slats must run the length or width of the kennel floor. For female dogs close to birthing or with pups, class C commercial kennels may house the female and her pups on flooring that is 50 percent solid and 50 percent wire.

Wire flooring quotes from USDA reports

“Two puppies were observed with their feet passing through the mesh flooring. One puppy wearing a paper collar with the number 3429 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 same day where seizure activity was observed. The election to humanely euthanize this puppy was made.” (10/2/2007, #31-A-0265)

“The female on the top left side of the whelping building had blood staining on the feet. The animal was observed in the pen with the individual toes sticking through the holes in the wire. This was applying the weight of the animal to the webbing between the toes. The animal was not moving around in the pen due to the sore feet.” (6/24/08 #43-A-3480)

“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)

“There were at least two puppies in two different pens seen with the feet and legs of the puppies falling through the openings in the wire flooring. One puppy was trapped in the exterior portion of the sheltered enclosure in the doorway with a spring loaded door pressed against him and could not get up since his feet and legs were through the wire. The other was a very young puppy who had rolled off of a mat and could not get back onto the mat since his feet and legs were through the wire floor.” (8/7/2007, #43-A-1747)

“There is a pen in the whelping building with a white dog and her six puppies. The flooring is made of wire mesh with 1 inch square openings. There is a solid surface provided in one corner of the pen. The licensee stated that the puppies don't stay on the solid surface. It was observed during the inspection that the puppies try to walk on the mesh portion and their whole legs fall through the openings in the floor.” (4/22/08, #43-B-0398)

“A female French bulldog was observed in an outside hutch type enclosure in poor body condition. Multiple ribs and hip structures were easily visible. During the observation of this dog a reluctance to bear weight on the hind legs was noticed. The dog repeatedly shifted weight between each of the hind legs while standing on the wire mesh flooring.” (1/23/08, #43-A-4848).

“Three Chinese crested puppies were observed housed in the whelping room in an enclosure with wire mesh flooring. These puppies were only a few days old and were not provided with a solid flooring surface. The wire mesh flooring had strands of plastic coated wire approximately ¾ by ¾ inch apart. During the inspection the puppies were observed multiple times with feet and legs protruding below the surface of the floor. This poses a very significant risk of injury to the puppies.” (1/10/07, #43-A-2807)

"The feet and legs of puppies were observed at multiple times to be falling through the wire mesh floors of the enclosure. In addition, in one of the enclosures in the lower tier, there was an adult Pug (with an amputated right front leg) being housed on a similar wire mesh floor. This 'handicapped' animal would be more prone to injuries of the paws and lower extremities due to the instability of the flooring provided and also being unable to properly distribute its weight over all four legs. At the time of the inspection, the Pug was observed staying put in one corner of the outdoor portion of the enclosure and appeared to be reluctant to move around. This three-legged animal would be better served by housing it in an inside enclosure with more solid footing which would subsequently decrease the chances of injury to its paws and lower extremities." (7/14/08 #43-A-4499)

"There were large piles of fecal material mashed into the wire mesh flooring as well as an excessive build-up of fecal material on the collecting pans underneath." (7/24/07 #43-A-4499)

Statement of the Humane Society Veterinary Medical Association on Wire Flooring in Dog Kennels

The Humane Society Veterinary Medical Association (HSVMA) opposes the use of wire mesh material as flooring in dog kennels because of its negative impact on the health and welfare of dogs housed in this fashion.

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Animal Behavior Science Shows Terrestrial Species Prefer Solid Flooring

Animal behavior science indicates that although wire flooring may be preferred by arboreal (tree-living) species such as marmosets, solid flooring is the most appropriate for terrestrial species¹ such as canids. One study demonstrated that foxes were willing to work to gain access from a wire mesh floor to a solid one. On the solid floor, they performed a greater variety and a higher frequency of normal species-specific behaviors such as play, rooting (exploring with their muzzles) and jumping.²

Potential Injuries and Illness Caused by Wire Flooring

By discouraging normal animal behaviors, such as reclining, wire flooring may compromise the health and welfare of animals housed in such systems.³ Dogs kennelled on wire flooring may remain standing longer because of the discomfort associated with lying down on this material. These 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. Dogs splay their paws in order to maintain their balance on wire flooring. Consequently, they can develop painful inter-digital cysts and sores, which can disrupt their normal gait. Dogs' nails overgrow—often in a curved manner—due to limited contact with solid surfaces. 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 great discomfort.

Kennels must be able to accommodate a wide range of dog sizes—depending on breed, conformation and age—including young puppies. For this reason the size of the wire mesh can be a serious liability; entire paws and even limbs may slip through it. If a dog struggles to pull a limb back through the mesh, it can cause severe lacerations or even unintentional amputation of that limb. In a kennel with stacked cages, dogs may injure or mutilate limbs of other dogs housed above or below them.

Other Health and Welfare Issues Associated with Wire Flooring

Although some states require wire mesh flooring to be vinyl-coated, the vinyl material is not durable and wears off quickly. Without coating the wire is even

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sharper, more uncomfortable and potentially dangerous. 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. This is particularly true for puppies and other dogs with minimal body mass or fat.

Dogs in kennels with wire flooring may restrict their own activity in an attempt to avoid discomfort. This can lead to obesity and other health problems. The stresses of uncomfortable confinement can foster anxiety, frustration or depression, causing dogs to withdraw, bark frequently, self-mutilate or develop inappropriate repetitive behaviors.

Sanitation Concerns

If kennels are cleaned regularly and appropriately, solid flooring can be easier to clean more thoroughly than wire flooring. Wire mesh is often used as commercial dog kennel flooring because it is presumed to facilitate cage cleaning. However, dog feces often stick to the mesh material, becoming caked onto the wire. Once this fecal material dries, it is very difficult to remove completely. Feces that do drop through the 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 increase the likelihood of disease transmission. In stacked-cage scenarios, wire mesh flooring amplifies the health risks for the dogs housed below.

References

- ¹Hardy A, Windle CP, Baker HF, et al. Assessment of preference for grid-flooring and sawdust-flooring by captive-bred marmosets in free-standing cages. *Appl Anim Behav Sci* Jan 2004, 85(1-2) 167-172.
- ²Koistinen, T, Mononen, J. Blue foxes' motivation to gain access to solid floors and the effect of the floor material on their behaviour. *Appl Anim Behav Sci* Sept 2008, 113(1-3) 236-246.
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MODEL BILL AND REGULATIONS TO ASSURE APPROPRIATE CARE FOR DOGS INTENDED FOR USE AS PETS

Background and Context

The issue

Dogs that are bred and intended to be kept as pets require a basic standard of care for their own well being and to ensure they possess the temperament and good health necessary to become successful companion animals. The good news is that most facilities meet or exceed this level of care. Unfortunately, there are also substandard facilities that breed and keep dogs under deplorable and unsanitary conditions.

During the past few years, many states have considered passing bills regulating those who breed and/or retail dogs in an effort to address these substandard facilities. To assist state and local governments in designing effective policies to enforce reasonable welfare standards for breeder and retailer operations, the American Veterinary Medical Association (AVMA) has developed model legislation and accompanying regulations.

Our model legislation and regulations are intended to serve as guidance for governments considering the creation or augmentation of policies regulating dog breeders and retailers. The following information is provided to explain the rationale and scientific evidence behind the ideas set forth in our model.

Who would be regulated?

Currently, the basic welfare needs of dogs in certain facilities are assured by compliance with the federal Animal Welfare Act (AWA). However, dogs in many breeding and retail operations are left unprotected, including those in operations that sell/distribute dogs directly to the public. Thus, the goal of our model bill and accompanying regulations is to provide assurance of acceptable animal care for dogs currently not covered by the AWA or similar regulations and to ensure that all dogs sold/distributed to the public are protected, irrespective of facility type (i.e., dogs are deserving of a minimum standard of care whether bred/raised/distributed by breeders, shelters or animal control facilities).

To maximize the allocation of limited resources, the models define two groups for coverage: 'high-volume dog breeder' and 'high-volume dog retailer.' A 'high-volume dog breeder' is defined as one who whelps six or more litters a year. This classification is in accord with the American Kennel Club's definition of a high-volume breeder,¹ and has been used in both current and proposed legislation.^{2,3,4} A 'high-volume retailer' is described as one who sells or transfers ownership of more than fifty dogs during any calendar year. Use of these definitions helps to focus limited resources on the facilities housing a large proportion of the dogs raised and/or made available for use as pets.

How are the model bill and regulations designed?

There are two general types of assurance standards: engineering standards and performance standards. Engineering standards are resource-based and generally include rigid technical specifications addressing the physical environment. For example, our model sets a minimum calculable standard for the amount of cage space a dog must be provided. Performance standards are animal-based and measure how a dog's welfare is impacted by a given environment. Under a performance standard, if the welfare needs of the dogs are met, as evidenced by their general physical and behavioral condition, then the facilities are sufficient. For example, waste disposal systems are sufficient if enclosures are kept clean, and if dogs are kept dry and their coats are free of debris.

The model bill and its accompanying regulations are designed to ensure the welfare needs of individual dogs are met, and rely largely on performance standards. We believe performance standards better measure a dog's well-

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being, are flexible enough to support a positive outcome in a diversity of operations, and allow for the use of professional judgment in their application. This is desirable as both small and large operations can and must provide acceptable care for dogs. Furthermore, performance standards allow consideration of a dog's breed, age, sex, reproductive status, and any other factors impacting its individual welfare needs. Performance standards are also currently, widely, and effectively used in the regulation of care for dogs in research institutions.⁵ It is envisaged that these standards should never be applied in a way that meets the letter of the standard, but is detrimental to the well-being of the dog. However, where discretion is exercised to modify requirements or exempt a dog from their application, a clear justification should be provided that has as its basis *the welfare of the dog*. Whenever possible, necessary steps should be taken to remove the need for the exemption. For example, a dog may need to be individually housed until it is socialized or a compatible social group can be found. If this is not possible, the dog might be provided with visual contact with other dogs and/or additional human interaction in an attempt to improve its welfare.

In certain cases, engineering standards are effective for specifying enforceable and unambiguous minimum requirements. These can help ensure the critical needs of a dog are met, such as minimum primary enclosure space.

One should bear in mind that the standards in the model bill and accompanying regulations are considered to be minimums; they should not be interpreted as providing guidance for ideal dog care. Responsible facilities will readily exceed most, if not all, of the stated standards.

Public health concerns

Housing multiple dogs in a facility without strict sanitation and preventive healthcare practices can promote the spread of infectious disease, including many zoonotic diseases, such as ringworm and sarcoptic mange.⁶ Insufficient attention to sanitation and healthcare, as well as housing conditions that create unnecessary stress, can pose health risks for dogs and people. Our model thereby seeks to ensure that dogs are housed and managed in ways that reduce the incidence and spread of infectious disease.

Explanation of regulations

Much of the model bill and regulations is direct and self-explanatory. The following comments are intended to help readers better understand the rationale behind selected sections.

Housing Facilities

Space—Provision of adequate space is important for the physical and psychological well-being of dogs. Here, the model combines performance standards with an engineering standard. As for performance benchmarks, a dog should have sufficient space to allow it freedom of movement and to assume normal postures, such as to lie fully recumbent.

Specifying a minimum spatial requirement provides an enforceable benchmark that corresponds with federal standards. To achieve this, the model adopts the equation used in the AWA.⁷ As a minimum criterion, it should not be used as a guide for designing ideal housing. In fact, most housing situations should visibly meet and exceed the performance standards, in which case calculation of space minimums may not be necessary.

While providing dogs with more space beyond these standards is desirable, the adoption of additional rigid space standards is not recommended. Simply providing excess cage space beyond the minimums cited does not necessarily benefit the welfare of dogs.⁸ Stricter standards would also not be practical to enforce given that many different housing situations can fulfill the welfare needs of dogs.

Flooring—Dogs should be provided with an area of solid flooring. A dog's welfare needs for comfortable housing are better met by a kennel with solid flooring.⁹ However, the use of wire flooring can assist in maintaining a clean environment. Thus, housing designs that make use of both flooring types together are acceptable.

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Retreat and Security—Dogs also have a behavioral need for retreat and security. Just as a dog needs to be able to engage and explore its environment, a dog benefits from having the option to withdraw from its environment to rest.^{9,10} A den can be provided for dogs in numerous ways, from built-in platforms to simple bedding. Such guidance is provided with the understanding that exemptions may be required during behavioral training when appropriate techniques and exercises are being used to socialize dogs.

Whelping box—A pregnant dog should be provided with a whelping box prior to parturition.¹¹ The design can be variable so long as the whelping area provides a comfortable environment, security, and an appropriate temperature for the puppies is able to be maintained.

Behavioral Requirements

Dogs have an intrinsic need to exhibit certain species-typical behaviors; these behaviors allow them to maintain a healthy physical and psychological state. Well-designed housing provides a complex environment and allows the dog to choose to partake in these behaviors. For certain activities, the dog may need to be removed from its primary enclosure.

Most of the model regulations in this section are performance-based because we recognize that various housing facilities and procedures could potentially fulfill minimum requirements for dog well-being, which include:

- Daily satisfaction of specific behavioral needs.
- Not housing dogs for extended periods of time without some form of environmental enrichment.

Socialization—Dogs need both human and conspecific (dog-dog) socialization. Proper socialization is critical for the psychological development of puppies. Positive and friendly human contact should occur as often as possible. Lack of adequate socialization for puppies has been hypothesized to contribute to behavioral aggression in dogs.¹²

Adult dogs continue to need daily human and conspecific interaction. Both can be accomplished in a variety of ways, and should be integrated into husbandry whenever possible. Socialization promotes both the physical and psychological well-being of dogs,^{13,14,15} and lack of it can lead to the development of stereotypic, self-injurious, or aggressive behavioral patterns.¹⁶ These behaviors can precipitate clinical conditions, such as acral lick dermatitis and psychogenic alopecia.^{17,18} Though not definitive, abnormal behavioral patterns can be useful indicators of inadequate socialization or environmental conditions.¹⁹

Environmental Enrichment—Dogs need and benefit from a complex environment that incorporates both social and inanimate enrichment features.²⁰

Enrichment provided by inanimate objects meets important behavioral needs of dogs. For example, puppies exhibit extensive play with enrichment objects such as toys and chewing substrates.²¹ Adult dogs also use and benefit from the provision of enrichment objects.²² These objects promote species-typical behaviors such as play, chewing, and exploration. Inanimate enrichment can be easily and economically accomplished by provision of an object for play for a puppy, and an object for chewing for an adult dog. However, adequate enrichment can be accomplished in numerous ways, including furniture, platforms, and space-displacing objects.

Visual forms of enrichment can also benefit the well-being of dogs. For dogs not housed in a primary enclosure with other compatible dogs, an effort should be made to house dogs with either conspecific or human visual contact whenever possible.

Locomotor activity—Dogs should be given the opportunity for locomotor activity on a daily basis. This may involve walking on- or off-leash and/or access to an area where spontaneous activity occurs. Spontaneous activity is facilitated by adequate space, social contact and some form of enrichment. In terms of spatial needs, a dog should have the opportunity for various physical movements, such as achieving a running stride.²³ Providing additional space beyond the stated minimums is desirable, but not necessary to support suitable locomotor activity.²⁴ In fact, having interaction with other dogs, people, or an enriched environment may more effectively

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ensure healthy physical activity.²⁵ Thus, a proper locomotory regimen will provide simultaneous access to proper space and an enriched environment.

Stringent technical requirements for either a specific exercise area or time allotments for locomotory activity are not recommended as they do not provide a tangible benefit for a dog's welfare.²⁶ A dog's locomotory needs are complex and variable, and will depend on factors such as its age, breed, reproductive status, and housing environment. For example, dogs housed socially in a primary enclosure with other compatible dogs have less need for additional locomotory activity than those housed in isolation.²³ In addition, a variety of activities and situations can contribute to an acceptable locomotory program. For example, an acceptable program may include walking the dog on a leash or may include giving multiple dogs free access to a secure area. Finally, enforcement of rigid exercise area and time requirements is difficult and impractical.²⁷ For these reasons, within our model bill and regulations, only performance standards are used to ensure a dog's locomotory needs are fulfilled.

Health and Veterinary Care

All dogs must be provided with regular routine and preventive veterinary care, which must adhere to pertinent local statutes (e.g., those addressing rabies vaccination).

Health Care Protocol—Each facility should devise a standard protocol for routine veterinary care, including examination by a licensed veterinarian, a vaccination schedule, and strategies for parasite control (a list of resources providing examples of protocols for routine veterinary care is provided at the end of this document). A set of standard protocols provides caretakers with guidance about the care dogs should receive, and assists inspectors in determining whether proper routine care is being provided for each dog. For example, a properly constructed parasite control protocol will ensure that puppies aren't persistently infested with fleas. The model regulations are not specific as to individual issues to be addressed, because needs can vary widely between operations and geographic locations.

Veterinary Records—Each facility should keep a complete record of all veterinary care for each dog. These records should be available as needed for inspections, as well as at the request of a veterinarian treating a dog originating from the facility.

Daily Health and Welfare Checks—Each dog should have its general health, behavior, and overall welfare assessed daily. Any reasonable person who has experience breeding and raising dogs should be readily able to do this. Mandating daily health and welfare checks is important as it does not allow a breeder or retailer to claim ignorance in cases of neglect, nor does it allow them to withhold necessary veterinary care for obvious illness or injury. Rather, it may allow health problems to be prevented and/or identified before they reach a critical clinical stage.

Resources*

General Housing and Husbandry Standards

1. Animal Welfare Act, Dog and cat regulations, 9 CFR 3.1 – 3.19.
2. Committee on the Care and Use of Laboratory Animals, Institute of Laboratory Animal Resources, Commission of Life Sciences, National Research Council. *Guide for the Care and Use of Laboratory Animals*. Washington DC: National Academy Press, 1996.
3. Hubrecht RC. Comfortable Quarters for Dogs in Research Institutions. In: Reinhardt V, ed. *Comfortable Quarters for Laboratory Animals*. Washington DC: Animal Welfare Institute, 1997; 1 – 15.
4. Stafford K. The dog as a research animal. In: *The Welfare of Dogs*; Dordrecht, Netherlands: Springer, 2006;166-175.

Veterinary Health Care

1. AVMA Council on Biologic and Therapeutic Agents: Report on cat and dog vaccines, 2002. Available at: <http://avmajournals.avma.org/doi/pdf/10.2460/javma.2002.221.1401>. Accessed December 16, 2009
2. American Animal Hospital Association, 2006 AAHA canine vaccine guidelines, revised. 2006. Available at: <http://www.aahanet.org/PublicDocuments/VaccineGuidelines06Revised.pdf>. Accessed December 16, 2009.

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3. AVMA Guidelines on Euthanasia. Available at: http://www.avma.org/issues/animal_welfare/euthanasia.pdf. Accessed December 16, 2009.

Examples of Existing Legislation/Recommendations on Standards of Care for Dogs

1. Virginia 2009 Chapter 852 — Relating to commercial dog breeders. Available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0852>. Accessed December 16, 2009.
2. Indiana IC 15-21 — Relating to commercial dog breeders and brokers. Available at: <http://www.in.gov/legislative/ic/code/title15/ar21/ch3.html>. Accessed December 16, 2009.
3. Indiana IC 6-9-39 — County option dog tax on kennels; applies to animal control centers, animal shelters, humane societies, other animal impounding facilities. Available at: <http://www.in.gov/legislative/ic/code/title6/ar9/ch39.html>. Accessed December 16, 2009.
4. Oregon Laws 2009 Chapter 297 — Relating to dogs (large-scale commercial breeding). Available at: <http://www.leg.state.or.us/09orlaws/sess0200.dir/0297.pdf>. Accessed December 16, 2009.
5. 2009 Wisconsin Act 90 — Relating to persons who sell dogs or operate shelters, and animal control facilities. Available at: <http://www.legis.state.wi.us/2009/data/acts/09Act90.pdf>. Accessed December 19, 2009.
6. Canadian Veterinary Medical Association. *A Code of Practice for Canadian Kennel Operations*. 2nd Ed. Ottawa, ON, Canada. 2007. Available at: <http://www.animalhealthcare.ca/pdfs/Kennel%20Code-EN.pdf>. Accessed December 16, 2009.
7. New Zealand: Ministry of Agriculture and Forestry, Code of recommendations and minimum standards for the welfare of dogs, 1998. Available at: <http://www.biosecurity.govt.nz/animal-welfare/codes/dogs/index.htm>. Accessed December 16, 2009.
8. New South Wales, Australia: Department of Primary Industries, NSW Animal Welfare Code of Practice No. 6 – Breeding Dogs. 1996. Available at: <http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/general/aw-code-6>. Accessed December 16, 2009.
9. United Kingdom: Home Office, Code of practice for the housing of animals in designated breeding and supplying establishments, 1995. Available at: <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/publications/code-of-practice/housing-of-animals-breeding/>

*These resources are provided as information only. With the exception of policy created or adopted by the American Veterinary Medical Association, listing of a particular resource does not imply recommendation or endorsement by the American Veterinary Medical Association.

¹ American Kennel Club. High-volume breeders: Committee report to the American Kennel Club Board of Directors. Available at: http://www.akc.org/pdfs/about/special_reports/HVBC_finalA.pdf. Accessed June 17, 2009.

² Colorado § 35-80-101 to 35-80-117

³ New York § 4:19-15.1 to 4:19-15.19

⁴ Wisconsin 2009 Act 90. Available at: <http://www.legis.state.wi.us/2009/data/acts/09Act90.pdf>. Accessed December 19, 2009.

⁵ Committee on the Care and Use of Laboratory Animals, Institute of Laboratory Animal Resources, Commission of Life Sciences, National Research Council. *Guide for the care and use of laboratory animals*. Washington DC: National Academy Press, 1996.

⁶ Newbury S, Moriello KA. Skin diseases of animals in shelters: triage strategy and treatment recommendations for common diseases. *Vet Clin North Am Small Anim Pract* 2006;36:59-88.

⁷ Animal Welfare Act. 7 USC 2131. 1985. 9 CFR 3.1 et seq.

⁸ Bebak J, Beck AM. The effect of cage size on play and aggression between dogs in purpose-bred beagles. *Lab Anim Sci* 1993;43:457-459.

⁹ Hubrecht RC. Comfortable quarters for dogs in research institutions. In: Reinhardt V, ed. *Comfortable quarters for laboratory animals*. Washington DC: Animal Welfare Institute, 1997; 1 – 15.

¹⁰ Wells, DL. A review of environmental enrichment for kennelled dogs, *Canis familiaris*. *Appl Anim Behav Sci* 2004;85:307-317.

¹¹ Johnson, CA. Pregnancy management in the bitch. *Theriogenology* 2008;70:1412-1417.

¹² Haug LI. Canine aggression toward unfamiliar people and dogs. *Vet Clin North Am Small Anim Pract* 2008;38:1023-1041.

¹³ Beerda B, Schilder MBH, Van Hoff JARAM. Chronic stress in dogs subjected to social and spatial restriction. II. Hormonal and immunological responses. *Physiol Behav* 1999;66:243-254.

¹⁴ Coppola CL, Grandin T, Enns RM. Human interaction and cortisol: Can human contact reduce stress for shelter dogs? *Physiol Behav* 2006;87:537-541.

¹⁵ Hennessy MB, Voith VL, Hawke JL. Effects of a program of human interaction and alternations in diet composition on activity of the hypothalamic-pituitary-adrenal axis in dogs housed in a public animal shelter. *J Am Vet Med Assoc* 2002;221: 65-71.

¹⁶ Beerda B, Schilder MBH, Van Hoff JARAM. Chronic stress in dogs subjected to social and spatial restriction. I. Behavioral responses. *Physiol Behav* 1999;66:233-242.

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- ¹⁷ Virga V. Behavioral dermatology. *Vet Clin North Am Small Anim Pract.* 2003 Mar, 33(2): 231-51.
- ¹⁸ Haug LI. Environmental enrichment for dogs. Unpublished handout.
- ¹⁹ Hetts S. Psychologic well-being: conceptual issues, behavioral measures, and implications for dogs. *Vet Clin North Am Small Anim Pract* 1991;21:369-387.
- ²⁰ Wells DL. A review of environmental enrichment for kenneled dogs, *Canis familiaris*. *Appl Anim Behav Sci* 2003;85: 307-317.
- ²¹ Hubrecht RC. Enrichment in puppyhood and its effects on later behavior of dogs. *Lab Anim Sci* 1995;45:70-75.
- ²² Hubrecht, RC. A comparison of social and environmental enrichment methods for laboratory housed dogs. *Appl Anim Behav Sci* 1993;37:345-361.
- ²³ Spangenberg EMF, Björklund L, Dhalborn K. Outdoor housing of laboratory dogs: effects on activity, behaviour, and physiology. *Appl Anim Behav Sci* 2006;98:260-276.
- ²⁴ Clark JD, Calpin JP, Armstrong RB. Influence of type of enclosure on exercise fitness of dogs. *Am J Vet Res* 1991;52: 1024-1028
- ²⁵ Hetts S, Clark JD, Clapin JP. Influence of housing conditions on beagle behaviour. *Appl Anim Behav Sci* 1992;34:137-155
- ²⁶ Campbell SA, Hughes HC, Griffin HE. Some effects of limited exercise on purpose-bred beagles. *Am J Vet Res* 1988: 49:1298-1301
- ²⁷ Kulpa-Eddy JA, Taylor S, Adams KM. USDA perspective on environmental enrichment for animals. *ILAR J* 2005;46:83-94

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MODEL REGULATIONS

The following are regulations pertaining to the humane care and housing of dogs under the Act.

Any high-volume dog breeder or high-volume dog retailer, in order to qualify for, retain, or renew a license under the Act, shall adhere to the following minimum standards of care.

I. Definitions

- a. Dog – means any member of *Canis lupus familiaris*.ⁱ
- b. High volume dog breeder – means any person who, during any calendar year, whelps more than six (6) litters of dogs.
- c. High volume dog retailer - means any person who, during any calendar year, sells, resells or transfers ownership of more than fifty (50) dogs, including sale, resale and transfer of dogs to pet stores, breeders, kennels and dealers, and sale, resale, and transfer that occur via the Internet.
- d. Infectious Disease – means any disease that may be contagious between dogs and/or humans, including bacterial, viral, fungal, and parasitic contagions.
- e. Licensed veterinarian – means an individual licensed as a veterinarian under [insert appropriate state law].
- f. Positive Physical Contact – means petting, stroking, or other touching, which is beneficial to the well-being of the dog.
- g. Person – means any individual, corporation, company, partnership, shelter, pound, rescue, firm, estate, trust, or other legal entity.
- h. Primary Enclosure – any structure used to restrict a dog or dogs to a limited amount of space. This may include, but is not necessarily limited to, a room, pen, run, cage, compartment, or hutch. If a dog or dogs are housed on the premise of a house or building without restriction, than the premises shall also constitute a primary enclosure.
- i. Staff – means a person appropriately trained to perform the duties required.
- j. Whelping Box – means a primary enclosure provided to a bitch prior to parturition, designed so that a bitch may lie fully recumbent, stand, turn around, and have some freedom of posture and movement. The whelping box shall function to securely house the bitch and her litter, prevent dissipation of their body heat, and allow for daily positive physical contact with people.

II. Housing

- a. Housing – Shall provide for sanitary and safe housing for dogs, and shall provide adequate space appropriate to the age, size, weight, and breed of the dog, and that allows the dog to engage in normal body movements, including the ability to sit, stand up, turn about freely, or lie fully recumbent in a natural position. The primary enclosure shall provide at least partial solid flooring. Nonsolid flooring must be safe for the breed, size, and age of the dog; be free from protruding sharp edges; and be designed to that the paw of the dog is unable to extend through or become caught in the flooring.
- b. Each dog, if housed in a primary enclosure, whether housed alone or with other compatible dogs, shall be provided a minimum amount of space, calculated as:
 - i. Find the mathematical square of the sum of the length of the dog in inches as measured from the tip of the nose to the base of its tail, plus 6 inches. Divide this product by 144 to calculate the minimum required floor space, in square footage, that must be provided by a primary enclosure.^{vi}
 - ii. For nonbreeding dogs housed together, the primary enclosure shall provide 100 percent of the required space for each dog, if maintained separately.
 - iii. Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accord 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 five (5) percent of the minimum requirement for the bitch, such housing must be approved by the Board/Agency.
 - iv. 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.

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- v. Innovative primary enclosures not precisely meeting the floor area requirements provided in paragraphs b(i), b(ii), b(iii), and b(iv) of this section, but that provide the dogs with a sufficient volume of space and the behavioral needs stated in section IV may be used at an operation when approved by the Board/Agency.
- c. Shelter – Shall provide protection from harmful extremes of temperature, air movement, moisture, light and other climatic elements to ensure proper health and well-being of the dog.
- d. Storage Facilities – Shall be designed and maintained as to provide adequate storage to protect food, medicines, supplies, and bedding from deterioration, contamination, and vermin infestation. Any potentially toxic substance should be stored in a manner to avoid contamination and potential for harm to the dogs.
- e. Structure – Shall be structurally sound, in good repair, have no sharp edges or points that could injure the dog(s), and shall securely contain the dogs while precluding access by other animals. Structural surfaces should be sanitizable or replaceable.
- f. Waste Disposal – All excreta, feces, debris, and food wastes must be removed from enclosures, at least once daily, and from under primary enclosures as often as necessary, to prevent an excessive accumulation of feces and food waste, to prevent soiling of dogs contained in the enclosure, and to reduce disease hazards, insects, pests and odors. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Waste must be handled and disposed of in a manner that poses minimal hazards to dogs and personnel, and reduces the likelihood of contamination of the soil or ground water with chemicals and/or microorganisms.
- g. Cleaning and Sanitation – Hard surfaces with which the dogs come in contact must be spot-cleaned daily and sanitized at least once every 2 weeks and more often if necessary to prevent accumulation of dirt, debris, food waste, excreta, and other disease hazards. When steam or water is used to clean the primary enclosure, whether by hosing, flushing or other methods, dogs must be removed, unless the enclosure is large enough to ensure the dogs will not be harmed, wetted, or distressed in the process. Standing water must be removed from the primary enclosure and dogs in other primary enclosures must be protected from being contaminated with water and other wastes during cleaning.
- h. Lighting – The facility shall have sufficient lighting by natural and/or artificial means as to allow observation of the physical condition of the dogs being housed, and to permit inspection and cleaning of the facility. A diurnal lighting cycle should be provided.
- i. Environment – Dogs shall be protected from extreme temperatures so as to maintain their health and render their environment comfortable. When climatic conditions pose a threat to a dog's health or well-being, taking into consideration such factors as the dog's age, breed, overall health status and acclimation, appropriate measures must be taken to alleviate the impact of those conditions. Adequate ventilation shall be provided to minimize odors, drafts, ammonia levels, and to prevent the condensation of moisture.
- j. Pest Control – An effective program for the control of insects, external parasites affecting dogs, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the dogs and reduce contamination by pests in dog areas.
- k. Retreat Area – Dogs shall also be provided in their primary enclosure some form of a den, which shall comprise at least a solid floor and visual barrier, as to allow rest and retreat.
- l. Whelping box – All bitches with litters shall be provided an appropriate whelping box, which should provide means to contain the puppies during whelping, and provide some form of substrate, insulation or heat source so as to prevent dissipation of heat so that all puppies are able to maintain appropriate body temperature. If a heat source is provided, care must be taken to protect the bitch and puppies from thermal injury.

III. Nutrition and Hydration

- a. Adequate food – A dog shall be fed at least once daily, or as otherwise required on the advice of a veterinarian. The food should be free from contaminants and be of sufficient nutritive value and quantity to maintain the normal condition and weight of the dog as germane to its age, sex, breed, and reproductive status.
- b. Potable water – Shall be provided at all times, unless otherwise directed by a veterinarian.

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- c. Food and water receptacles – Shall be readily accessible to all dogs and shall be located to minimize contamination and to protect them from precipitation. Any non-disposable receptacles shall be durable, cleaned daily, and sanitized at least once per week; disposable receptacles shall be replaced daily, and automatic feeders shall be cleaned and sanitized regularly to prevent the growth of mold and deterioration or caking of feed. Automatic watering devices shall be kept clean, be properly and regularly sanitized, and be tested daily to ensure they are functioning correctly.

IV. Behavioral Requirements

a. General

- i. The following behavioral needs shall be met at least daily, except as stated otherwise. All persons should have a documented protocol regarding how to meet the following necessary behavioral needs, and sufficient facilities and/or staff to meet them.
- ii. The goal shall be to allow dogs the opportunity to partake in species-specific behaviors. Dogs shall not be housed for extended periods of time in a manner devoid of any enrichment and/or activity and/or social contact.

- b. Conspecific socialization – Dogs shall be provided with full-body physical contact with other compatible dogs daily, except as necessary for reasons such as veterinary treatment or quarantine, or prior to parturition for a bitch. Prior to weaning, a bitch and her litter shall fulfill all conspecific socialization needs among the group.

- c. Human socialization – Dogs shall be provided with daily positive human contact and socialization. Contact during feeding time alone is not sufficient to meet this requirement.

d. Enrichment

- i. Dogs shall be provided in their primary enclosure some form of effective inanimate enrichment. For example, an object that allows the dogs to chew or to play.
- ii. Every effort should be made to provide dogs that are housed singly with visual enrichment, such as visual contact with conspecifics or humans, except as necessary for veterinary care, quarantine, or prior to parturition for a bitch.

e. Locomotion

- i. Persons shall ensure that each dog that is weaned has access to “locomotory activity”; this activity should allow for an animal to move sufficiently to develop and/or maintain normal muscle tone and mass as pertinent for the age, breed, sex and reproductive status of the dog. Provisions for locomotory activity should also allow the dog an opportunity to achieve a running stride.
- ii. The provided area for locomotion should be separate from the primary enclosure if the primary enclosure does not allow for fulfillment of adequate locomotion enrichment and social activities. The area must be kept clean, free of infestation by pests or vermin, and prevent escape of the dogs.
- iii. Forced activity, other than for veterinary treatment, is neither sufficient nor appropriate for fulfilling these needs. Physical activity that is repetitive, restrictive of other activities, solitary, and not goal-oriented is neither sufficient nor appropriate for fulfilling all activity needs.

V. Grouping

- a. Dogs having locomotory activity in groups and/or social interaction must be compatible and free of infectious disease.
- b. Females in heat shall not be housed in the same primary enclosure with males, except for breeding purposes.
- c. Any dog exhibiting a vicious or aggressive behavior shall be housed separately, as needed to prevent injury to other dogs. As with quarantine, separation of dogs due to aggression should be accompanied by a program to resolve the underlying causes of this disorder.
- d. Puppies four months of age or younger shall not be housed together in the same primary enclosure with adult dogs other than their dam or foster dam.
- e. Isolation of any dog with an infectious disease or condition – If a dog is infected with a contagious disease or condition as determined by a licensed veterinarian, one must house the dog separately from healthy animals, and shall handle the dog in a manner that will minimize the likelihood of contagion. Handlers must wash their hands before and after handling each infected or contagious dog.

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THE HUMANE SOCIETY
OF THE UNITED STATES

Veterinary Medical Issues in Puppy Mill Dogs

Dogs in puppy mills often suffer from an array of painful and potentially life-shortening veterinary problems due to overcrowded and unsanitary conditions and the lack of proper oversight or veterinary care. Conditions common to puppy mills, such as the use of stacked, wire cages to house more animals than a given space should reasonably hold, and constant exposure to the feces and urine of other dogs, make it difficult for dogs to avoid exposure to parasites and infectious diseases. In addition, a lack of regular and preventive veterinary care, clean food and water, basic cleaning and grooming, and careful daily observation by the operators may cause even minor injuries or infections to fester until they become severe. These disorders cause undue pain and suffering to the animals involved and often result in premature death.

Examples:

- When 80 dogs were rescued in July 21, 2011 from a puppy mill in Hertford, NC, a veterinarian with the intake shelter reported that almost 50% of the dogs were afflicted with parasites, 23% suffered from ear infections, 15% suffered from various eye disorders including some with Keratoconjunctivitis Sicca or "KCS", a very painful dry eye condition, and all the animals older than 18 months showed evidence of moderate to severe periodontal disease. One of the dogs had such severe dental disease that she required 32 dental extractions, while others had periodontal disease so severe that it led to bone reabsorption of the mandible (eroded jaw bone). Six dogs suffered from pyoderma (skin disease) secondary to urine-soaked matted fur.
- When more than 100 dogs were removed from a puppy mill in Stuarts Draft, VA in August 2009, findings from 200-page state veterinarian report indicated that out of 80 dogs examined, more than 60% of them suffered from a disorder serious enough to require emergency veterinary care, more than 80% suffered from parasites, almost 40% were underweight, more than 35% were suffering from dehydration, and more than 40% were suffering from eye



TOP: VA's state veterinarian determined that this rescued puppy mill dog suffered from an ulcerated conjunctiva with a pigmented cornea suggestive of long-term eye disease; dental disease, dermatitis, and parasites and required emergency veterinary care. / VA State Veterinarian report, 2009

BOTTOM: Skin conditions caused by mites, fleas and secondary infections are common in puppy mill dogs due to overcrowding and lack of proper care. This Doberman's skin was so irritated that it would crack and bleed when he rubbed his face against the cage to relieve the itching. /HSUS



disorders such as conjunctivitis, ocular infections or KCS. Many of the severely underweight or ill dogs were also pregnant, affecting the survivability of their offspring.

- The long-term effects of the confinement and deprivation at a puppy mill can have mental as well as physical manifestations, according research conducted by Dr. Frank McMillan, DVM, with James Serpell and Deborah Duffy of the University of Pennsylvania School of Veterinary Medicine. The study was reported in *USA Today* (Oct. 10, 2011) and is scheduled for publication in *Applied Animal Behavior Science*. The research encompassed more than 1100 dogs rescued from puppy mills who had been in their new homes an average of 2 years. The dogs were found to have significantly elevated levels of fears and phobias, compulsive and repetitive behaviors, and heightened sensitivity to being touched. Compared to 'normal' pet dogs, the chance of scoring in the highest ranges for fear was six to eight times higher in the recovered puppy mill dogs.

"This study gives us strong evidence that the dogs kept in these large-scale breeding facilities don't just suffer while they're confined there, but carry the emotional scars out with them for years, even when they're placed in loving homes," Dr. McMillan told *USA Today*.

Costs to Intake Shelters and other Nonprofits

A study conducted by the Humane Society of the United States (HSUS) in 2011 found that animal shelters and rescue groups that HSUS worked with to help treat and place newly-rescued puppy mill dogs spent an average of \$259 for veterinary expenses per dog rescued. The HSUS reimbursed the shelters for their expenses. Details from that research include:

- A Houston, Texas animal shelter spent more than \$24,000.00 to provide veterinary treatment for 220 dogs rescued from a breeding and hoarding case in January 2011. In addition, the shelter estimated it spent more than \$52,800.00 for the 9 days of veterinary boarding and 30 days of sheltering care during the animals' stay at the shelter prior to placement, for a total cost of approximately \$76,800.00.
- A New Jersey animal rescue organization spend more than \$4,000.00 caring for just three critically ill puppy mill survivors who required urgent inpatient intensive care after they were removed from a puppy mill in March 2010.
- A Maryland rescue group (Lost Dog and Cat Rescue) that took in 5 animals relinquished by a puppy mill in January 2011 spent more than \$4,200.00 on the dogs' care, or an average of \$840 per dog. The care included one large mammary tumor removal and biopsy, several animals who required treatment for eye disorders, and a total of 62 dental extractions among the 5 animals, including one dog who required more than 20 extractions.

Conclusion

Vaccination programs alone can't prevent the array of veterinary problems prevalent in dogs at puppy mills. The health impacts of overcrowding, filthy conditions and lack of basic oversight can be traced directly to the housing and husbandry conditions common in large-scale commercial breeding operations. Wire floors injure paws, high ammonia levels lead to breathing problems, and the lack of sanitation results in pathogens that are very difficult to permanently eradicate. Caging set-ups designed to require the most minimal hands-on care possible often lead to treatable injuries or infections becoming severe or even deadly.

Stronger, clearer humane standards, and better oversight of large-scale commercial breeders are necessary to help prevent this suffering.

Licensed Breeders HB1451 Public Comment

Attention:

Melissa Rinard, Melissa Rinard, Legal Assistant
General Counsel's Office

Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

RECEIVED	
TDLR MAIL ROOM 10	
FEB 17 2012	
RECEIPT#	AMOUNT

Melissa Rinard, Legal Assistant General Counsel's
Office

Texas Department of Licensing and Regulation

P.O.Box 12157

Austin, Texas 78711

From: Daniel Beard

[REDACTED]
[REDACTED]

[REDACTED]

email: [REDACTED]

No Fax available.

Melissa, attached is my comments. Please have
TDLR respond to my queries in attached
commentary.

Sincerely, Me.

Licensed Breeders HB1451: Public Comment Forum

Introduction:

Please forgive me. I find this opportunity to proffer my views before such a very honored and esteemed group of people an intimidating and surreal experience. To establish a foundation of communication between us, I start with, "I accept Jesus Christ is who he claims he is as written in the Holy Bible, American Standard Edition." ¹

My name is Daniel Beard. You can just remember me as the 'Old Man.'

Thank you for allowing me this great privilege of contributing my two cents into this half million dollar process of licensing and regulation of the Dog and Cat Breeding industry in this Great State of Texas.

I do not presume I have any expertise on this subject other than being involved with a hobby kennel operation since I was nine. I am now 53.

Let me start with how astounded I am by all this major, big league money and educated talent that is being committed to the welfare of dogs and cats when the State has a 16.8% poverty rate.² Kudos to everyone involved in

¹ http://en.wikipedia.org/wiki/American_Standard_Bible Specifically, the book of John.

² <http://quickfacts.census.gov/qfd/states/48000.html> -that's over four million Texans.

getting your animal welfare priorities through legislation when so many children and poor are doing without here in Texas. You all must be proud.

Texas HB1451 has transformed a really basic task, feeding and caring for animals into a governmental morass by:

A) creating an act that requires breeders to hire a lawyer to interpret the statutes for compliance. Expensive.

B) requires a bureaucratic maze of paperwork that breeders would be advised to hire office staff to process; I guess this is lawyer work too. Administration Cost.

B) Require the breeder to end their home spun cottage hobby and form a legal business entity. "Oh the Humanity."³

D) Require the breeder learn a complicated compliance lexicon that should entitle them to a degreed accredited diploma.⁴

C) my favorite; placing the raising of animals under judicial jurisprudence which puts breeders at risk of potential civil fine/s and-or incarceration. Ah yes, the attorney of record requirement. Insurance Expense.

F) Taking a real Nazi "Snitch" governmental policy and applying it here in Texas.

³<http://www.bing.com/videos/search?q=Oh+the+Humanity+lz+129+hindenburg&mid=5CFCDDC2076D7B95CBF35CFCDDC2076D7B95CBF3&view=detail&FORM=VIRE8> -imagine the Hindenburg as Texas Pet Economy.

⁴ <http://www2.ed.gov/admins/finaid/accred/index.html>

H) Smearing the “Puppy Mill” label similar to the Star of David or Scarlet Letter upon all Texas Licensed breeders.⁵

I) Creation of a Godfather like Veterinarian protecting the breeders who will pay yearly service fees to (tribute?), without whose blessing breeders are not allowed the privilege of operating a breeding facility.

J) There is a sense of political quid pro quo in this selection of the breeder advisory board members. The current members seem to have a politically narrow and biased interest concerning our states dynamic pet economy. For me personally, the current board is all too white and way too wealthy to reflect the real complexity of Texan society.⁶

K) Let us not forget, after becoming a licensed breeder, the government has a surprise for their business coming in 2014; Obamacare.

L) Changing the future experience of acquiring a companion pet into what? Obviously an animal rescue/shelter adoption psychometric test. God have mercy on this insult to the Texas public.

Lets examine the complexity of the first requirement. Registering with the city, county and state as a Licensed Breeder business and establishing sales tax payment account. You need a lawyer to do this right. Expensive. A business education is probably needed too.

⁵ http://www.thln.org/index.cfm?view=legislative_updates_and_actions -THLN public relations promotes HB1451 as only “The Puppy Mill Bill.”

⁶ <http://quickfacts.census.gov/qfd/states/48000.html>

How about the dog dossier required for each animal. Sounds like an additional office staffer will be needed. Additional administration costs. This legislation will burden kennels/puppy mills/breeders with an additional workload that has negligible return on value (assets or investments -ROA/ROI). The State also expects breeders to operate their business with even less resources due to fees and mandated animal health care just so animal advocates can feel good about themselves and their lofty statutes. Never mind the damage this does to the companion pet economy.

Breeders are at the bottom of this political food chain. We struggle just to put food on our table. Few of us earn enough to contribute to politicians or even better, afford attorneys. So obviously, we seem to have little input into this legislation. Be forewarned though;

Disenfranchisement is bad government policy and usually leads to ugly events.

What do breeders get in return from our state government for complying with this new law, HB1451? Did I mention depleted resources we rely on to survive, did I mention tighter budgets on which to provide proper care for raising our animals, how about the rattled nerves we get from duress caused by lack of understanding of this political process, or the ill health due to our rattled nerves, did I mention more hours of work for even less money, or paying tribute to what is feeling like a veterinarian racketeering extortion scam, how about the

animal activist scorn, and being singled out and marked as with a scarlet letter or jewish star through the licensed breeder registration requirements which is code for “puppy mill” and most importantly to us, the plain and simple loss of joy we experience in raising our animals.

Thank you Animal advocates for financing and writing this legislation. And forgive me for contributing my two cents as I question your motives.

I attended the THLN Houston Victory Conference last September in Houston. THLN members informed me that taking care of dogs, allowing them to breed and selling the puppies to good people of our great state and community re-brands me as a puppy mill operator. I got no problem with being re-branded. But I do have a problem with the assumption by this board and all animal advocates that automatically assume ALL puppy mills are criminally operated enterprises. That would be like me associating every animal shelter as a Tax haven laundering donations for Stripper pole and lap dances. IS that a fair assumption of the animal shelters throughout Texas Sherry Ferguson?⁷ No, that would be plain wrong associating all shelters with such deviant behavior. Likewise for assuming all puppy mills are bad.

As a Christian, I am also affronted that people would associate our hobby Kennel/“puppy mill” (re-branded by

⁷ http://blogs.houstonpress.com/hairballs/2009/12/humane_society_1.php

THLN) with any other puppy mill/kennel. Every puppy mill/kennel is an individual operation reflecting the individual owners character and work ethics. This agency should not be predisposed to assumptions that those who apply for a breeders license are bad people as the THLN advocates insinuate. That is just not the facts. Until you have information otherwise, each applicant and licensed breeder should be treated with the utmost respect. Remember, the licensed breeders are paying for your breeders act from their dinner table.

As to Sherry Ferguson throwing photos of criminally operated puppy mills into every ones faces; I have to rebuke her insinuation that all kennels/puppy mills/breeders behave that way too. Let make this clear, her animal shelter is contracted with the county and city to do just that; process criminal ran puppy mills and stray animals. It is her job! That does not mean all breeders/puppy mills/kennels operate under inhumane conditions.

Second No one here is advocating inhumane conditions. So stop the false insinuations.

Third, by allowing Ms Ferguson to cast all kennels/puppy mills/breeders as inhumane would be like claiming all people are murders, liars and thieves based only on the misbehaving people. Society as a whole is not inhumane, murdering, lying and thieving. And neither are the majority of kennels/puppy mills/breeders inhumane. Remember that about those who this agency will be regulating. You cannot take Sherry Ferguson's bias as justifiable reason for statute oppression.

From a business perspective, I don't know how criminal puppy mills make money. Who would buy such defective dogs let alone not report seeing any animal cruelty. But lets face the facts here. And that fact is that unsatisfied consumer demand for a companion pet created badly ran puppy mills. And those badly run puppy mills is why we have this over reaching government regulation.

I defiantly defend the Kennel/Puppy mill/Breeder. They are the result of some individual who stepped up and tried to meet the public demand for a companion pet. So Puppy Mills, which use to be called Kennels, are small business entrepreneur enterprises, just as the paper route, lemonade stand or baby sitter are small entrepreneur businesses. Contrary to what animal advocates claim, Puppy Mills serve a good, not a bad. And that is the basic fundamental truth.

In my opinion HB1451 is about monopolization of the companion pet market by tax subsidized pet stores. You see most animal shelters derive some of their budget from county and city taxpayers. They will become the primary de facto pet store after implementation of HB1451 next September. By the way, why are Animal Rescues and Shelters not subjected to the same animal welfare statutes of HB1451 as licensed breeders will be? And what are their rejection rates of the people seeking to adopt a pet? Anyone who has gone through those Animal Rescue or Animal Shelters adoption process knows what I am talking about here. Does the State Government really

think it is a good idea to make Animal Rescue and Shelters the primary venue to acquire a pet from in Texas? I remind them, a lot of people earn their living off the companion pet economy. And these statutes will seriously affect that economy.

I also want to serve notice that HB1451 proposed statutes are economically difficult to meet at best and a certain bankruptcy on its face value business model. The only options Texas free market Breeders have seems to be either to move over the borders or fade into the Texas black market industries just like immigrant labor and recreational drugs. If you think we have a handle on those two industries here in Texas; I remind you to look around you. For example, how many Drug related smoke shops are there in Austin?⁸ Immigrant labor? Come on, do I really need to point out our laws and our hypocrisy about that subject too?

I must congratulate HSUS and THLN's overall strategy. They are absolutely "BRILLIANT!" By forcing the pet livestock industry into the black market, you proliferate the number of badly run puppy mills, ensuring your supply of inventory for the animal shelters and rescues. Being the only outlet to meet the companion pet market, you can develop a continuous revenue stream with your real money maker: charitable donations and fundraisers. All you need to do is just drag a horrific puppy mill out of

⁸ <http://www.headshopfinder.com/head-shop-finder.html?scity=Austin&sstate=TX&zipcode=&radius=3&find=Find+Head+Shops>
-this does not include each companies branches which would multiply the total.

the community woodwork and bring it into the open for the news media to gawk over. If your primary business model is donations and fund raisers like Humane Society of the US and Texas Humane League Network are, then you want the back yard guerilla puppy mills to never end. Just for the record, HSUS revenue stream is a nine figure business model.⁹ I think former exploratory Presidential Candidate Steven Cobert would announced; “The market has spoken!”

The Real issue:

But wait a minute. There is a bigger reality concerning this legislation. The Real purpose of this Texas Breeders Agency. What I really want everyone to grasp is the real issue we are addressing: animal population control. This is about developing the government infrastructure to deal with an excessive dog and cat population. Try to grasp what I am implicating here. Realize that this Breeders Advisory Board may also be developing the tools and infrastructure to one day to be applied to the Texas people population too.

Let me give you an example. I see stray people. I see lots of stray people. I see stray people walking around everywhere. I see more stray people than I see stray animals. I think you call them homeless. Hmmm..... are we going to apply what this agency learns to one day address the over population of stray people, I mean homeless? Probably.

⁹ http://humanewatch.org/index.php/documents/category/financial_documents/

Backup:

Let me backup and examine the lopsided political view of this breeder advisory board. Who wants to take credit for creating these breeder board seats? I got serious problems with its composition. First, I see no racial diversity in the appointments. Second, I see no Pet Industry member seats. Third, I see No University academia seats. Fourth, five out seven voting members are or were THLN members. Which explains why every statute seems to be dictated and not negotiated. Democratic compromise indeed! This whole process is more like a Shakespearean staged play if you ask me. You even lured some breeders as window dressing to give the board more credibility, but stripped them of any input or voting rights. Dubious is what I call this breeders advisory boards work so far.

Let us examine the lack of Pet industry breeder board seats. According to the American Pet Products Association, for every dollar in live stock sale, there is 22 dollars in down stream revenue created.¹⁰ So for a dollar of unfettered capitalism, you create 22 dollars the state can apply sales and property taxes to. I am confident the state comptrollers office knows which businesses derive their revenue stream from livestock sales and who would be adversely affected by a precipitous collapse of pet livestock supply. Should they be warned of the coming business downturn the Breeders Act probably will cause?

¹⁰ <http://www.americanpetproducts.org/>

IS HB1451 really an improvement for the state's companion Pet Industry than the free market system that was in place? It is a high probability that HB1451 will proliferate back yard puppy mills and guerilla kennels. And if the legislation exasperates the problem it is meant to fix, then it has failed in its intent.

Side note: there is also no metric in place to determine if this Breeders Act is improving animals welfare or making it worse. I offer you the Equine industry here in Texas which has lost billions in economic activity over the last two decades as an example of what could happen to our dog and cat companion pet economy here in our Great State.¹¹¹²

This leads me to another bothersome issue. How little I have heard from Texas academia. There have been no financial impact studies as to how this legislation will affect our state companion pet economy. I've heard No comment as to whether this breeder act will crash the demand for Texas University trained veterinarians and/or whether it will diminish the career earning prospects of their graduates.

I have seen no business models that demonstrate any puppy mill/kennels businesses that can even work under these new laws. All I see is reckless legislated laws that do

¹¹ http://www.texashorseweb.com/emails/2011_0110.htm

¹² <http://www.equestrianmag.com/news/texas-horse-industry-state-economy.html>

not even perform due diligence concerning the basics of applicability. You would think with all the super computers and collegiate mathematicians we have that we could have crunched some numbers first to determine the feasibility of success of this legislation. But that would be prudent.

Another issue I ask about; was there a study to establish benchmarks about where the current state of the pet industry is today. O wait, AKC did report 112 million in registration sales for 2010 to the State legislative committee steering this legislation. So we do have one benchmark. But the State needs more benchmarks that capture the true nature of Texas Companion Pet economy.

Another important issue that this board is leaving out is way too many diverse political views from Texans in writing these statutes. It seems only the rich white elitist animal activists opinions are being discussed and/or considered at these advisory board work groups and meetings. There is no political balance in the Licensed Breeders Board membership.

Another issue I take seriously is that we have been talking to many veterinarians in the Houston and Katy area about this legislation. We ask them their opinions about this Breeders Act. I don't know if they are afraid of spooking us into abandoning our hobby business, but they all say they do not know anything about this Bill.

Repeat: They say they do not know anything about this bill. If this is true, I have to ask whether they are properly represented by the current seated veterinarian breeder board members? Personally, I'd like to see a survey conducted from all the veterinarians in the State of Texas as to their views about this legislation and its impact to their business. That would be a benchmark about our pet economy worth monitoring yearly.

Allow me to digress here and comment about this snitch monetary reward system HB1451 is creating. Are you sure you want to be creating bad blood among your Texas Citizens and neighbors. Jesus taught us to love our neighbor as we would love ourselves. This monetary financially motivated reward snitch program you created does exactly the opposite. It sows the seeds of evil amongst neighbors, period. I remind you that this snitch program is exactly what the NAZI Gestapo actually did do to their German citizens. It is absolutely disgusting morally. And I condemn it as really very 'bad' Texas government policy. Raising animals was not a criminal or civil crime until HB1451 legislation. And there is something fundamentally wrong with our state government if they feel the need to institute a Nazi Gestapo "snitch" policy. This isn't crime reporting, this is snitching on your neighbor about having more than ten intact females. What an abomination!

Skip Trimble

With all due respect; I extend Kudos to Skip Trimble and THLN for a stellar performance in writing, lobbying and

steering new Texas government involvement into regulating the companion pet livestock industry. Very professional legal maneuvering, especially in using the backdoor to avoid the public's input on the legislated process.

I second that I think Skip Trimble is right. This animal advisory board is not doing enough to succeed in closing down every kennel in the State of Texas -and that is the ultimate goal of HB1451.

This was the stated goal of numerous speakers at the THLN victory conference last September in Houston, Texas. Those speakers said explicitly that their mission was to close down every "Puppy Mill" in Texas. They also stated they believe there "are no good commercial kennels, period." ¹³

Another important fact heard at this conference was from THLN member Lexa Dell Prette stating that "Maybe THLN will allow breeders ten percent of the companion pet market. Maybe less." She also had serious problems with the public having the right to choose where they get their companion pet from. As far as THLN philosophy was concerned, the public should not be allowed the right of free choice in acquiring a companion pet. They want the animal rescues and animal shelters cleared out first and

¹³ Quote from KHOU Bob Woodward at THLN conference in response to question "Is there any kennels in the State of Texas that would meet the compliance requirements of HB 1451. Are there any good kennels and if so, who are they and where are they located?"

maybe then allow the private market a venue as a last resort to meet public demand for a companion pet.

But Seriously, this Advisory Board can do a whole lot more to make owning a pet a government regulation nightmare for everyone. Thus, I would like to offer these suggested strategies of what else the Texas Licensed Breeders Board can do to close down all kennels/puppy mills and breeders.

Suggested Strategies:

First, a legal disclaimer: These strategies I proffer should be taken as “brain storm” ideas. They are extreme and politically controversial in theory and practice. They require further debate and discussion to determine whether there is any merit to incorporating them into Government policies.

Second: A definition of Success. Success is where everyone, the Texas Public, The Animals and the pet industry professionals all benefit.

Issue facts.

Primary Issue: Ending the need for animal euthanasia at animal shelters -the heart of this breeders act regulation.
Secondary Issue: Companion Pet market. Animal Rescues and Shelters compete with the free market kennels/puppy mills/breeders to supply the public consumer demand - HB1451 clearly is a market take away from the puppy mills and the consumers.

Third Issue: Kennels that degrade into inhumane operational practices. Government intervention of these operations and the media exposure of those interventions has led to a new political force in America; The Animal Advocates. And they think they know the only answer to the problem.

Ask yourself, who ultimately owns the companion pet market? Regardless of what laws are written, the Public who spends their resources to acquire a companion pet owns the market and what they want for a pet matters. Will Animal Shelters and Animal rescues satisfy the Public's fluctuating tastes and appetite? Probably not. More likely the end result of HB1451 will be pent up demand due to inaccessible supply, higher prices and an increase in puppy mill raids in Texas.

Let's compare products between the Animal Rescue/Shelters versus Kennel/Puppy Mill/breeders livestock. Which entity places their product and which one has to euthanase its excess? Is the Public's Best Interest served when their access to a companion pet is artificially manipulated and restricted by government statutes?

This is a good place to inject a reality check. **Reality:** In fifteen years, every companion pet in the state of Texas will probably have passed away. But every person you see will probably still be around. I ask that you please allocate our State resources with this fact at the forefront of public expenditures.

Lets get to the First problem we should address: Data collection. Where are the animals coming from that are inundating our animal shelters and rescues? We have no accurate method to collect and analyze the statistical information needed to help us determine the true nature of this problem. Although one theory is that kennels and puppy mills are creating an over supply of animals and therefore are the sole culprit, another theory believes the animal over population is coming from inadequately educated and economically disadvantaged neighborhoods. Lets find out the real reasons before we badly damage our companion pet industry here in Texas. My first suggested strategy would address data collection.

Strategy number one: The State of Texas treats animals like handguns. Require a licensed permit to own a pet. That would require training and certification that you are responsible enough to care for an animal and understand and know the state animal laws. Such a law would be the Animal Advocates wet dream.

Pros: State control of pet ownership.

Cons: Nanny State Government overreach. Anybody can breed out children without government oversight, so why are animals a government over sight concern in comparison?

To address the claim that puppy mills are over producing I tender this idea-

Strategy number 2: -That the state develops what I call a 'breed to need' pet distribution system. This is a paradigm change from the current market supply where everyone and anyone can birth animals until market saturation occurs. In animal populations, excess capacity is bad for everyone. Animals included.

We should seek the business community's expertise to help us develop a pet supply system that only breeds to meet Licensed permit pet owners needs. This is an enormous opportunity for the State of Texas to create jobs, jobs, jobs. There is a lot of money sitting in US Treasury bonds that The State of Texas could be luring in to assist us in developing a beautifully run companion pet industry. It just has to pay a better return than the US Treasury interest notes offer to be attractive to investors. We can build that pet industry in Texas using the existing capital markets. Lets bring in the financial mavericks to work on this strategy.

Pros: no market saturation.

Cons: complexity of making such a system actually work.

Strategy number 3: Statewide Animal Registration of animals. Recommend each animal have a Texas Registration Number henceforth acronym as TRN.

Pros: All animals will be documented and monitored for the duration of the animals life. From the state governments point of view, this gives the state a potential nine figure revenue source. It also provides great statistical data. Good data will help enable our leaders to make the right decisions about animal welfare. For

example, helping the animal advocates track down who is straining our animal shelter and rescue resources.

Cons: First, the biggest problem with this strategy is that the Texas Citizens hate this registration permit fee. They usually only pay this fee to retrieve their pet from the pound. It also violates their God given Bill of rights to own a pet without government/nanny state interference.

On a serious negative, it takes away the private market currently being provided by registration companies and moves it into another governmental bureaucracy.

Strategy number 4: Make the Animal Registration a legal title of ownership just like an automobile.

Pros: This raises the intrinsic value of an animal by providing property rights protection. I suggest this to help Texas attract investment capital to help us build our companion pet industry. Ownership titles are excellent commodity instruments for investors. This will require a politically public outcome maximizer policy to compete with private equity market investments.

Cons: Government bureaucracy, additional pet ownership expenses.

Strategy number 5: Develop a Pet industry road map with benchmark metrics to determine if the policies are getting the results desired.

Pros: Performing due diligence of service to the public.

Cons: (I leave this to others to list.)

Strategy number 6: Put all pet industries under this agencies jurisdiction.

Pros: The animal living standards can be uniform across the field; whether it is at Licensed breeders, puppy mills, kennels, boarding kennels, animal shelters, SPCA's, animal rescues, animal hospitals, veterinarian clinics or retail pet stores facilities. The standard animal welfare statutes should be the same everywhere. No political favoritism to any part of the pet industry such as exemptions or waivers should be allowed.

Cons: Would level the playing field which non-profits, animal shelters and rescues would balk at.

Strategy number 7: we use the technology available to us to build a companion pet registry exchange.

Pros: This would require maintaining a State animal registry database. From this registry exchange consumers can buy or adopt their companion pets, reunite separated animals to their owners, help facilitate animals finding good homes and moderate the pet supply to maintain a balanced healthy companion pet industry.

Cons: Monopolizes the companion pet market to the sole exclusion of a few wealthy financed organizations.

Internet integration of this registry would be the backbone of this animal registry exchange.

Strategy number 8: All animals should be identifiable through the current industry methods with plans to accommodate DNA technological identification advancements. Having said that, TDLR should consider a longevity type plan for improving the animals identification and welfare by creating a standardized ID system. I recommend buying or licensing the patents such as the AVID microchip system for implementing of a state wide proprietary animal ID system.¹⁴

TDLR also should match the animal microchip reader ID to the Texas animals actual TRN for that animal. The format should take into consideration how DNA markers could be used in the TRN in the future. Each character/digit should Designate Dog or Cat, Breed, DNA markers, Breeder license source and animal id. Thoughts in the design should be placed on an exponentially growing system that will be used for decades, even centuries to come.

Pros: As a potential revenue source; TDLR should definitely make this a proprietary system considering the volume that will be occurring under this proposed strategy. This system could make TDLR the gorilla in the room in the Pet Identifying System industry. The King Kong of sorts on how pets in the State of Texas are going to be identified.

This might also lessen the possible confusion and mix ups throughout the life of the pet. Benefactors would be Breeders,

¹⁴ <http://www.avidid.com/>

Veterinarians, County Officials, TDLR and the animal by establishing a state standardize identification system. As well as build a marketable database for the pet industry. (Another possible revenue source for TDLR)

- Let me reiterate, TDLR's identification system, the animal's Texas Registration Number (TRN) should be the actual micro chip number that microchip readers will detect and display.

- A Microchip ID with the TRN and a State TDLR embossed sealed certificate should be part of the animal registration package. These should be considered like a Title of ownership. This would facilitate the State legal statutes and puts the animal under protection of state property rights. (This is another enormous revenue source for TDLR)

Cons: many, very many.

Other statutes to consider in burdening the Licensed Breeders with:

- that you require bi-weekly spa treatments; pedicure, bathing and hair grooming.

- That you require every animal run have a park bench in it and require someone sit with the animals twice a day giving each of the animals some hands on interaction until the animals get bored with the attention.

- That you have a mobile Lost in Space style robot with digital camera, sound, voice and wifi internet capabilities so that the state can wonder around the licensed breeder facilities 24/7 365 days the year. And make it have a value to the kennel to offset the privacy intrusion. Have Robot pooper scoop. This

would eliminate the need for ambush inspections that Sherry Ferguson advocates so often. Also, it would create jobs just to build these things.

Having offered these brain storm strategies and additional statutes, I'd like to move on to the relationship between TDLR and the Licensed Breeders.

Licensed Breeders TDLR Expectations

TDLR Inspectors should already know what the status of the Breeders kennel is before they arrive to perform site inspections. Realistically, they should only be inspecting the health and well being of the animals, performing TRN identification, and verifying public display of the breeder license.

Inspectors must practice clinical viral/bacterial contagion protocol. Gloves and booties should be worn at all inspections. I recommend wiping the booties and hand gloves after the inspection onto Petri dishes. The grown viral and bacteria cultures can then be analyzed to develop an early warning database to prevent animal pandemics, cross contamination of kennels/puppy mills/breeder facilities and identify disease hotspots. Useful information to warn the local veterinarians and county officials, as well as assist private market forces to offer solutions -I sense an opportunity for jobs being created with this suggested recommendation.

Inspectors should have the breeders separate the nursing bitches from the whelping litters prior to performing the nursery inspections. Nursing bitches go into an excited animal

defense state when strangers enter their whelping area. In this defense mode they can harm their puppies when trying to fend off strangers.

• Inspectors should be trained in identifying:

- 1) Eclampsia
- 2) Parvo virus symptoms
- 3) Distemper symptoms
- 4) Kennel Cough symptoms
- 5) Tape worms
- 6) Fleas
- 7) Round Worms
- 8) Eye infections
- 9) Mange
- 10) Skin allergies
- 11) Hernias
- 12) Rat infestation

Commentary: If TDLR thinks these are skills that will be covered by the yearly vet checkups, then I say train the vets to perform the TDLR breeders inspector reports at the same time as the yearly animal health checkup. This would save TDLR human resources and provide significant savings to the agency. As well as having qualified, animal trained TDLR representatives. This duty should be considered to be performed by licensed Vets with TDLR oversight.

TDLR should provide a 24/7 365 days a year server where the breeder licensee is able in real time to manage their required animal database. This database will be kept private under

each breeders license account with only the owning Breeder and authorized TDLR agents to have access.

A special component of the breeder database should be set aside for the animals profile history. Immunization and veterinarian medical history should accompany the animal profile and be accessible through the TDLR Licensed breeder database. Access should be limited to licensed veterinarians, county officers, SPCA chapters and state licensed animal rescue centers. (Animal rescues are licensed by the state too aren't they? If not, then TDLR should have a special license database format for them too. Again, I reiterate that Animal Rescue organizations should not be exempt from the same statutes that govern Breeders.)

- To serve the Animal welfare State, government and business community, the TDLR breeders database should allow analysis by University and industry mathematicians for research and development studies. The goal being to help improve the welfare and quality of the animals under the TDLR Breeders program.

- Basic privacy safe guards must be put in place to protect the breeders.

- The database should be designed to accept current DNA identification markers and animal profile information on a voluntary basis from pet industry certified DNA labs. Question: Does the State have a certification accreditation process in place for Animal DNA labs?

- The breeders Database and animal registration Certificate should provide breed classification.
- The breeders Database should provide the pedigree lineage. The State then can issue a Texas Embossed Sealed pedigree certificate via an additional service fee paid to the State by the animal owner. This is another revenue opportunity for TDLR. But then again, this would be government intrusion on market territory that is currently being provided by private sector businesses.
- The Breeders Database shall be maintained and serviced by TDLR.

Objections to various HB1451 statutes:

Concerning the eight week Puppy/Kitten ownership acquisitions transfer: No numerical time limits should be established for when puppies/kittens are transferred from the breeder to the new pet owner. Instead, it should be up to the actual animal to determine when they are ready. Criteria that should be used to determine when they are ready are: the animal has discontinued nursing from the mother either by choosing to only eat solid food over the mama's milk or are no longer allowed to nurse by the nursing bitch. The principled criteria here is that the puppy/kitten eats well enough from a bowl to survive on their own. This is a subjective date, but with specific criteria. Rational from private market experience: Younger pets bond better and are more loyal to their owners than animals delivered later in life to a new owner.

Concerning the exercise yard statute: We agree with the need for animals to get daily exercise, but the daily record keeping TDLR requires for daily exercise is logistically unobtainable. We also know that if the animal can get enough exercise in their runs and does not suffer from “Kennel Stress”, then Kennels should be exempt from such burdening paperwork required in the daily exercise yard statute.

Concerning the call for Natural ground cover. This is a very bad stipulation. Natural ground is the perfect Petri dish for disease causing illnesses and parasite haven. Concrete or other anti-microbe/pest retardant surfaces should be allowed for the exercise yards as well.

Again, I reiterate that Animal Rescue Shelters and county dog pounds should also be under the same licenses and regulations as the breeders are. There should not be an economic advantage over the private sector Licensed breeders.

Texas Dog Gestapo

I know, we all get to laugh and poke fun at our political opponents by throwing this word around in the political arena. I even read about a State Representative calling this the ‘Dog Gestapo bill’ in the newspapers.¹⁵ And I have heard the TDLR director use this phrase in several speeches online.¹⁶ But let me put the NAZI Gestapo into its proper context.

¹⁵ http://www.statesman.com/news/texas-politics/house-oks-puppy-mill-bill-1435695.html?cxtype=rss_ece_frontpage

¹⁶ <http://www.license.state.tx.us/bre/breCommittee.htm> -see video links at bottom of page.

My mother was born in Germany in 1939. When she was four, the Gestapo arrested her father because he said the obvious, "Germany is going to lose this war." In Nazi Germany during the war, saying such a statement was considered seditious treason and could get you hanging by the neck on a lamp post or shot immediately. For our family, it meant terrible fear for Eric Koch's life. My Mother still recalls the story about when the Gestapo came kicking in their front door and conducted a violent search of the family home. They were primarily interested in what the radio station frequency dial was tuned in to on their radio. Many Germans broke the law and tuned in to the BBC broadcasts for news about the war. My grandparents did this often but were always wise enough to reset the tuning dial back to the Joseph Goebbels's radio program.¹⁷

Fortunately for my Grandfather, he was an engineer with whom very powerful bosses at HGW ship building company and my Grandmother's apothecary connections (she bribed the sitting prosecutor while the main Nazi prosecutor went on vacation) saved his life by intervening on his behalf. Thus he was afforded due process and was conscripted into the army instead of being executed. It's an amazing story, but the gist of my point is that my mother was taught by the Gestapo to only say what people want to hear. In her mind, if you don't, well she has the image of a political ruling party that took her father away and threatened to kill him. He returned after the war, an 80lb. shell of a man. To this day, she fears and abhors speaking her mind or standing up for her basic civil liberties

¹⁷ http://www.transdiffusion.org/radio/features/hitlers_radio

Via Facsimile

Attn. **Melissa Rinard**, Legal Assistant
Office of General Counsel
Texas Dept. of Licensing and Regulation
(512) 475-3032

Re: **Comments Submitted in Response to Proposed Rules –
(Dog or Cat Breeders Licensing Program)**

Attached please find Comments of **33 breed club organizations, representing 19,549 total cumulative individual members**, submitted in response to the proposed Rules of TDLR published in the *Texas Register* on January 20, 2012.

The 33 breed club organizations, and each of their 19,549 members, submit these Comments, in their collective and individual capacities as "interested persons," in opposition to the proposed Rules implementing the Dog or Cat Breeders' Act.

In the interest of conservation of agency and environmental resources, as well as for your convenience, we have consolidated these comments in one submission, with the understanding and request that the Department/Commission accord this submission the same weight as if each association and its members had made separate submissions.

Thank you in advance for your attention to this matter. In the event you should have any questions regarding the attached Comments, please feel free to contact the undersigned.

Anna Matthews

February 19, 2012

**STATEMENT OF COMMENTS OF
SELECT BREED CLUBS IN RESPONSE TO
TDLR'S PROPOSED RULES
(DOG/CAT BREEDERS PROGRAM)**

INTRODUCTION

This Statement of Comments is submitted by and on behalf of the following **33 organizations, and their collective 19,549 members** ("Interested Persons"), in response to the Texas Department of Licensing and Regulation's ("TDLR" or "Department") proposed Dog/Cat Breeders' Program Rules published in the *Texas Register* on January 20, 2012:

- American Fox Terrier Club
- American Shetland Sheepdog Association
- Bluebonnet Pug Dog Club
- Caddo Kennel Club of Texas
- California Responsible Pet Owners
- Cavalier King Charles Spaniel Club of North Texas
- Cavalier King Charles Spaniel Club of Southern California
- Cavalier King Charles Spaniel Club of Greater San Diego
- Cavaliers of the West
- Cavaliers of the Northeast
- Cavaliers of the South
- Chihuahua Club of North Texas
- Claremore Kennel Club
- Cocker Spaniel Club of Dallas
- Cowtown Chinese Crested Club
- Dallas-Fort Worth Toy Club
- Dallas-Forth Basenji Club

- Dal-Tex Basset Hound Club
- Faith City Kennel Club
- Fort Worth Kennel Club
- German Shepherd Dog Club of America
- Great Dane Club of Greater Dallas
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- Irish Setter Club of Fort Worth
- Lone Star Fox Terrier Club
- Longview Kennel Club
- National Animal Interest Alliance
- Papillion Club of Tulsa
- Pekingese Club of Texas
- Southern California Den Dogs Club
- The Cavalier King Charles Spaniel Club, USA
- Travis County Kennel Club
- Tyler Texas Kennel Club.

On the basis of the facts, statutory authority, and arguments set forth herein, the Respondents respectfully request that the Department defer adoption of the proposed Rules published on January 20, 2012, and amend the proposed Rules to: (1) Reflect current, empirical research regarding the anticipated number of breeders who will apply for licenses and related economic impact factors; (2) Reflect the accurate facts with respect to the cost and economic impact of proposed Rules; (3) Correct the unsubstantiated conclusion in Notice of Proposed Rules that the “public benefits” of the proposed rules outweigh such costs; (4) Review, modify and revise other substantive provisions of the proposed Rules to correct legal deficiencies and to accommodate compelling breeder interests.

COMMENTS

I. **Deficiencies in Notice of Proposed Rules Relating to Cost and Economic Impact Factors. (37 TexReg 166).**

The Administrative Procedure Act ("APA"), Tx. Gov't Code, Sec. 2001, *et seq.*, requires a state agency to file a "notice of proposed rule" with the Secretary of State prior to adoption of a rule. Tx Gov't Code Sec. 2001.023. That notice must include, in pertinent part, a fiscal note stating the anticipated five-year projected cost and economic impact of enforcement/administration of the proposed rule on State and local governments, as well as on persons required to comply with the rule. See Tx Gov't Code Sec. 2001.024(4).

The APA also mandates that before proposing a rule, the state agency shall determine whether the rule may affect a local economy and prepare, for inclusion in the rule, a local employment impact statement. Tx Gov't Code Sec. 2001.022. In addition, where, as here, rule compliance is directed primarily at "micro" or small businesses—in this case, breeders of dogs and cats, including small to mid-size in-home breeders—the state agency is also statutorily required to prepare and include in the rules notice an "Economic Impact Statement" that accurately assesses the potential impact of a proposed rule on small businesses and a "Regulatory Flexibility Analysis" that considers alternative methods of achieving the purpose of the proposed rule. See Tx Gov't Code Sec. 2006.002 (as amended by HB 3430).

In addition, the APA requires inclusion in the notice of proposed rules of a note about "public benefit and costs" stating, for each year of the

first five years the rule will be in effect, the "public benefits expected as result of adoption of the proposed rule." Tx Gov't Code Sec.2001.024(5)(A).

As we show below, the fiscal conclusions of the Department in its notice of proposed rules are factually inaccurate and/or without sufficient basis and rationale. The Department also has failed to consider the tangible adverse economic effect of the rules on the many "micro" and small business breeders which comprise almost 100% of this industry segment, and to prepare the requisite small business Economic Impact Statement and Regulatory Flexibility Analysis. Finally, the Department has failed to show that the alleged public benefits identified in the proposed rules, even if *prima facie* valid (which we contend they are not), outweigh the substantial State costs, adverse fiscal impact on small/micro businesses, and the negative economic impact on State and local economies resulting from implementation of their proposal.

Accordingly, we respectfully request that the Department reevaluate and weigh the significant anticipated cost of its proposed rules to the State and local governments, as well as the adverse economic impact on small businesses operated by breeders against the minimal, potentially counterproductive, contribution of those Rules to the public welfare, with a view toward filing a statutorily compliant amended rules notice which accurately reflects those facts.

A. The Estimated Additional State Cost of Enforcing And Administering the Proposed Rules Greatly Exceeds Anticipated State Revenues from Breeder Licensing And Inspections Fees. (37 TexReg 166).

In its notice of proposed rules, the Department is required to include a fiscal note stating for each year of the first five years the rule is in effect:

“(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule; and

* * * *

(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments....” Tx Gov’t Code Sec. 2001.024(4).

The brief fiscal statement in the proposed Rules asserts, without factual basis or rationale, that there will be no anticipated increased costs or other fiscal implications for the State or units of local government for each year of the first five-year period the proposed new rules are in effect. (37 TexReg 166). That “zero cost” finding was prerequisite to the Department’s statutory authority to implement the statute because the legislature clearly required that this legislation was to have been administered and enforced **without additional cost implications for the State**. See HB 1451, Sec. 802.051 (“The commission shall ... establish reasonable and necessary fees in amounts sufficient to cover costs of administering and enforcing this chapter.”); *see also* Fiscal Note to HB 1451, 82nd Legislative Regular Session (April 14, 2011) (\$0 estimated impact to General Revenue Related Funds for HB 1451 through the biennium ending August 2013; Agency is “statutorily required to generate sufficient revenue to cover its costs of operation.... [of HB 1451].”)

The stated basis for the Executive Director's questionable "no additional cost" conclusion is that the annual \$565,000 "expected cost" of enforcing and administering the Rules will be covered entirely by revenues generated from the licensing and inspection fees established by the proposed Rules ("Fees which are included in the proposed new rules, have been set to generate revenues sufficient to cover these costs.") (37 TexReg 166). The above conclusion was reached, without explanation of its factual basis, despite the fact that elsewhere in the Rules, the Department readily acknowledges that "the number of potential licensees [from whom licensing/inspection fee revenue will be generated] is unknown...." (37 TexReg 166).

We contend that the \$565,000 estimated anticipated cost figure is unrealistically low. Moreover, that estimate undoubtedly will be substantially inaccurate, if the Department proceeds forward with utilization of the costly, nonmandatory "third-party inspector" program it has initiated through dissemination of an RFP for training of those inspectors. If the optional third party inspector program is utilized, it is anticipated that the annual contract cost alone for the estimated 50 inspectors would be approximately \$150,000 (see LBB, Fiscal Note, 82nd Legislative Regular Session (May 18, 2011)). In addition to the above inspector contract cost, the training program cost proposals for inspectors (whether for third-party inspectors or pre-existing Department inspectors) likely would entail estimates of several hundred thousand dollars—an expense which does not appear to have been factored into the Legislative Budget Board's program cost estimate prior to passage of HB 1451. When the additional Department fiscal expenses attendant to enforcement and administration of the Rules are factored in, including but not limited to salaries/employment benefits of the additional Departments staffing required (estimated additional staff of six full-time TDLR employees (LLB, *Fiscal Note* (May 18, 2011), *supra*), TDLR "reward" payments under the proposed rules

(up to \$1,000 each) for public tips regarding statutory violations, plus compensation packages of existing Department employees (such as an Assistant General Counsel) who will be called upon to perform work in this matter, etc., **the true anticipated cost figure for implementation more accurately approaches the original legislative annual cost estimate of \$1,300,000.** (See LLB Fiscal Note (April 14, 2011), *supra*.)

However, for the sake of this discussion, we will assume that the Department's \$565,000 projected annual cost estimate is accurate. We show below that the anticipated revenues expected to be generated during the first year (and beyond) of enforcement of the proposed Rules fall far short of that cost estimate—and of the “zero cost” enforcement scheme promised by the Department and mandated by the legislature.

The Legislative Budget Board's conclusion that the revised cost estimate of \$565,242 for statutory implementation (LBB *Fiscal Note* (May 18, 2011), *supra*) would be covered, at no loss to the State, by licensing revenues generated was predicated upon the assumption that approximately 600 “commercial dog and cat breeders” would be subject to licensure. (LLB *Fiscal Note* (May 18, 2011), *supra*.) Pursuant to information obtained from the Department, that “600 breeder” annual applicant figure forms the basis of the agency's assurance in the proposed rules that sufficient revenues will be generated from license/inspection fees to cover program cost. That breeder-applicant estimate—which we contend is unrealistically high, if not patently inaccurate—apparently was sourced from anecdotal research conducted prior to adoption of HB 1451 consisting of: (1) informal research of licensing applicant statistics from breeder licensing programs in other states such as Kansas, Nebraska, Missouri (programs with significantly different statutory licensing standards than the Texas statute); and (2) an anecdotal survey of select Texas entities, such as

City and County municipalities (e.g., Animal Control officials). It does not appear that any current empirical research was conducted by the Department, subsequent to adoption of HB 1451, with respect to the in-fact anticipated number of breeders who actually intend to apply for licenses (e.g., via direct survey of dog and cat breeders as opposed to non-empirical research regarding other State licensing programs and requested estimates from non-breeder interests such as animal control officers, rescue organizations, Municipalities, etc.).

We dispute the accuracy of the Department's projected "600 breeder" statistic—which figure is pivotal to the Department's "no cost" conclusion. Our informal, direct contact with an extensive network of breeders across the State suggests that a substantially less number Texas breeders can be expected to apply for licenses—a number which will generate significantly less revenue than sufficient to cover program operational costs.

To the best of our knowledge, on the basis of informal discussions with numerous dog breeders across the State, including show breeders of pedigreed dogs, the "600 breeder" figure appears to be at odds with the facts. **The primary segment of anticipated licensee applicants who realistically can be relied upon by the Department to pay licensing revenues during the first year of enforcement is a starkly smaller subset: The 34 Commercial Texas breeders of dogs and cats who currently hold USDA "Class A" breeder licenses.**

Discussions with a cross section of knowledgeable breeders in the State, especially show breeders of AKC registered pure-bred dogs, suggest that few, if any, non-federally licensed Texas dog breeders intend to apply for a State breeders' license. As set forth in the Statement of Dale Martenson ("Exhibit A" hereto), a Texas show breeder of with considerable background in this matter and industry

contacts, a number of dog breeders who possibly may have been subject to the licensing requirement have already relocated their breeding operations outside the State or intend to do so prior to September 1, 2012. (See Exhibit A, p. 5.) Many other dog breeders, especially show breeders of AKC registered purebred dogs, intend to down-size their breeding operations to lawfully avoid statutory licensing (or have already done so). To that end, a number of breeders intend to reduce (or have already reduced), their number of intact bitches used for breeding and/or number of animal sales below the statutory licensing threshold. Other breeders, unable to shoulder the substantial costs of licensure and/or unwilling to expose themselves to ongoing invasive inspections and potential harassing complaints, have begun to sell, auction *en mass*, or spay their intact bitches for the above reason—decisions which, in some instances, will not support the welfare or humane treatment of the dogs involved or advance the benefits to canine health derived from expansion of longstanding breeding programs designed to perfect breed type and gene pools of purebred dogs. (See Exhibit A, p. 5).

As consequence of the above facts, our informal “real world” contact with networks of Texas breeders suggests that few, if any, non-federally licensed dog breeders currently intend to apply for the State license/inspection upon which the Department’s estimate of generated revenue is premised. Indeed, the Department has failed to produce any factually substantiated information or explanation to the contrary or to explain the current empirical basis (as opposed to theoretical statistical assumption) for its 600-breeder applicant estimate. Its reliance upon evaluation of breeder licensing programs in other States, such as Kansas, is misplaced, as the scope of statutory coverage, and threshold licensing requirements of those states, differ substantially from the Texas statute, as does the “breeder landscape”

(e.g., Texas has a high concentration of select show breeders of pedigreed dogs).

Any attempt by the Department to rely upon AKC statistics pertaining to the number of pedigreed dogs registered in Texas or the number of AKC Texas breeders subject to that organization's inspection protocol for that figure is unfounded, as the AKC statistics clearly are not predictive of the in-fact number of anticipated dog breeders who can be expected to apply for a license by or after September 1, 2012. AKC does not maintain records which accurately reflect or identify the number of Texas breeders of purebred dogs registered with it who would be subject to the State licensing requirement. *I.e.*, it does not maintain data regarding the current number of intact bitches possessed or controlled by a breeder or sales of dogs registered with AKC. Instead, it utilizes the annual number of "registered litters" figure for inspection requirement purposes. We understand that its position is, and always has been, that the number of dogs or litters sold is the only accurate way to identify high-volume breeders. Accordingly, the non-empirical statistical projections utilized by the Department and Legislature in estimating that there will be at least 600 expected licensing applicants during the first year of the licensing program lacks credible factual basis and is intrinsically unreliable.

At present, the only reliably accurate source of statistics for predicting the in-fact anticipated number of dog and cat breeder licensees in 2012 are the Department of Agriculture's list of USDA licensed "Class A" Texas dog and cat breeders—all of whom are readily identifiable and potentially would be required to apply for a state breeders' license. Those Department of Agriculture statistics show that, as of this date, there are a total of only 34 cat and dog breeders in Texas who hold active USDA "Class A" Breeder licenses. (See Dept. of Ag.

licensing statistics at www.aphis.gov.) That figure includes 32 licensed dog breeders and only two licensed cat breeders, all or most of whom presumably will be subject to the State Breeders' Licensing statute, assuming they remain in business through September 1, 2012.

Assuming that all 34 "Class A" licensed breeders apply for the state license before September 1, 2012, the high-estimate average annual revenue that subset of breeders would generate for the State under the proposed fee structure, is approximately **\$2,600 per breeder**, for a **total estimated annual sum of \$88,400**. That calculation is based upon:

Anticipated licensing revenues generated from 34 breeders for "maximum tier" license (*i.e.*, breeders with 61 or more intact female animals), from the following fees: Original Application fee (\$1,900), plus one periodic and out-of-cycle inspection fee (\$700), for a total of \$2,600 per "Class A" licensed breeder applicant.

Because the statute and proposed Rules exempt "Class A" breeders from pre-license inspection requirement, that fee (\$700 maximum) is excluded from the above calculation. Note that this \$88,400 figure is a high estimate, given that it presupposes payment of the maximum fee structure by all, notwithstanding the likelihood that some of the "Class A" breeder applicants with less than 61 intact female animals will pay lower annual fee amounts. In addition, the \$88,400 figure includes payment of one annual "periodic/out-of-cycle inspection fee (\$700 maximum), which fee will not necessarily be required of all breeders in a given year. Consequently, an anticipated revenue amount of less than the \$88,400 revenue estimate is a more realistic figure.

Based upon the above anticipated estimate of licensing application revenues from current federally licensed dog/cat breeders, even if we

were to round that figure upward (to \$100,000 annually) and double it (to \$200,000 to provide for possible revenues generated from other breeder applicants), that sum falls far short—i.e., less than 40%—of the Department's \$565,000 annual program cost estimate. We therefore urge the Executive Director, before implementing this program, to carefully reevaluate the factual basis for the critical cost estimate relating to in-fact anticipated licensing revenue through empirical field research and survey of Texas breeders, and to amend its notice of proposed Rules accordingly to include a factually accurate, APA-compliant analysis of the rationale and basis for its cost projections, through which the statutorily required "zero cost" legislative mandate will be attained.

B. Enforcement or Administration of the Proposed Rules Will Result in Loss of Other Revenues to State and Local Governments.

By statute, the Department also is required to include in its Notice of proposed rules, a fiscal note stating for each year of the first five years that the rule will be in effect:

"the estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule."
TxGov't Code Sec. 2001.024(4).

In its notice of proposed rules, the Executive Director asserts that enforcement of the proposed rules will have no adverse impact on the revenues of the State or "anticipated fiscal implication for units of local government." (37 TexReg 166). No factual substantiation or rationale is provided by the Department for that conclusion.

We contend that a close analysis of the facts supports the opposite conclusion. If, as the facts suggest (see, *e.g.*, Statement of dog breeder, Exhibit A hereto), many dog breeders in the State intend to down-size their operations or to relocate their businesses outside of the State to lawfully avoid the statutory licensure, both the State and local economies inevitably will be adversely affected. In some instances, breeder relocation decisions likely will result in closing of other ancillary businesses (such as grooming, boarding businesses) (see Exhibit A hereto) or businesses of family members of the breeder forced to relocate. As consequence, revenues previously generated for the State and local economies not only by such breeding operations, but by other related family businesses, invariably will decline. Lost revenues to State and local governments include not only income tax and sales tax revenues previously paid by breeders, but also loss of revenue derived from the substantial sum of money breeders—especially breeders of purebred show dogs—spend on high quality pet food, nutritional supplements, kennel supplies, grooming products and groomers, veterinarian services, employment of kennel staff, professional dog handlers/trainers, etc.

In addition, the significant anticipated impact on the State and local economies of declining breeder participation in AKC-related events within the State cannot be overlooked, as that those figures are substantial. The American Kennel Club represents more than 5,100 dog clubs nationally, with 305 of those clubs located in the state of Texas—all of which conduct meetings and events which generate revenue for the State and local economies. A number of the purebred dogs which competed in the recent 2012 Westminster Dog Show, some of whom won awards, were the product of careful breeding programs based in Texas which clearly are not “puppy mills.” Pursuant to AKC statistics, it is estimated that the AKC licensed and sanctioned 957 events in the state of Texas, in which more than 177,300 dogs participated, and

Via Facsimile

**Attn. Melissa Rinard, Legal Assistant
Office of General Counsel
Texas Dept. of Licensing and Regulation
(512) 475-3032**

**Re: Comments Submitted in Response to Proposed Rules –
(Dog or Cat Breeders Licensing Program)**

Attached please find Comments of 33 breed club organizations, representing 19,549 total cumulative individual members, submitted in response to the proposed Rules of TDLR published in the *Texas Register* on January 20, 2012.

The 33 breed club organizations, and each of their 19,549 members, submit these Comments, in their collective and individual capacities as "interested persons," in opposition to the proposed Rules implementing the Dog or Cat Breeders' Act.

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Thank you in advance for your attention to this matter. In the event you should have any questions regarding the attached Comments, please feel free to contact the undersigned.

**Anna Matthews
Phone: [REDACTED]
February 19, 2012**

**STATEMENT OF COMMENTS OF
SELECT BREED CLUBS IN RESPONSE TO
TDLR'S PROPOSED RULES
(DOG/CAT BREEDERS PROGRAM)**

INTRODUCTION

This Statement of Comments is submitted by and on behalf of the following **33 organizations, and their collective 19,549 members** ("Interested Persons"), in response to the Texas Department of Licensing and Regulation's ("TDLR" or "Department") proposed Dog/Cat Breeders' Program Rules published in the *Texas Register* on January 20, 2012:

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COMMENTS

I. **Deficiencies in Notice of Proposed Rules Relating to Cost and Economic Impact Factors (37 TexReg 166).**

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In addition, the APA requires inclusion in the notice of proposed rules of a note about “public benefit and costs” stating, for each year of the

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As we show below, the fiscal conclusions of the Department in its notice of proposed rules are factually inaccurate and/or without sufficient basis and rationale. The Department also has failed to consider the tangible adverse economic effect of the rules on the many "micro" and small business breeders which comprise almost 100% of this industry segment, and to prepare the requisite small business Economic Impact Statement and Regulatory Flexibility Analysis. Finally, the Department has failed to show that the alleged public benefits identified in the proposed rules, even if *prima facie* valid (which we contend they are not), outweigh the substantial State costs, adverse fiscal impact on small/micro businesses, and the negative economic impact on State and local economies resulting from implementation of their proposal.

Accordingly, we respectfully request that the Department reevaluate and weigh the significant anticipated cost of its proposed rules to the State and local governments, as well as the adverse economic impact on small businesses operated by breeders against the minimal, potentially counterproductive, contribution of those Rules to the public welfare, with a view toward filing a statutorily compliant amended rules notice which accurately reflects those facts.

A. The Estimated Additional State Cost of Enforcing And Administering the Proposed Rules Greatly Exceeds Anticipated State Revenues from Breeder Licensing And Inspections Fees. (37 TexReg 166).

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(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments....” Tx Gov’t Code Sec. 2001.024(4).

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To the best of our knowledge, on the basis of informal discussions with numerous dog breeders across the State, including show breeders of pedigreed dogs, the "600 breeder" figure appears to be at odds with the facts. **The primary segment of anticipated licensee applicants who realistically can be relied upon by the Department to pay licensing revenues during the first year of enforcement is a starkly smaller subset: The 34 Commercial Texas breeders of dogs and cats who currently hold USDA "Class A" breeder licenses.**

Discussions with a cross section of knowledgeable breeders in the State, especially show breeders of AKC registered pure-bred dogs, suggest that few, if any, non-federally licensed Texas dog breeders intend to apply for a State breeders' license. As set forth in the Statement of Dale Martenson ("Exhibit A" hereto), a Texas show breeder of with considerable background in this matter and industry

contacts, a number of dog breeders who possibly may have been subject to the licensing requirement have already relocated their breeding operations outside the State or intend to do so prior to September 1, 2012. (See Exhibit A, p. 5.) Many other dog breeders, especially show breeders of AKC registered purebred dogs, intend to down-size their breeding operations to lawfully avoid statutory licensing (or have already done so). To that end, a number of breeders intend to reduce (or have already reduced), their number of intact bitches used for breeding and/or number of animal sales below the statutory licensing threshold. Other breeders, unable to shoulder the substantial costs of licensure and/or unwilling to expose themselves to ongoing invasive inspections and potential harassing complaints, have begun to sell, auction *en mass*, or spay their intact bitches for the above reason—decisions which, in some instances, will not support the welfare or humane treatment of the dogs involved or advance the benefits to canine health derived from expansion of longstanding breeding programs designed to perfect breed type and gene pools of purebred dogs. (See Exhibit A, p. 5).

As consequence of the above facts, our informal “real world” contact with networks of Texas breeders suggests that few, if any, non-federally licensed dog breeders currently intend to apply for the State license/inspection upon which the Department’s estimate of generated revenue is premised. Indeed, the Department has failed to produce any factually substantiated information or explanation to the contrary or to explain the current empirical basis (as opposed to theoretical statistical assumption) for its 600-breeder applicant estimate. Its reliance upon evaluation of breeder licensing programs in other States, such as Kansas, is misplaced, as the scope of statutory coverage, and threshold licensing requirements of those states, differ substantially from the Texas statute, as does the “breeder landscape”

(e.g., Texas has a high concentration of select show breeders of pedigreed dogs).

Any attempt by the Department to rely upon AKC statistics pertaining to the number of pedigreed dogs registered in Texas or the number of AKC Texas breeders subject to that organization's inspection protocol for that figure is unfounded, as the AKC statistics clearly are not predictive of the in-fact number of anticipated dog breeders who can be expected to apply for a license by or after September 1, 2012. AKC does not maintain records which accurately reflect or identify the number of Texas breeders of purebred dogs registered with it who would be subject to the State licensing requirement. *I.e.*, it does not maintain data regarding the current number of intact bitches possessed or controlled by a breeder or sales of dogs registered with AKC. Instead, it utilizes the annual number of "registered litters" figure for inspection requirement purposes. We understand that its position is, and always has been, that the number of dogs or litters sold is the only accurate way to identify high-volume breeders. Accordingly, the non-empirical statistical projections utilized by the Department and Legislature in estimating that there will be at least 600 expected licensing applicants during the first year of the licensing program lacks credible factual basis and is intrinsically unreliable.

At present, the only reliably accurate source of statistics for predicting the in-fact anticipated number of dog and cat breeder licensees in 2012 are the Department of Agriculture's list of USDA licensed "Class A" Texas dog and cat breeders—all of whom are readily identifiable and potentially would be required to apply for a state breeders' license. Those Department of Agriculture statistics show that, as of this date, there are a total of only 34 cat and dog breeders in Texas who hold active USDA "Class A" Breeder licenses. (See Dept. of Ag.

licensing statistics at www.aphis.gov.) That figure includes 32 licensed dog breeders and only two licensed cat breeders, all or most of whom presumably will be subject to the State Breeders' Licensing statute, assuming they remain in business through September 1, 2012.

Assuming that all 34 "Class A" licensed breeders apply for the state license before September 1, 2012, the high-estimate average annual revenue that subset of breeders would generate for the State under the proposed fee structure, is approximately **\$2,600 per breeder, for a total estimated annual sum of \$88,400.** That calculation is based upon:

Anticipated licensing revenues generated from 34 breeders for "maximum tier" license (*i.e.*, breeders with 61 or more intact female animals), from the following fees: Original Application fee (\$1,900), plus one periodic and out-of-cycle inspection fee (\$700), for a total of \$2,600 per "Class A" licensed breeder applicant.

Because the statute and proposed Rules exempt "Class A" breeders from pre-license inspection requirement, that fee (\$700 maximum) is excluded from the above calculation. Note that this \$88,400 figure is a high estimate, given that it presupposes payment of the maximum fee structure by all, notwithstanding the likelihood that some of the "Class A" breeder applicants with less than 61 intact female animals will pay lower annual fee amounts. In addition, the \$88,400 figure includes payment of one annual "periodic/out-of-cycle inspection fee (\$700 maximum), which fee will not necessarily be required of all breeders in a given year. Consequently, an anticipated revenue amount of less than the \$88,400 revenue estimate is a more realistic figure.

Based upon the above anticipated estimate of licensing application revenues from current federally licensed dog/cat breeders, even if we

were to round that figure upward (to \$100,000 annually) and double it (to \$200,000 to provide for possible revenues generated from other breeder applicants), that sum falls far short—i.e., less than 40%—of the Department's \$565,000 annual program cost estimate. We therefore urge the Executive Director, before implementing this program, to carefully reevaluate the factual basis for the critical cost estimate relating to in-fact anticipated licensing revenue through empirical field research and survey of Texas breeders, and to amend its notice of proposed Rules accordingly to include a factually accurate, APA-compliant analysis of the rationale and basis for its cost projections, through which the statutorily required "zero cost" legislative mandate will be attained.

B. Enforcement or Administration of the Proposed Rules Will Result in Loss of Other Revenues to State and Local Governments.

By statute, the Department also is required to include in its Notice of proposed rules, a fiscal note stating for each year of the first five years that the rule will be in effect:

"the estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule."
TxGov't Code Sec. 2001.024(4).

In its notice of proposed rules, the Executive Director asserts that enforcement of the proposed rules will have no adverse impact on the revenues of the State or "anticipated fiscal implication for units of local government." (37 TexReg 166). No factual substantiation or rationale is provided by the Department for that conclusion.

We contend that a close analysis of the facts supports the opposite conclusion. If, as the facts suggest (see, *e.g.*, Statement of dog breeder, Exhibit A hereto), many dog breeders in the State intend to down-size their operations or to relocate their businesses outside of the State to lawfully avoid the statutory licensure, both the State and local economies inevitably will be adversely affected. In some instances, breeder relocation decisions likely will result in closing of other ancillary businesses (such as grooming, boarding businesses) (see Exhibit A hereto) or businesses of family members of the breeder forced to relocate. As consequence, revenues previously generated for the State and local economies not only by such breeding operations, but by other related family businesses, invariably will decline. Lost revenues to State and local governments include not only income tax and sales tax revenues previously paid by breeders, but also loss of revenue derived from the substantial sum of money breeders—especially breeders of purebred show dogs—spend on high quality pet food, nutritional supplements, kennel supplies, grooming products and groomers, veterinarian services, employment of kennel staff, professional dog handlers/trainers, etc.

In addition, the significant anticipated impact on the State and local economies of declining breeder participation in AKC-related events within the State cannot be overlooked, as that those figures are substantial. The American Kennel Club represents more than 5,100 dog clubs nationally, with 305 of those clubs located in the state of Texas—all of which conduct meetings and events which generate revenue for the State and local economies. A number of the purebred dogs which competed in the recent 2012 Westminster Dog Show, some of whom won awards, were the product of careful breeding programs based in Texas which clearly are not “puppy mills.” Pursuant to AKC statistics, it is estimated that the AKC licensed and sanctioned 957 events in the state of Texas, in which more than 177,300 dogs participated, and

related spending on purebred dogs in the state generated approximately \$90,200,000 in annual revenues for the State's economy. (See American Kennel Club publication entitled "Economic Impact of AKC Purebred Dog Ownership in Texas," a copy of which is attached hereto as "Exhibit B.") Pursuant to informal discussions with a cross-section of breeders of purebred dog breeders in the State, the anticipated down-sizing, closing or relocation of their breeding operations as consequence of implementation of the proposed rules, will result in substantially reduced participation in revenue-generating AKC sanctioned and other breed club events.

The above loss of revenue statistics should have been considered by the Department and reflected in the statutory fiscal statement set forth in its notice of proposed rules. We therefore request that the Department carefully research and analyze the "in fact" adverse impact of the proposed rules on State and local revenues, inclusive of the above factors, with a view toward amending its notice of proposed rules to reflect the anticipated tangible loss of revenues to the State and local governments resulting from implementation and enforcement of the proposed Rules.

C. The Department's Notice of Proposed Rules Fails to Accurately Assess and Reflect the High Compliance Cost to Breeder Licensees.

The Administrative Procedure Act requires inclusion of a statement in the notice of proposed rules showing the "probable economic cost to persons required to comply with the rule" for each year of the first five years the rule will be in effect. (TxGov'tCode, Sec. 2001.024(5)(B); emphasis added.). Pursuant to statutory directive, the Department is

required to consider that factor in determining whether the "public benefits expected" as result of adoption of the proposed rule outweigh the economic disadvantages to persons required to comply with the rule.

In its notice of proposed rules, the Department concludes that, aside from the licensing fee structure, "there will be no new economic costs imposed on businesses that comply with the licensing on or before the September 1, 2012 effective date...." (37 TexReg 166). In so concluding, it concedes that "the number of potential licensees is unknown" and that it is without knowledge of their facilities. Notwithstanding its admitted lack of knowledge regarding the above factors, it concludes that the alleged "grandfather" concessions included (re enclosure size and solid flooring) will "minimize [or] eliminate those potential cost increase[s]" [sic]...." (37 TexReg 166).

The Department has invited interested persons to "provide additional cost estimates for implementation...." (37 TexReg 166). Unfortunately, the limited "breeder perspective" representation on the Breeders' Advisory Committee (i.e., two commercial breeders from the "licensed breeder" category who lack voting rights) cannot serve as an adequate research basis in this respect. Surely the Department should have foreseen the understandable reluctance of reputable Texas breeders to come forward and volunteer their cost estimate figures for fear that their facilities would be targeted by the Department for inspection and licensing and subjected to exposure/harassment by members of animal rights organizations whose goal is to eliminate all breeding operations. Given the Department's statutory obligation to analyze and include an accurate (empirically researched) assessment of compliance costs in its notice of rules, it would seem to have been incumbent on that agency, before publishing the proposed rules, to have affirmatively surveyed a representative cross-section of breeders across the State (possibly with

an assurance of anonymity) who were potentially subject to licensure, including the many breeders of purebred dogs who intend to substantially down-size their breeding programs to lawfully avoid statutory coverage. In researching this issue, the Department should have anticipated the understandable reluctance of good faith breeders to come forward with compliance cost estimates and to discuss and expose their breeding operations, given the likelihood of potential recrimination and undue agency scrutiny. Its *post hoc* inclusion in the proposed rules of an "invitation" to produce such evidence or alternative means of compliance simply is inadequate.

Our informal discussions with a cross-section of breeders of purebred dogs potentially subject to licensure (none of whom operate "puppy mills" and all of whom provide humane care and veterinary services for their dogs) overwhelmingly suggest that the compliance cost of conforming their operations to the standards imposed by the Rules would be exceedingly high, if not cost prohibitive. (See, e.g., Statement of Show Breeder Martenson, Exhibit A hereto.) The disproportionately high proposed fee structure alone, which includes the possibility of multiple pre-inspections, with repayment of pre-inspection fees, and a potentially unrestricted number of out-of-cycle or periodic inspections, likely will deter many breeders from applying for a license. Those fees are considered to be sufficiently punitive, even without factoring in the substantial additional costs of conforming their operations to the rigorous proposed enclosure/care standards of the proposed rules.

As set forth in the Statement of one long-term Texas show breeder who has already decided to relocate his breeding operations ("Exhibit A" hereto), the initial estimated cost of conforming his mid-sized, noncommercial AKC-inspected "Breeder of Merit" kennel facilities to the requirements of the rules is approximately \$50,000, exclusive of licensing fees. In the opinion of that breeder, the so-called

“concessions” made in the rules re enclosure sizing, flooring would not “minimize or eliminate” the above costs. (See Exhibit A, pp. 3-4.) A number of other reputable show breeders of dogs whose animals are housed in their homes, where they enjoy humane care and attention of the breeders’ family members, have indicated that the specifications of their home environment simply would not satisfy the proposed rule requirements. In those instances, conforming their homes to the unreasonable “cookie cutter” federal standards imposed would entail substantial home renovation projects and costs.

In addition to the cost-prohibitive breeder estimates of re-building kennel/housing facilities to comply with the proposed rules, the additional cost factors imposed by the rules would be considerable, and, in some instances, counterproductive to the health interests of the dogs involved. Thus, for example, the requisite rigid veterinary care requirements would appreciably increase health care costs for “non-puppy mill” breeders of pedigreed dogs (such as the long-term show breeder interviews (see Exhibit A hereto)) who already provide high quality veterinary care (e.g., specialized veterinary care including annual Board certified veterinary health screenings for heart/eyes, etc.) which exceeds rule requirements for their animals. (Exhibit A, pp. 5-6). In addition, there is evidence that the proposed rules regarding veterinary care and record keeping would, in some instances, have the counterproductive effect of discouraging veterinarians from providing medical care for dogs of licensed breeders (which requires veterinary “sign offs” on the requisite annual exam records) because of feared potential involvement in administrative/legal proceedings and related liability. It also appears that a number of veterinarians would require individual “in office” appointments for each dog subject to the statutory medical exam—which requirement would be cost prohibitive for many of the mid-sized or higher volume breeders. Very few, if any, veterinarians were found who would be willing to conduct on-site

kennel visits for purposes of performing the statutorily required examinations or to schedule "group" office visits for a breeder's dogs. (See Exhibit A, p. 6.)

The above informal research, which we suggest is representative of the prevailing breeder perspective—particularly among show breeders of purebred dogs—overwhelmingly is at odds with the Department's "no new economic costs" conclusion in the proposed rules. At a minimum, we contend that the Department should have conducted "real world" research of the facts by interviewing a cross section of breeders and veterinarians across the State (if necessary, with guarantees of anonymity)—as opposed to reliance upon theoretical observations of the animal rights community or animal control officer representatives, shelter/animal rescue personnel, whose exposure to and knowledge of reputable show breeder facilities (as opposed to substandard commercial "puppy mill" operations involved in seizure cases) is limited or nonexistent or research of out-of-state licensing programs—prior to arriving at its "no cost" conclusion set forth in its notice of proposed rules.

D. The Notice of Proposed Rules Fails to Meet the Statutory "Economic Impact Statement" and "Regulatory Flexibility Analysis" Requirements.

Pursuant to the Administrative Procedure Act, the Department was required to determine whether the proposed rules "may affect a local economy before proposing the rule for adoption" (TxGov'tCode, Sec. 2001.022) and to include that local impact statement in its notice of proposed rules. (TxGov'tCode, Sec. 2001.024(6).)

The "small business impact" amendment to that statute (TxGov'tCode Sec. 2006.002) also requires that a state agency considering adoption of

a rule that would have an "adverse economic effect" on small businesses or micro-businesses "shall reduce that effect...." That statute legislatively authorizes the agency, via rulemaking processes, to exercise broad administrative authority to mitigate adverse effects on small businesses through measures such as establishment of separate compliance or reporting requirements for small businesses; use of "performance standards in place of design standards" for those businesses; or exemption of small businesses from "all or part of the rule." (TxGov'tCode, Sec. 2006.002(b)).

The above statute also provides that before adopting a rule that "may" have an adverse economic effect on small businesses, a state agency is **required to** prepare the following analyses in statement form for inclusion as part of the notice of proposed rules:

"(1) an economic impact statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule; and

"(2) a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule."

(TxGov'tCode, Sec. 2006.002(c), (c-1)).

All or most of the breeders potentially subject to the proposed rules easily satisfy the statutory definition of small or micro businesses. See TxGov'tCode, Sec. 1006.001(1), (2) ("micro-business" defined as an independently owned business with not more than 20 employees; "small business" defined as an independently owned business which has fewer than 100 employees or less than \$6 million in annual gross

receipts). Many of the breeders potentially subject to state licensure, including the larger, more commercialized "Class A" federally licensed breeders, are small-scale businesses staffed primarily with family members and a few additional workers.

The Department's proposed rules fail, both procedurally and substantively, to comply with the above statutory small business provisions. The unsubstantiated conclusions of the Executive Director in the notice of proposed rules to the effect that there are no anticipated fiscal implications for State or local government clearly cannot excuse such non-compliance, especially where, as here, there is factual evidence that enforcement of the proposed rules will have tangible adverse impact on many breeders who will be forced to close their operations, down-size their businesses, or relocate their businesses if the proposed rules are implemented as written. See, e.g., above discussion, *supra*; Exhibit A hereto. The Department is or should have been on notice that the proposed rules would have a significant adverse impact on small or micro businesses in the State. Accordingly, it was required to carefully analyze that impact via preparation of a factually documented "economic impact statement" as well as a "regulatory flexibility analysis," neither of which requirements is met in the notice of proposed rules. Clearly, the Department's assertion that there is no economic impact or that it is "without information" to assess that effect (see 37 TexReg 166) and/or the *de minimis* mitigating effect of its alleged concessions re "grandfather" provision with respect to enclosure size and solid flooring, fall far short of meeting the statutorily requisite agency obligation to reduce adverse economic effect on small businesses.

The terms of the Licensed Breeders' Act plainly confer rule-making authority on the Department to "modify" the statutorily imposed rigid minimum federal standards of "care and confinement" "to protect or

improve the health and well-being of animals” or “to protect the health and safety of the public.” (HB 1451, Subch. E, Sec. 802.201(c)). That statutorily conferred authority, coupled with the express APA small business requirements relating to preparation of a “regulatory flexibility analysis” through which the agency is authorized to consider alternative methods of achieving the purpose of the rule (including exemption from rule requirements) provide clear legal basis for the Department to have mitigated the effect of the proposed rule standards imposed on small business breeders. **Such modification of the imposed rigid federal standards is particularly appropriate for categories of breeders such as show breeders of AKC purebred dogs who maintain home-based or small-scale home-adjacent kennels or breeders of purebred dogs whose kennels are inspected and approved annually by the AKC—as most of those humane breeding operations substantially support and contribute to the welfare of their animals, but simply do not and cannot conform to imposed federal standards which originally were designed for laboratory animals and high volume dealers.**

E. The Alleged “Public Benefits” of the Proposed Rules Do Not And Cannot Justify the Substantial Costs and Adverse Economic Impact.

In its notice of proposed rules, the Department was required to include a statement about “public benefits and costs” which indicates for each year of the first five years the rule will be in effect “the public benefits expected as a result of adoption of the proposed rule.” TxGov’tCode, Sec. 2001.024(5)(A). Review of the APA requirements with respect to the requisite “public benefits-cost analysis” suggests legislative emphasis on the agency’s obligation to analyze, weigh and mitigate the countervailing economic impact factors of enforcement of the

proposed rules as opposed to prioritization of public interest benefits. See TxGov'tCode, Sec. 2001.022; Sec. 2001.024(4)-(6); Sec. 2006.002.

The notice of proposed rules of the Department posits the alleged "public benefit" which, under its analysis, justifies the significant adverse economic effect of the rules on State and local revenues and businesses, as follows:

"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.... [and]

"[to] 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."

(37 TexReg 166).

We show below that a realistic analysis of the "real world" effect of the proposed rules pertaining to standardized kennel facilities and uniform medical care would not, in many cases, promote the public benefit of enhancement of humane treatment of animals—much less such a public benefit that would justify the significant adverse economic effect on breeders and on State and local revenues.

First, as discussed above, the primary segment of anticipated breeders who will apply for licenses are the 34 current Texas USDA "Class A" Licensed dog and cat breeders. That target group of federally licensed breeders presumptively is already operating within federally-imposed standards of animal care and confinement, as they are subject to mandatory federal inspections. Accordingly, it is highly unlikely that this group of "Class A" licensed breeders operate "puppy mills" in which animals are abused or subjected to inhumane conditions. Clearly,

application of the essentially duplicative proposed State Rule standards to that group will do nothing to enhance the "public benefit" by correcting humane treatment of animals or to ensure that the "quality of life of the animals is maintained at a safe and humane level." (37 TexReg 166). Nor will it serve the alleged public interest of leveling the "competitive field" among this category of federally licensed breeders, all of whom are already subject to the same federal standards imposed by the Department's proposed rules.

To the contrary, the principal impact of the proposed Rules on that federally licensed and inspected group of breeders will be to substantially increase their operational costs through imposition of additional fee payments of an unreasonably high nature—which, in some instances, are higher than the federally imposed fee structure. The effect of "doubling" the estimated annual licensing costs of those breeders invariably will adversely affect the quality of animal care provided. In an effort to recoup those costs, those small businesses likely will be forced to resort to cost-cutting measures such as feeding lower quality pet food, eliminating or decreasing use of nutritional supplements to enhance their animals' health, down-grading quality of grooming products and kennel supplies, cutting back on kennel staffing who provide care and attention for the animals, and possibly cutting back the frequency and quality of veterinary care previously provided to animals (which, in some instances, exceeded the basic rule requirements).

Second, as to the small segment of non-licensed commercial, high volume breeders whose animals undoubtedly would benefit from improved animal care and kennel conditions (e.g., the so-called "puppy mills" which the Statute and Rules were intended to target), it is highly unlikely that any in-fact public benefit will be attained through enforcement of the proposed rules. Realization of any such public

benefit presupposes breeder statutory compliance. And, it would be unrealistic for the Department to presume that any segment of that group of unscrupulous breeders with truly inhumane conditions will voluntarily come forward and apply for a State license. It is more likely that such breeding operations will endeavor to avoid or evade statutory coverage, *e.g.*, by further concealing kennel operations where detection is unlikely, by relocating to another state, or by closing their operations and selling their breeding stock "at auction" under less than humane conditions. It is therefore unlikely that any of the alleged "public benefit" interests posited by the Department, such as ensuring quality of life of the animal and leveling the "competitive field," will be served in this instance. And, to the extent such benefit interest could be served by confiscation of the animals housed in substandard conditions, other more appropriate, cost expedient statutory vehicles already exist for better accomplishment that objective (*e.g.*, State animal cruelty laws).

Third, as to the group of reputable breeders potentially subject to licensure whose operations will be most harmed by the proposed rules, with no public benefit return—particularly the show breeders of pedigreed dogs in the State who generate substantial State and local revenue—it is highly unlikely that either of the Department's asserted "public benefits" will be achieved by enforcement of the proposed rules to that segment. Thus, for example, because many of the dogs owned by the above group presumptively enjoy a high quality of care and quality of life (*albeit* one which may not conform to all of the rigid rule-based standards), often in home settings, in which they have access in any one day to a variety of "primary enclosures" (*e.g.*, "run of the house," occasional confinement to crates which do not satisfy the "primary enclosure" requirements of rules, confinement to a particular room in the home which is large enough for the family, confinement to the owner's bed at night where they sleep, etc.), which do not

necessarily comply with all rule-imposed standards (*e.g.*, with respect to drainage, "primary enclosure" requirements) imposition of proposed rigid statutory commercial housing standards which were originally designed for laboratory animals and the dealer trade, clearly will not enhance quality of life for those animals. To the contrary, in many cases, such requirements could **diminish** the animals' standard humane of care and opportunity for human contact, while imposing undue financial burdens on the show breeder.

Moreover, because a number of small-scale show breeders of purebred dogs within the State potentially could fall subject to the proposed rules through a combination of factors unique to show breeder practices, yet overlooked by the Department in its proposed rules, including, *e.g.*, "co-ownership" of bitch arrangements in which bitches co-owned by a Texas breeder may live elsewhere (often as "pets" in family homes of co-owner, sometimes outside the State), and the practice of retaining ("running on") select young puppies until one year or more of age to determine show potential, application of the proposed rule standards to that group would be patently unreasonable and fraught with jurisdictional issues. Thus, for example, a show breeder theoretically could be required to obtain a license if in one year, hypothetically, that breeder: (a) retained only a few intact brood bitches (*e.g.*, five) in their facility in Texas; (b) owned greater than 25% interest in several (*e.g.*, six) in-tact bitches living elsewhere in co-owners' homes within or outside the State; and (c) met the statutory annual sales number because of sale of a few older "run on" puppies (to select show or pet homes), sale of a few puppies from their small annual number of litters produced, sales (at reduced prices) of older, retired show dogs placed in "pet" homes, combined with sales of out-of-state puppies produced by co-owned bitches in which they owned partial interest). In such instances, aside from the jurisdictional issues presented, if the proposed Rules are construed to cover co-owned

intact bitches of a Texas breeder who are kept outside the State, enforcement of those Rules in the above instances could result in diminished standards of housing, animal care (quality of food, supplements, etc.) and veterinary care, due to the increased costs imposed (e.g., licensing fees, building costs of conforming housing to federal standards, etc.) on a segment of breeders which already spend considerable sums of money on care of their dogs, with little or no financial profit. Standardization of housing and animal care, in the case of that segment of show breeders, clearly would not benefit the public through enhancement of animal care. In fact, it will have precisely the opposite effect.

With respect to the rigid veterinary care standards imposed by the rules; most show breeders of pedigreed dogs already provide a high quality of veterinary care for their animals, which is requisite to maintenance of the dogs in optimal condition to compete in competitive conformation or performance events. It is common practice for such show breeders to spend appreciable sums on nutritional supplements, premium food, sub-specialized veterinary care (such as Board certified veterinary care, canine chiropractic care, acupuncture, etc.) to optimize the animal's health and appearance. Dogs subjected to inhumane conditions and substandard care simply could not compete in the rigorously competitive conformation or performance events on which the breeders spend thousands of dollars to exhibit their dogs. The proposed rules fail to acknowledge the above breeder practices and to modify (via regulatory flexibility analysis statutorily authorized for small businesses) the rigid rules standards imposed on that group to reduce the adverse economic impact of compliance.

Nor would application of the proposed Rules to this segment of breeders serve the asserted public benefit of leveling the competitive

field between regulated breeders by requiring record keeping and standardized levels of care. Indeed, the breed registries for pedigreed dogs—especially AKC—already impose strict record-keeping (including DNA samples) and registration standards on all pedigreed dogs being exhibited. Most breed registries, including those of named respondents, also have strict standards regarding acceptable breeding practices for its members, inclusive of how often female dogs can be bred and the age cutoff for same. In short, the Department's proposed rules standards would do nothing to enhance those standards of humane animal care in a manner which yields public benefit. The more likely effect would be to force reputable show breeders of pedigreed dogs to lawfully avoid licensure by down-sizing their breeding operations, relocating breeding operations to another State, or possibly closing their businesses or to diminish the standards of care provided to animals to avoid licensure and/or to recoup the excessive costs imposed by the proposed rules fee structure and related inspections.

Ultimately, the public interest will be damaged, not advanced, by imposition of the proposed rules standards to the segment of reputable show breeders of purebred dogs, as the pool of available quality, carefully bred puppies produced invariably will decline and costs will increase. Public access to healthy, carefully bred purebred dogs—which dogs appreciably enhance the public welfare by providing companionship, comfort and often emotional/physical therapy benefits—would decline and/or become cost prohibitive. Ultimately, the valuable bond between dog and human—which relationship provides increasingly recognized human health benefits—would be adversely affected.

We request that the Department defer adoption of the proposed amended rules, undertake additional research in this matter, and

amend its statement of asserted “public benefits” in the notice of proposed rules to accurately reflect the facts.

II. Deficiencies with Other Select Provisions of Proposed Rules (37 TexReg 167-180).

The crux of our position is that the Department lacks statutory authority to implement the breeder licensing program through adoption of the currently proposed Rules. As shown above, the statutory “zero operational cost” mandate, as well as other statutory requirements relating to cost and economic impact factors, simply have not been, and cannot be, met under the terms of its proposal. We therefore urge the Department to defer adoption of its proposal, pending further substantive research into the in-fact cost and economic impact—especially regarding the in-fact number of Texas breeders who can be expected to apply for licensure the first year and resulting anticipated revenues—before proceeding forward in this matter.

Upon such review, we ask that the Department amend its rules proposal to accurately reflect the critical cost and economic analysis factors required by the Breeders’ Licensing Act (*i.e.*, zero operational cost to State) and APA. While we object to a number of other provisions of the proposed rules, we expressly reserve, and request the opportunity, to comment further on those provisions at the public hearing in this matter and at a later date when the proposed rules are amended to establish agency basis of statutory authority.

In advance of that, we itemize below select examples of proposed Rules to which we object:

- **Sec. 91.22(a). License Required—Dog or Cat Breeder.**

“A person may not act as, or 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 the state.”

Comment:

The phrase “dog or cat breeder in this state” should be changed to read: **“licensed dog or cat breeder in this state.”**

The statute applies strictly to “licensed breeder[s]” which term is defined as “a dog or cat breeder who holds a license issued under this chapter.” (Act, Sec. 802.002).

For narrow statutory purposes, the term “dog or cat breeder” is defined to mean “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, now fewer than 20 animals in a calendar year.” (HB 1451, Sec. 802.002(8)).

The Department’s rule-making authority in this matter is limited to implementation of the statutory provisions. It lacks administrative authority to expand the narrowly defined statutory term “dog or cat breeder” to preclude use of the generic term “breeder” of dogs or cats in a non-statutory context. Nowhere does the statute prohibit dog or cat breeding without licensure in instances in which breeders do not meet the defined statutory threshold requirements.

Thus, for example, a person engaged in the *bona fide* breeding of dogs, as recognized by AKC or other breed club standards, but who

is not covered by state licensure standards, cannot lawfully be prohibited by the Department from describing themselves as a "breeder," provided they do not represent that they are a "licensed breeder."

The Department's unauthorized attempt to preempt and restrict use of the term "breeder" in the above instances would undermine and impermissibly interfere with the long-standing right of national and local dog breed clubs to establish rules which define and set standards with respect to matters such as breeding protocol, ethical restrictions, for their breed club members.

It also could be interpreted to have the potential effect of inhibiting the right of established breed clubs to conduct the traditional "bred by" conformation events to which "breeder" status is prerequisite (e.g., gender-based conformation classes in which dogs "bred by" the exhibitor compete) or of a breed club's right to identify and list the "breeder" of dogs who win awards in show premiums or reported show results. It also would impermissibly interfere with the established, legally protected right of non-for-profit kennel clubs to utilize official Club communications to publish membership "breeder" lists or "puppy search" listings of "breeder" members who are not licensed.

- **Section 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.”

Comment:

The proposed Rule fails to provide for: (1) the right of administrative appeal by licensee applicants, in the event their application is denied; and (2) other due process procedures relating to applicable administrative review or challenge of such decisions, inclusive of the right to an administrative hearing. Subsection (c) should also be amended to require the Department to state the reason for its refusal to enter a “temporary” denial, with 14-day right of compliance, in instances in which a final order of denial excluding that right is entered.

Considerable discretion is afforded to the department, *e.g.*, in Section 91.25(b), to adversely affect or preclude operation of the business of a licensee-applicant which otherwise complies with State and local business requirements. Revocation of that right to conduct business, without application of basic procedural due process protections, inclusive of the right to administrative challenge hearing and appeal, could be subject to legal challenge. A clear statement of all due process rights available to the licensee should be included in this section for notice purposes.

In addition to above comments, we concur with the AKC’s position in this matter, which provides, in pertinent part: “Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the

mandatory nature of the statute; and therefore should read, "...the department shall approve the application." (AKC Comments, p. 2).

• **Sec. 91.30(e). Exemptions.**

"(e) For purposes of this section a dog is presumed to count under Sec. 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 issues by an entity sponsoring, conducting or organizing competitive events."

Comment:

The above rules provisions add "gloss" to the statutory exemption which substantially erodes underlying legislative intent and restricts the intended scope of application of the exemption. Prior to its adoption, HB 1451 was amended, at the behest of the breeders of the referenced exempt "special interest" dogs. From a political and legislative perspective, this broadly worded exemption was pivotal to attainment of the requisite legislative approval for adoption of HB 1451. Accordingly, agency deference to legislative intent dictates that any related rules promulgated should preserve--and not undermine--the broad terms and application of the statutory exemption.

Subsection (e) of proposed rules appears to impose a presumptive burden of proof on the breeder claiming the exemption to come forward and affirmatively establish to the Department that a dog is exempt. Imposition of such a presumption is at odds with statutory language and legislative intent.

The Rule fails to clarify the point in time and procedural mechanism through which such proof of exempt status must be made. For example, it is unclear whether the Rule purports to impose a pre-licensing obligation on the breeder of special purpose dogs to affirmatively seek exempt status or whether such obligation would not be triggered, if at all, until such time as the department investigates that breeding facility, pursuant to complaint.

In addition, the examples of acceptable evidence of exempt status set forth in Subsection (e)(1)-(2) improperly suggest that the Department will require proof of the in-fact "use" of the dog for purposes of establishing exempt status, rather than proof that the dog was "bred with the intent that it be used primarily" for the statutorily defined purposes, as set forth in the statute. (See Sec. 91.30(a), which provides that "This section applies only to a dog bred with *the intent that she would be used* primarily for [exempt purposes]." (Emphasis added.)) Under the Department's currently proposed rule, for example, there are instances in which an in-tact bitch who was "bred with the intent" that she would be "used" primarily for statutorily exempt purposes may not, in fact, have been exhibited in exempt events or "used" for any of the stated exemption purposes. Instead, the above bitch may have been "used" to breed other dogs for those purposes to enhance the owner's breeding program for exempt status special purpose dogs. Clearly, the breeder's use of that bitch for such breeding purpose, which cannot be documented with external proof of "use" or participation in exempt status events, would satisfy the statutory exemption. The department's proposed rules suggest otherwise.

Further, the apparent attempt by the Department in the proposed rules (Sec. 91.30(e)) to accord open-ended discretion to the Department (*e.g.*, "evidence acceptable to the department....") without providing notice of clear evidentiary standards and due process protections for the breeder in the event exempt status is denied (*e.g.*, through notice, hearing and right to appeal procedures) is at odds with the language and intent of the statutory provision, as well as the due process rights of breeders claiming exempt status.

Recommendation: The Rule should be amended to correct the above issues in a manner which broadly interprets the statutory exemption and protects the due process rights of breeders claiming statutory exempt status. 7

We recommend that the Department consider deletion of Sec. 91.30(e) in its entirety if the above objectives cannot be clearly accommodated through an amended proposed rule which implements and enforces the exemption provision in a manner consistent with legislative intent. In such instance, we would recommend that any further interpretation of the statutory exemption should be reserved for the Courts, in a judicial context which accords full procedural due process for all interested parties.

- **Section 91.30(f). Exemptions.**

(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."

Comment:

The language of Subsection (f) is unduly vague and again fails to provide for the right of the breeder claiming exempt status to contest or appeal the department's decision. The proposed rule requirement that "all evidence" must "uniquely and conclusively identify and relate to" the specific dog or dogs in question should be revised to include examples of acceptable *prima facie* evidence for such identification purposes. That provision also should be amended to include procedural due process protections for the breeder, including notice, right to hearing, right of appeal, in the event the Department rejects the breeder's proof of exempt status.

- **Sec. 91.50(c). Inspections—Prelicense.**

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

Comment:

We object to the department's attempt to impose on breeders the obligation to pay open-ended, nonspecific amounts of its "expenses...related to...licensing and inspection duties..." in addition to the costly fees structure set forth in Section 91.80 of the proposed rules.

To be sure, the statute authorizes the commission by rule to "establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter." (Act, Section 802.051). It was pursuant to that authority, that the Commission (in consultation with the BAC) established the proposed fee structure, with set amounts, elsewhere in the

proposed rules (at Section 91.80). However, nowhere does the statute authorize the Department to reserve the right to assess additional "expenses" in open-ended, unspecified amounts in a manner which fails to provide advance notice to the breeder-applicant of the in-fact anticipated licensing costs.

We request that the proposed rules language of subsection (c) authorizing the Department to impose additional licensing and inspection "expenses," should be deleted from the proposed rule. It is our position that this provision exceeds the scope of the agency's statutory authority to set "fees."

- **Section 91.58(a). 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."

Comment:

The statute states that the Department "may" but need not, solicit and accept gifts, grants, and other donations from any source for deposit into the account. (HB 1451, Sec. 802.059(d)). The statute elsewhere makes clear, however, that the cost of administration and enforcement of the statute is to be covered by revenues generated from "reasonable and necessary fees." (HB 1451, Sec. 802.052). In view of the statutory "zero cost" mandate, and the potential for possible abuse of that legislative intent, or the possibility of undue influence of the Department's enforcement scheme by special interests groups, through membership-drive donations, which is at odds with statutory intent, we recommend that the

Department refrain from implementing this provision and that this section of the rules be deleted, pursuant to amendment.

However, in the event the Department proceeds forward with this rules provision, any and all referenced additional "procedures" developed by the department (pursuant to Sec. 91.58(a)) should be promulgated through formal Department rules, subject to the administrative rule-making and review process, in accordance with the Administrative Procedure Act, rather than via informal, internal Agency procedures. Moreover, the proposed rule, and any related procedures, should make clear that any and all information identifying the named source and amount of any donations shall be subject to public disclosure.

• **Section 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.”

Comment:

We object to the Department’s proposal for adoption of an online reporting system, with reward provisions.

The proposed reporting system is **not statutorily required**. Moreover, it is at odds with the other complaint procedures adopted by the Department for the other licensed professions within its jurisdiction. No explanation or rational basis has been provided by the Department to justify the foreseeable damaging discriminatory impact of this system on dog and cat breeders (*vis a vis* other categories of licensed professions).

The Department’s proposal for this non-mandatory hotline system, and its related procedures, should be stricken from the proposed rules. We ask that the proposed rules be amended to adopt and implement a less costly, even-handed complaint procedure for breeders in accordance with complaint processing protocol for other similarly situated licensed professions within its jurisdiction.

It is our belief that the realistic potential for abuse to breeders under the proposed system through exposure of breeders to malicious, unfounded complaints, as well as cost to the State, far outweighs any alleged public benefit which would be served through this system.

We further contend that the Department's adoption of the proposed on-line system complaint procedure, especially with offer of monetary rewards for complaints, would create undue administrative burden and additional expense for the Department, which could necessitate hiring of additional administrative personnel and inspectors (beyond the legislative staffing estimate).

If the Department elects to proceed forward with implementation of this breeder-specific, potentially discriminatory system, we request that stronger safeguards designed to protect breeder rights—especially to protect breeders from exposure to costly investigation of malicious, unfounded complaints, should be added to the proposed rule, including but not limited to those suggested by the AKC in its written Comments to the Department noted at pp. 3-4 of that submission.

- **Sec. 91.60. Responsibilities of the Department—Payment of Rewards.**

Subsections (a), (b), (c) The proposed rule establishes a procedure and standards for payment of rewards not to exceed \$1,000 to applicants who “furnish information pertaining to unlicensed activity....” (Sec. 91.60(a), (b), (c)).

Comment:

The proposed rule establishes a unique “reward payment” system which is nonmandatory under the Statute. Section 802.059(c) of the Act makes clear that the commission by rule “may” (but need not) “provide for a system to pay for information described by Subsection (b)(3).” In the event any

such rules are adopted for this purpose, the statute mandates that they “must ensure that a public purpose is accomplished through use of the payment system.” (Section 802.059(c)).

We object to the Department’s adoption of the proposed reward system and procedure set forth in the proposed rules, as we believe the potential for abuse (both of breeders and the State)—in addition to excessive additional costs—of that system far outweigh any public benefits derived. Indeed, no statement of a valid “public purpose” justifying imposition of this procedure, as required by the statute, is set forth in the proposed rule.

Section 91.60(d) of the Rules makes clear that “A decision by the executive director to pay or otherwise allocate reward payments is within [his] sole discretion and this chapter in no way provides an independent right to such payments....”

In accordance with the above discretion, we strongly urge the Executive Director amend the proposed rules to delete the “reward system” procedure.

- **Sec. 91.66(c). Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.**

“(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 animals. This subsection does not apply to the investigation of unlicensed activity.”

Comment:

The phrase "except as necessary to access animals or other property relevant to the care of animals" should be deleted and replaced with the following language: "...except pursuant to a warrant issued by an objective member of the judiciary."

As written, the unduly vague language of subsection (c), could be interpreted to permit overly broad, potentially unconstitutional, searches and seizures of a breeder's private residential property without due process, which could be susceptible to legal challenge by the breeder, or result in impermissible entry and seizure without adequate notice or due process protections.

We also recommend deletion of the last sentence of subsection (c) in its entirety. We concur with position of AKC that "investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary." (AKC Comments, p 4).

- **Sec. 91.80. Fees.**

The proposed rule establishes a three-tier fee structure for multiple fee amounts, including (a) prelicense inspections; (b) original application; (c) renewal; (d) periodic and out-of-cycle inspections and duplicate license. The amount of fees paid is determined by specified number of in-tact bitches.

Comment:

The statute authorizes the Commission to establish "reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter." (Sec. 802.051).

There is no limit imposed on the number of annual inspections for which the Department could assess two different categories of fees (pre-inspection and periodic/out-of-cycle inspection fees) on the breeder. This open-ended system could result, for example, in more than one pre-inspection being ordered, with fee repayment each time and more than one annual periodic or out-of-cycle inspection, for which fees must be repaid.

It is our position that the specific fees set by the Commission are unreasonably high, if not punitive. Although the Breeders' Advisory Committee may have reviewed that fee structure, it should be noted that the breeder perspective was not adequately represented by that Committee (*e.g.*, only two licensed commercial breeder members, with no voting rights, no significant breeder representation from show breeders of purebred dogs whose high-cost, low profit operations are most harmed by the fee structure, etc.). The breeder licensing/inspection fee amounts proposed by the Department are significantly higher, on the average, than those of other licensed professions regulated by the department.

If the Department found it necessary to impose this punitive fee structure to cover costs of statutory administration and enforcement, fault should be placed on the administrative miscalculation of the in-fact estimated revenues from fee applications (*i.e.*, number of breeders subject to licensing who

will apply for licenses). **The statute requires not only that the fee structure set cover operational costs, but also that it be "reasonable." We contend that the fee structure proposed falls short of the latter requirement. In fact, the proposed fees are sufficiently high that they will likely deter voluntary breeder compliance. At a minimum, the fee amounts surely will impose undue if not counterproductive economic burden on the micro or small businesses subject to licensure.**

- **Sec. 91.92. License Revocation and Suspension.**

This section enumerates bases for mandatory license revocation and non-mandatory license revocation or suspension by the Department.

Comment:

The proposed Rule fails to provide for: (1) the right of administrative appeal by licensee applicants, in the event their licenses is revoked or suspended; and (2) other due process procedural safeguards for the breeder, such as the right to administrative review, appeal, administrative hearings.

Considerable discretion is afforded to the Department in Section 91.92(b), to adversely affect or impede operation of the businesses of a licensee-applicant's otherwise lawfully operated business. Denial or revocation of that right to conduct business, without basic due process, could, under some circumstances, be subject to legal challenge.

We recommend the this provision be amended include and notify the breeder of all due process rights and protections available to

the breeder in the event the Department seeks to revoke or suspend his/her license.

- **Sec. 91.100--Standards of Care—Housing. (37Tex Reg 173-180)**

Comment:

The standards of care imposed on breeders by the proposed rules with respect to housing, veterinary care, general care standards are overly restrictive. The standards imposed are primarily federal standards imposed by the Animal Welfare Act—a statute which originally was designed to ensure humane, standardized treatment for laboratory animals and high volume commercial animal dealers—not to dictate animal care practices for non-commercialized breeders of dogs and cats—particularly show breeders of pedigreed dogs.

The Department clearly has statutory authority to “modify,” via rule, the overly rigid federal standards imposed on breeders as necessary to protect the public interest or improve the health and well-being of animals. (HB 1451, Sec. 802.201(c)). It also has the statutory **obligation** to do so where, as here, the overly rigid commercial standards imposed by the rules adversely affect micro and small business breeders, with little or no public benefit, and could be revised to provide alternative standards which better accommodate the collective interests of both breeders and the animals under their care. (See TexGov’tCode (Small Business Impact Amendment), Sec. 2006.002, which requires the agency to prepare an “Economic Impact Statement” and “Regulatory Flexibility Analysis” in

instances where, as here, the proposed rules "may" have adverse economic effect small businesses.)

To that end, we request that the Department defer adoption of proposed rules with respect to housing /standards of care to (1) more carefully evaluate the above adverse economic impact factors resulting from its proposal; and (2) prepare a "Regulatory Flexibility Analysis" devising alternative methods through which the legislative objective of ensuring humane care for animals can be better accomplished without undue harm to reputable breeders whose operations which bear no resemblance to illicit "puppy mills."

In that regard, we ask that the Department reevaluate and revise standards including, but not limited to: Sec. 91.102 (sheltered housing); Sec. 91.104 (primary enclosure); Sec. 91.112 (veterinary care); section 91.113 (sales and transfers); Sec. 91.202 (transportation standards re primary enclosure); Sec. 91.10 (definition of "wire or wire mesh"). We further request, and expressly reserve, the right to address our position in more detail with respect to the above and other proposed standards at the public hearing conducted in this matter and via future comments submitted in connection with proposed amendments to the rules.

CONCLUSION

On the basis of the facts, statutory authority, and arguments set forth herein, the Respondents respectfully request that the Department defer adoption of the proposed Rules published on January 20, 2012, and amend its Rules proposal in accordance with our Comments.

We further request that, in considering our positions herein, the Department accord deference and weight both to the experienced perspective of the **33 professional breed clubs and related organizations** participating in this submission, as well as to the substantial number of individual member participants, **totaling 19,549** (per memberships noted below), whose interests are represented by those organizations.

Respectfully submitted,

- **American Fox Terrier Club (518)**
- **American Shetland Sheepdog Association (843)**
- **Bluebonnet Pug Dog Club (33)**
- **Caddo Kennel Club of Texas (40)**
- **California Responsible Pet Owners (80)**
- **Cavalier King Charles Spaniel Club of North Texas (44)**
- **Cavalier King Charles Spaniel Club of Southern California (85)**
- **Cavalier King Charles Spaniel Club of Greater San Diego (90)**
- **Cavaliers of the West (460)**
- **Cavaliers of the Northeast (350)**
- **Cavaliers of the South (400)**
- **Chihuahua Club of North Texas (20)**
- **Claremore Kennel Club (24)**
- **Cocker Spaniel Club of Dallas (31)**

- **Cowtown Chinese Crested Club (21)**
- **Dallas-Fort Worth Toy Club (44)**
- **Dallas-Forth Basenji Club (40)**
- **Dal-Tex Basset Hound Club (30)**
- **Faith City Kennel Club (36)**
- **Fort Worth Kennel Club (52)**
- **German Shepherd Dog Club of America (2,800)**
- **Great Dane Club of Greater Dallas (35)**
- **Greater Collin Kennel Club (56)**
- **Irish Setter Club of Fort Worth (10)**
- **Lone Star Fox Terrier Club (38)**
- **Longview Kennel Club (37)**
- **National Animal Interest Alliance (11,000)**
- **Papillion Club of Tulsa (47)**
- **Pekingese Club of Texas (25)**
- **Southern California Den Dogs Club (100)**
- **The Cavalier King Charles Spaniel Club, USA (2,100)**
- **Travis County Kennel Club (30)**
- **Tyler Texas Kennel Club (30).**

Dated: February 19, 2012

**STATEMENT OF DOG BREEDER DALE MARTENSON
IN OPPOSITION TO PROPOSED RULES**

I, Dale Martenson, submit the following Statement in opposition to the proposed Rules of the Texas Department of Licensing and Regulation published in the *Texas Register* on January 20, 2012.

1. I have been a non-commercial breeder of AKC registered purebred dogs in the State of Texas since 1979. My primary emphasis as a breeder has been the breeding and exhibition of the Toy Group breed known as the Cavalier King Charles Spaniel. Over the years, I have bred and/or shown a significant number of Cavaliers who have attained championship titles in competitive conformation events.
2. My introduction to breeding began over thirty years ago as a small hobby venture. My emphasis was on expansion of the genetic pools and bloodlines of this breed with a view toward perfection of breed type, temperament, structure and, most importantly, improvement of breed health. My goal from the outset as a breeder was, and continues to be, production of high quality, healthy breed specimens for exhibition in conformation classes, primarily in the AKC venue. In the process, I also produce beautiful, carefully bred, healthy, well socialized puppies for sale to select, carefully screened loving homes. Many of my puppies have enriched the lives of the families who purchased them in a manner which has improved their emotional and physical health, as this UK breed historically was known as the quintessential "comfort dog." Some of my puppy sales also have contributed to the overall public health and welfare by producing dogs who have been trained as "therapy dogs" for assistance in hospitals and health care facilities—a service for which this breed is uniquely well suited.
3. In the process of breeding for the above show and hobby purposes over the years, my sales of high quality, carefully bred puppies gradually began to produce a profit and to become a partial source of economic livelihood for myself and family. We were fortunate in this regard, as the majority of show breeders of pure-bred dogs do not realize a profit (but in fact incur losses) with their operations, as consequence of the exceedingly high costs of

"EXHIBIT A"

producing and maintaining top show prospects and the related expenses of campaigning those dogs in shows to championship titles.

4. AKC Inspections. My dogs and kennel facilities are annually inspected by the AKC, pursuant to its ongoing kennel inspection program. AKC inspections consist of rigorous review of the environment and facilities in which the dogs are housed by an organization with years of substantial training and experience in this area. During their kennel visits, the inspectors first tour the overall facility to verify that the dogs and the condition of their environment are in good order. (AKC Inspections Fact Sheet, www.akc.org). The AKC inspection also includes review of the breeder's records, possible DNA testing of dogs, and advice to the breeder on how to improve the facilities or correct any minor deficiencies. At no time during any of the inspections of my facilities has AKC found any aspect of my operations to be out of compliance.

I consistently have been awarded the "Breeder of Merit" certificate by the AKC—the highest of their three-level breeder awards. The "Breeder of Merit" distinction is conferred in instances in which additional standards of excellence, aside from threshold facility compliance, are achieved, including but not limited to breeder certification that applicable "health screens" are performed on breeding stock, achievement in earning conformation, performance or companion event titles on dogs bred, etc.

5. Veterinary Care. My dogs regularly receive quality medical care from licensed Veterinarians, inclusive of annual health testing of adult dogs by Board-certified veterinary Cardiologists and Ophthalmologists, at considerable monthly expense to my kennel. My dogs are fed premium, balanced food, with nutritional supplementation. They receive regular grooming and bathing with top show products, such as the All Systems line. Puppies under my care are well socialized, both through contact with other dogs and with humans. The dogs being bred or shown receive an exacting level of additional care—which is prerequisite for production of healthy puppies, as well as attainment of competitive conformation awards.
6. Expansion of Operations (Grooming, Boarding). Over the years, my operation has expanded appreciably, both with respect to breeding

operations, as well as addition of dog grooming and boarding services offered to the public. In the process of expansion of my operation from a home-to-kennel environment, I invested considerable money into upgrading my operational facilities, to enhance the quality of my breeding program, as well as the grooming and boarding businesses. My successful dog grooming and boarding businesses served the community by providing exceptional, professional services. In the process, revenues from those adjunct businesses provided an additional source of livelihood for myself and family, in addition to generating revenues for the State and local government and providing income for the workers who assisted at my facility.

7. Animal Welfare Contributions. While in Texas, I regularly contributed to the "animal welfare" efforts in my region by participating in community canine adoption and rescue fairs. I also performed volunteer work for the local shelter(s) in the interest of making a meaningful contribution to the welfare of disadvantaged canines and attempting to "give back" to the community which had so generously supported my businesses.
8. Statutory Coverage. Despite my non-commercial status as a mid-sized show breeder, on the date of enactment of the Dog and Cat Breeders' Act, it appeared that my dog breeding operation possibly fell within the statutory licensing requirement, as consequence of my annual number of puppy sales and/or number of intact bitches. As such, as of that date, it appeared that I possibly could have been subject to the breeder licensing requirement and related fees/sanctions structure scheduled to become effective on September 1, 2012.
9. Decision to Relocate Breeding Operations. My considerable legislative experience and background with HB 1451 prior to its adoption enabled me to intelligently assess the practical impact of this legislation on my breeding operation. Shortly after adoption of that statute, upon careful reflection, my family and I made a decision to relocate our breeding operation to another State.

The factors which informed my decision to relocate included: (a) the significant cost of conforming my "breeder of merit" facility to the unreasonable statutory housing and care standards of the Rules (cost

estimate for re-configuring our kennel to comply with requisite standards was approximately \$50,000, exclusive of licensing and related inspection fees); (b) the prospect of ongoing harassment by third-party inspectors and anonymous, baseless complaints; and (c) the political/administrative deference of controlling legislators and State officials to the dictates of a animal rights organization whose ultimate goal is to eliminate dog and cat breeders under the guise of alleged "puppy mill" eradication; and (d) the prospect of spending additional time and resources on legal and legislative issues related to enforcement of this statute. Keynote in our decision was the high initial cost factor (\$50,000) of conforming our "Breeder of Merit", AKC inspected kennel specifications to the rigid standards imposed by this legislation. Our small family business of breeding purebred show dogs simply could not afford that type of fiscal expenditure, especially in addition to the anticipated high licensing fee structure. With great sadness, we proceeded with dispatch to implement our relocation decision. As of this date, our breeding operation and dogs used for breeding are no longer located in the State of Texas.

- 10. Decision to Close Grooming and Boarding Businesses. The successful grooming and boarding businesses we had established in Texas were ancillary to our breeding operation. Over time, they had generated profits sufficient to provide a substantial portion of my family's livelihood. However, with the relocation of our breeding operation, it became necessary to close those Texas businesses. We are considering the possibility of attempting to re-build those enterprises in the future in the region to which we relocated our breeding operation. The anomalous conclusion that the housing/kennel specifications of our public dog boarding and grooming facilities (where dogs we boarded and groomed were housed) were acceptable to the State of Texas, while those same facilities were unacceptable for housing our own dogs used for breeding and show, defied logic.**
- 11. Relocation Costs. The short-term cost of relocating, both emotionally and financially, was considerable. Expenses attendant to relocation, related real estate transactions, loss of income from closing of businesses and start-up costs were in excess of \$100,000. However, on balance, after review of the**

proposed Rules and the additional untenable standards and breeder fees imposed therein, I have concluded that my relocation decision was well advised. My desire to continue to do what I love—breed and show dogs for the purpose of improving the breed and perfecting genetic pools—prevailed in my decision-making process, as I was unwilling to sell or spay my prize champion brood bitches, or to down-size the breeding program I had so carefully developed over a thirty year period.

12. Decisions of Other Breeders. As a long-term established dog breeder, I have contact with many dog breeders in the State of Texas. To date, I am aware of at least three other dog breeders who have already relocated their breeding operations and homes to another State as consequence of this legislation and proposed Rules. I am aware of numerous other breeders who have substantially down-sized their breeding operations to avoid statutory licensing coverage. To that end, sadly, some breeders have auctioned their pure-bred dogs in Missouri, spayed otherwise productive bitches and have even been forced to ask their Veterinarians to euthanize older bitches who could not easily be re-homed, but who presumptively would be regarded as “intact bitches used for breeding” by the State for licensing purposes, if retained. Breeders who had anticipated expanding their breeding programs to develop breed type and improve the genetic breed pool have abandoned those plans—especially if such growth would bring them within the statutory licensing threshold. **I know of no Texas show breeder of pure-bred dogs who intends to apply for a license. Instead, the collective approach of the many Texas breeders with whom I am familiar who elect to remain in Texas (especially show breeders of purebred dogs) is to reduce their number of breeding bitches and/or annual number of puppy sales below the statutory licensing threshold to avoid statutory coverage and, if necessary, to challenge this legislation and Rules. The inevitable result of those decisions will be decreased participation in pure-bred dog show events, loss of revenues to the State, adverse economic impact on state and local economies and harm to the pedigreed dog breeds whose health and welfare benefit from enhancement of genetic pools through careful breeding practices.**

13. Adverse Impact of Proposed Rules. Review of the proposed Rules implementing the breeder licensing statute confirms the validity of my relocation decision. Although the Statute accords the Commission the rule-based authority to “modify existing standards [including minimum federal standards] as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public” (Sec. 802.201 (c)), the standards-related provisions of the Rules made no such attempt to adjust the unreasonable kennel specifications or rigid veterinary care standards, where appropriate, to permit responsible show breeders such as myself to continue their operations. Instead, the Commission presumptively imposed the federal standards as their starting point and, in other instances, imposed additional unreasonable requirements.

A number of the proposed standards in the Rules do not support animal health and welfare, but potentially cut against the best interest of dogs under the care of reputable show breeders. **For example, the Rules requirements regarding rigid Veterinary care and record keeping likely will have the effect of decreasing available veterinary care for dogs of licensed breeders and of increasing breeder costs for same.** Several of the licensed Veterinarians with whom I discussed this matter indicated their reluctance to treat the dogs of licensed breeders or to “sign off” on the statutorily required medical exams for fear of potential legal liability or embroilment in State administrative proceedings in the event their breeder-client was cited for violations. To the best of my knowledge and experience, no Veterinarians with whom I spoke were willing to make “house calls” to licensed breeder kennels to perform the statutorily required exams. Most required individual (non-group) in-office appointments for each dog’s health examinations—which requirement would be cost-infeasible for most breeders with breeding programs covered by the statute. Accordingly, it is my opinion as an experienced breeder that **enforcement of the Rules-based requirement of rigid veterinary care and record-keeping ultimately may inure to the detriment of the health and welfare of dogs of licensed breeders by minimizing the available options for responsible veterinary care.**

14. Economic Impact on State Revenues. My decision to relocate my established dog breeding operation and to close my boarding and grooming facility adversely affects the State and local economy through factors including, but not limited to: (a) loss of income tax revenue from profits generated by my businesses; (b) loss of employment to workers who assisted with kennel, grooming and boarding operations; (c) loss of State revenues generated by my vigorous participation in State AKC Clubs and dog show activities (per AKC statistics, the activities of pure-bred dog breeders and show exhibitors in Texas generate approximately \$90.2 Million dollars annually for the State economy (See www.akc.org)).

I have read the above Statement consisting of seven (7) pages and affirm that the facts and statements therein are true and accurate to the best of my knowledge, information and belief.

Dale Martenson
 Dale Martenson

2/9/12
 Date



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Economic Impact of AKC Purebred Dog Ownership in Texas

The American Kennel Club (AKC) was established in 1884 to promote the study, breeding, exhibiting, and advancement of purebred dogs. We now represent more than 5,100 dog clubs nationally, including 305 clubs in the state of Texas.

The AKC sanctions thousands of dog events each year, which generate significant economic benefits to local communities in addition to the millions of dollars AKC dog owners in Texas spend annually on their dogs.

Here are the statistics for the State of Texas over the past three years:

2009: AKC licensed and sanctioned 872 events in the state of Texas, in which more than 155,800 dogs participated.

2010: AKC licensed and sanctioned 967 events in the state of Texas, in which more than 175,800 dogs participated.

2011: AKC licensed and sanctioned 957 events in the state of Texas, in which more than 177,300 dogs participated.

The AKC conducts ongoing research regarding the economic impact of AKC events in localities throughout the state, as well as of AKC registered dogs in the state. **Based on our findings, over \$90.2 million is generated annually within the Texas economy from spending on purebred dogs in the state.** This includes spending on events, dog clubs, show exhibitors, breeding and basic dog care, just to name a few. As dog shows are a family sport, the large spectator gates generate additional revenues for cities and towns statewide.

"EXHIBIT B"



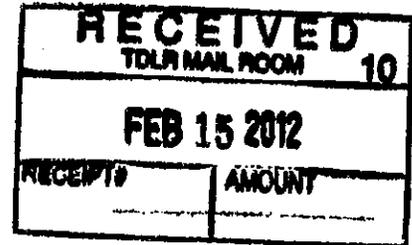
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February 13, 2012

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, 82nd 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	A Violation of the rules related to records required by this chapter.	At least Once each year
Tier 2	A serious or repeated violation relating to of the sanitation requirements of this chapter violations or. f Failure to timely remedy violations documented during periodic inspections, or investigations, or Failure to comply with a commission orders.	At least Twice each year
Tier 3	Repeated, serious v Violations related to shelter, food, water, safety or healthcare required by this chapter medical treatment or examinations.	At least Four 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~~he 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~~ 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."¹ The Department's unlawful interpretation of the statute thwarts the Commission's ability to fulfill this purpose.

GG. Closing.

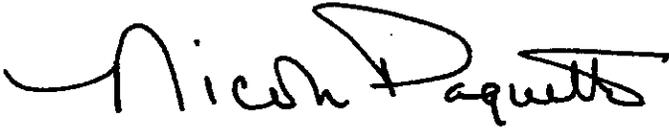
In closing, we wish to thank you for allowing us the opportunity to submit our comments and recommendations set forth above. We realize the complexity and detail of rules and regulations dealing with the housing, care, and transportation of dogs and cats. We further realize that compromise and accommodations 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.

¹ 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), Skip Trimble with THLN (Tel: 214/855-2960; Email: skip@catlyn.net); or Cori Menkin with ASPCA (Tel: 212/876-7700-x4549; Email: cori.menkin@aspca.org).

Respectfully submitted,



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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. 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)~~ (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*.

~~(46)~~ Commission--The Texas Commission of Licensing and Regulation under Texas Occupations Code, Chapter 51.

~~(57)~~ 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.

~~(68)~~ Department--The Texas Department of Licensing and Regulation under Texas Occupations Code, Chapter 51.

~~(79)~~ Dog--A mammal that is wholly or partly of the species *Canis familiaris*.

~~(810)~~ 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.

~~(13)~~~~(18)~~ 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 ~~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.

§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	A violation of the rules related to records required by this chapter.	At least once once each year
Tier 2	A serious or repeated violation relating to of the sanitation requirements of this	At least twice twice each year

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

~~(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.~~

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

~~(e) 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.~~

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

~~(g) 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.~~

~~§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" 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) 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 (61 or 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--\$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 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 animals simultaneously to sit, stand, and lie in a normal manner and turnabout freely without any part of its-their bodies body being in contact with at least one side of theany 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 turn about 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 ft² (0.28 m²).

(D) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft² (0.37 m²).

(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 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~~ 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~~ Potable, 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~~ 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 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.

(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-weeks~~week 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 the 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 ~~receives~~ 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

Melissa Rinard, Legal Assistant
General Counsel's Office
P. O. Box 12157
Austin, TX 78711

Regard: HB 1451 Regulations

My husband and I have been breeders for 11 years. We have been licensed by USDA from the very beginning. Although we are licensed we do not sell out puppies to brokers or pet stores. Most of our puppies are sold by the time they are 8 weeks old. Many of our buyers have had to wait anywhere from 6 months to a year for their puppy as we have a waiting list for many of our puppies.

The proposed rules would pose a hardship for me and my husband because of the expense that they would have.

We spend a considerable amount of money producing the healthiest puppies possible. We operate on a very close profit and loss margin. With the additional expenses we would have to cut back on the number of our breeders. That would reduce the number of puppies which would cut or sales. It would still cost the same to heat and cool our kennels. We would have other expenses that would not be cut.

We might not have a choice but to close our kennel. This would not only affect us but our vet, dog food supplier and other business that we regularly deal with.

If your goal is to get as many breeder to get licensed and not go out of business please adopt the minimum USDA regulations.

Respectfully yours,

Patricia J. Galyon

Patricia J. Galyon



RECEIVED	
TDLR MAIL ROOM	20
FEB 16 2012	
RECEIPT#	AMOUNT

Lee E. DeGrasse



February 13, 2012

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

RECEIVED	
TDLR MAIL ROOM 21	
FEB 15 2012	
RECEIPT#	AMOUNT

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.

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,

A handwritten signature in cursive script that reads "Lee E. DeGrasse".

Lee E. DeGrasse

Kendall Herr
Dickendall Labrador Retrievers

[REDACTED]
[REDACTED]

REFERENCE:
HB 1451

February 19, 2012

Melissa Renard, Legal Assistant, General Counsels Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Dear Ms. Renard:

I have been a breeder of Labrador Retrievers since 1964. The hobby started by my great love of dogs and all animals. The average hobby breeder is motivated for there love of dogs and the passion to develop their breed to be healthy, beautiful, and sound in temperament. For many of us this hobby encompasses our entire life. The pursuit of this hobby involves studying pedigrees, health issues, movement and conformation. Attending shows and trial events also contributes to the learning process, seeing many different dogs is very helpful in the continuing learning process.

Conformation and working events also generate a lot of income for the cities hosting the events as many exhibitors are from out of town, stay at hotels and motels and eat at local restaurants.

The hobby breeder sells the puppies they do not keep for showing and breeding to well interviewed pet homes. The new pet owner gets the benefit of the generations of quality breeding that has gone into the new puppy. In most cases it is healthy, beautiful, well mannered and a delight to own. A hobby breeder will also stipulate if the owner cannot keep the puppy for any reason at any age it will be returned to the breeder. In all my years of breeding I have yet to have a puppy returned and usually get a call to get a new puppy when the first one dies at 12 or 13 years of age. A hobby breeder is there to answer any questions at any time to help the new pet owner. A Hobby Breeder recommends puppy kindergarten and obedience classes to make the dog a good citizen.

I am a typical Hobby Breeder. I doubt if there are many well bred dogs in the shelters and if so it is a rarity. I feel you are approaching this dog

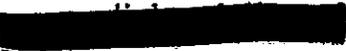
law in the very wrong way. Most of the shelter dogs are mixed breeds, just go look around any shelter. They are from one dog owners who let the dogs run and have accidental litters or from poorly bred puppy mill dogs who are sold at pet shops and puppy mills. This is the problem. Your dog law needs to go in an entirely different direction.

This law will greatly penalize the good breeders and do nothing for the big problem. It will be devastation for those of us who spend our life attending shows, field events and obedience trials. It will be devastating for the people who want to own a quality dog. Please take another look at this Bill. It will only hurt those trying to do the right thing and do nothing to solve the real problem. The Hobby breeder is the key to education in responsible dog ownership. Hobby breeders are the stewards of the breed. They do all they can to protect breeding integrity in all ways possible. They have invested years and generations to maintain type and to improve the quality of their dogs. This bill will greatly harm those trying to do the most good for responsible dog ownership.

Please do not pass this bill that has failed to look at the big picture..

Sincerely,



Kendall Herr


THE ANIMAL COUNCIL

[REDACTED]

Officers:

Sharon A. Coleman
President
Gayle A. Hand
Secretary
Margaret Kranzfelder
Treasurer

Directors:

Dr. Ronald E. Cole
James S. Daugherty
Karen Johnson
Alice E. Partanen

Emeritus:

Leslie L. Altick, 1991-1996
Judith A. Brecka, 1991-2002

February 17, 2012

Via facsimile [REDACTED]

General Counsel's Office
Texas Department of Licensing and Regulation
Attention: Melissa Rinard, Legal Assistant
P.O. Box 1215
Austin, Texas 78711

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

Gentlemen:"

THE ANIMAL COUNCIL (TAC) is a California nonprofit, public benefit corporation founded in 1991 to seek positive, humane solutions to the challenges of detrimental animal public policies, legislation and regulation through study, analysis and application of animal husbandry, statistics and law, and at the same time preserve human benefit from all species, breeds and registries. At the request of and on behalf of our Texas constituents, we submit the following comments to the above-referenced proposed rules.

In preface, we stress your agency's dilemma initiating licensing of unknown numbers of breeders who may or may not be operating on a business model and have, do or would annually meet the threshold definition. This differs from the other licensed occupations in that breeding as a single activity is rarely a means of economic support. Potential licensees must estimate the costs and risks of compliance in deciding whether to reduce operations, leave Texas or attempt application and anticipate compliance although the quantitative measures may vary unpredictably from year to year. The animal activists who sought the enabling legislation have interests ranging from mere protection of animals to abolition of whatever they deem exploitation of animals, i.e. breeding. Promulgating fair, practical rules will be challenging. However, given the factual context, we believe the following proposed rules unreasonably stretch TDLR's discretion by setting up, incenting and fostering systematic vigilantism in respect to unlicensed activity.

§91.59. (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.

COMMENT: Will TDLR be accepting oral complaint reports? If the complainant provided adequate identification and verifiable information, why would the reward be limited to written or online complaints?

§91.59 (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.

COMMENT: Does "all subsequent transactions" refer to all different complaints about other unlicensed persons made by a serial complainant, so that the presence, persistence and scope of activity of such complainants is

THE ANIMAL COUNCIL

2

identified and tracked? While anonymous reporting by an individual who had personal dealings with a suspect is understandable, this system would not identify an association of complainants casting their own dragnet over possible breeders as a class. Would the frequency and outcomes of such reporters be included in publicly available information about enforcement activities?

§91.60. (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.

COMMENT: We do not believe that authority to offer any type of reward under these circumstances is appropriate exercise of agency discretion. Rather, it entices witch-hunting for gain or even underwrites an individual's efforts to seek out any dog or cat breeders or merely owners as suspects for investigation.

§91.60. (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.

COMMENT: The mere authorization of this determination subjects the executive director to suspicions – even if baseless, of complicity in what will appear to the public as opportunity for excess influence by organized complainants, other impropriety or outright corruption.

§91.60. (c) A reward under this section must be authorized by the executive director in writing stating the public purpose served by the payment.

COMMENT: The final order by the commission finding unlicensed activity would be adequate public purpose alone, because the very essence of the activity is rarely apparent to observation but requires suspicion and investigation to gather and present identifying information in a complaint. The cost of paying awards is a low cost investigative tool notwithstanding its potential for harm.

§91.60. (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.

COMMENT: Again, these details will appear to allow the executive director appear to conspire with individuals, not subject to legal constraints on government employees, to pursue private investigations of citizens who may or may not ever be subject to licensing.

§91.60. (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.

COMMENT: Following §91.60. (d), this appears to give the reward recipient(s) a right to receive the reward and possibly bring a claim for payment should receipt not be considered timely.

We believe the detrimental consequences of this scheme of reporting and rewarding unlicensed activity will outweigh the legitimate enforcement interests in licensing and regulating commercial breeders and should be eliminated from the proposed rules.

Respectfully submitted



SHARON A. COLEMAN
President, The Animal Council

• Saturday, February 11, 2012 BILLY AND BETTY

BARRON [REDACTED]

TO WHOM IT MAY CONCERN

THE NAMES BELOW ARE PEOPLE CONCERN ABOUT
THE NEW RULES AND REGULATIONS .

WE OPPOSE THE NEW RULES AND REGULATIONS RE:
SIZE OF CAGES, COST OF
IMPROVEMENTS, COST OF ADDED VET
FEEES, LICENSE AND INSPECTION FEEES.
WE THINK THAT THE ORIGINAL USDA RULES AND
REGULATIONS SERVES EVERYONE (breeders / dogs /
puppies) WELL. DON'T NEED MORE RULES OR
REGULATIONS IT WILL ONLY CAUSE MANY SMALL
BREEDERS TO GO OUT OF BUSINESS AND MANY WILL
NOT BE ABLE TO RENEW THEIR LICENSE. THERE IS
GOOD AND EVIL IN ALL WALKS OF LIFE WHY WOULD
YOU WANT TO PUNISH EVERYONE BECAUSE WHERE
EVER YOU GO WHAT EVER YOU DO NO MATTER IF
YOU ARE RAISING PUPPIES / DOGS OR CARING FOR
BABIES OR OUR SENIOR CITIZENS YOU WILL FIND
BAD AND GOOD IN EVERYTHING. THERE ARE GOING
TO BE A LOT OF BUSINESSES AND PEOPLE REALLY
AFFECTED AND PUT OUT OF BUSINESS BY THIS .
PLEASE HELP US ! ANYTHING MORE THAN THE
STANDARD USDA REGULATOINS WOULD NOT BE A
WORKABLE THING !!! THANK YOU FOR YOUR TIME .
SINCERELY,

GL

FEB 16 2012	
INITIAL	

RECEIVED TOLA MAIL ROOM	
FEB 15 2012	
RECEIPT#	AMOUNT

Billy Barron
Betty Barron
Fran Pickering
Shane Pickering
Jacqueline Pickering
Cameo Pickering
Dana Pickering
Darlene Pickering
Cameo
Chase Woodrum
Clara Rhea
Diann Bruner
Gary Clay
Glenda Barron
Cecis Teftler
Paulette Teftler
JUSTIN FURTH
Dane Furth
Cindy Dick
Raymond Brown
Thomas Brown
Billy Brown
Tommy Dick
Angie Stroud
Cubie Stroud
Christa Kay Stroud