

The following attachments are examples of several form letters received by the Texas Department of Licensing and Regulation (Department) regarding the Cat or Dog Breeders proposed rules. The Department received approximately seven thousand form letters in various formats.





**From:** Beverly Wunderlin [REDACTED]  
**To:** <erule.comments@ncense.state.tx.us>  
**Date:** 2/15/2012 5:44 PM  
**Subject:** Please strengthen proposed licensed breeder regulations

Feb 15, 2012

Melissa Rinard  
P.O. Box 12157  
Austin, TX 78711

To Rinard,

I am writing today to urge you to strengthen the proposed dog and cat breeder regulations to improve the health and well-being of the animals.

Although the proposed regulations address many of the basic needs of dogs and cats at breeding facilities, several of the provisions need to be strengthened.

1. 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
2. Under 91.104, please prohibit the stacking of cages above one level. Stacked cages encourage overcrowding and make it more difficult for adequate lighting and air flow to reach all parts of the enclosures.
3. Under 91.112(b), please prohibit licensed breeders from performing additional surgical procedures such as ear cropping, tail docking, debarking, and dew claw removal. These are painful procedures that should only be conducted by a licensed veterinarian.
4. Under 91.101 (a) and 91.102(a), please remove the sentence allowing a licensed breeder to use their best efforts in not allowing the air temperature to fall below 45 degrees for more than 4 consecutive hours and not rise above 85 degrees for more than 4 consecutive hours. This language is weaker than the federal regulations and as such counter to state statute.

These changes are in the best interest of the animals and we urge you to modify the regulations to reflect these much need changes to improve the health and well-being of the animals.

Sincerely,

Dr. Beverly Wunderlin  
[REDACTED]



**From:** "Leah Filzow-Perez" [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/5/2012 8:02 AM  
**Subject:** Reference to Breeder bill 1451

Dear Sirs,

I am writing on behalf of support of immediate changes to strengthen Breeder Bill 1451 and carry through changes that can and will make a difference in the way Texas currently "sells-out" our beloved pets to industries yet again for the sake of money and without regard to the safety or what little comfort animals may have living in cages! Below are some recommendations that at a minimum can and should be implemented. Let's fix this bill once and for all so we don't have to keep coming back again and again as this is the right thing to do to any living creature.

## 1. WIRE FLOORING

TDLR's proposed rules dealing with flooring in licensed breeder facilities {Section 91.102 (e)(A)} require that at least 50% of the floor be solid flooring with the remainder being allowed to be wire or wire mesh. However, these proposed rules do not apply to existing breeder facilities. These existing breeder facilities are allowed to have 100% wire or wire mesh flooring. This "grandfathering" of current breeding facilities is terribly flawed and will result in thousands of animals living their entire lives on wire flooring with no relief. We must get this "grandfathering" provision out of the proposed rules and require all breeders, both current and future, to have at least 50% solid flooring where the animal can stand, sit, lie down and turnabout freely on a solid surface, to seek relief from the wire flooring. Recommended solution to problem:

100% wire flooring in primary enclosures is inherently cruel confinement. By licensing (grandfathering) this practice, the TDLR is "gutting" the intent and purpose of the statute which is to improve the health and wellbeing of the animals who spend their entire lives in these cages. Also, by licensing (endorsing) the practice the TDLR is making the state animal cruelty statute (cruel confinement) more difficult or impossible to enforce. This is a giant step backward, not forward.

Dogs forced to live on wire flooring for long periods of time suffer from foot and leg injuries, including chronic, painful sores, infections and cysts between the toes, toenails that curl into the paw pads from lack of pressure on the nail, and toenails being ripped out when they get caught on the wire.

Wire flooring increases drafts in extremely cold weather, making it difficult for dogs to maintain their body heat.

Wire flooring in most cases is less sanitary than solid flooring. Feces do not readily fall through wire mesh, so the dog(s) grind it through the wire with their feet which creates terribly unsanitary conditions. Both the dogs and the wire flooring become caked in feces and debris, making cleaning very difficult if not impossible.

One can provide 50% solid flooring easily and at little expense by providing a resting board, rubber mat, or bedding. This does NOT require restructure of the enclosure for breeders.

## 2. CAGE SIZES

TDLR's proposed rules dealing with cage sizes {Section 91.104 (3)(A) and (B)} require that primary enclosures be twice the size currently required by the USDA regulations for USDA licensed breeders. Again, however, the TDLR

proposed rules exempt current breeder facilities from these requirements and allow them to continue using the smaller cage sizes required by the USDA regulations. The reason given is that it would be cost prohibitive to require current breeder facilities to double their cage sizes. Although this has some merit, there must be a specific timeframe for current breeder facilities to come into compliance with the larger size caging requirements. We recommend that they be given three years to come into compliance - to wit: until September 1, 2015. Also, we recommend that any new cages built at these facilities must come into compliance with the larger cage size requirements at the time they are installed. Recommended solution to problem:

. The Licensed Breeder bill was passed to protect the well being of animals forced to live their entire lives in small cages. To "grandfather" existing breeders from increased cage sizes equates to 1) ignoring the will of the legislature and 2) allowing licensed breeders to continue the "status quo" of tiny barren wire living quarters.

### 3. CAGE STACKING

TDLR's proposed rules {Section 91.104(E)} allow the stacking of dog cages up to three tiers. We recommend that there be no stacking or if any stacking is allowed that it must not exceed one cage on top of another.

Recommended solution to problem:

. Stacked cages encourage gross overcrowding of animals and are often so high or low - caretakers or inspectors can't easily see the dogs to check on their wellbeing.

. Stacked cages with wire flooring allow urine, feces and wastewater from higher cages to rain down on dogs below

. Stacking makes it more difficult for adequate lighting and air flow to reach all parts of the enclosures - allowing many dogs and cats to live in total darkness and neglect.

### 4. SURGICAL PROCEDURES

TDLR's proposed rules {Section 91.112(b)} require that only a veterinarian be allowed to euthanize an animal or perform a surgical birth procedure on an animal. This section should cover additional procedures that only a veterinarian shall perform, such as tail docking, ear cropping, debarking, and claw removal. Currently, it is common for these procedures to be performed by breeders (non-veterinarians).

Recommended solution to problem:

. These procedures are veterinary procedures because they are surgical in nature, and should include prescription drugs and/or anesthesia for pain - neither of which can legally be obtained and used by a lay person.

. A strong argument can be made for animal cruelty, should a breeder/lay person dock tails, cut ears, remove claws, or cut vocal cords without prescription pain drugs or antibiotics.

Please consider changing these (4) issues immediately. Animals deserve to be treated humanely. I appreciate your help.

Regards,

Leah Filzow-Perez

[REDACTED]

[REDACTED]

[REDACTED]



**Erule. Comments - URGENT!!!!!! - Dog & Cat Breeders**

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**From:** Ginger Simon <[REDACTED]>  
**To:** "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>  
**Date:** 2/10/2012 1:50 PM  
**Subject:** URGENT!!!!!! - Dog & Cat Breeders

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P.S.

With upmost respect, I would also like to say, shame on you and anyone else who do not do the right thing for helpless animals, who cannot speak or defend themselves. It is an embarrassment for Texas, to say the least!

**From:** Ginger Simon  
**Sent:** Friday, February 10, 2012 1:46 PM  
**To:** 'erule.comments@license.state.tx.us'  
**Subject:** URGENT!!!!!! - Dog & Cat Breeders

Dear Ms. Rinard:

I am writing today to urge you to strengthen the proposed dog and cat breeder regulations as published in the Texas Registry on January 20<sup>th</sup>.

1. Please prohibit the use of wire flooring for all facilities. Having animals spend their entire lives on a wire floor is cruel and inhumane.
2. Please prohibit the stacking of cages above one level. This is unhealthy and unsanitary and allows feces and urine to fall on the animals below.
3. Please prohibit non-veterinarians from performing surgical procedures such as ear cropping, tail docking, debarking, and dew claw removal. These are surgical procedures and should be performed by a licensed veterinarian.
4. Please remove all references to a licensed breeder to use their "best efforts" regarding temperature control. This phrase is vague, ambiguous and unenforceable. It also weakens the federal regulations which are the minimum standards and can only be strengthened, NOT weakened.

In addition, there should be no "grandfathering" of existing breeder mills. Dogs and cats currently living in these horrific conditions, rampant in Texas, should not be sentenced to a future of suffering and painful death at the hands of individuals who consider animals a "cash crop."

Thank you for allowing my comments and for your consideration.

Respectfully,

Ginger Simon

[REDACTED]



**Erule. Comments - Puppy mill Bill**

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**From:** Isabel Medina [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/17/2012 12:25 PM  
**Subject:** Puppy mill Bill

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Dear Ms. Rinard:

I am writing today to urge you to strengthen the proposed dog and cat breeder regulations as published in the Texas Registry on January 20<sup>th</sup>.

1. I am asking that you 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 with out a sturdy item between the two that would catch any accidental spills.  
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,

Isabel Medina  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



**From:** Jessica Ordille [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/15/2012 10:21 PM  
**Subject:** Please Strengthen the Proposed Breeder Rules and Standards

Feb 15, 2012

Texas Department of Licensing and Regulation

Dear of Licensing and Regulation,

I respectfully urge you to make changes to the proposed breeder rules and standards that are necessary to implement the Dog and Cat Breeders Act regarding the licensing and regulation of certain dog and cat breeders. In particular, please remove grandfather clauses that would allow breeders in business before the Dog and Cat Breeders Act was passed to use smaller caging and caging with wire floors; forbid the use of cage stacking; ban breeders from performing surgical procedures (including debarking, ear-cropping, tail-docking, dew claw removal, etc.); and require all licensed breeders to keep ambient temperatures at adequate levels at all times.

As currently written, the proposed rules will not promote the improvements in animal treatment required by the Dog and Cat Breeders Act.

Thank you.

Sincerely,

Jessica Ordille



**Erule. Comments**

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**From:** Nick Palmos [REDACTED]  
**To:** "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>  
**Date:** 2/15/2012 10:45 PM

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Melissa Rinard, Legal Assistant  
General Counsel's Office  
Texas Department of Licensing and Regulation  
Email: erule.comments@license.state.tx.us  
RE: Comments and Recommendations to the Proposed Rules Governing  
Licensed Breeders in Texas

Dear Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

*100% wire flooring* (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

*Cage Stacking:* There should be no stacking of primary enclosures for dogs as allowed in §91.104. This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

*Cage Sizes:* I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

*Veterinary Procedures:* Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

*Temperature:* Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The

proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts." It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules. Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.  
Sincerely,

Nicholas Palmos



**Erule. Comments - HB 1451**

**From:** WILLIE [REDACTED]  
**To:** <erule.comments@license.state.tx.us>  
**Date:** 2/19/2012 7:13 PM  
**Subject:** HB 1451

**As an owner and exhibitor of Show Dogs I was and still am ADAMANTLY opposed to HB 1451. That being said I would like to state that with the passage of HB 1451 I would be very adamantly opposed to any added restrictions to the existing law. I have reviewed the Texas Department of Licensing and Regulation's regulatory proposal and offers the following comments. (NOTE: Each section of concern is quoted below, with my comments and recommendations following in *bold and italicized.*)**

**Sincerely,  
 William W. Haefner  
 Joshua, TX 76058**

**Section 91.10. Definitions.**

**"(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free airflow 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."**

***COMMENT: While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at all times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness would elaborate, "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."***

**§91.10. 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.**

***COMMENT: An animal is not an adult at 6 months of age. Although conception could occur on the first heat cycle, generally sometime around 6 months of age a dog is not mature until 18 months of age. I recommend changing this to "Adult animal—An animal 18 months of age."***

**Section 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."**

***COMMENT: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptable to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.***

**Section 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."...**

***COMMENT: 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."***

**Section 91.27. License or Registration—Notice of Proposed Denial, Opportunity to Comply.**

**...“(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: 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.”**

Section 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.”

**COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the address shown on the application/file by certified mail, return receipt requested.**

Section 91.30. Exemptions.

“... (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.”...

**COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? Individuals may keep dogs for**

**those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, 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. I requests that TDLR provide more specific guidance on this issue.**

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: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file**

**the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or habit of contact and a record of whether or not each complaint was substantiated by**

**department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission.**

Section 91.66. 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 the animals. This subsection does not apply to the investigation of unlicensed activity.”...

**COMMENT: 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.**

Section 91.71. Responsibilities of Licensee—Advertising.

“(a) A licensed breeder may not engage in false, misleading, or deceptive advertising.”...

**COMMENT: Is this subpart necessary? Texas’ false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. I recommend deletion.**

Section 91.80. Fees.

“(a) Application Fees.

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

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

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

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

Page 5 of 8

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

(E) Duplicate License \$25.

(b) Revised/Duplicate License/Certificate/Permit/Registration--\$25.”... **COMMENT: Though pursuant to statute’s direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are incredibly high; and will discourage compliance and the fees are designed to discourage people from becoming or continuing to be Breeders. I recommend deletion.**

Section 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.”...

**COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe. This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.**

Section 91.102. Standards of Care—Sheltered Housing Facilities.

“(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;”...

**COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, I recommend as a better alternative the following: “(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of receptacles,”**

Section 91.104. Standards of Care—Primary Enclosure.

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

(1) General requirements.

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

...  
(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;”...

**COMMENT: I believe that subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? To ensure ease of compliance, a better, more clear alternative reads, “Provide all dogs and cats with**

**easy and convenient access to clean food and water, as required in §91.107 and §91.108 of these rules.”**

Section 91.104. Standards of Care—Primary Enclosure.

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

(1) General requirements.

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

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

**COMMENT: I have concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.**

Section 91.104. Standards of Care—Primary Enclosure.

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

...  
(3) Additional requirements for dogs.

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

**COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requirements standards should not vary between licensees, especially if they vary in consideration only of the interest of encouraging compliance with licensing requirements. I recommend that one standard be uniformly applied among all licensees.**

Section 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.”

**COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? I 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. I recommend removal of this section.*

Section 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.”

**COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. 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.”**

Page 8 of 8

Section 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:

...  
(6) Transportation by air.

...  
(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.

...  
(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.”

**COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlying statute. As such, I recommend deletion of these subparts.**

Section 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:

...  
(9) A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a license issued by the federal regulatory agency.”

**COMMENTS: This subsection is unclear and should be either edited or deleted**

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