

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 21]

Dog Shelters

The Department of Agriculture (Department), under the specific authority conferred by section 207(b) of the Dog Law (act) (3 P.S. § 459-207(b)), proposes to amend § 21.24 (relating to shelters). Section 101 of the act (3 P.S. § 459-101) states this is an act "... relating to dogs, regulating the keeping of dogs; providing for the licensing of ... kennels ..." and "... providing for the protection of dogs..." The Department has a duty to assure the proper and humane care of dogs kept in captivity. Section 207(b) of the act confers upon the Department the power to promulgate regulations regarding the maintenance of kennels. It states, "(A)ll kennels shall be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary."

Background

The current provisions in § 21.24, relating to shelters for dogs, became effective April 12, 1996. They require kennels that house dogs in a primary enclosure with wire flooring to provide a solid draft free resting surface to allow the dogs to rest comfortably. Section 21.24 was originally enacted to protect the health and safety of dogs, assure their humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels.

The Department vigorously enforced the regulations and all kennels with wire or mesh flooring were brought into compliance with the rest board requirements. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards. It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Concerns were voiced and written complaints were filed by licensed veterinarians, the Pennsylvania Pet Breeders Association and owners of pet store kennels. The complaints stated that illness and disease was occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement.

The proposed amendment will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the proposed amendment addresses the comfort, safety and humane treatment of the dogs by requiring that, "(A) dog may be sheltered in a primary enclosure having wire flooring provided the wire is coated with a vinyl type coating. The coated wire flooring must be kept in good repair and shall be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated wire shall be constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the wire floor does not bend or sag from

the weight of the dogs." The proposed amendment requires a kennel owner to install vinyl coated wire before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated wire flooring meeting the standards of these regulations and will be required to keep the rest boards sanitized. The ability to remove the rest boards and the added language concerning vinyl coated wire has been agreed to by a representative for pet store kennels, a representative of the Pennsylvania Legislative Animal Network, and representatives for the Pet Breeders Association and various dog clubs.

The proposed amendment is intended to update the Department's policy regarding the sheltering of dogs in kennels. The proposed amendment is consistent with the Department's duties under the act and brings the Department into closer compliance with Federal regulations regarding the sheltering of dogs in kennels.

In the interest of continuing to carry out the policy of the act, to assure the health, safety and humane treatment of dogs, the Department proposes to amend § 21.24 to effectuate the changes referred to previously.

Summary of Proposed Change

Section 21.24.(d). This section will be changed by eliminating the language requiring that a "solid resting surface" be provided for dogs being housed in a primary enclosure having wire flooring. Language will be added to require that the wire flooring in primary enclosures must be "vinyl coated" and be "constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the wire floor does not bend or sag from the weight of the dogs." All other requirements, such as a draft free area and wire constructed in a manner which does not allow the dog's feet to pass through any opening in the floor, shall remain unchanged. Kennel owners will be required to install vinyl coated wire flooring before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated wire flooring meeting the standards of these regulations and will be required to keep the rest boards sanitized.

Fiscal Impact

Commonwealth

The proposed amendment will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The proposed change will not increase or decrease the regulatory workload. The Department already inspects kennels on a regular basis and the proposed change will not affect inspection schedules or the time required to inspect a kennel.

Political Subdivisions

The proposed amendment will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed amendment will impose minimal costs on private sector organizations and individuals. There will not be an increased cost to the regulated community. The regulated community will have an increase in costs initially, because it will be required to replace current wire flooring with a vinyl coated wire flooring. However,

the regulated community has requested the proposed change. The regulated community believes the change will decrease the health problems associated with the rest board requirement and thereby decrease veterinary and health care costs. In addition, the elimination of rest boards will decrease the sanitary expenses by reducing the man-hours required to clean the kennels.

General Public

The proposed amendment will impose no costs and have no fiscal impact on the general public. The general public should benefit through reduced costs to the industry.

Paperwork Requirements

The proposed amendment will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer kennel inspections. Only small changes will be required.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) on July 10, 2000, the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1 "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment it will notify the Department within 10 days after the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendment to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Department, the General Assembly and the Governor of objections raised.

Public Comment Period

The public comment period for this proposal shall be 30 days from the date of publication in the *Pennsylvania Bulletin*.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Richard Burd (717) 787-4833.

Effective Date

This proposed amendment would become effective upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-132; (1) General Fund; (2) Implementing Year 1999-00 is \$1,400; (3) 1st Succeeding Year 2000-01 is \$N/A; 2nd Succeeding Year 2001-02 is \$N/A; 3rd Succeeding Year 2002-03 is \$N/A; 4th Succeeding Year 2003-04 is \$N/A; 5th Succeeding Year 2004-05 is \$N/A; (4)

Fiscal Year 1998-99 \$N/A; Fiscal Year 1997-98 \$N/A; Fiscal Year 1996-97 \$N/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 21. GENERAL PROVISIONS; KENNELS; LICENSURE; DOG-CAUSED DAMAGES

KENNELS—PRIMARY ENCLOSURES

§ 21.24. Shelters.

* * * * *

(d) A dog may be sheltered in a primary enclosure having wire flooring [if] provided the wire flooring is coated with a vinyl type coating. The coated wire flooring shall be kept in good repair[, is] and shall be made of mesh [or slatted] construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated wire shall be constructed of sufficient diameter (gauge) to provide a rigid floor area sufficient to support the weight of the dogs housed in the enclosure so that the wire floor does not bend or sag from the weight of the dogs. Coated wire flooring shall be installed by _____ (Editor's Note: The blank refers to a date 90 days after the effective date of adoption of this proposal). Coated wire flooring shall be installed prior to the removal of a solid resting surface. If a solid resting surface is provided, the solid resting surface shall be constructed of impervious material. A dog being housed in a primary enclosure with wire flooring shall be provided with a draft free [solid resting surface that, in the aggregate,] area that is large enough to hold all the occupants of the primary enclosure at the same time comfortably.

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[Pa.B. Doc. No. 00-1241. Filed for public inspection July 21, 2000, 9:00 a.m.]

**ENVIRONMENTAL
QUALITY BOARD**

[25 PA. CODE CH. 240]

Radon Certification; Continuing Education

The Environmental Quality Board (Board) proposes to amend § 240.306 (relating to continuing education program). The amendment is being proposed to modify the requirements for a continuing education program by certified persons performing radon-related work in this Commonwealth outlined in § 240.306 to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of June 20, 2000.

A. Effective Date

This proposed amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.

B. Contact Person

For further information contact Michael A. Pyles, Chief, Division of Radon, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-3594, or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA, 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TTD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

This proposed rulemaking is being made under the authority of section 13 of the Pennsylvania Radon Certification Act (63 P. S. § 2013) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-21).

D. Background and Purpose

The Department is responsible for maintaining a certification program for persons conducting radon-related work in this Commonwealth, and a component of that certification program is a continuing education program. Currently § 240.306 requires that a certified person conducting radon-related activities in this Commonwealth participate in a continuing education program consisting of a minimum of 16 hours of Department-approved courses or seminars on radon testing or mitigation each year. The proposed amendment would reduce this minimum continuing education requirement to 8 hours each year.

The purpose of this proposed reduction in the required number of continuing education hours is to conform this Commonwealth's regulations with the recommendations of National bodies which set standards in this area, as well as with the requirements for continuing education in neighboring states with active radon certification programs, and provide relief to the radon regulated community of this Commonwealth from a regulation that is unnecessarily burdensome.

The National Environmental Health Association (NEHA), and the National Radon Safety Board (NRSB), both of which have standards for continuing education by persons conducting radon-related activities, recommend a minimum of 8 hours of continuing education each year. Likewise, the neighboring states of New Jersey and Ohio have active radon certification programs and require a minimum of 8 hours of continuing education each year.

The radon regulated community of this Commonwealth participated in a series of eight radon regulatory workshops in 1996. At that time, the regulated community and members of organizations involved with the radon issue represented at these workshops recommended that the minimum continuing education requirement for certified persons performing radon-related work in this Commonwealth be reduced from 16 hours each year to 8 hours each year. The participants believed that the 16-hour minimum requirement is unnecessarily burdensome. In February 2000, staff from the Department's Radon Division surveyed the workshop participants to confirm their views on this amendment. The results of this survey indicate that participants continue to support this reduction of hours.

E. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendment.

Benefits

This proposed rulemaking would benefit about 200 certified radon laboratory, testing and mitigation persons who take continuing education courses to fulfill the requirements of § 240.306. By reducing the minimum number of required continuing education hours from 16 hours each year to 8 hours each year, the estimated savings per certified person per year is expected to be \$150. Thus, the total savings to the community of certified radon laboratory, testing and mitigation persons is estimated to be about \$30,000 per year.

Costs

There are no additional costs to the Commonwealth, its citizens or regulated community associated with this proposal.

Compliance Costs

The proposed amendment is not expected to impose any additional compliance costs on the regulated community.

F. Pollution Prevention

Not applicable.

G. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 11, 2000, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed amendment to which an objection has been made. The Regulatory Review Act specifies detailed procedures for review by the General Assembly and the Governor of objections raised by IRRC prior to final publication of the amendment by the Department.

I. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendment to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by August 21, 2000 (within 30 days of publica-

tion in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must be received by August 21, 2000 (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by August 21, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-351. No fiscal impact; recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND
SAFETY**

ARTICLE V. RADIOLOGICAL HEALTH

CHAPTER 240. RADON CERTIFICATION

§ 240.306. Continuing education program.

A person conducting radon-related activities shall have a radon education program to assure that the applicant and all employees have a minimum of 4 hours initial training, and the certified person [**will**] **shall** participate in a continuing education program consisting of a minimum of [**16**] **8** hours of Department-approved courses or seminars on radon testing or mitigation each year.

[Pa.B. Doc. No. 00-1242. Filed for public inspection July 21, 2000, 9:00 a.m.]