

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 21, 23, 25 AND 27]

Dog Law Enforcement

The Department of Agriculture (Department), under section 902 of the Dog Law (act) (3 P. S. § 459-902), proposes to amend the Chapters 21, 23, 25 and 27. Section 902 of the act, charges the Secretary with the duty of promulgating "... rules and regulations to carry out the provisions and intent of this act." (3 P. S. § 459-902). The Department proposes to amend numerous sections of the current regulations to address changes in the industry, clarify provisions of the regulations which are vague or outdated and clarify enforcement powers and duties of the Department and the Secretary.

Background

The amendments add definitions and set forth more specific and stringent provisions related to kennel requirements and related enforcement. The intent of the amendments is to clarify numerous provisions of the act and thereby increase both the Department's ability to carry out the intent of the act and the awareness and understanding among the regulated community and the general public of the Department's authority under and interpretation of the act. Many of the provisions of the current regulations were last revised in January of 1996.

The major features and amendments to the proposed regulations are summarized as follows:

Summary of Major Features

Section 21.1. Definitions.

New definitions have been added to clarify the kennel requirements in section 206 of the act (3 P. S. § 459-206). Specifically, the regulations now define "establishment" and "temporary home." In addition, the definitions of "licensed veterinarian" and "sanitize" have been amended. The definitions were added or revised to provide clarification. The necessity for clarification is based on issues, comments and questions which have arisen with regard to the Department's interpretation of various provisions of the act and the current regulations over the past several years.

Section 21.4. Penalties.

Language has been added to the Article II of the act (3 P. S. §§ 459-200—459-219) penalty provisions (associated with kennel licensure) which is intended to clarify the Secretary's powers, duties and enforcement options related to the failure of a person to obtain a kennel license prior to operating a kennel, as required by section 207 of the act (3 P. S. § 459-207). Clarifying language was also added to the revocation, suspension and denial language of the regulations and the seizure provisions of the regulations, related to enforcement of section 211 of the act (3 P. S. § 459-211). Finally, clarifying language was added to the penalty provisions of the regulations associated with Article V and V-A of the act (3 P. S. §§ 459-501, 459-502, 459-501-A—459-507-A) This language is intended to establish the process to be followed during and after dangerous dog proceedings and clarify the timing and due process which must be afforded prior to confiscation or euthanization, or both, of a dangerous dog.

Section 21.13. Contact information.

The Department added this section to the regulations to provide the general public and the regulated community with contact information to allow them easy access to the Bureau when questions or concerns arise. The Department hopes this will result in enhanced compliance with the act.

Section 21.14. Kennel licensure provisions.

The Department added this section which addresses the kennel licensure requirements found in sections 206 and 207 of the act. In addition, it provides more specifics with regard to the intent and enforcement of the kennel licensure provisions of the act and sets forth the substantive provisions of the regulations which relate to the new definitions of "establishment" and "temporary home" set forth in these regulations. It also, addresses the prohibition to operate as set forth in section 207 of the act and provides for the powers of the Department with regard to enforcement of that section of the act. Furthermore, this section establishes more specific recordkeeping requirements for each category of kennel and class of kennel. Finally, it addresses and sets forth the prohibitions related to dealing with unlicensed kennels and reiterates and clarifies the requirement for health certificates for all dogs entering this Commonwealth from another state, commonwealth or country. In general, this new section provides clarification related to Article II provisions of the act and is intended to assure greater compliance with the existing provisions of the act and enhance the Department's ability to carry out the intent of the act which is protection of the health, safety and welfare of dogs.

Section 21.15. Exemptions.

Language was added to assure that dog control facilities authorized to receive grants under section 1002 of the act (3 P. S. § 459-1002(a)) would be exempt from the new quarantine and space provisions of the regulations. These facilities perform a government service by taking stray and abandoned dogs from the Department and the general public. In addition, they accept and hold dogs seized from licensed and unlicensed kennels. Subjecting them to the quarantine and double space requirements of these proposed regulations would limit the space available to provide those services and limit the ability of these facilities to adopt such dogs.

Section 21.21. Dog quarters.

Language was added to this section to clarify the overall sanitation and housing requirements of the regulations and to address—in general—the amendments to later sections of the regulation related to sanitation and housing of dogs.

Section 21.22. Housing.

Amendments to this section of the regulations address problems and issues that have arisen with regard to dogs, both puppies and adults, being brought into a kennel from another kennel or establishment. The new language sets forth health requirements, such as an isolation time period for the dogs, and thereby addresses health problems related to new or varied strains of virus and bacteria being brought into the kennel or new or existing parasites the may accompany puppies or adult dogs not born at the particular establishment.

Section 21.23. Space.

This section contains new language which is intended to address the health and welfare of dogs housed in kennels and which makes the Department's regulations more consistent with Federal regulations set forth under the Animal Welfare Act (7 U.S.C.A. §§ 2131—2159). The new language addresses space requirements and sets forth the requirements of and for an exercise program for all dogs kept in a kennel.

Section 21.24. Shelter, housing facilities and primary enclosures.

Amendments to this section include new provisions which establish separate requirements for indoor and outdoor kennel facilities. The current regulations do not address the differences between indoor and outdoor kennels and the differences regarding the health, safety and welfare needs of the dogs housed in these kennels. The changes made to this section are based on situations encountered by the Department over the last several years and in many cases set forth provisions contained in the Animal Welfare Act and in the "Military Dog Training Manual." In addition, the revised regulations address, clarify and enhance sanitary and animal husbandry practices. They address and set forth more detailed requirements for outdoor kennels in areas such as drainage, construction and maintenance of primary enclosures, shade and shelter requirements, bedding, lighting, slope of ground, and run and footing materials for the dogs. They provide more detailed requirements for indoor kennels with regard to slope of floor and drainage, construction of kennels and primary enclosures, sanitation, storage of food and medical supplies and wash facilities.

Section 21.25. Temperature control.

This section is amended to provide more specific language regarding temperature control in indoor and outdoor kennels. Temperature ranges have been established. The purpose of these changes is to address concerns expressed by the Department's State dog wardens and district justices regarding vagueness and a lack of clarity with regard to the current regulations.

Section 21.26. Ventilation in housing facilities.

Language has been added to this section to clarify and address concerns expressed by the Department's State dog wardens and district justices regarding vagueness and a lack of clarity with regard to the current regulations. The new language provides specific ventilation, humidity and air movement requirements.

Section 21.27. Lighting and electrical systems.

This section contains amendments that now set forth specific lighting requirements for indoor and outdoor kennels and attached buildings. Once again the revisions are in response to concerns expressed by the Department's State dog wardens and district justices regarding vagueness and a lack of clarity with regard to the current regulations.

Section 21.28. Food, water and bedding.

The amendments to this section establish more specific and more stringent food, water and bedding requirements. The amendments are aimed in part to address control of contagious diseases and to assure dogs housed in kennels have access to water at all times.

Section 21.29. Sanitation.

Amendments to this section set more specific sanitation requirements and controls. The intent, in part, is to address the control of contagious diseases within kennel facilities and to more effectively address sanitation issues and requirements in outdoor kennels. The amendments more specifically address the location of dogs during sanitation of their primary enclosure and address insect, parasite and general pest control.

Section 21.30. Condition of dog.

Amendments to this section were made for the purpose of addressing grammatical errors.

Section 21.41. General requirements.

This section addresses general requirements for kennel records. The Department amended this section to provide more specific provisions related to the amendments to the previous sections of these regulations. More specifically, they are more specific with regard to food, water and sanitation records, exercise records and injury and veterinary care records. The amendments also provide for unsworn falsification to authorities with regard to the records kept at kennels.

Section 21.42. Bills of sale.

The Department added subsection (b) to this section. Subsection (b) addresses the in-State and out-of-State licensure provisions of the act. Subsection (b) notifies licensed kennel owners that it is a violation of the act to purchase, accept, sell on behalf of or transport a dog from a kennel required to be, but not licensed under the provisions of the act. It provides an exception where the Department provides the kennel owner with written permission to accept dogs from an unlicensed kennel. This is to allow the Department flexibility in closing unlicensed kennels. Furthermore, it should be noted that this provision is not intended to and does not affect the ability of a licensed kennel to sell dogs it owns.

21.54. Dog and kennel license issuance date.

The Department made a revision to this section in order to clarify that the Department issues kennel licenses and affirms that kennel licenses are issued on a calendar year basis.

Section 21.61. Conditions and limitations for payment.

Revisions to this section clarify the conditions under which payment will be made by the Department for dog caused damages. These revisions are necessary to add clarity to the existing regulations.

Section 21.62. Appointment of disinterested citizen.

This section has been deleted and replaced with an appeal process for the owner of the dog found to have caused damage. The Department will now make a determination of damages (under the amended version of § 21.63 (relating to determination and appeal of damages)) and the owner of the dog causing the damages will have a right to dispute and appeal the determination. This removes the requirement that a citizen or other entity become involved in any dispute or appeal of a decision regarding determination of damages. The Department has the expertise to assess the value of livestock and poultry and to gather appropriate documentation of the value.

Section 21.63. Determination and appeal of damages.

This section mirrors and clarifies the provisions of the act related to an appeal of the damages assesses.

Section 21.64. Certification of payment of claims.

This section was added to set forth the requirement that the owner of the animal injured or killed will not be compensated if the owner has already received reimbursement for the injuries sustained or the loss of the animal.

Section 21.65. Killing of dogs causing damages.

This section was added to clarify and address the provisions established by section 704 of the act (3 P. S. § 459-704). It sets forth the procedure for ordering the euthanization of the offending dog and provides the owner of the dog with appeal rights.

Section 21.66. Unlicensed dogs and forfeiture of right to reimbursement.

This section clarifies the provisions of section 705 of the act (3 P. S. § 459-705).

Section 23.1. Dog law restricted account.

Amendments to this section clarify how restricted account funds may be utilized by adding language already set forth at section 1001(b) of the act.

Section 23.3. Application procedures.

This section was deleted from the previous draft of this regulation, but has been reinstated based on input received, with the current provisions as set forth in the Pa. Code.

Section 23.6. Stray dogs.

This section was amended to make it consistent with current provisions of the act, which required all dogs over 3 months of age to be licensed and changes the word "shelter" to "releasing agency" to be consistent with the act.

Section 25.1. General.

Amendments to this section expand the Department's ability to reimburse properly licensed kennels for the holding and humane disposition of dogs. In addition, it encourages (and follows the trend within society and the industry) adoption of dogs held in shelters by allowing for reimbursement for dogs that are adopted instead of euthanized. It also requires the releasing agency to ensure the adopting person has secured a license for the dog to be adopted.

Section 25.2. Dog disposition record.

This section has been amended to set forth parameters of the dog disposition form, but that specific form has not been included in the regulation. This allows the Department some flexibility as changes occur. The Department will develop and distribute the necessary forms.

Section 25.3. Claims for fees.

This section has been amended to set forth parameters of the claims form, but that specific form has not been included in the regulation. This allows the Department some flexibility as changes occur. The Department will develop and distribute the necessary forms.

Section 25.4. License of dogs before release.

The amendments to this section bring the regulations into conformity with the act. The act, as amended in 1996, requires all dog over 3 months of age to be licensed.

Section 27.5. Owner's application to register a dangerous dog.

The Department has proposed to amend this section to include the requirement that the registration application include a copy of the surety bond or a certificate of liability insurance in the proper amount required by the act.

Section 27.6. Processing of an application.

This section was amended by adding language to make it consistent with the revisions to § 27.5 and to reiterate the requirement of the act that the appropriate fee accompany the application.

Section 27.7. General condition of registration.

The amendment to this section is intended to make it clear that failure to comply with the registration requirements for a dangerous dog will result in the Department taking the action prescribed by section 505-A of the act (3 P. S. § 459-505-A), which is confiscation of the dangerous dog.

Section 27.14. Verification of compliance with financial responsibility requirements.

This section was added to relate to the owner of a dangerous dog, that the Department will verify the information required in the application prior to the issuance of the registration.

Fiscal Impact

Commonwealth

The proposed amendments to the regulations will impose additional fiscal impacts upon the Commonwealth. The amendments to the regulations will require the Department to purchase additional equipment necessary for measuring lighting and ventilation and to commit an additional amount of time to kennel inspection and review of the required kennel records. It is estimated that the cost to the Department per warden will be \$15,000 in the first year, and \$5,000 per year through year 5 for the additional amount of time to perform kennel inspections and review of the required kennel records.

Political Subdivisions

The proposed amendments to the regulations will impose no costs nor have a fiscal impact upon political subdivisions. The regulations do not impose any additional burden of enforcement or review on political subdivisions.

Private Sector

The proposed amendments to the regulations will impose additional costs on the regulated community. Licensed kennels will likely have to make some changes to comply with the lighting, ventilation and space requirements, as well as, the additional sanitation and housing requirements in these regulations. Furthermore, establishments utilizing temporary homes will now have to comply with the kennel licensure and recordkeeping requirements of the act and these regulations. The costs to the regulated community will be varied, depending on the size and condition of the existing kennel. It is estimated that the costs will range from \$5,000 to \$20,000 per existing kennel for compliance with the new standards.

General Public

The proposed amendments to the regulations will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments to the regulations will not result in a substantial increase in paperwork. The Department will not have to develop new application forms or review procedures, but in some cases may want to amend current forms.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulations within 60 days following publication in the Pennsylvania Bulletin.

Regulatory Review

In accordance with Section 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Department submitted a copy of the proposed amendments, on December 6, 2006, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin, and to the Independent Regulatory Review Commission (Commission). In accordance with section 5(f) of the act (71 P. S. § 745.5(f)), the Department will submit the proposed regulations and the required material to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees) no later than the second Monday after the date by which both Committees designations have been published in the Pennsylvania Bulletin. In addition to submitting the proposed amendments, the Department has provided the Commission and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If the Commission has an objection to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification must specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408; Attn: Mary Bender (717) 787-3062.

Effective date

This final regulation will be effective upon publication in the Pennsylvania Bulletin.

DENNIS C WOLFE, Secretary

Fiscal Note: 2-152. (1) General Fund (Dog Law Restricted Account); (2) Implementing Year is \$795,000; (3) 1st Succeeding Year is \$265,000; 2nd Succeeding Year is \$265,000; 3rd Succeeding Year is \$265,000; 4th Succeeding Year is \$265,000; 5th Succeeding Year is \$265,000; (4) 2005-06 Program—\$6.434 million; 2004-05 Program—\$5.062; 2033-04 Program—\$5.331; (7) Dog Law Administration; (8) recommends adoption.

Annex A

TITLE 7. DEPARTMENT OF AGRICULTURE
PART II. DOG LAW ENFORCEMENT BUREAU
CHAPTER 21. GENERAL PROVISIONS; KENNELS; LICENSURE; DOG-CAUSED DAMAGES
GENERAL PROVISIONS

§ 21.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Establishment—The premises including the home, homestead, place of business or operation of any individual or person, including a dealer, which includes all of the land, property, housing facilities or any combination thereof, on, in or through which any dog is kept, bred, harbored, boarded, sheltered, maintained, sold, given away, exchanged or in any way transferred. Establishment shall encompass all of the individuals or persons residing thereon. It may be public or private and includes an individual, person, organization, business or operation, which utilizes offsite or temporary homes to keep, maintain, breed, train, harbor, board, shelter, sell, give away, adopt, exchange, or in any way transfer dogs.

Housing facility—Any land, premises, shed, barn, building, house, trailer or other structure or area housing or intended to house dogs for any period of time.

Licensed veterinarian—A licensed doctor of veterinary medicine as defined [in section 901-A of the act (35 P. S. § 459-901-A)] by the Veterinary Medicine Practice Act (63 P. S. §§ 485.1—485.33).

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Sanitize—To make physically clean and to remove, neutralize and destroy, to a practical minimum, agents, vectors of disease, bacteria and all infective and deleterious elements injurious to the health of a dog.

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Temporary home—A place, other than a licensed kennel or veterinary office, including a personal home, land, property, premises or housing facility or any combination thereof where an individual, person, owner or keeper, keeps, maintains, breeds, harbors, boards or shelters dogs on behalf of another person, organization, business or operation for the purpose of later selling, giving away, adopting, exchanging or transferring the dogs.

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§ 21.3. Enforcement and compliance.

Unless otherwise stated, only [employees] employees of the Department [shall be] are authorized to enforce this chapter. Noncompliance with any section of the act or of this chapter or the conviction for violation of any statute relating to cruelty to animals may result in prosecution, revocation of the kennel license or nonapproval of the kennel license application.

§ 21.4. Penalties.

The act establishes penalties for violations of the various articles of the act and this part. The Department may impose the following penalties individually or in

combination. Section 903 of the act (3 P. S. § 459-903) provides the penalty for illegal or unlawful activities enumerated in the act or violations of the act for which specific criminal penalty provisions have not been enumerated. It may be applied in addition to civil penalties provided for in the act.

(1) *Article II penalty provisions.* Article II of the act (3 P. S. §§ 459-200—459-219) contains provisions regarding licensure of dogs and kennels and provides the following penalties:

* * * * *

(iii) *Failure of a kennel to comply with licensure provisions.* Consistent with section 207(a.1) of the act (3 P. S. § 459-207(a.1)), it is unlawful for a kennel to operate without first obtaining a license. **[The Secretary may file suit in Commonwealth Court to enjoin the operation of a kennel that violates any of the provisions of the act or this part and may seek the imposition of a fine of not less than \$100 nor more than \$500 for every day the kennel has operated in violation of the act or regulations.]** Failure to obtain a kennel license prior to operating any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any 1 calendar year, may result in one or more of the following actions by the Secretary:

(A) The issuance of a citation for violation of the act as allowed under the Secretary's general enforcement powers set forth in sections 901(a) and 903 of the act (3 P. S. §§ 459-901(a) and 459-903).

(B) The issuance of a Notice of Violation and time period to comply, or an order, or both, as allowed under the Secretary's general enforcement powers in section 901 of the act, followed by administrative action as may be appropriate or required under the powers in section 211 of the act (3 P. S. § 459-211). When an order is issued, the Secretary may impose a fine of not less than \$100 and not more than \$500 for every day the kennel has operated and continues to operate in violation of the licensure provisions of the act.

(C) Filing of a suit in equity in Commonwealth Court to enjoin the operation of any kennel that violates the act or this part. The Secretary may seek the imposition of a fine of not less than \$100 nor more than \$500 for every day the kennel has operated in violation of the act or regulations, as set forth in section 207 of the act (3 P. S. § 459-207(a)).

(iv) *Revocation, suspension or denial of a kennel license.* Consistent with the powers and authority established in section 211 of the act [(3 P. S. § 459-211)], the Secretary will revoke a kennel license or out-of-State dealer license if a licensee is convicted of any violation of 18 Pa.C.S. § 5511 (relating to cruelty to animals). The Secretary will not issue a kennel license or out-of-State dealer license to a person who has been convicted of a violation of the 18 Pa.C.S. § 5511 within the last 10 years. The Secretary may revoke, suspend or refuse to issue a kennel license or an out-of-State dealer license if the person holding or applying for a license has done any of the following:

* * * * *

(E) Been convicted of any law relating to cruelty to animals **and the conviction is more than 10 years old, if the Secretary finds that the crime was so heinous that the person could not yet be rehabilitated or there is evidence the person has not been rehabilitated, and granting a license would jeopardize the health, safety and welfare of the dogs.**

(v) *Seizure of dogs.* Consistent with section 211(c) of the act [(3 P. S. § 459-211(c))], the Department may seize and impound [, and direct forfeiture of ownership of a dog for the following reasons:] a dog. **The following conditions apply with regard to seizure of a dog.**

(A) *Seizure.* Upon revocation, suspension or denial of a kennel license or an out-of-State dealer license, the Department may seize and impound any dog in the possession, custody or care of the person whose license is revoked, suspended or denied if there are reasonable grounds to believe that the dog's health, safety or welfare is endangered. The person from whom the dog was seized and impounded shall pay for reasonable costs of transportation, care and feeding of the dog.

(B) Return of seized dog.

(I) If the person whose kennel license or out-of-State dealer license has been revoked, suspended or denied and whose dog has been seized and impounded provides the Department with satisfactory evidence or assurances that the dog will receive adequate care, which may include an inspection by a State dog warden or employee of the Department of the premises and buildings in which the dog will be housed, a plan of care and kennel maintenance, a signed sworn letter from a licensed veterinarian attesting to oversee the care, or other information related to care of the dog as the Department may reasonably require, and the person has paid all costs of transportation, care and feeding related to the seizure and impoundment of the dog, the Department may allow the person to retrieve the seized and impounded dog.

(II) If the owner of a seized or impounded dog is someone other than the person from whom the dog was seized and impounded, the dog owner may retrieve the dog from impoundment upon payment of the costs of transportation, care and feeding related to the seizure and impoundment of the dog. The person from whom the dog was seized and impounded shall be responsible to reimburse the dog owner for the transportation, care and feeding costs.

(C) [(C) Upon proper notice and opportunity for an administrative hearing, as set forth in section 211(c)(5) of the act (3 P. S. § 459-211(c)(5)), the Secretary may direct the forfeiture of ownership of a dog which has been seized and impounded.] The Department will not take physical possession or custody of a dog housed in a kennel whose kennel license has been revoked, suspended or denied upon any one or more of the following findings:

(I) There are no reasonable grounds to support the belief that the health, safety or welfare of the dog is endangered.

(II) The person whose license is revoked, suspended or denied has provided satisfactory evidence or assurances the dog will receive adequate care.

(vi) **Forfeiture of dog.** Consistent with section 211(c)(4) and (5) of the act, a dog seized and impounded may be forfeited or the Department may direct forfeiture of ownership of the dog for the following reasons and under the following conditions.

(A) **Voluntary forfeiture.** Ownership of the dog which has been seized and impounded may be forfeited upon the written request of the owner.

(B) **Secretary-directed forfeiture.** The Secretary may direct that ownership of a particular dog which has been seized and impounded pursuant to the revocation, suspension or denial of a kennel license be forfeited.

(I) The Secretary will serve the owner of the affected dog with written notice of forfeiture. The notice will indicate the ownership of the dog in question may be forfeited to some entity other than the Department. Notice of forfeiture will be served by personal service or by registered or certified mail, return receipt requested, to a responsible person at the kennel from which the dog was seized or the owner of the affected dog or a responsible person at the address of the owner. The notice will specify an effective date of forfeiture which will be at least 10 days from service of the notice. The notice will further inform the dog owner of the right to request an administrative hearing on the issue of forfeiture by delivering written request to the department prior to the date of forfeiture.

(II) A written hearing request shall act as a supersedeas of the forfeiture action. At the administrative hearing on the matter, the Department will have the burden of proving that the affected dog owner did not adequately care for the subject dog, or that no satisfactory evidence or assurances have been given to the Department that the subject dog will be adequately cared for if it is returned to the owner, or that the owner has abandoned the subject dog.

(III) Abandonment will be found if an owner fails to make timely payment of reasonable costs of transportation, feeding, care and veterinary expenses of the seized and impounded dog after two written requests to do so have been served by personal service or registered or certified mail, return receipt requested, upon a responsible person at the kennel from which the dog was seized or the dog owner or a responsible person as the address of the dog owner.

(2) [**Article**] **Articles V and V-A penalty provisions.** Articles V and V-A of the act (3 P. S. §§ 459-501, 459-502 and 459-507-A) contains provisions regarding offenses of dogs and provides the following penalties:

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(iii) **Failure to register and restrain a dangerous dog.** [Consistent with section 505-A(a) of the act (3 P. S. § 459-505-A(a)), a person that fails to properly register a dangerous dog, secure and maintain the liability insurance coverage required under section 503-A of the act (3 P. S. § 450-503-A), maintain the dog in the proper enclosure or fails to have the dog under proper physical restraint when the dog is outside the enclosure or dwelling of the owner shall be guilty of a misdemeanor of the third degree. In addition, a] A State dog warden or a police officer shall

immediately confiscate a dangerous dog upon the occurrence of any [of these violations] violation of section 505-A(a) of the act (3 P. S. 459-505-A(a)).

(A) The dangerous dog shall be impounded, until the final outcome of any court proceedings. The reasonable costs of transportation, care and feeding of the impounded dog shall be paid by the owner of the dangerous dog.

(B) Abandonment shall be presumed if the owner of the dangerous dog fails to make timely payment of the reasonable costs of transportation, care and feeding of the impounded dog after two written requests to do so have been served by personal service or registered or certified mail, return receipt requested upon the owner or a responsible person at the owner's last known address.

(C) When a court of competent jurisdiction finds a person guilty of violating any of the provisions of 505-A(a) of the act, the owner of the dangerous dog shall be guilty of a misdemeanor of the third degree. When the owner of the dangerous dog is found guilty of violating any of the provisions of section 505-A(a) of the act, the dangerous dog shall be forfeited to some entity other than the Department. In addition, the owner of the dangerous dog may at any time, by written request, forfeit the dangerous dog to some entity other than the Department or choose to have the dog humanely destroyed.

(iv) **Attacks by a dangerous dog.** A State dog warden or a police officer shall immediately seize and impound a dangerous dog upon the occurrence of any violation of section 505-A(b) of the act. Consistent with section 505-A(b) of the act, when [it is found] a court of competent jurisdiction finds, that a dangerous dog, through the intentional, reckless or negligent conduct of the dog's owner, attacked a human or a domestic animal, or when the dog's owner provides a written admission of the conduct and specifically waives due process rights, the dog's owner shall be guilty of a misdemeanor of the second degree and the dangerous dog shall be immediately confiscated by a State dog warden or police officer, placed in quarantine for the proper length of time and thereafter humanely killed. The costs of quarantine and destruction shall be borne by the dog's owner.

(v) **Attacks by a dangerous dog causing severe injury or death.** A State dog warden or a police officer shall immediately seize and impound a dangerous dog upon the occurrence of any violation of the provisions of section 505-A(c) of the act. Consistent with section 505-A(c) of the act, when [it is found] a court of competent jurisdiction finds, that a dangerous dog, through the intentional, reckless or negligent conduct of the dog's owner, aggressively attacked and caused severe injury to or death of a human, or when the dog's owner provides a written admission of the conduct and waives due process rights, the dog's owner shall be guilty of a misdemeanor of the first degree. The dangerous dog shall be immediately confiscated by a State dog warden or a police officer, placed in quarantine for the proper length of time and thereafter humanely killed. The costs of quarantine and destruction shall be borne by the dog's owner.

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§ 21.13. Contact information.

The Department may be contacted at the following location:

The Department of Agriculture
Bureau of Dog Law Enforcement
2301 North Cameron Street, Room 102
Harrisburg, PA 17110-9408
Telephone Number: (717) 787-4833

§ 21.14. Kennel licensure provisions.

(a) *General provisions.* The following constitutes general requirements which shall be adhered to regarding licensure of kennels in this Commonwealth.

(1) *Operation of a kennel.* A person who keeps or operates a Class I, Class II, Class III, Class IV or Class V Kennel, Boarding Kennel Class I, Class II or Class III or a nonprofit kennel shall on or before January 1 of each year apply to the Department for a kennel license or kennel license renewal

(2) *License for each class and location.* A separate and proper kennel license shall be required for each type of kennel and every location at which a kennel is kept or operated

(3) *Kennel license required.* A kennel license shall be required for any establishment upon which a cumulative total of 26 or more dogs of any age in any 1 calendar year are kept, harbored, boarded, sheltered, sold, given away or in any way transferred. The Department, based upon the application, will determine the appropriate licensure classifications.

(i) Upon reaching the cumulative total of 26 or more dogs of any age in any 1 calendar year, the establishment in question shall be required to apply for and obtain a kennel license. The establishment shall have kennel facilities that meet the regulatory requirements for all of the dogs currently on the premises or to be kept, harbored, boarded, sheltered, sold, given away or in any way transferred by the establishment, which ever number is larger.

(ii) An establishment that utilizes temporary homes and meets the threshold criteria of keeping, harboring, boarding, sheltering, selling, giving away or in any way transferring a cumulative total of 26 or more dogs of any age in any 1 calendar year shall obtain a kennel license, provide tags for the dogs in the temporary homes and maintain records meeting the criteria established in paragraph (5). The establishments shall be considered under the category established by paragraph (5)(iii)(B), regarding boarding kennel class I through boarding kennel class III and nonprofit kennel licensees. In addition, the records must set forth the location of each temporary home at which establishment dogs are kept, harbored, boarded, sheltered, sold, given away or in any way transferred, a description of each dog, a cumulative total of dogs housed at each temporary establishment, and the date each dog was transferred to the temporary home. Each temporary home utilized by the establishment shall be treated as a separate kennel location. All temporary homes shall be subject to inspection by the Department.

(iii) A temporary home that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any 1 calendar year becomes a kennel and shall meet the kennel licensure requirements of the act and this chapter.

(iv) An establishment or temporary home that does not keep, harbor, board, shelter, sell, give away or in any way transfer a cumulative total of 26 or more dogs in any 1 calendar year, shall adhere to the individual licensure requirements in sections 201–205 of the act (3 P. S. §§ 459-201–459-205) or each dog shall display the kennel tags of the licensed kennel for which the dogs are being kept as required in subparagraph (ii).

(4) *Prohibition to operate.* As set forth in section 207(a.1) of the act (3 P. S. § 459-207(a.1)), it shall be unlawful to operate a kennel, as described in section 206 of the act (3 P. S. § 459-206) and further clarified and defined in this chapter, without first obtaining a kennel license from the Department. Failure to obtain a kennel license prior to operating any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any 1 calendar year, may result in one or more of the following actions by the Secretary:

(i) The issuance of a citation for violation of the act as allowed under the Secretary's general enforcement powers in sections 901(a) and 903 of the act (3 P. S. §§ 459-901(a) and 459-903).

(ii) The issuance of a Notice of Violation and time period to comply, or an order, or both, as allowed under the Secretary's general enforcement powers in section 901(a) of the act, followed by administrative action as may be appropriate or required under the powers in section 211 of the act (3 P. S. § 459-211).

(iii) Filing of a suit in equity in Commonwealth Court to enjoin the operation of any kennel that violates any of the provisions of the act or this part. The Secretary may seek the imposition of a fine of not less than \$100 nor more than \$500 for every day the kennel has operated in violation of the act or this part, as set forth in section 207 of the act.

(5) *Kennel records.* Every kennel shall keep, for at least 2 years, a record of each dog kept at any time kept in the kennel. The records must be legible and be open to inspection and may be copied by any employee of the Department, State dog warden or police officer as defined by the act. The records must include the following information:

(i) The breed, color, markings, sex and age of each dog.

(ii) The date on which each dog entered the kennel.

(iii) From where the dog came. The records must provide the following information:

(A) For Kennel Class I—Kennel Class V licensed kennels, the following information:

(I) The name of the kennel and kennel owner from which the dogs were acquired.

(II) The address of the kennel.

(III) The Pennsylvania kennel license number or Out-of-State dealer license number of the kennel from which the dog came.

(IV) The name and address of the individual breeder of the dog, when applicable.

(V) Where applicable the name and address of the owner or keeper of the dog

(B) For Boarding Kennel Class I—Boarding Kennel Class III licensed kennels and Nonprofit Kennel licensees any of the following which is applicable:

(I) The name and address of the owner or keeper of the dog.

(II) The name, address and Pennsylvania kennel license number or Out-of-State dealer license number of the licensed kennel from which the dog came.

(III) If a stray dog found running at large or a rescued dog, the name and principle address of the organization, agency or person that last owned the dog and that of the organization, agency or person delivering the dog to the kennel.

(iv) To whom the dog belongs at the time of transfer.

(v) For what purpose each dog is kept in the kennel.

(vi) The date on which each dog leaves the kennel.

(vii) How and to whom the dog is dispersed, the record must provide the following information:

(A) When the dog is dispersed to another kennel:

(I) The name of the kennel and kennel owner to whom the dog was dispersed.

(II) The address of the kennel to whom the dog was dispersed.

(III) The Pennsylvania kennel license number or out-of-State dealer license number of the kennel to which the dog is dispersed.

(B) When the dog is dispersed to a private individual, person, organization, establishment, temporary home or other entity, the name and address of that private individual, person, organization, establishment, temporary home or other entity.

(C) Whether the dog is spayed or neutered and whether an agreement to spay or neuter the dog has been entered into.

(D) The date of the dog's last vaccination, deworming or other medical treatment and the medication administered. Any previous history of diseases treated for and past veterinary protocol of vaccinations or medication administered to the dog.

(viii) The name, address and telephone number of the licensed doctor of veterinary medicine used by the kennel.

(b) *Prohibitions on dealing with unlicensed kennels.* It shall be a violation of the act and this chapter for any kennel to keep, harbor, board, shelter, sell, give away or in any way accept, deal or transfer any dog from a kennel or establishment operating without a license in violation of sections 206, 207 or 209 of the act (3 P. S. §§ 459-206, 459-207 and 459-209), without the express written permission of the Department. In addition, it shall be a violation of the act and this chapter for any kennel to keep, harbor, board, shelter, sell, give away or in any way accept, deal or transfer any dog from a kennel that has had its license suspended or revoked, without the express written permission of the Department.

(c) *Health certificate requirement.* A dog entering this Commonwealth from another state, commonwealth or country shall have a health certificate. A person, licensed kennel, establishment or temporary home accepting a dog from another state, commonwealth or country shall assure a health certificate accompanies each dog and copy and record the health certificate which shall become part of their records. In accordance with section 214 of the act (3 P. S. § 459-214), it shall be unlawful to transport any dog into this Commonwealth, except dogs temporarily in this Commonwealth as defined in section 212 of the act (3 P. S. § 459-212), without a certificate of health prepared by a licensed doctor of veterinary medicine. The health certificate or a copy thereof must accompany the dog while in this Commonwealth. The health certificate must state that the following conditions have been met:

(1) The dog is at least 7 weeks of age.

(2) The dog shows no signs or symptoms of infectious or communicable disease.

(3) The dog did not originate within an area under quarantine for rabies.

(4) After reasonable investigation, the dog has not been exposed to rabies within 100 days of importation.

(5) The dog has been vaccinated for rabies in accordance with the Rabies Prevention and Control in Domestic Animals and Wildlife Act (3 P. S. §§ 455.1—455.12). The health certificate must show the vaccine manufacturer, the date of administration of the rabies vaccine and the rabies tag number.

§ 21.15. Exemptions.

Dog control facilities authorized to receive grants under section 1002(a) of the act (3 P. S. § 459-1002(a)) shall be exempt from the following provisions:

(1) Section 21.22(d) and (e) (relating to housing) requiring quarantine and separation of puppies and adult dogs received from another kennel facility or acquired from another person.

(2) Section 21.23(b) (relating to space) which doubles the minimum amount of floor space. The facilities will not be required to double the quotient arrived at after calculating the minimum amount of floor space.

KENNELS—PRIMARY ENCLOSURES

§ 21.21. Dog quarters.

(a) Indoor and outdoor housing facilities for dogs shall be maintained in a manner to protect the dogs from injury, **insure the sanitary conditions required in this part have been compiled with and shall be maintained in a manner complying with the other conditions required by this chapter** and to contain the dogs.

(b) The interior building surfaces of housing facilities shall be constructed and maintained so that they are water resistant and may be readily sanitized. **Outdoor facilities shall be constructed in a manner to allow them to be readily sanitized, to assure the dogs have a mud free area and to assure there is no standing or pooled water.**

(c) Adequate drains or gutters, or both, shall be provided to rapidly eliminate excess water from **both indoor and outdoor housing facilities and other areas such as outdoor runs and exercise areas.**

(d) Entryways and exits shall be maintained so that, when the gate or enclosure is opened, the dog will have unfettered clearance out of the enclosure.

(e) Where the primary enclosures are stacked or set side by side, a tray, wall, partition or other device approved by the Department which does not allow for feces and urine to pass between primary enclosures or soil the primary enclosure of another dog, shall be placed under or between, or both, the primary enclosures. The tray, wall, partition or approved device must be impermeable to water, removable and able to be easily sanitized.

§ 21.22. Housing.

(a) Dogs that display ferocious or aggressive behavior shall be kept **[inaccessible to other dogs]** in a manner so as to be unable to come in physical contact with other dogs.

* * * * *

(c) **[Adult dogs shall be segregated by sex except for health, welfare or breeding reasons.**

(d) **[Dogs that are not acclimated to the outdoor temperatures prevalent in the area or region where they are maintained, breeds of dogs that cannot tolerate the prevalent outdoor temperatures without stress or discomfort (such as short-haired breeds in cold climates), and sick, infirm, aged or young dogs may not be kept in outdoor facilities [unless that practice is specifically approved by the attending veterinarian].**

(d) Puppies not born in the receiving kennel facility or establishment, that are brought into a kennel from another kennel facility or acquired from another person shall be quarantined from other dogs and puppies in the receiving kennel facility for a minimum of 14 days or for the time period necessary to allow for treatment of any disease, prevent the spread of parasites or new strains of bacteria or viruses and to allow the puppies to acclimate to the new kennel environment, which ever is longer. Each group of puppies arriving from another kennel facility, person or establishment shall be quarantined together and kept separate from other groups of puppies arriving at the receiving kennel facility or establishment from a different kennel facility, person or establish-

ment and shall be kept separate from the current kennel population of the receiving kennel facility or establishment.

(e) **Adult dogs entering a kennel facility or establishment, that are brought into a kennel from another kennel facility or acquired from another person or individual, that exhibit signs of parasites or disease or that have no record of vaccinations, shall be quarantined until adequate veterinary care has been provided to arrest the parasites or disease and until proper vaccinations can be given and become effective or all of the requirements have been met, when applicable. A release from the treating licensed veterinarian shall be adequate to allow the dog to enter the kennel population.**

§ 21.23. Space.

(a) Primary enclosures **[shall]** must be constructed and maintained to provide sufficient space to allow each dog to turn about freely and to stand erect, sit and lie down in a comfortable, normal position. **The dog shall be able to lie in a lateral recumbence (on its side or back) with legs fully extended, without head, tail, legs, back or feet touching any side of the enclosure.**

(b) Each dog housed in a primary enclosure shall be provided with **[a]** twice the minimum amount of floor space**[, which]** set forth in this subsection. The minimum amount of floor space shall be calculated according to the following procedure:

* * * * *

(e) **[Subsections (b) and (c) do not apply if all of the following conditions are met:**

(1) **The dog is located in a kennel that is licensed under the act solely as a pet shop-kennel Class I, II, III or IV.**

(2) **The dog is being offered for sale on a retail basis, or has been sold and is awaiting physical transfer to its new owner.**

(3) **The dog is maintained in a primary enclosure that keeps the dog on display to patrons of the pet shop-kennel during its normal business hours.**

(4) **The primary enclosure meets one of the following conditions:**

(i) **Affords each dog sheltered therein at least 5 square feet for a dog weighing 25 pounds or less, 8 square feet for a dog weighing more than 25 pounds but not more than 45 pounds, and 12 square feet for a dog weighing more than 45 pounds.**

(ii) **Has been approved by the attending veterinarian, in advance and in writing, as being of adequate size to protect the health and well-being of the particular dog or dogs sheltered therein.]**

In addition to the space requirements, each dog shall receive 20 minutes of exercise per day. Dogs shall be observed and supervised during exercise and shall be exercised the following manner:

(i) **Walked on a leash by a handler or put in an exercise area.**

(ii) **An exercise area must meet the following criteria:**

(A) The space per dog must be consistent with § 21.24(b)(3) (relating to shelter, housing facilities and primary enclosures).

(B) Fencing must be adequate to prevent dogs from escaping from the exercise area and shall be kept in good repair and free of rust, jagged edges or other defects which could cause injury to the dogs.

(C) The exercise area must be equipped in a manner to allow dogs to be exercised even during inclement weather and to protect the dogs from becoming wet, matted or muddy during the exercise.

(D) The provisions regarding the type of materials utilized for flooring in § 21.24(b)(6) apply.

(E) The same sanitation requirements in § 21.24(b)(8) and (9) and the applicable provisions of § 21.29 (relating to sanitation) apply.

(iii) Dogs put in an exercise area shall be segregated in the following manner:

(A) Small dogs (35 pounds and less) shall be exercised together and may not be put in the same exercise area with medium or large dogs.

(B) Medium sized dogs (36 pounds but less than 60 pounds) shall be exercised together and may not be put in the same exercise area with small or large dogs.

(C) Large sized dogs (61 pounds but less than 90 pounds) shall be exercised together and may not be put in the same exercise area with small or medium dogs.

(D) Giant sized dogs (91 pounds and greater) shall be exercised together and may not be put in the same exercise area with small, medium or large dogs.

(E) Aggressive or antisocial dogs shall be exercised alone.

(F) Spayed and neutered dogs may be exercised together. Otherwise males and females shall be separated and may not be exercised at the same time in the same exercise enclosure.

(G) Nursing bitches may be exercised separately with their puppies.

(iv) The Department may exempt a dog from exercise for a period of time, if a licensed veterinarian has determined the dog has an injury or other physical condition that would cause exercise to endanger the health, safety or welfare of the dog. The determination must be in writing, be for a time period limited to the amount of time medically necessary to recover from the injury or illness, state the specific medical condition and reason for the exemption and list the time period for the exemption.

(v) Daily records of exercise shall be kept for each dog in the kennel. The records, at a minimum, must set forth:

(A) The breed, color, markings, sex, approximate weight and age of each dog or when applicable, the microchip number of each dog.

(B) The date and the time period each dog was exercised and whether the exercise was on a leash or in an exercise area.

(C) Any medical exemption written by a veterinarian licensed to practice in this Commonwealth.

§ 21.24. [Shelters] Shelter, housing facilities and primary enclosures.

(a) *General.* [Dogs] All dogs shall be provided access to shelter which protects them against inclement weather and excessive temperatures (as set forth more specifically in § 21.25 (relating to temperature control), preserves their body heat and keeps them dry. Housing facilities and primary enclosures for dogs shall be constructed [to] so that they are structurally sound, be kept in good repair at all times and provide for the health, safety, welfare and comfort of the animals.

(b) *Outdoor housing facilities.* Shelter shall be provided for dogs kept outdoors. Sufficient clean bedding material or other means of protection from the weather shall be provided. Dogs that are not acclimated to the temperatures prevalent in the area or region where they are being maintained, breeds of dogs that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climate or cold climate breeds—such as huskies—in warm climates), and sick, infirmed, aged or young dogs, may not be kept in outdoor facilities. When a dog's acclimation status is unknown, it may not be kept in an outdoor facility when the ambient temperature is less than 50° F.

(1) Dogs housed in outdoor facilities or outdoor primary enclosures shall be provided with one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to meet the space requirements of this chapter. In addition to the shelter structures, at least one area of shade other than the dog box or primary enclosure itself shall be provided. The area of shade must meet the following criteria:

(i) Be constructed as a permanent fixture. A tarp may not be considered a permanent fixture.

(ii) Be immediately outside the dog box or primary enclosure to assure the dog has a mud and water free area in which to stay dry before entering the dog box or primary enclosure.

(iii) Be constructed to allow for sufficient air movement to keep the dog comfortable in event of excessive heat and to provide all the dogs housed in that area protection from the direct rays of the sun.

(iv) Be as wide as the kennel run area and at least 4 feet in length or large enough to contain all the dogs in that kennel run area at the same time and provide them with a permanent area of shade and protection from inclement weather throughout the day, whichever is larger. It must be large enough to allow each dog in the kennel run area to sit, stand and lie in a normal manner and to turn about freely. In addition, it must be large enough to allow all dogs in the kennel run area to avoid the elements—including direct sunshine and inclement weather.

(2) Dogs housed in outdoor facilities shall be provided with a flat and level surface for housing and for exercise. Outdoor facilities and exercise areas must have a slope of at least 1/8 inch per foot to provide drainage, but may not be placed on a slope of more than 6 inches per 10 feet. The slope

must be situated to assure drainage away from the primary enclosure and away from any adjacent primary enclosure and run associated with that primary enclosure.

(3) The run associated with each dog box or primary enclosure of an outdoor facility must be at least five times the length of the largest dog in that run and two times as wide as the length of the largest dog in that run, as measured from the tip of its nose to the base of its tail, and allow each dog convenient access to the primary enclosure or dog box, permanent shade area and food and water containers.

(4) The dog box or primary enclosure for a dog housed in an outdoor facility must have dry and clean bedding at all times to assure the dog can maintain its body heat and in order to provide sanitary conditions for the dog.

(5) Where a dog is housed in an outdoor facility, the primary enclosure or dog box itself must be raised off the ground to prevent moisture, constructed and situated to provide a draft free area (a dog door is recommended) and insure the dog can stay dry and maintain its body heat.

(6) The primary enclosure or dog box must contain a roof, four sides and a floor and meet the following requirements:

(i) Provide the dogs with adequate protection and shelter from the cold and heat.

(ii) Provide the dogs with protection from the direct rays of the sun and the direct effect of wind, rain or snow.

(iii) Provide for a wind break and rain break at the entrance.

(iv) Contain clean and dry bedding material at all times and additional clean and dry bedding shall be required when the temperature is 35° F or lower.

(7) Building surfaces in contact with dogs in outdoor housing facilities, including indoor or primary enclosure floor areas, outdoor floor areas when the floor area is not exposed to the direct sun, or are made of a hard material such as wire, wood, metal or concrete and all walls, boxes, houses, dens and other surfaces in contact with the dog must be impervious to moisture. Surfaces of outdoor housing facilities—including houses, primary enclosures, dens and shelters—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled. Wood surfaces must be painted with a nontoxic paint and in a light color so that it does not absorb heat.

(8) Outdoor runs and exercise areas may be constructed of concrete, gravel or stone. If gravel or stone is utilized, it must be constructed in layers to provide proper drainage and footing that will not cause injury to the dogs. The first layer of gravel or stone must be a course layer of number 2, 3 or 4 crushed durable rock and the top layer of gravel or stone must be a fine layer which fills in the courser layer of stone or gravel and results in an even surface. The first layer must be of a thickness adequate to provide proper drainage (approximately 4–5 inches) and the top layer must be of a thickness adequate to assure none of the bottom layer stones are protruding (approximately 2–5 inches). The surfaces shall be kept in good repair at

all times. Cracks or chips in concrete shall be repaired as soon as weather permits. Repairs to stone or gravel surfaces shall be done as necessary to prevent protrusion of the course first layer and to repair any holes or depressions caused by compaction of the materials or digging by the dogs. Pulverized stone, sand, sawdust or any other material that cannot be readily hosed down and sanitized or that may cause respiratory or digestive problems for the dogs may not be utilized.

(9) Outdoor facilities must be fenced and be constructed to minimize or prevent vermin, animal, insect and pest infestation and other vectors of disease.

(10) Outdoor facilities must be constructed and maintained in a manner and in an area that assures adequate and proper drainage and elimination of standing water, pooled water and mud—even in times of severe weather conditions. The outdoor facility and drainage system must be constructed to insure the animals stay dry and are not subjected to wet, muddy or unsanitary conditions. Outdoor facilities shall be cleaned of all feces and sanitized to wash away urine, and kill all parasites, fungus and other disease causing elements. The facilities shall be cleaned and sanitized every 24 hours and in a manner consistent with this chapter.

(11) Outdoor facilities, including runs and exercise areas shall be kept free of grass and weeds. Grass and weeds shall be cut back from the sides of runs and exercise areas to a distance of 5 feet to help prevent tick, flea and other parasite infestation. Where pesticides are used, the owners shall consult a licensed veterinarian with regard to the proper pesticides to use to assure the health, safety and welfare of the dogs.

(c) *Tethers.* If [dog houses with tethers are used as primary enclosures for dogs kept outdoors] dogs are attached to primary enclosures by means of a tether, the [tethers] tether used shall be placed or attached so that [they] the dog cannot become entangled with other objects or come into physical contact with other dogs in the housing facility, and to allow the dog to roam to the full range of the tether. The tether [shall] must be of a type commonly used for the size dog involved and [shall] be attached to the dog by means of a well-fitted collar or body harness that will not cause trauma or injury to the dog. The tether [shall] must be a minimum of 6 feet long or at least [three] five times the length of the dog as measured from the tip of its nose to the base of its tail, whichever is longer, and must allow the dog convenient and unfettered access to the dog house, permanent shade area and food [or] and water [container] containers. The facilities must meet the requirements in subsection (b)(1), (2) and (4)–(8).

* * * * *

(e) *Solid resting surface.* [Coated metal strand flooring shall be installed by June 29, 2001. Coated metal strand 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 material that is impervious to water or moisture and shall be kept in a sanitary condition in accordance with § 21.29 (relating to sanitation).

(f) **Housing facilities—general.** The following criteria apply to both indoor and outdoor facilities:

(1) A dog may not be housed on a temporary or permanent basis in a drum or barrel dog house, regardless of the material of which the drum or barrel is constructed. Metal barrels, drums, cars, refrigerators, freezers or like materials may not be used as primary enclosures or shelter structures.

(2) The interior surfaces of all primary enclosures must be free of rust, jagged edges and sharp points or any object which may cause harm or injury to the dog.

(3) 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 (such as a suspended ceiling with replaceable panels).

(4) Housing facilities and the systems installed therein and food and bedding storage areas must be constructed in a manner that minimizes vermin, insect and pest infestation and other vectors of disease.

(5) Housing facilities and areas used to store food or bedding must be free of any accumulation of trash, waste, garbage or other discarded material.

(6) The animal areas in housing facilities must be kept clean, neat and free of clutter, including trash, waste, garbage, equipment, furniture and stored material. The area may contain materials actually used and necessary for cleaning the area and fixtures or equipment necessary for proper animal husbandry practices.

(7) Animal waste including bodily fluids, food waste, soiled bedding, dead animals, garbage and water that is dirty and no longer potable shall be removed from all areas of the housing facility and disposed of on a daily basis to minimize or prevent contamination and disease risks to the dogs. Where water is removed, the operator shall immediately provide new potable water to the dog.

(8) Records shall be kept in accordance with the act and §§ 21.14(a)(5) and 21.41 (relating to kennel licensure provisions; and general requirements) must evidence, among the other provisions, the date and time of day following conditions were met:

- (i) The housing facility was cleaned.
- (ii) The housing facility was sanitized.
- (iii) Each individual cage, dog box or primary enclosure was cleaned.
- (iv) Each food and water bowl was sanitized.
- (v) New food and potable water was provided each dog.

(9) The housing facility must have and be equipped to provide potable water for all the dogs' drinking needs and for all other animal husbandry requirements.

(10) The housing facility must have adequate heating, cooling, ventilation and lighting mechanisms, as set forth more specifically in §§ 21.25—21.27 (relating to temperature control; ventilation in housing facilities; and lighting and electrical systems), and for carrying out necessary animal

husbandry requirements and to provide for the general health, safety and welfare of the dogs.

(11) The housing facility including outdoor kennel housing must be equipped with waste disposal and drainage systems that are constructed and operated in a manner that allows for the rapid elimination of animal waste and water and that insures the animals stay dry. The drainage system must be properly constructed, installed and maintained.

(i) Where the kennel is an indoor kennel with no outside runs, a gutter and drain shall be provided for sluicing waste waters during kennel cleaning. The kennels must have adequate holding facilities to allow a dog to be outside its primary enclosure during the washing of that primary enclosure and until there has been adequate drying of the primary enclosure.

(ii) Floor or surface drains and gutters must be at least 6 inches in diameter.

(iii) Where an indoor kennel has outside runs attached, drains or gutters shall be installed between the indoor and outdoor section of the kennel for sanitation and drainage purposes. Half round pipe shall be installed in these areas to permit the dog to walk through. The indoor kennel and the outdoor run must be separated by a guillotine, swinging or sliding door or some other device or means approved by the Department, to allow isolation of the dogs during cleaning operations.

(iv) Outdoor kennel runs must be sloped to a gutter located immediately outside of the end fence of each run and shall meet the criteria established in subsection (b)(1)—(3) and (6)—(9). Indoor kennels with outdoor runs must also have indoor drains or gutters.

(v) Drains and gutters shall be sanitized at least once daily and flushed immediately after cleaning with potable water to prevent sanitation problems.

(vi) Where a closed drainage system is used, it must be equipped with traps to prevent the backflow of gases and the backup of sewage into the housing facility. Drain traps must be deep enough to prevent freezing of water in cold weather.

(vii) The floor or surface of the indoor or outdoor kennel must be sloped, situated and constructed in a manner which assures the urine and feces are eliminated from the areas occupied by the dog or dogs housed in that enclosure and in a manner to assure the urine and feces do not wash into the area occupied by another dog. The kennel floor or surface must be sloped (at least 1/8-inch per foot) to the gutter or drain to allow for quick water drainage and drying.

(12) Containers utilized to hold trash, medicine, chemicals, toxins or other substances within the housing facility and in any food storage or food preparation area must be leak proof and must have tightly fitting lids on them at all times, and be manufactured so as to not be accessible to or destructible by a dog.

(13) Supplies of food and bedding shall be kept in a building or permanent structure which assures they are kept dry and prevents contamination and

vectors of disease. Spoiled food or wet or moldy bedding shall be discarded and may not be fed to the dogs or utilized.

(14) Open supplies of food or bedding shall be kept in leak proof containers with tightly fitting lids to prevent contamination, vermin infestation and spoilage.

(15) Substances that are toxic to dogs, including those substances necessary for normal animal husbandry practices, may not be stored in food storage or preparation areas. Those substances may be stored in the animal areas only if they are contained in cabinets, containers or in some other secure manner, all of which are manufactured so as to not be accessible to or destructible by a dog and that prevents inadvertent or accidental contact with the dogs.

(16) Washing facilities, which may include washrooms, basins, sinks or showers, shall be provided for animal caretakers, shall be readily accessible and, where dogs are housed in an indoor facility, shall be accessible in the housing facility. Washing facilities shall be equipped with an adequate supply of potable water (both hot and cold), towels and soap or other disinfectant. Potable water is water which has been approved for human consumption. If water lines are not available, a water trailer and immersion heaters shall be provided.

(17) If another business is operated on the same premises as the establishment, that business shall be physically separated from the actual housing facilities for the dogs in a manner (such as a wall) that will not allow uncontrolled ingress or egress by the dogs or other animals.

(18) Kennel facilities shall be cleaned and sanitized once every 24 hours in a manner consistent with this chapter.

§ 21.25. Temperature control.

* * * * *

(b) [Shade] In outdoor and sheltered housing facilities, a permanent area of shade shall be provided, as set forth in § 21.24(b)(1) (relating to shelter, housing facilities and primary enclosures), to protect the dogs from the direct rays of the sun.

(c) Auxiliary temperature control and air movement from fans, blowers or air conditioners shall be provided when the ambient temperature is 85° F (29.5° C) or higher.

(d) Indoor kennels shall have a heating source sufficient to assure a slab temperature of not less than 35° F and not more than 55° F during heating season.

(e) Indoor kennels and the sheltered part of sheltered housing facilities shall be sufficiently heated and cooled to protect the dogs from temperature or humidity extremes and to provide for their health and well-being.

(1) *Heating.* The ambient temperature in the facility may not fall below 50° F for dogs 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 infirmed dogs.

(2) *Cooling.* The ambient temperature in the facility may not rise above 85° F.

§ 21.26. Ventilation in [indoor] housing facilities.

(a) *Indoor and sheltered housing facilities.* Indoor housing facilities and the sheltered part of sheltered housing facilities for dogs shall be sufficiently ventilated when dogs are present to minimize drafts, odors, ammonia levels and to prevent moisture condensation. Ventilation shall be provided by natural means [of] such as windows, doors, vents and building shell design or by mechanical means such as ventilators, air exchange fans, forced air reversible fans or air conditioners.

(1) Kennels must be equipped and meet the minimum air flow required for control of moisture condensation under severe conditions, which is 0.8 to 1.0 cubic feet per minute per square foot of floor area.

(2) The ventilation system in the kennel building shall provide at least six air changes per hour.

(3) The kennel building must include ground level ventilation to assure dry kennel run floors during cold weather.

(4) The ventilation system for latrines and support buildings must be separate from the ventilation system for the kennel building. Kennel support buildings, such as supply buildings, must have a ventilation system that provides at least one air exchange per hour.

(5) The ventilation requirements may be achieved through design of the building shell and natural air flow or by means of auxiliary air movement systems. Where auxiliary air movement systems are required or utilized to achieve the required air exchanges, the kennel must still have doors and windows which can be opened to allow air flow in the event of a system malfunction.

(b) *Other requirements.* In indoor, sheltered and outdoor facilities, [Auxiliary] auxiliary ventilation and air movement from fans, blowers or air conditioners shall be provided when the ambient temperature is 85° F (29.5° C) or higher. The relative humidity shall be maintained at a level that ensures the health and well-being of the dog housed therein in accordance with generally accepted husbandry practices.

§ 21.27. Lighting [in indoor housing facilities] and electrical systems.

[Indoor] (a) *Lighting.* Lighting in the kennel building is required for safety and security. Kennel housing facilities [in kennels shall] must have ample lighting by natural or artificial means. Lighting [in indoor housing facilities shall] must be sufficient to allow observation of the physical condition of the dogs [so housed,] and to allow observation of the sanitary condition of the [indoor] housing facility.

(1) Dogs housed in [these] indoor and sheltered kennel facilities shall be provided a regular diurnal lighting cycle. The lighting must be uniformly diffused throughout the animal facility. Primary enclosures must be placed to protect the dogs from excessive light. Lighting in the kennel building and area containing the primary enclosures must be at least 10-foot candles. At least 20-foot candles of

light must be provided in all bathing, grooming and toilet areas and 70-foot candles of light shall be provided in support buildings, including food preparation and storage areas.

(2) Lighting must be available for dogs housed in outdoor kennel facilities. The lighting must be sufficient to allow observation of the physical condition of the dogs even at night. Primary enclosures shall be placed to protect the dogs from excessive light and direct rays of the sun.

(b) *Electrical systems.* Receptacle circuits in areas to be washed down or subjected to spraying shall be provided with ground fault circuit interrupters. Electrical sockets (inside and out) must be the all-weather type with a spring cover.

§ 21.28. Food, water and bedding.

Contagious diseases, including infectious canine hepatitis, leptospirosis and parvovirus are spread through the urine of dogs and rats and stools, vomit and urine of dogs. To protect the health, safety and welfare of dogs housed in kennels, the cleaning and sanitation requirements in this section shall be followed.

[(a)] (1) Dogs kept in kennels shall be fed at least once each day unless otherwise directed by a veterinarian. The food [shall] must be free from contamination [or], mold and disease, and [shall] be of sufficient quantity and nutritive value to maintain the health of the dogs. Wet, moldy, soiled or inedible food shall be disposed of promptly—meaning within 2 hours of feeding—and feeding bowls shall be cleaned with detergent and hot water at least daily and always prior to the next feeding. Water bowls shall be cleaned with detergent and hot water on at least a daily basis or whenever urine, stools or vomit are present in the bowl, whichever is more frequent.

[(b) If potable water is not accessible to the dogs in their primary enclosures, potable fluids shall be offered to the dogs at least 6 hours daily] (2) Potable water shall be available to the dogs at all times unless otherwise directed by a veterinarian. The water must be free of stools, urine, vomit and other contaminants at all times. The water in dog bowls may not be frozen. The Department may require that a kennel licensee have samples of the water that it provides to dogs analyzed to confirm potability, and may require a licensee to submit the results of the water analysis to the Department. The analysis [shall] will be conducted at the licensee's expense. The Department may also sample and analyze the water.

[(c)] (3) Food and water receptacles shall be accessible to dogs kept in the kennel and shall be located to avoid contamination by excreta. The receptacles [shall] must be durable, meaning a dog cannot destroy or ingest parts of the receptacle, and shall be kept clean and sanitized in accordance with this section. Self-feeders and waterers may be used but shall be sanitized [regularly] on a daily basis to prevent [molding] mold, deterioration, contamination or caking of feed.

[(d) If bedding is] (4) Bedding used in primary enclosures, [it] shall be kept clean and maintained in that manner on a daily basis. Bedding must be free of stools, urine, vomit and other contaminants.

§ 21.29. Sanitation.

[(a) Excreta shall be removed from the primary enclosure, including any floor area or ground surface beneath the primary enclosure, on a daily basis.

(b) Primary enclosures for dogs shall be sanitized a minimum of once daily, and as often as is necessary to prevent an accumulation of debris or excreta or a disease hazard. A dog may not be placed in a primary enclosure previously occupied unless the enclosure has been sanitized.

(c) The buildings and grounds of kennels shall be maintained, kept clean and in good repair to protect the animal from injury and to facilitate practices required by this chapter. Kennels shall have an effective program that controls ingress by insects, ectoparasites and avian and mammalian pests. Evidence of insects, ectoparasites and avian and mammalian pests or conditions that would allow or encourage infestation in a kennel are indicative of an ineffective program and unsanitary environmental sanitation in the kennel.]

Contagious diseases, including infectious canine hepatitis, leptospirosis and parvovirus are spread through the urine, stools and vomit of dogs and rats. To protect the health, safety and welfare of dogs housed in kennels, the cleaning and sanitation requirements in this section shall be followed.

(1) Kennels, including the kennel building, areas in which dogs are housed, all interior surfaces, the primary enclosure of each dog, outdoor runs associated with both indoor and outdoor kennels, and drains and gutters shall be sanitized and disinfected daily (every 24 hours), using only those disinfecting products approved by a licensed veterinarian. All areas of the kennel, including the kennel building, areas in which dogs are housed, the primary enclosure of each dog, drains, gutters, runs and outdoor exercise areas shall be kept in a state of good repair and outdoor runs and exercise areas shall be free of weeds. All areas of the kennel shall be cleaned daily or as often as possible to assure they are free of any accumulation of debris, excreta or disease hazard.

(2) A dog may not be placed in a primary enclosure previously occupied unless the enclosure has been sanitized and disinfected. The primary enclosure and runs associated with that primary enclosure shall be sanitized and disinfected whenever an animal is removed from that primary enclosure and prior to being occupied by another animal. Exercise areas shall be sanitized and all stools removed prior to the next group of dogs being exercised in that area.

(3) Dogs shall be removed from their enclosures while the enclosure is being sanitized and washed down.

(4) Excreta shall be removed from the primary enclosure, including any floor area or ground surface beneath the primary enclosure, on at least a daily basis. Stools are a common source of infection and shall be removed from the runs as often as necessary. Before washing down concrete runs, stools shall be removed with a shovel to prevent them from splashing into adjacent runs, on the walls of the kennel, or on the dog. The method of

disposing of stools depends on local conditions and the type of sewage system present. If stools must be carried from the area in cans, the cans shall be cleaned and disinfected on a daily basis.

(5) One of the causes of bacterial skin infections and bacterial ear infections in kennels is the high humidity in the kennels. For this reason, when cleaning or sanitizing the kennels animals shall be removed from their primary enclosure and runs prior to cleaning or sanitizing the primary enclosure or run. The runs and floor areas associated with the primary enclosure shall be squeegee dried and the primary enclosure shall be dried prior to putting the animal back in the run or primary enclosure

(6) The buildings and grounds of kennels, as well as the primary enclosures, runs, fencing and food and water receptacles shall be maintained, kept clean and in good repair to protect the animal from injury and to facilitate practices required by this chapter. The entire kennel area must be free of refuse and garbage that could attract rats, vermin, insects and other vectors of disease.

(7) Kennels must have an effective program that controls ingress by insects, ectoparasites and avian and mammalian pests (such as fleas, ticks, mites and intestinal parasites). Evidence of insects, ectoparasites and avian and mammalian pests or conditions that would allow or encourage infestation in a kennel are indicative of an ineffective program and unsanitary environmental sanitation in the kennel. Mosquito control measures shall be used in ditches and swampy areas in the vicinity of the kennels. Disinfectants, pesticides and disinfectant procedures shall be used only with the approval of the veterinarian.

§ 21.30. Condition of dog.

[An employe] A State dog warden or other employe of the Department [may] entering or inspecting a kennel or entering onto the premises of a kennel or a person or individual dog owner or keeper for the purpose of enforcing the act, shall visually observe the physical condition of [a] each dog sheltered at [a] the kennel or on the premises of the person or individual. A dog sheltered at a kennel shall be free of infectious and contagious diseases, and shall be in general good health. If a dog exhibits signs of an infectious or contagious disease, parasites or appears to be in poor health, the kennel owner shall [have] provide the State dog warden or employe of the Department with proof of adequate veterinary care for the dog. A State dog warden or employe of the Department may order a veterinary check on any dog that exhibits signs of an infectious or contagious disease, parasites or the appearance of poor health. When a veterinary check is ordered, the kennel owner, person or individual who is the owner or keeper of the dog shall provide the Department, within 72 hours of the order, with proof that the veterinary check has been carried out and with documentation concerning the veterinary recommendation or protocol for treatment of the dog.

KENNELS—RECORDS

§ 21.41. General requirements.

* * * * *

(b) Kennels shall maintain records as required by section 207 of the act and § 21.14(a)(5) (relating to kennel licensure provisions). Records shall be maintained on forms issued or approved by the Department.

(c) Records shall be provided to the Department and to State dog wardens upon request.

(d) The records shall be subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(e) In addition to the records required under section 207 of the act, every keeper of a kennel shall keep a record of the following for each dog housed in the facility:

(1) The date, time and detail of daily feedings, cleaning of kennel, and changing and refreshing potable water.

(2) The date, time and detail of exercise activity of the dog.

(3) The date, time and detail of any medication administered to a dog.

(4) Any accident or incident in which the dog is injured.

(5) The date and time of any veterinary care administered.

(6) Records of veterinary care for each dog.

(7) Any veterinary ordered or voluntary protocol for vaccination, medication or other recommendation for medical treatment of the dogs.

§ 21.42. Bills of sale.

(a) Bills of sale required in section 210 of the act (3 P. S. § 459-210) shall accompany dogs at the kennel location and when the dogs are being transported. It is the intent of this section that the bill of sale can be immediately produced when requested by an [employe] employe of the Department or police officer as defined by the act. Bills of sale [shall] must contain the following information:

* * * * *

(b) It shall be a violation of the act and this chapter for a kennel owner, operator or agent to purchase, accept, sell on behalf of or transport a dog from a kennel required to be, but not licensed under section 207 or 209 of the act (3 P. S. §§ 459-207 and 459-209) without written permission from the Department.

LICENSURE

§ 21.54. Dog and kennel license issuance date.

All classes of individual dog licenses [and kennel licenses] shall be issued by the county treasurer beginning December 1 for the following calendar year. All classes of kennel licenses will be issued by the Department beginning January 1 of the calendar year for which the kennel license is valid.

DOG [-] OR COYOTE CAUSED DAMAGES

§ 21.61. Conditions and limitations for payments.

(a) For the purposes of administering Article VII of the act (3 P. S. §§ 459-701—[459-705] 459-706), no claim for dog [-] or coyote-caused damages will be investigated, nor will an application for reimbursement be approved by the Department unless the claimant [reports the loss to an employe of] files a written, signed complaint with the Department within 5 business days of the [occurrence] discovery of the damage or loss. The complaint must contain the information required by sections 701(b), 701.1(b) and 706(b) of the Act corresponding to the claim (3 P. S. §§ 459-701(b), 459-701.1(b) or 459-706(b)).

(b) No payment will be made for a loss under this chapter unless the injured [,] or killed livestock or poultry or game [birds] bird raised in captivity [are available to be inspected and appraised by the Department] was confined in a field or other enclosure adequate for confinement of the animal at the time of the attack, the damage was not caused by a dog owned or harbored by the owner of the damaged animal and the owner of the offending dog is unknown. The damaged animal must be available to be inspected and appraised by the Department; or in the case of a reimbursement claim for rabies, the claimant can provide to the Department a certificate from a licensed doctor of veterinary medicine and a report from any laboratory approved by the Department to the effect that the animal was affected with rabies.

(c) No payment will be made by the Department for claims for livestock, poultry or domestic game birds raised in captivity if [the claimant was found negligent in not confining the animals or birds] if the Department finds [the animals] the animal or birds injured or killed was not confined within a proper enclosure.

§ 21.62. [Appointment of disinterested citizen] (Reserved).

[(a) Under section 701 of the act (3 P. S. § 459-701), if either the owner of the dog or owner of the livestock or poultry do not accept the determination of the appraiser, the owner may request the appointment of a disinterested, qualified citizen to determine the amount of damage sustained. The citizen shall be agreeable to the owner of the dog, if known, owner of the livestock or poultry, and the Department.

(b) A disinterested, qualified citizen shall be knowledgeable as to the value of the type of animal killed or injured.]

§ 21.63. Determination and appeal of damages.

(a) An investigation and a determination of damages, if any, shall be made by the State dog warden as set forth in section 701(d) and (e), 701.1(d) and (e) or 706(d) and (e) of the act (3 P. S. §§ 459-701(d) and (e), 459-701.1(d) and (e) and 459-706(d) and (e)).

(b) When the State dog warden dismisses a complaint, the complainant may appeal the dismissal of the complaint directly to the Department. The appeal shall be filed with the Department within 30 days of the issuance of the determination to dismiss

the complaint. The complainant and the Department shall proceed as set forth in section 701(g), 701.1(g) or 706(g) of the act.

(c) A complainant may appeal the amount of a damage award determined by the State dog warden under section 701(e)(1)(ii) or 706(e)(1)(ii). The appeal shall be filed with the Department within 30 days of the issuance of the determination. The complainant and the Department will proceed to arbitration as set forth in section 701(f), 701.1(f) or 706(f) of the act.

(d) A complainant may appeal the amount of a damage award determined by an arbitrator. The appeal shall be filed with the Department within 30 days of the issuance of the determination. The complainant and the Department will proceed as set forth in section 701(g), 701.1(g) or 706(g) of the act.

§ 21.64. Certification of payment of claims.

Payment will not be made for a claim which has already been paid by the claimant's insurance carrier. Before payment will be made by the Department, the claimant shall complete and sign a form prepared by the Department, certifying under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), that he has not received payment for damages from any other person.

§ 21.65. Killing of dogs causing damages.

As set forth in section 704 of the act (3 P. S. § 459-704), where the identity of the owner of the dog causing the damages has been established, the Secretary may order the owner of the dog to have the dog immediately euthanized.

(1) The owner shall have 10 days to comply with the order of the Secretary.

(2) Failure to comply with the order of the Secretary may result in the Secretary authorizing the humane disposition of the dog wherever found.

(3) When the owner or keeper fails to comply with the order of the Secretary, the owner or keeper of the dog, upon summary conviction, shall be sentenced to pay of fine of not less the \$100 and not more than \$500.

(4) It shall be unlawful and a violation of the act and this chapter for the owner or keeper of the dog, after notification by the Secretary, to allow to leave or to remove the dog from the premises while the dog is alive, unless the owner removes the dog to a State dog warden, veterinarian or animal shelter for euthanasia purposes.

(5) The owner of the dog shall still be liable for damages caused by the dog.

(6) The owner of the dog causing damage may appeal the order of the Secretary directly to the Department.

(7) The appeal shall be filed within 10 days of receipt of the Secretary's order.

§ 21.66. Unlicensed dogs and forfeiture of right to reimbursement.

As established by section 705 of the act (3 P. S. § 459-705), a person who owns or harbors an unlicensed dog, required to be licensed by the act, shall forfeit any right to be reimbursed by the Department for any damages to his livestock, poultry or game birds caused by dogs or coyotes.

CHAPTER 23. FUNDING FOR LOCAL DOG CONTROL PROGRAMS

§ 23.1. Dog Law Restricted Account.

Under section 1001 of the act (3 P. S. § 459-1001), the account was established which consists of all moneys paid into the State Treasury under the act. Moneys are appropriated from the account to make payments to counties and incorporated humane society organizations for designated purposes. **Moneys paid into the account may be expended for allowable administrative expenses, damage claims, payments to counties, payments from surplus funds, promotional and educational activities and training as set forth in section 1001(b) of the act (3 P. S. § 459-1001(b)).**

§ 23.6. Stray dogs.

A grant recipient shall accept and cooperate in the detention of a dog apprehended **while** running at large, either licensed or unlicensed, and **lawfully** dispose of unlicensed stray dogs apprehended and delivered to the agency by an enforcement officer. In addition, the recipient shall make certain that an unlicensed stray dog [6] 3 months of age or over is licensed before being released from [the shelter] a releasing agency to its owner. If the stray dog is adopted by a new owner, the appropriate license fee and application completed by the new owner shall be left with the agency releasing the dog. It is the agency's responsibility to forward the fee and application to the County Treasurer's office within 5 working days.

CHAPTER 25. REIMBURSEMENT FOR HUMANE DISPOSITION OF DOGS AND REIMBURSEMENT FOR LOSSES

§ 25.1. General.

In accordance with the act, the Department will pay \$5 per dog, or whatever greater amount as determined by the Secretary, subject to the availability of funds, for services rendered by a legally constituted law enforcement agency **or others as the Secretary may designate**, maintaining a compound for the humane disposition of stray, unlicensed dogs apprehended running at large **or the adoption of the dogs. When a stray dog is adopted by a new owner, the appropriate license fee and application completed by the new owner shall be left with the agency releasing the dog. It is the agency's responsibility to forward the fee and application to the county treasurer's office.** No other fee will be paid to the agency for the care, adoption or disposal of the dogs. [The secretary will include in notices prepared under § 23.4 (relating to guidelines and conditions), the annual amount of reimbursement to be provided.]

§ 25.2. Dog Disposition Record.

[Form ADLEB-4, Dog Disposition Record attached hereto as Exhibit A and made a part of this section shall be completed by the enforcement officer depositing the dog and shall be held on file by the agency maintaining the compound.] The Department will develop a "Dog Disposition Form" to be used by all enforcement officers.

(1) The Department will disseminate the form to applicable enforcement officers and it can be obtained by contacting the Department at the address or website in § 21.13 (relating to contact information).

(2) The form shall be completed by the enforcement officer depositing the dog and shall be held on file by the agency maintaining the shelter or kennel where the dog is deposited.

(3) The form must include the date of the apprehension and deposit of the dog, the enforcement officer's signature, title and jurisdiction, a certification of the information, a description of the dogs markings, breed, approximate age and sex and a section for the shelter to fill out delineating whether the dog was humanely put to death, reclaimed by its owner or adopted by a new owner.

(4) If the dog was adopted by a new owner the shelter shall enter the name and address of the new owner and the license number of the dog on the form.

[EXHIBIT A

**Pennsylvania Department of Agriculture
BUREAU OF DOG LAW ENFORCEMENT
Dog Disposition Record
MUST BE KEPT ON FILE AT SHELTER**

Date

On this day, I, the undersigned, do hereby certify that the stray dog described below was apprehended while running at large in _____ county and was

(city, township, borough)

delivered to the _____ shelter.

Description of dog:

Color and markings _____ Breed _____ Approximate age _____ Sex _____

Signature of Enforcement Officer

Official Title

Jurisdiction

FOR SHELTER USE ONLY

Disposition of dog (check one):

- Humanely put to death. :
- New owner, as follows: :

Name

Post Office Address

License No.]

§ 25.3. Claims for fees.

[Form ADLEB-2, Affidavit in Claim for Fees for Holding and Humanely Disposing of Unlicensed Dogs attached hereto as Exhibit B and made a part of this section] The Department will develop a reimbursement form to be completed by a legally constituted law enforcement agency or other as the Secretary may designate, maintaining a compound for the humane disposition or adoption of stray, unlicensed dogs apprehended running at large, that

accepts, holds and humanely disposes of or adopts out a stray or unlicensed dog apprehended running at large.

(1) The reimbursement form will be in the form of an affidavit and will include the name and address of the agency or shelter holding and humanely disposing or adopting the dog, the county in which the agency or shelter is located, the date of acquisition and disposal or adoption of each dog a sworn statement and signature lines for the claimant and the official accepting the reimbursement form.

(2) Reimbursement forms shall be submitted quarterly to the nearest district office of the Department within 10 days following the last day of March, June, September [,] and December. [These offices are located as follows:] The location of the district offices and the counties they serve can be found on the Department's website in § 21.13 (relating to contact information) as follows:

* * * * *

[EXHIBIT B

PENNSYLVANIA DEPARTMENT OF AGRICULTURE
BUREAU OF DOG LAW ENFORCEMENT

AFFIDAVIT IN CLAIM FOR FEES FOR HOLDING AND HUMANELY DISPOSING OF STRAY DOGS UNDER THE PROVISIONS OF THE "DOG LAW OF 1965"

Commonwealth of Pennsylvania }

County of _____ }

SS:

Before me, the undersigned, a

(Official Title)

in and for said County, personally appeared

(Name of Claimant)

a _____ whose post office address is (Title)

(Include R.D. or Street No.)

who being duly sworn according to law doth depose and say that during the months of _____, 19__, he did hold and humanely dispose of _____ dog(s) in accordance with all provisions (Number)

of the Dog Law and desiring to secure the fees prescribed for such holding and humane disposing of, as provided by regulations of the Pennsylvania Department of Agriculture, herewith presents his claim: he further swears that the above were all stray dogs apprehended running at large for which no other fee was paid for care or disposal of such dogs and that records to substantiate this claim for fees are being maintained by him as prescribed by Section 207 of the Dog Law.

Sworn to and subscribed before me, this _____ day of _____, 19__

(Signature of Official)

(Signature of Claimant)

(Official Title)

My commission expires _____

Two (2) copies of this affidavit must be executed and forwarded to the DISTRICT OFFICE of the Pennsylvania Department of Agriculture wherein the claim originates. All affidavits must be submitted to the appropriate District Office by the tenth (10th) day of the month following the claim period specified above.]

§ 25.4. License of dogs before release.

A dog [6] 3 months of age or over not disposed of by being humanely put to death shall be licensed before being released from a shelter or a releasing agency.

CHAPTER 27. DANGEROUS DOGS

§ 27.5. Owner's application to register a dangerous dog.

(a) Forms and fee. An application to register a dangerous dog shall be made on a form furnished by and in a manner prescribed by the Department and shall be accompanied by the registration fee established in § 27.3(a) (relating to fees) and a copy of the surety bond or a valid certificate of liability insurance in the amount of \$50,000 as required by the financial responsibility requirements established in section 503-A(a)(2) of the act (3 P. S. § 459-503-A(a)(2)) and § 27.7(b) (relating to general conditions of registration).

* * * * *

§ 27.6. Processing of an application.

(a) Upon receipt of an application to register a dangerous dog [and], the registration fee [in] required by §§ 27.3(a) and 27.5(a) (relating to fees[]); and owner's application to register a dangerous dog) and a copy of the surety bond or valid certificate of insurance assuring compliance with the financial responsibility requirements of the act and this chapter, the Department will review the application for completeness and accuracy.

(b) The Department will issue the applicant a certification of registration within 30 days of the following:

* * * * *

(2) The receipt of [a] the fee required by §§ 27.3(a) and 27.5(a).

(3) The [applicant's] receipt of the required documentation and verification of compliance with § 27.7 (relating to general conditions of registration), including a copy of the surety bond or valid certificate of insurance assuring compliance with the financial responsibility requirements of the act and this chapter and verification from the insurer that the surety bond or liability coverage relates to the dangerous dog and contains a provision naming the Secretary as an additional insured.

* * * * *

§ 27.7. General conditions of registration.

* * * * *

(c) If the owner of a dangerous dog no longer complies with this section, the Department [**may**] will revoke the registration of the dangerous dog and confiscate the dangerous dog as required under section 505-A of the act (3 P. S. § 459-505-A).

§ 27.14. Verification of compliance with financial responsibility requirements.

The Department will contact the insurer listed on the surety bond or policy of liability insurance to verify the surety bond or liability insurance policy covers personal injuries inflicted by the dangerous dog and names the Secretary as an additional insured for the purpose of notification by the insurer of cancellation, termination or expiration of the surety bond or liability insurance policy as required in section 503-A(a)(2) of the act (3 P. S. § 459-503-A(a)(2)) and § 27.7(b) (relating to general conditions of registration). The Department will not issue a certificate of registration until the information is verified.

[Pa.B. Doc. No. 06-2452. Filed for public inspection December 15, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Advance Notice of Proposed Rulemaking Responsible Utility Customer Protection

Public Meeting held
November 30, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Kim Pizzingrilli, Statement follows; Terrance J. Fitzpatrick

Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S., Chapter 14; General Review of Regulations; Doc. No. L-00060282

By the Commission:

On November 30, 2004, the Governor signed into law SB 677, or Act 201. This law went into effect on December 14, 2004. The Act amended Title 66 by adding Chapter 14 (66 Pa.C.S. §§ 1401—1418), *Responsible Utility Customer Protection*. The Act is intended to protect responsible bill paying customers from rate increases attributable to the uncollectible accounts of customers that can afford to pay their bills, but choose not to pay. The legislation is applicable to electric distribution companies, water distribution companies and larger natural gas distribution companies (those having an annual operating income in excess of \$6,000,000).¹ Steam and waste water utilities are not covered by Chapter 14.

Chapter 14 seeks to eliminate the opportunities for customers capable of paying to avoid paying their utility bills, and to provide utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. The goal of these

¹ Small natural gas companies may voluntarily "opt in" to Chapter 14. 66 Pa.C.S. § 1403.

changes is to increase timely collections while ensuring that service is available to all customers based on equitable terms and conditions. 66 Pa.C.S. § 1402.

Chapter 14 supersedes certain Chapter 56 regulations, all ordinances of the City of Philadelphia and any other regulations that impose inconsistent requirements on the utilities. Chapter 14 expires on December 31, 2014, unless re-enacted. Two years after the effective date and every two years thereafter, the Commission must report to the General Assembly regarding the implementation and effectiveness of the Act. The Commission is directed to amend Chapter 56 and may promulgate regulations to administer and enforce Chapter 14. Complying with this responsibility of the Act is the purpose of this rulemaking.

On January 28, 2005, the Commission issued a Secretarial Letter identifying general subject areas for discussion and encouraged interested parties to file written comments. In addition, on February 3, 2005, the Commission held a "Roundtable Forum" to address the implementation and application of Chapter 14.

Written comments were filed by the following interested parties: Energy Association of Pennsylvania (EAP), Office of Consumer Advocate (OCA), Philadelphia Gas Works (PGW), Community Legal Services (CLS), PECO Energy Company (PECO Energy), Pennsylvania Utility Law Project (PULP), Aqua Pennsylvania, Inc. (Aqua), Pennsylvania American Water, PPL Electric Utilities Corporation and PPL Gas Utilities Corporation, Pennsylvania Coalition Against Domestic Violence, Pennsylvania Apartment Association, Housing Alliance of Pennsylvania, and American Association of Retired Persons (AARP).

Based upon our review of the comments filed by interested parties pursuant to our January 28, 2005 Secretarial Letter and the oral comments expressed at the Roundtable Forum, we issued an *Implementation Order* dated March 4, 2005 that addressed seven threshold issues. Although we considered these issues to be the most fundamental, we understood that this is an on-going process and that other implementation issues will need to be resolved in the future.

Therefore, by Secretarial Letter issued June 27, 2005, we informed interested parties of the next Chapter 14 Roundtable, July 1, 2005, and established agenda items for this meeting. At this second Chapter 14 Roundtable, we again sought to engage in a discussion that promoted an exchange of ideas and views so that all interested parties will better understand differing positions and the rationales underlying them. It was intended that the parties would benefit from this discussion of the issues and assist in the effective development of procedures, interim guidelines and subsequent regulations necessary to implement the new requirements of Chapter 14.

Written comments were again submitted by the EAP, OCA, PGW, CLS, PECO Energy, PULP, and Aqua. The comments were also intended to supplement oral representations at the July 1, 2005 Roundtable. Another Roundtable discussion was held on July 21, 2005 to discuss PGW-Specific Chapter 14 issues, and written comments were filed by PGW, the OCA, CLS, and PULP. On September 12, 2005, we issued the *Second Implementation Order* addressing additional unresolved issues identified for review and disposition as follows:

- Section I—Termination/Reconnection
- Section II—Payment Arrangements (PARS)
- Section III—Applications—Deposits
- Section IV—Protection from Abuse (PFA)/Consumer Education
- Section IV—PGW—Specific Issues

Thereafter, we continued to address issues at this docket number. On August 24, 2005, we issued a *Section 703(g) Order Seeking Comments* on one of these threshold issues—the interpretation of the payment agreement restrictions in § 1405(d). On October 31, 2005, we issued the *Reconsideration of Implementation Order* amending *Implementation Order* by concluding “that § 1405(d) permits the Commission (in addition to instances where there has been a change of income) to establish one payment agreement that meets the terms of Chapter 14 before the prohibition against a second payment agreement in § 1405(d) applies.” Finally, on November 21, 2005, we issued a *Declaratory Order* pursuant to 66 Pa.C.S. § 331(f) that Chapter 14 does not authorize public utilities to require upfront payments greater than those amounts specified in § 1407(c)(2).

At this point in our implementation process, we have addressed and resolved numerous issues involving the application of Chapter 14 provisions. However, we must still implement Section 6 of the Act which requires the Commission to amend Chapter 56 to comply with the provisions of Chapter 14, and if necessary, promulgate other regulations to administer and enforce Chapter 14.² In order to facilitate the completion of this responsibility under the Act, we are issuing this Advance Notice of Proposed Rulemaking Order. This Advance Notice will enable us to gather input from the industry, consumer groups, and advocates before drafting the proposed revisions.

Many of these issues have been raised but not resolved in this implementation process. This Advance Notice will give us the opportunity to conduct a general review of this Chapter to identify, modify, and/or rescind certain provisions of Chapter 56. See, e.g., *General Review of Regulations; Advance Notice of Proposed Rulemaking*, Doc. No. L-00950103, adopted April 27, 1995, *25 Pa. B. 2188* (June 3, 1995). Hopefully, this process will lead to a clear, cohesive, thorough, and analytically sound proposed rulemaking order.

In addition to revising Chapter 56 to align it with Chapter 14 as discussed previously, we believe all parties should use this opportunity to address other issues as well. For example, since the most recent revision of Chapter 56, there have been technological advances including electronic billing and payment, email, the Internet, etc. Parties are invited to comment as to how these technological advances should be addressed in the regulations, especially the billing and payment sections. The rulemaking proceeding will also review all of its outstanding ad hoc reporting requirements for the same purpose.

Chapter 14 will necessitate significant changes to the winter termination rules at § 56.100. This is an area of crucial importance and is central to the Commission's obligation to protect the health and safety of all citizens of the Commonwealth. This has been an area of much discussion and inquiry since the Chapter was enacted and the Commission is asking the parties to provide comments related to these procedures.

² Section 6 further provides that “promulgation of any such regulation shall not act to delay the implementation of effectiveness of this chapter.”

Chapter 14 also changes the procedures utilities may use when screening applicants for service and credit worthiness. Related to this are provisions in Chapter 14 that expands a utility's ability to assign liability for account balances that may have accrued under the name of someone other than the customer or applicant. Again, the Commission requests comments on these procedures and asks for the assistance of all parties in formulating regulations to address this important area.

More specifically, the Commission is seeking comments on the most controversial and complex provisions of Chapter 14 identified in questions set forth in Appendix A and requests comments from all utilities subject to Chapter 14 and other interested parties. In addition, we welcome offers of proposed language for our consideration in drafting the regulatory provisions. Finally, we encourage the commentators to raise any matters or issues that they feel we have overlooked or missed, including the need to revise Chapter 56 sections unrelated to Chapter 14.

This is an advanced notice of proposed rulemaking order and is in addition to the normal rulemaking procedures for publication and comment established under the Commonwealth Documents Law, 45 P.S. 1201, et seq. Accordingly, pursuant to Sections 501, 504, 505, 506, 1301, and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P.S. 1201, et seq., and the regulations promulgated thereunder, we shall initiate a rulemaking proceeding to comply with the requirements of Section 6 of Chapter 14; *Therefore*,

It Is Ordered that:

1. A rulemaking proceeding is hereby instituted at this docket to consider revisions of the regulations appearing in 52 Pa. Code Chapter 56, relating to standard and billing practices for residential utility service.

2. This advanced notice of proposed rulemaking order proceeding shall be published in the *Pennsylvania Bulletin*.

3. Interested parties may submit written comments, original and 15 copies, within 60 days from the date the notice is published in the *Pennsylvania Bulletin*, to James McNulty, Secretary of the Pennsylvania Public Utility Commission, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. A copy of written comments shall also be served upon the Commission's Bureau of Consumer Services and Law Bureau. In addition, one copy in electronic format (Microsoft Word® 2002 or readable equivalent) on diskette shall be provided to the Secretary and copies shall be emailed to Terrence J. Buda (tbuda@state.pa.us), Cyndi Page (cypage@state.pa.us), and Daniel Mumford (dmumford@state.pa.us). All comments shall be posted on the Commission website.

4. Copies of this order shall be served upon all jurisdictional electric utilities, gas, and water utilities subject to Chapter 14, the Office of Consumer Advocate, the Office of Small Business Advocate, and those parties who submitted comments at Docket No. M-00041802.

5. The contact persons for this matter are Daniel Mumford in Bureau of Consumer Services (717) 783-1957, and Terrence J. Buda in the Law Bureau (717) 783-3459.

JAMES J. MCNULTY,
Secretary

APPENDIX A

1. Rules that apply to victims with a protection from abuse (PFA) order and to customers of steam heating, wastewater and small natural gas companies.

Section 1417 states that the Chapter 14 rules “shall not apply” to victims under a protection from abuse (PFA) order. The definition of “natural gas distribution utility” at § 1403 also excludes gas utilities with annual operating revenues of less than \$6 million per year or that are not connected to an interstate gas pipeline. Moreover, § 1406(e) excludes water utilities. In addition, Chapter 14 excludes steam heat and wastewater utilities. In light of the above, we need to address what regulations should be applied for these utilities and consumers that are specifically excluded from Chapter 14 requirements. If it is Chapter 56 that is to be applied, we need to address what will be applicable to PFA holders and delinquent steam heat, small gas and wastewater customers once Chapter 56 is revised to reflect Chapter 14.

We propose creating a separate chapter to address the utilities and consumers that are specifically excluded from Chapter 14 provisions. This separate chapter essentially would reflect the current Chapter 56 rules, except that it would only apply to residential customers of steam heating utilities, wastewater utilities, small natural gas distribution utilities, water utilities’ winter termination activity, and victims with a PFA order.

2. Previously unbilled utility service.

The “make-up” bill rules at § 56.14 address the procedures to be used when a utility bills for previously unbilled service resulting from a billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills. We propose incorporating into this section a four-year limit on such billings. This four-year statute of limitations reflects the same time restrictions found in other sections of the regulations; § 56.35 for example; and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa.C.S.A. § 1312.

Also concerning § 56.14, we propose maintaining the obligation of a utility to offer a payment schedule based on previously unbilled utility service. Since this section involves charges that were not previously billed and are not overdue, we see no conflict with the limitations on the number of payment agreements found in Chapter 14 at § 1405(d).

3. Credit Standards

Credit standards and procedures are found in §§ 56.31–56.38. In addition to incorporating the requirements of §§ 1404(a), 1404(d)–(f), 1407(d), 1414(c) and the § 1403 definitions of *applicant* and *customer*, into these sections, we propose revising these sections to clarify acceptable applicant identification requirements, use of social security numbers, and third-party service requests, in the context of preventing fraud and identify theft (refer to the Commission’s July 14, 2005 Order re: Investigation In Re: Identity Theft at Docket M-00041811). This will include the identification standards that should be applied to “each adult occupant” per § 1404(d).

Chapter 14 at § 1404(a) (2) specifies utilities are to use “a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice.” In order to insure that the credit standards being used meet these conditions and are being applied in an equitable and nondiscriminatory manner, we propose requiring utilities to include their credit scoring methodologies and standards in their Commission-approved tariffs.

Chapter 14 at § 1407(d) allows a utility to hold an applicant seeking reconnection at a location terminated for non payment responsible for utility service previously furnished at the same address but in another parties name(s) for the period during which the applicant resided at the same address. Section 1407(e) addresses how a utility may establish such liability, including “. . . other methods approved as valid by the Commission.” We propose requiring utilities to seek approval from the Commission before using the “other methods” mentioned in this section by requiring utilities to include the “other methods” in their Commission-approved tariffs. We also propose including a four-year statute of limitations on such assignments of liability. This four-year limit reflects the same time restrictions found in other sections of the regulations; § 56.35 for example; and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa.C.S.A. § 1312.

4. Payment period for deposits.

Chapter 14 includes deposit payment time frames (§§ 1404(a), 1404(e), 1404(h)) that would benefit from clarifying regulations. The Commission provided some clarifications with respect to deposit payment time frames in the first *Implementation Order of March 3, 2005*, pp. 15-17(M-00041802F0002), but also declared that the “. . . Commission will undertake a review of these sections of its Regulations in a subsequent rulemaking proceeding.” For example, one source of confusion at § 1404(h) is the phrase “. . . shall have up to 90 days to pay the deposit in accordance with Commission regulations” when in fact there is no 90 day payment period in current Commission regulations. Current Commission regulations specify 50 percent of the deposit upfront, followed by 25 percent 30 days later and 25 percent 60 days later, making the deposit payment period 60 days. In addition, there appears to be a need to reconcile the installment option for paying deposits found at § 1404(h) with language at § 1404(e) that declares that a utility does not have to provide service to an applicant who “. . . fails to pay the full amount of the cash deposit.” More generally, the payment periods in Chapter 14 appear to distinguish between applicants and customers, and customers who have had service terminated for one of the grounds listed under § 1404(a) (1). As specifically stated in the first *Implementation Order*, p. 17, the Commission intends to address deposit payment timeframes in this proceeding and urges all interested parties to comment on these issues.

We propose that in situations where a customer or applicant is seeking restoration of service after having been terminated for any of the grounds found in § 1404(a)(1) that 50% of the deposit can be required up-front as a condition of restoration, with the balance of the deposit due within 90 days of restoration. For situations where a customer or applicant is seeking service outside of the grounds found in § 1404(a)(1), the full amount of the security deposit can be required before service is provided per § 1404(e). For existing customers

with service who are required to pay a deposit, we propose maintaining the existing rules at §§ 56.41—42 which allows for the deposit to be paid in three installments over 60 days since Chapter 14 is silent on rules for collecting deposits from customers with service, and since these Chapter 56 provisions do not appear to be inconsistent with the credit related provisions in Chapter 14.

5. Termination of service.

Regulations governing the termination of service are found in Chapter 56 sections 56.81—56.131. Termination of service can have serious consequences, not only for the customers immediately affected but also for neighbors and the surrounding community. Therefore, we seek comments that reflect careful consideration of the health and safety factors for those immediately affected by termination of essential utility service, as well as the Commission's duty to protect the health and safety of all citizens of the Commonwealth.

Chapter 14 includes grounds for authorized termination at § 1406(a) and we propose incorporating these grounds into § 56.81. § 1406(c) lists grounds for which immediate termination without prior notice is authorized and we propose incorporating these into § 56.98. However, Chapter 14 does not specifically list grounds for which termination of service is not authorized as currently found at § 56.83. This section includes prohibitions on terminating utility service for nonpayment of nonbasic charges, for charges of a different rate class, for overdue account balances less than \$25.00, for unpaid concurrent service, etc. We propose maintaining § 56.83 to the extent that it is found to be consistent with Chapter 14. We also propose maintaining the distinction between "user without contract" and "unauthorized use" as determined and supported by the Commission in the first *Implementation Order*, pp. 7-10.

Moreover, we propose revising the termination notice process to incorporate the new termination notice procedures found in Chapter 14 at § 1406(b). We also intend to address the interaction of dispute procedures (§§ 56.92, 56.97, 56.141—181) with the termination procedures, including the obligation of the utility to stay termination pending resolution of a dispute, and the obligation to provide the consumer with an opportunity to file an informal complaint after a dispute is addressed by the utility and the customer remains dissatisfied. There appears to be nothing in Chapter 14 that supersedes the dispute regulations in Chapter 56 that would negate any of the rights a consumer has to raise a dispute with a utility. Likewise, the procedures found at § 56.94 addressing what is to happen immediately prior to termination appear not to be impacted by Chapter 14.

6. Winter termination procedures.

Termination of utility service in the winter-time is of critical importance and of great interest to many parties, including the Commission. As noted previously, the Commission takes seriously its obligation to protect the health and safety of citizens of the Commonwealth and enforcing the winter termination procedures is an important aspect of this duty. New winter termination rules at § 1406(e) are significantly different and supersede the traditional rules at § 56.100. As a result, the revisions to § 56.100 are of great importance and the Commission urges all parties to seriously consider the many issues involved and invites specific and detailed comments on this section in particular. Winter-time termination restrictions are based

upon the customer's income in relation to the federal poverty level. There is also a need to promulgate specific regulations to cover the winter-time statutory provisions exclusive to the Philadelphia Gas Works.

Section 1406(e) restricts termination without Commission permission for customers at or below 250% of the federal poverty level (150% for PGW). However, there is no direction provided regarding utility obligations to determine and confirm a customer's eligibility for winter time termination based on their income and the customer's obligation to cooperate with such procedures. The Commission addressed this to some extent in the *Second Implementation Order* and we propose incorporating this guidance into this regulation.

Unlike § 56.100 which distinguishes between heat related and non-heating accounts (heat-related accounts are protected from termination without PUC permission), § 1406(e) does not make this distinction in Chapter 14. To align § 56.100 with the statute, we propose eliminating the distinction between heat and nonheat accounts.

In addition, one of the major tools used by policy makers and other parties is the information obtained per the provisions of § 56.100(4) and (5). These subsections require utilities to annually, at the beginning of the winter, survey the heat-related accounts they have terminated and to make a good faith effort to restore service to as many as possible. The utilities are then required to report to the Commission by December 15 of each year on these efforts and the number of heat-related accounts still without service. Given that Chapter 14 now allows utilities to terminate some utility service throughout the winter without PUC permission, we believe that updated information on the number of households without utility service throughout the wintertime may be necessary. We propose revising the survey provisions (§ 56.100(4) and (5)) to require updates throughout the winter consistent with the Final Order of July 20, 2006 re: *Biennial Report to the General Assembly and Governor Pursuant to Section 1415* (M-00041802F0003). We also propose to clarify what grounds for termination should be included in the survey in addition to non-payment (safety, meter non-access, etc.). Also, we propose to clarify how far back a termination had to have occurred to be included in the accounts surveyed. This has all been a matter of some confusion at times and providing additional clarifications should assist utilities with compliance to this section.

As a related matter we propose that utilities report to the Commission anytime they become aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service.

7. Emergency Medical Procedures.

Section 56.111 refers only to a "physician" as being eligible to file a medical certificate. However, Chapter 14, § 1406(f), in addition to physician, also refers to "nurse practitioner." We propose amending all of the emergency medical provisions in Chapter 56 (§§ 56.111—118) to include "nurse practitioner" as found in Chapter 14, § 1406(f).

Much of the language at § 56.114 concerning limitations on renewal of medical certificates has been in effect only since 1998. Since that time utility experience in implementing these sections has resulted in numerous informal inquiries to Commission staff about details not currently specified in the current regulation. For example,

are the limitations noted in this section applicable per individual or household or account, and is there any timeframe on these limitations such as annual, lifetime of the account or are the limitations just in reference to consecutively filed certificates? And given that the section also requires that a utility petition the Commission if it wishes to contest a certificate renewal, is this directive intended for certificates that are not already barred by the restrictions listed previously in this section, or does the directive apply to any certificate a utility wishes to contest?

We propose answering these questions in a way that balances the need of the utility to effectively manage account collections with the needs of consumers with medical conditions to obtain necessary, temporary relief from the threat of termination. It is important to point out that the restrictions at § 56.114 only apply if the customer is not meeting their obligation to arrange payment on all bills as required per § 56.116. We propose amending the medical certificate renewal provisions at § 56.114 to clarify that the limit of two renewal certifications applies to medical certificates filed for the same set of arrearages, meaning that if the customer subsequently eliminates the arrearage, the customer is once again eligible to file medical certificates, regardless of the number of medical certificates filed previously. We would also apply these restrictions to the household and the same account; meaning that the limits apply to the entire household as long as the account remains in the same name(s).

We also propose that a utility does not have to petition the Commission using the procedures at § 56.118 if it is simply enforcing the restrictions at § 56.114; petitioning is necessary only if the utility does not want to honor a medical certificate that does not fall under the restrictions. Requiring a petition in all circumstances where a utility does not want to honor a medical certificate would essentially make the restrictions at § 56.114(2) meaningless, when the intent of this section when it was proposed in 1996 was to “clarify, simplify and remove excessive and burdensome requirements from the parties dealing with our Bureau of Consumer Services” (26 Pa.B. 2908).

8. Commission informal complaint procedures.

Chapter 14 includes sections that effect the Commission's informal and formal complaint procedures. An example are the length of payment arrangement formulae found at § 1405(b) that dictate the length of the payback period for a customer's payment arrangement based upon the customer's income in relation to the federal poverty level. Another is the prohibition on establishing payment arrangements for customers participating in a CAP program found at § 1405(c). We propose revising the Commission's informal and formal complaint procedures found at §§ 56.161—181 to develop some of the details that are necessary to effectively integrate the requirements of Chapter 14 into these sections.

Regarding the restriction at § 1405(c), we propose applying the restriction to any balance that reflects application of CAP program rates and also to any account balance comprised of both CAP rates and standard rates. At the same time we intend to clarify that while the Commission will not be establishing payment agreements on CAP balances per the above noted restrictions, the Commission can still address CAP-related disputes including but not limited to issues like billing, eligibility requirements and default as part of the Commission's obligation at § 2203(8) and 2804(9) to ensure that the utility's CAP is operated in a cost-effective manner

through compliance with its approved CAP plan, including the proper calculation of a participant's CAP payment amount.

We also propose clarifying the role of the Commission in establishing payment agreement restoration terms for customers whose service has been terminated as addressed, to some extent, in the first *Implementation Order* (pages 11-12) and with the *Reconsideration of Implementation Order of October 27, 2005* (M-00041802F0002).

In addition to addressing Commission procedures as noted above, we propose § 56.163 be amended to include the imposition of a standard upon the utility in response to consumer informal complaints filed at the Commission. To facilitate the handling of informal consumer complaints, we are proposing a company response standard of 30 days as found in the analogous telephone regulations (52 Pa. Code § 64.153). For informal complaints where the customer's service has been terminated, we are proposing a five-day standard.

9. Restoration of Service.

Chapter 14 provides utilities with expanded opportunities for assigning liability for balances that accrued in another party's name if some other party seeks restoration of service. Section 1407(d) allows a utility to “. . . also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.” This section is elaborated on by the section that follows it at § 1407(e), i.e., “[a] public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.”

We propose requiring utilities to include in their tariffs the procedures and standards the utility will use to determine whether an applicant or customer has previously resided at a property and whether an applicant or customer is responsible for an unpaid account balance per § 1407(d) and (e) and specify the means for providing acceptable proof of such. This will help ensure equitable and nondiscriminatory liability determinations. We also propose incorporating a four year statute of limitations on such determinations. This four-year statute of limitations reflects the same time restrictions found in other sections of the regulations such as § 56.35 and the record maintenance requirements found at § 56.202. In addition, this would reflect the four-year limit found at 66 Pa.C.S.A. § 1312.

Chapter 14 at § 1407(b) includes service restoration timeframes which we propose incorporating into § 56.191, while clarifying that the timeframes refer to “calendar” days and hours as opposed to “business” days and hours. We also intend to clarify that the timeframes found in this section are contingent upon what time of the year it is when the customer or applicant has met all applicable restoration conditions. For example, the standards in § 1407(b) require that service be restored within 24 hours for “. . . terminations occurring after November 30 and before April 1.” If the customer satisfies all restoration requirements in December, we would impose the 24 hour reconnection timeframe found at § 1407(b)(2), regardless of when the termination of service occurred.

10. Reporting requirements.

The monthly collections data reporting requirements are specified at § 56.231. Under this regulation, electric, gas and steam heating utilities report to the Commission monthly on a variety of collection variables including the number of service terminations, overdue customers, service restorations and arrearages. Policy makers, utilities and the general public use this information to measure the effectiveness of utility collection activities. We propose revising this section to also include Class A water utilities. Water utility rates have increased significantly since this section was first promulgated and concerns with collection issues in the water industry are now sufficient to amend this section to include major water utilities.

In addition, we propose revising this section to incorporate the *Interim Guidelines for Residential Collections Data Reporting Requirements of the Electric, Natural Gas and Water Distribution Companies in Accordance with the Provisions of Chapter 14 at § 1415* as contained in the Final Order of July 24, 2006 re: *Biennial Report to the General Assembly and Governor Pursuant to Section 1415* (M-00041802F0003).

Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S., Chapter 14 General Review of Regulations; NOV-2006-BCS-0013* Doc. No. L00060182

Statement of Commissioner Kim Pizzingrilli

Before the Commission is an Advance Notice of Proposed Rulemaking (ANOPR) to comply with the requirements of the Responsible Utility Customer Protection Act, which amended Title 66 by adding Chapter 14. See 66 Pa.C.S. §§ 1401–1418. During the implementation process, many Chapter 14 application issues were addressed with the input of interested parties and Commission staff. Now, we must amend Chapter 56 to comply with the provisions of Chapter 14, and if necessary, promulgate other regulations to administer and enforce Chapter 14.

The ANOPR contains an Appendix listing ten issues. The intent of this list is to bring additional focus to the more challenging questions as we proceed with the rule-making. Within the Appendix, the Commission has made some proposed findings. While I concur with the adoption of the ANOPR and the form of the Appendix, I request that commentators address the question of whether it is appropriate or necessary to incorporate portions of the statute directly into the regulations.

In addition, I note that the ANOPR proposes that utilities report to the Commission when they become aware of a death following a termination of utility service where it appears that the death may be linked to the lack of utility service. As a relatively new issue that was brought to our attention by the Consumer Advisory Council, I request that commentators provide input on specific recommendations regarding the implementation of this proposed requirement, including what situations should be reported and the need to establish a requisite time frame linking an incident and lack of utility service.

I look forward to reviewing the comments filed in response to our ANOPR and encourage parties to bring to our attention other pertinent issues that could be addressed in this rulemaking. The input from affected

parties will aid the Commission in carrying out the goals of Chapter 14 while ensuring that service is available to all customers based on equitable terms and conditions.

[Pa.B. Doc. No. 06-2453. Filed for public inspection December 15, 2006, 9:00 a.m.]

[52 PA. CODE CH. 57]

Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57 Pertaining to Adding Inspection and Maintenance Standards for the Electric Distribution Companies

Notice of the Pennsylvania Public Utility Commission's (Commission) proposal to amend 52 Pa. Code Chapter 57 was published at 36 Pa.B. 6097 (October 7, 2006). The Commission will now accept public comments until April 16, 2007. The Commission intends to hold a Technical Conference in January 2007 to gather more information before the end of the comment period.

Written Comments

Interested persons are invited to submit comments, suggestions or objections regarding the proposed rule-making to the Pennsylvania Public Utility Commission, Attention: Secretary James J. McNulty, P. O. Box 3265, Harrisburg PA 17105-3265. An electronic copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel, ebarnes@state.pa.us. These comments will be placed on the Commission's website for public viewing at www.puc.state.pa.us.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-2454. Filed for public inspection December 15, 2006, 9:00 a.m.]

**STATE BOARD OF VEHICLE
MANUFACTURERS,
DEALERS AND
SALESPERSONS**

[49 PA. CODE CH. 19]

Biennial Renewal Fees

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.4 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fees for all classes of the Board's licensees.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new biennial renewal fees will take effect for the biennial period beginning June 1, 2007.

Statutory Authority

The Board is required by law to support its operations from revenue it generates from fees, fines and civil penalties. Section 30(a) of the Board of Vehicles Act (act) (63 P. S. § 818.30(a)) requires the Board to increase fees

so that adequate revenue is raised to meet the Board's expenditures in enforcing the act. While many of the Board's fees are based on the cost of providing a service to an individual licensee, such as processing an application for licensure, biennial renewal fees are charged to licensees across the Board and are thus most appropriately increased to meet the Board's general enforcement costs.

Background and Need for Amendment

The Board last increased its renewal fees in 1989. In the 17 years since the Board established the existing biennial renewal fees, the Board has seen a significant increase in its law enforcement budget, thus necessitating a fee increase.

At the July 13, 2006, Board meeting, the Bureau of Finance and Operations for the Department of State (Department) presented a summary of the Board's actual revenue and expenses for the past 3 fiscal years and projected revenues and expenses through Fiscal Year (FY) 2016-2017.

At the close of FY 2004-2005, a year in which the Board's revenue was high because licenses are renewed in odd numbered years, the Board carried a balance of \$594,546.31. At the close of FY 2005-2006, however, the Board carried a deficit of \$454,564.57. The projected deficit for FY 2006-2007 is \$539,514; and the projected deficit for FY 2007-2008 is \$2,048,514. By FY 2016-2017, the deficit is projected to reach \$13,338,514. The Bureau of Finance and Operations anticipates that the proposed fee increases will enable the Board to recapture the current deficit and meet its estimated expenditures through at least FY 2016-2017.

The Board, as with other licensing boards and commissions within the Bureau of Professional and Occupational Affairs (Bureau), budgets on the basis of the following categories: administrative costs, which includes Board administration (Bureau-wide operating expenses such as printed forms, office supplies and interagency billings), Commissioner's office (staff expenses) and Departmental services (centralized support services such as the executive office, public information office and legislative affairs office); legal costs, which includes legal office (staff expenses), hearing expenses (staff of hearing examiner's office and stenographer services) and legislative and regulatory analysis (staff expenses); enforcement and investigation costs, which includes nontravel (staff expenses) and travel expenses; professional health monitoring program expenses (staff expenses); and Board member expenses (travel to meetings, accommodations when necessary).

Because it has been 17 years since the Board set the biennial renewal fees, it is difficult to ascertain any particular cost centers that have led to the need to increase the fees. Costs have risen across the spectrum of the Board's activities. The increases in the Board's biennial expenses occurred due to increases in costs of both Board services and Departmental expenses. The increases experienced by the Board itself are primarily in cost centers allocated to law enforcement costs and legal office costs. These increased expenditures are directly related to increases in the number of complaints filed. Each complaint filed produces costs in law enforcement and in the professional compliance office and prosecution division of the legal office. The Board received an average of 404

complaints per year from FY 1996-1997 through FY 2000-2001. The Board received an average of 499 complaints per year from FY 2001-2002 to FY 2005-2006. The number of serious disciplinary sanctions imposed by the Board, which includes any sanction that suspends or revokes a license, increased from 37 in FY 1996-1997 to 70 in FY 2005-2006. The total number of disciplinary sanctions imposed by the Board increased from 150 in FY 1996-1997 to 178 in FY 2005-2006.

During FY 2003-2004, additional costs were incurred as a result of one-time charges to the Department for personnel costs. This one-time charge was split equitably within the Professional Licensure Augmentation Account and other related restricted accounts administered by the Bureau.

Description of Proposed Amendments

The proposed amendments will increase the biennial renewal fees as follows:

Vehicle dealer	from \$70 to \$175
Vehicle dealer branch	from \$70 to \$175
Vehicle auction	from \$70 to \$175
Vehicle manufacturer	from \$100 to \$250
Manufacturer branch.....	from \$70 to \$175
Vehicle distributor	from \$70 to \$175
Vehicle representative.....	from \$35 to \$90
Vehicle salesperson	from \$35 to \$90

The proposed increases are based on the expense and revenue estimates provided to the Board as set forth in Annex A. By this increase, the Board seeks to recoup its current deficit and avoid the projected deficits.

Fiscal Impact

It is estimated that the proposed rulemaking will have a modest fiscal impact on the cost of doing business of licensees over the next several biennial periods. The increase in fees should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees. However, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on December 5, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Legislative Reference Bureau for publication. The proposed rulemaking will be published in the *Pennsylvania Bulletin* on December 16, 2006, beginning a 30-day public comment period. On December 5, 2006, the Board sent a courtesy copy of the proposed rulemaking to the Executive Directors for the House Professional Licensure Committee (HPLC) and Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). Under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Board will deliver the

proposed rulemaking to the HPLC and SCP/PLC by the second Monday after the date on which committee designations for the 2007-2008 session of the General Assembly are published in the *Pennsylvania Bulletin*.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Pamela Marsden, Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWIN K. GALBREATH, Jr.,
Chairperson

Fiscal Note: 16A-6010. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

GENERAL PROVISIONS

§ 19.4. Fees.

The following is the schedule of fees charged by the Board:

* * * * *

Biennial renewal—salesperson license	\$ [35] 90
Biennial renewal—vehicle representative license	\$ [35] 90
Biennial renewal—manufacturer license	\$ [100] 250
Biennial renewal—manufacturer branch license	\$ [70] 175
Biennial renewal—distributor license	\$ [70] 175
Biennial renewal—dealer license	\$ [70] 175
Biennial renewal—auction license	\$ [70] 175
Biennial renewal—dealer branch license	\$ [70] 175

[Pa.B. Doc. No. 06-2455. Filed for public inspection December 15, 2006, 9:00 a.m.]