

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 28a]

Commercial Kennel Canine Health Regulations; Intent to Rescind

The Department of Agriculture (Department) intends to rescind § 28a.8(5) (relating to flooring). This paragraph, promulgated under the authority of the Dog Law (act) (3 P.S. §§ 459-101—459-1205), states the following:

(5) *Nursing mothers.* Primary enclosures, including whelping boxes, housing bitches with nursing litters or housing dams or foster dams with puppies under 12 weeks of age must be constructed so that at least 50% of the flooring of the primary enclosure complies with the standards established under section 207(i)(3) of the act.

Commonwealth Court recently determined that § 28a.8(5) directly contradicts express statutory provisions of the act and violates the legislative intent. This determination was made on September 9, 2016, in *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014).

The act authorizes the Department to promulgate regulations as necessary to carry out the provisions and intent of the act, and section 902 of the act (3 P.S. § 459-902) requires this be done “after due notice and a public hearing.” In this instance, when Commonwealth Court has already determined that the regulatory provision the Department plans to rescind is contrary to the act and the legislative intent, the Department believes convening a public hearing on the proposed regulatory rescission would be unnecessary and contrary to the public interest.

The Department provides notice of its intention to rescind § 28a.8(5) without first convening a public hearing. The Department will consider any request for a public hearing that is made in writing and delivered by Friday, October 28, 2016, to the Department of Agriculture, Legal Office, 2301 North Cameron Street, Harrisburg, PA 17110.

RUSSELL C. REDDING,
Secretary

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