

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 28a]

Commercial Kennel Canine Health Regulations

The Department of Agriculture (Department) proposes to amend § 28a.8 (relating to flooring) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under the Dog Law (act) (3 P.S. §§ 459-101—459-1205). Section 902 of the act (3 P.S. § 459-902) authorizes the Department to promulgate regulations as necessary to carry out the provisions and intent of the act.

Purpose and Description of this Proposed Rulemaking

This proposed rulemaking will delete § 28a.8(5) as Commonwealth Court determined this paragraph contradicts the express statutory provisions of the act and violates the Legislative intent of the act.

Section 28a.8(5), regarding nursing mothers, effectively allows for up to 50% of the floor area in certain primary enclosures used to house dogs at commercial kennels to be of a type that does not comply with section 207(i)(3) of the act (3 P.S. § 459-207(i)(3)). In effect, § 28a.8(5) allowed a portion of the floor of a primary enclosure in which nursing mothers and puppies were housed to be more permeable than otherwise allowed under section 207(i)(3) of the act.

After § 28a.8(5) became effective, a lawsuit was brought in Commonwealth Court against the Department seeking a determination that § 28a.8(5) conflicted with the act. See *Barbara Keith et al. v. Commonwealth of Pennsylvania, Department of Agriculture* (394 M.D. 2014). On September 9, 2016, Commonwealth Court granted summary judgment for the petitioners, and specifically determined that § 28a.8(5) directly contradicts express provisions of the act and violates the Legislative intent of the act.

Section 902 of the act provides that regulations are to be promulgated “after due notice and a public hearing.” In this instance—when Commonwealth Court has already determined that § 28a.8(5) is contrary to the act and the Legislative intent—the Department believes convening a public hearing on this proposed rulemaking would be unnecessary and contrary to the public interest. The Department published the intent to rescind § 28a.8(5) at 46 Pa.B. 6646 (October 22, 2016). Although the notice confirmed the Department did not believe it was necessary or in the public interest to convene a public hearing, it afforded interested persons a window within which to request a public hearing. The Department did not receive any requests for a public hearing.

Need for this Proposed Rulemaking

This proposed rulemaking will rescind § 28a.8(5), which Commonwealth Court determined contradicts the express statutory provisions of the act and violates the Legislative intent behind the act.

In summary, the Department is satisfied there is a need for this proposed rulemaking and that it is otherwise consistent with Executive Order 1996-1, “Regulatory Review and Promulgation.”

Persons Likely to be Affected

This proposed rulemaking will apply to operators of Department-licensed commercial kennels. There are currently about 68 licensees. The Department is aware, through onsite inspection, that: 1) 14 of these kennels are in compliance with flooring requirements so that a change or expense will not be necessary when § 28a.8(5) is rescinded; and 2) 26 of these kennels will have to make some changes to flooring when § 28a.8(5) is rescinded. The Department will be inspecting the remaining 28 kennels over the next several months. With respect to a licensed commercial kennel that needs to replace flooring when § 28a.8(5) is rescinded, the Department expects these costs to be modest and notes that to the extent a commercial kennel licensee bears costs associated with replacing flooring to bring it into compliance with the requirements of the act, it is the act, rather than the regulation, which imposes these costs. This is particularly so when Commonwealth Court has effectively concluded that the Department lacked statutory authority to promulgate § 28a.8(5).

Fiscal Impact

Commonwealth

This proposed rulemaking will not have appreciable fiscal impact upon the Commonwealth.

Political subdivisions

This proposed rulemaking will not have appreciable fiscal impact on political subdivisions.

Private sector

This is addressed under the “Persons Likely to be Affected” in this preamble.

General public

This proposed rulemaking will not have appreciable fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will not have impact on the paperwork handled by the Department or the impacted kennels.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2017, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Kristen Donmoyer, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 705-8896 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is Kristen Donmoyer, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 705-8896.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-190. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 28a. COMMERCIAL KENNEL CANINE HEALTH REGULATIONS

GENERAL PROVISIONS

§ 28a.8. Flooring.

For dogs over 12 weeks of age, the flooring in commercial kennels must meet the following standards:

* * * * *

(4) *Additional flooring requirements.*

* * * * *

(viii) Flooring may not be made of or coated with materials that can be chewed and readily ingested, or are toxic to dogs, or both.

[(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.]

[Pa.B. Doc. No. 17-1575. Filed for public inspection September 22, 2017, 9:00 a.m.]

[70 PA. CODE CH. 9]
Weighmasters

The Department of Agriculture (Department) proposes to amend §§ 9.10 and 9.24 (relating to weighmaster's certificate; and limitations of certificate for anthracite) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act) (act). Sections 4150 and 4190 of the act (relating to enforcement and regulations; and rules and regulations) authorize the Department to promulgate regulations as necessary to carry out the act and, more specifically, authorize the Department to promulgate

regulations as necessary to carry out Subchapter C of the act (relating to public weighmasters).

Need for this Proposed Rulemaking

The Department issues licenses to public weighmasters under the act. A licensed public weighmaster is authorized to issue a weighmaster's certificate with respect to various commercial weighings he performs. The weight appearing on a weighmaster's certificate is used to determine a weight-based price in commerce. Licensed public weighmasters typically conduct commercial weighings using vehicle scales at quarries, landfills, and the like.

As part of the process by which the Department renews or issues a license to a public weighmaster, the Department reviews the public weighmaster certificate forms the applicant plans to issue to ensure these forms meet basic content requirements. This proposed rulemaking is needed to delete outdated, burdensome provisions requiring that weighmaster's certificates and certificates of quality for anthracite coal be prepared in triplicate and bear additional language distinguishing the original certificate from the copies. These provisions are not required by statute, date from a time when multipage carbon copy forms were in extensive use and no longer serve a practical purpose.

The deletion of these requirements would relieve licensed public weighmasters of an unnecessary regulatory burden and would help the Department make better use of its weights and measures enforcement staff. In a typical year the Department processes roughly 6,600 applications for renewals of weighmaster licenses. It requires that an applicant submit a sample of its weighmaster's certificate form as part of the application process. The Department finds problems or deficiencies in about 2,200 of these 6,600 applications. Approximately 1,650 (75%) of these 2,200 rejected applications are rejected for lack of compliance with one or more of these regulatory requirements previously described. The deletion of these outdated regulatory requirements will spare the Department the time, effort and expense of enforcement.

Section 9.24(a) imposes the same type of unnecessary regulatory burden as previously described, but pertain to the "certificate of quality" that must exist for certain weighings of anthracite coal. As previously described, the requirement of triplicate forms and notations distinguishing originals from copies no longer serves a practical purpose.

In summary, the Department is satisfied there is a need for this proposed rulemaking, and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of this Proposed Rulemaking

Section 9.10 would be amended by deleting the language requiring that a weighmaster's certificate be prepared in triplicate and bear additional language distinguishing the original certificate from the two copies. This proposed amendment is driven by the fact that most modern weighing and measuring devices are electronic and can readily generate whatever number of certificates are needed for the owner's business purposes. There is no reason to require a licensed public weighmaster to generate a specific number of certificates with respect to each weighing he conducts or to label the certificates as required under the current regulation.

Section 9.24 would be amended by deleting the language requiring that a certificate of quality for anthracite

coal be prepared in triplicate and bear additional language distinguishing the original certificate from the two copies. This requirement is outdated and no longer serves a purpose.

Persons Likely to be Affected

This proposed rulemaking would have a positive impact on licensed public weighmasters and the Department.

Fiscal Impact

Commonwealth

This proposed rulemaking will have some fiscal impact upon the Commonwealth. The Department will save time and manpower costs associated with requiring compliance with the current outdated regulatory requirements. The Department estimates these annual savings at \$14,850.

Political subdivisions

This proposed rulemaking will not have appreciable fiscal impact on political subdivisions.

Private sector

The proposed rulemaking will have some small positive fiscal impact upon the private sector in that licensed public weighmasters will no longer be required to obtain, produce or use triplicate forms for weighmaster's certificates and have forms that distinguish originals from copies. These savings cannot be readily quantified. In addition, the Department estimates that of the public weighmaster license applications that it receives each year and that are deficient and are returned to applicants for corrections or additional information, approximately 1,650 of these are returned because the applicant has not complied with one or more of the provisions that are proposed to be deleted. The Department estimates that this proposed rulemaking will save these applicants about \$18,150 each year in postage and personnel costs.

General public

This proposed rulemaking will not have appreciable fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will simplify paperwork requirements for licensed public weighmasters in that it will do away with outdated regulatory requirements requiring triplicate forms. It will slightly lessen the Department's paperwork load in that applicants for public weighmaster licenses will no longer be required to submit copies of triplicate paper forms and the Department will not be required to review and retain them as part of the application review process.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2017, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior

to final publication of the rulemaking by the Department, the General Assembly and the Governor.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

There is not a sunset date for this proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Walter Remmert, Director, Bureau of Ride and Measurement Standards, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-9089 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is Walter Remmert, Director, Bureau of Ride and Measurement Standards, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-9089.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-187. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 70. WEIGHTS, MEASURES AND STANDARDS
PART I. WEIGHMASTERS
CHAPTER 9. WEIGHMASTERS
GENERAL

§ 9.10. Weighmaster's certificate.

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(b) *Contents.* A weighmaster's certificate [shall] must contain the following information:

* * * * *

(9) Other relevant information the licensed public weighmaster deems necessary.

[(c) *Triplicate form.* A weighmaster's certificate shall be prepared in triplicate.

(d) *Distinguishing original from copies.* The original weighmaster's certificate shall bear the words "Customer's Copy," and the two copies shall bear the words "Void—Customer Do Not Accept."

(e)] (c) *Variations in format and size.* The form and size of a weighmaster's certificate may be such as to suit any system or accounting device, as long as the certificate otherwise meets the requirements of this chapter.

SOLID FUEL

§ 9.24. Limitations of certificate for anthracite.

(a) *Certificate of quality required.* If solid fuel is transported to a licensed public weighmaster under authority of a certificate of transport as described in § 9.23 (relating to certificate affecting weighing requirements), and the solid fuel is anthracite (excluding barley and smaller sizes), the weighmaster may not weigh the anthracite unless the certificate of transport is accompanied by a

certificate of quality. A certificate of quality shall be made out in ink or indelible pencil[, **in triplicate, with the original bearing the legend “original” and the copies bearing the legend “copy” in 1 inch letters diagonally across the face**]. A certificate of quality [**shall**] **must** be sufficiently mucilaged at the left end to permit it to be securely attached to the corresponding copies of the certificate of the weighmaster as provided in subsection (b). The format of the certificate of quality [**shall**] **must** be as follows:

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[Pa.B. Doc. No. 17-1576. Filed for public inspection September 22, 2017, 9:00 a.m.]