



AMERICAN
KENNEL CLUB®

January 13, 2012

Angel Soriano, Chair
Oklahoma State Commercial Pet Breeders Board
1000 Northwest Grand Boulevard,
Suite 140
Oklahoma City, Oklahoma 73118

RE: AKC Comments on Proposed Administrative Rules

Dear Mr. Soriano:

The American Kennel Club (AKC) writes to you on behalf of the members of our 73 affiliated dog clubs and thousands of responsible dog owners and breeders throughout Oklahoma to express concerns regarding portions of the revised regulations recently proposed by the Oklahoma State Board of Commercial Pet Breeders.

Founded in 1884, the American Kennel Club is a not-for-profit purebred dog registry and educational organization dedicated to promoting responsible dog ownership, advocating for dogs as family companions, advancing canine health and well-being, and working to protect the rights of all responsible dog owners. We are the nation's primary resource for expertise, education, and advocacy about purebred dogs and responsible dog ownership.

In 2010 (the latest year for which our statistics are available), the AKC licensed and sanctioned over 200 events in the state of Oklahoma, in which over 37,100 dogs participated. Spending on these events is an important part of Oklahoma's economy and generates over \$31.6 million annually.

As you may know, we opposed Senate Bill 1712 during the 2010 legislative session because of concerns that the measure had the potential to harm responsible dog breeders and owners and not truly improve animal welfare in Oklahoma. During the Board's initial effort on regulations required after SB 1710's enactment, the American Kennel Club also offered written comments on areas of concern.

Enclosed are written comments detailing some of our specific concerns regarding the most recent promulgation of the administrative rules for commercial dog breeders in Oklahoma. We respectfully ask that you review these comments and revise the Board's regulations accordingly. Please feel free to contact the AKC Government Relations Department at (919) 816-3720 or doglaw@akc.org if we can provide further assistance in ensuring that regulations protect the health and welfare of dogs, as well as the rights of responsible breeders in Oklahoma.

Sincerely,

Sheila Goffe
Director, AKC Government Relations

Cc: Members of the Oklahoma State Board of Commercial Pet Breeders

**American Kennel Club’s Substantive Comments Regarding the Proposed Changes
to Regulations of the Oklahoma Board of Commercial Pet Breeders**

- **Section 532: 1-3-1. Board Meetings; officers [AMENDED AND RENUMBERED FROM 532:1-1-4]**

Proposed regulation:

(a) The Board meets once each month in regular session. Special meetings may be called by the Chair of the Board or upon petition by two (2) members. Four (4) members of the Board shall constitute a quorum excluding the Executive Director...

AKC COMMENT: This change reduces the number of participants necessary for a quorum from a majority to four. This could reduce procedural protections for licensees. A better solution for breeders is to ensure that the current quorum requirement—a majority of the Board—remains in place.

- **Section 532: 10-1-1. Definitions**

Proposed regulation:

... “Humane Society” means a nonprofit organization exempt from federal income taxation as an organization described in Section 501(c)(3), Internal Revenue Code of 1986, as amended, that has a principal purpose the prevention of animal cruelty or the sheltering of, caring for, and providing of homes for lost, stray, or abandoned animals.

AKC COMMENT: Because this term is capitalized, it may be interpreted to indicate a formal name of an organization; and therefore, to qualify under this definition, “Humane Society” must be part of an organization’s name. Clarification that “...any nonprofit organization...that has a principal purpose the prevention of animal cruelty...” may ensure that all similar organizations that otherwise are encompassed by this definition are included.

Proposed regulation:

*...These “**Rules**” means the permanent rules adopted by the Commercial Pet Breeders Board in Title 532 of the Oklahoma Administrative Code.*

AKC COMMENT: In addition to being out of form with the rest of the section (i.e., should “These” also be enclosed in quotes and bolded?), the use of the word “permanent” implies that the rules cannot be further amended. The word “permanent” should be deleted, thereby remaining clear that these rules are amendable and may therefore continue to address future issues of Board oversight and enforcement.

- **Section 532: 10-3-2. Requirements for licensing commercial pet breeders**

Proposed regulation:

...(c) Inspections. A Board staff investigator or an assigned Oklahoma licensed veterinarian under contract with the Board shall inspect each commercial pet breeder location prior to granting an initial license for that location, and annually thereafter. The commercial pet breeder shall pay the initial inspection fee and annual inspection fees. The Board shall not hire or allow under its authority, any Humane Society or Member of any Humane Society to perform any inspection of any licensed or pre-licensed commercial pet breeder of the State of Oklahoma.

AKC COMMENT: In combination with the new definition of “Humane Society” contained in Section 532: 10-1-1 (above), this section also provides potential ambiguity regarding what organizations, or members thereof, are not qualified to perform inspections. Again, clarification in both sections—herein, using “humane society” instead of “Humane Society”—may provide better assurance that all similar organizations that are targeted by the preemption are so included. Additionally providing that employees of any humane society are also prohibited from performing any inspection may further allay breeders’ concerns.

- **Section 532: 10-3-5. Grounds for denial, suspension, or revocation of a license**

Proposed regulation:

The Executive Director may cancel or revoke a license or refuse to issue an original license or renew a license:

- (1) For any felony conviction;*
- (2) For any misdemeanor conviction in any court involving animal cruelty by any individual required to be disclosed under the initial application or renewal application;*
- (3) For any type of felony specific by subparagraphs a through pp of paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes;*
- (4) For any felony conviction punishable under the Oklahoma Racketeer-Influenced and Corrupt Organizations Act;...*

AKC COMMENT: Items 1, 3, and 4 are repetitive. Despite the addition of items 3 and 4 replicates language in the controlling statute, in the interest of clarity, items 3 and 4 should be deleted.

- **Section 532: 10-5-2. Investigations and citations**

Proposed regulation:

...(f) Investigation report. The investigator shall prepare an investigation report within 10 days of the visit, a copy of which shall be placed in the commercial pet breeder’s file. A copy of the report to the commercial pet breeder shall be provided upon request. The investigation report shall summarize the investigation, list whether violations were

found, whether the investigator issued a citation, and list each violation.

AKC COMMENT: In an effort to make licensees aware of all investigations pertaining to their operations, AKC believes that the second sentence of the section above should be revised to state, “The commercial pet breeder shall be provided a copy of the report within 15 days of the visit.” This will ensure that the commercial pet breeder receives a copy of the report as a result of standard procedure.

- **Section 532: 10-5-10. Appeal of the Board’s order**

Proposed regulation:

The respondent may appeal the Board’s order to the District Court in Oklahoma City, Oklahoma, pursuant to the Administrative Procedures Act provided the appeal is filed within thirty (30) days after the issuance of the Board’s Final Order.

AKC COMMENT: Courts in licensee's counties may be less costly, more efficient and more familiar with the relevant issues than the Oklahoma City court. A more viable alternative is to permit local courts of competent jurisdiction to continue to hear Board appeals, as permitted in the Oklahoma Administrative Procedures Act (75 O.S. 318).

- **Section 532: 10-5-11. Penalties available to the Board**

Proposed regulation:

- ...(b) Fines. Pursuant to the Act, the Board may impose administrative fines as follows:*
- (1) Failure to obtain a license or operating without a license.*
 - (A) First violation - \$100 to \$1,000*
 - (B) Second violation - \$250 to \$5,000*
 - (C) Subsequent violations - \$500 to \$10,000*
 - (2) Failure to complete renewal license, including submission of the completed application and appropriate license fees.*
 - (A) First violation - \$100 to \$200*
 - (B) Second violation - \$150 to \$500*
 - (C) Subsequent violations - \$250 to \$1,000*
 - (3) Failure to keep records pursuant to the Act.*
 - (A) First violation - \$100 to \$500*
 - (B) Second violation - \$250 to \$750*
 - (C) Subsequent violations - \$500 to \$1,000*
 - (4) Failure to comply with any other provision of the Act.*
 - (A) First violation - \$100 to \$500*
 - (B) Second violation - \$250 to \$750*
 - (C) Subsequent violations - \$500 to \$1,000*
 - (5) Each day a violation is committed or continues may be deemed to be a separate offense.*

(6) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

AKC COMMENT: As drafted, this rule (subsection b, parts 1-4) presents no guidance as to when a specific fine amount may be assessed for a violation. A better alternative would provide guidance regarding how fines would be assessed. For example, guidance could provide that the lower end of a fine range would be available in cases of mitigated circumstances surrounding a violation, while the higher end would be available in cases of aggravated circumstances.

Regarding part 5, further clarification should also be provided regarding under what circumstances a violation could be considered as continued from one day to another. Additional separate offenses shall not be assessed unless proof that the violation continues to occur is received by the inspector, the Board, or other Board staff. For example, if a licensee is cited for a violation at their facility, but an inspector is not available to re-inspect for any amount of time (i.e., seven days), the licensee should be not assessed additional penalties based on the unavailability of an inspector to confirm that fact.

The AKC also strongly recommends removal of part 6 in its entirety. As currently written, parts 1-4 give the Board great discretion in imposing administrative fines with a specific range. Removal of part 6 will ensure that egregious fines are not assessed and that the public continues to be on notice as to the potential specific administrative fines they may suffer should they be found in violation of the Act.

- **Section 532: 15-3-1. Food and water requirements; storage of food.**

Proposed regulation:

(a) Water. Commercial pet breeders shall provide animals unfettered access to clean and unfrozen water at all times.

...

(c) Food and water receptacles. Commercial pet breeders shall use food and water receptacles to deliver food and water to pets. Commercial pet breeders shall make food and water receptacles readily accessible to each pet, and shall place food and water receptacles in a location where the receptacle and its contents will not likely become contaminated by excreta, pests, or otherwise, and where food will be protected from the elements. Food and water receptacles must be disposable, or they must be made of a durable material that can be easily cleaned and sanitized. Commercial pet breeders shall keep food receptacles clean at all times in which they contain food, and shall clean and sanitize water receptacles daily. Commercial pet breeders shall discard disposable receptacles after one use.

AKC COMMENT: Several breeders in Oklahoma have expressed the need for clarification of this section. First, clarification on whether “lick-it”-type water bottles qualify as an acceptable form of water receptacle will be appreciated. Second, we recommend further clarification of

what types of cleaning qualifies as sanitization that are necessary, as the general understanding of sanitizing may be unnecessarily and ineffectively broad to regularly meet the best interests of animals and the Board's intention. An additional definition of "Sanitize" added to Section 532: 15-1-2 will provide the best clarity.