

Texas Department of Licensing & Regulation
Re: HB 1451 Rules
Justification for Adopted Licensed Breeders Administrative Rules

New rules 16 TAC, Chapter 91, §§91.1, 91.10, 91.20 - 91.25, 91.27-91.30, 91.50 - 91.60, 91.65, 91.66, 91.71 - 91.78, 91.80, 91.90 - 91.92, 91.100 - 91.113, and 91.200 - 91.202
(Effective: May 1, 2012)

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code, (TAC), Chapter 91, §§91.1, 91.10, 91.20 - 91.25, 91.27-91.30, 91.50 - 91.60, 91.65, 91.66, 91.71 - 91.78, 91.80, 91.90 - 91.92, 91.100 - 91.113, and 91.200 - 91.202 regarding the licensing and regulation of the dog or cat breeders program, as published in the January 20, 2012, issue of the Texas Register (37 TexReg 164).

Sections 91.1, 91.20, 91.21, 91.25, 91.27- 91.29, 91.56-91.60, 91.65, 91.72, 91.74, 91.75, 91.78, 91.90-91.92, 91.107, 91.109-91.111, and 91.200 are adopted without changes to the proposed text as published in the January 20, 2012, issue of the Texas Register (37 TexReg 164).

Sections 91.10, 91.22, - 91.24, 91.30, 91.50 - 91.55, 91.66, 91.71, 91.73, 91.76, 91.77, 91.80, 91.100-91.106, 91.108, 91.112, 91.113, 91.201 and 91.202 are adopted with changes to the proposed text as published in the January 20, 2012, issue of the Texas Register (37 TexReg 164).

Sections 91.40, 91.41, 91.61, and 91.62 are being withdrawn from consideration for adoption since provisions for third-party inspections and third-party inspectors have been deleted from this rule filing. The adoption takes effect May 1, 2012.

The new rules are necessary to implement House Bill (HB) 1451, 82nd Legislature, Regular Session (2011). A summary of each new rule was included in the notice of proposed rules published in the January 20, 2012, issue of the Texas Register (37 TexReg 164).

The Department drafted and distributed the proposed new rules to persons internal and external to the agency. The proposed new rules were published in the Texas Register on January 20, 2012. The 30-day public comment period closed on February 20, 2012. The Department received public comments from approximately ten thousand commenters; a substantial number of comments were submitted as a form letter or variants commenting on five major issues or rules sections. The following organizations submitted comments: America's Pet Registry Inc., Doberman Pinscher Club of Houston, Farm and Ranch Freedom Alliance, Humane Society of the United States, International Cat Association, Lone Star Working Dog Association, Nolan River Kennel Club, Pet Industry Joint Advisory Council, Responsible Pet Owners Alliance, Seacoast Cat Club, Select Breed Clubs, SPCA of Texas, Sportsman's & Animal Owner's Voting Alliance, Texas Federation of Humane Societies, Texas Humane Legislative Network, Texas Municipal League, Texas Veterinary Medical Association, and U.S. Sportsmen's Alliance.

On March 1, 2012, the Licensed Breeders Advisory Committee (Advisory Committee) met to review public comments and recommend changes to the proposed rules in response to comments received. The public comments are summarized below, followed by the Department's responses.

General Public Comments:

The Commission received general comments opposing and supporting passage of HB 1451, as well as the proposed rules implementing that legislation. Many commenters opined that HB 1451 and the proposed rules are unnecessary and will drive breeders out-of-state.

The Commission is aware of both support and opposition to HB 1451 and the rules promulgated under the bill. As with all other regulatory programs the Commission is charged with balancing the needs and interests of the varying interest groups. As such the Commission will, to the extent possible as permitted by the legislation, enact fair and equitable rules protecting the well being of animals and creating an environment that recognizes the business of breeding animals.

Others argue that HB 1451 and the proposed rules are inadequate and should be strengthened. Many commenters oppose puppy mills, while others state the statute and rules will create a false sense that it is appropriate to purchase puppies from a licensed breeder. Others commenters believe the statute and rules penalize good breeders.

The Commission is aware all legislation has strengths and weakness and acknowledges HB 1451 is no different. However, all perceptions created by passage of HB 1451 are outside the jurisdiction of the Commission and the Department. The Commission believes that the balance reached by these rules will encourage good breeders to do more and will cause substandard and marginal breeders to raise their standards to improve the well being and overall health of their breeding animals.

Some commenters suggest the strict enforcement of existing laws and standards without adoption of new requirements. While the Commission agrees with the commenter that strict enforcement of existing laws and standards is essential, the Commission is charged with implementation of HB 1451 which includes a requirement that violations of existing laws and standards be reported by agency inspectors.

Several commenters suggest that hobby breeders be treated differently from commercial breeders. Others believe that punitive regulations will drive breeders underground and encourage a black market for puppies. The Commission finds that the statute and rules are not punitive to breeders choosing compliance over noncompliance and will be for the most part transparent to responsible breeders. Since the statute makes no distinction between hobby and commercial breeders, the Commission believes it appropriate to treat all persons who fall within the jurisdiction of the statute the same.

A commenter notes that change can be challenging and asked the Department to communicate changes to the rules with the industry, while minimizing costs in a difficult economy. Several comments note the rules may exceed statutory authority. Other comments express concern about the lack of regulation for the roadside sale of puppies. Additional comments express fear that the rules represent an overwhelming and confusing mixture of regulation that will do little to diminish the number of subpar breeders in the State.

The Commission agrees change is challenging and believes it has the staff and existing infrastructure to communicate effectively and efficiently with licensees and those required to obtain a license. The Commission also believes the rules are consistent with the statute which does not address the roadside sale of puppies. As previously stated, the Commission believes the rules are fair and will improve the well being and health of animals previously living in substandard conditions.

Several commenters suggest corrections to typographical and grammatical errors, as well as other nonsubstantive and stylistic changes to the proposed rules.

The Commission appreciates all suggestions to improve and clarify the proposed rules. To the extent required, the rules have been reviewed and where appropriate typographical, grammatical, and stylistic corrections have been made.

A commenter asked if comments from issues of private stakeholders were considered by the Advisory Committee before publication of the draft rules. The commenter also asked if the Advisory Committee or the Department sought consultation or input from national or state organizations or individuals in drafting the published rules.

In response to these comments, the Commission notes that members of the Advisory Committee represent diverse groups of stakeholders. As representatives of those groups it is reasonable to conclude group representatives engaged in discussion with others of similar interests and shared concerns. Neither the Commission nor the Department sought consultation or input from national or state organizations. However, state and national organizations submitted letters to the Advisory Committee which the Department made available by posting the material to the agency's website.

Specific Comments

One commenter states the proposed rules fail to include a fiscal note accurately stating the anticipated five-year projected costs and economic impact of enforcement of the proposed rules on state and local government as well as persons required to comply with the adopted rules.

The Commission disagrees with this commenter. The commenter failed to identify specific enforcement costs to state and local government and affected persons caused by the proposed rules. In response to this general concern, the Commission finds that the rules do not impose requirements on affected persons beyond those authorized and required by statute.

A commenter believes the rules failed to discuss the impact on local employment along with adverse impacts on micro or small businesses. The comments go on to raise questions about anticipated public benefits (which presupposes compliance with unintended consequences on small/show breeders) and costs analysis to achieve those benefits.

As stated in the published rules, the rules as adopted by the Commission do not impose costs on breeders beyond those required by the statute. As adopted, the Commission considered alternatives to the published rules and reduced program costs to levels below those projected in the legislative fiscal note.

A commenter argues that there is no factual evidence to support a finding of zero additional costs to the state because the estimated cost is unrealistically low (challenges to the Legislative Fiscal Note including the potential number of breeders).

The Commission finds that it is reasonable to rely on the legislative fiscal note used and considered by the Legislature. The Commission further finds that during implementation of HB 1451, additional cost savings have been identified and implemented through adoption of these rules. These additional costs savings further support the reasonableness of the costs data stated in the legislative fiscal note.

A commenter believes that enforcement of the rules will adversely impact the state and local economies because of the loss of potential dog shows and associated spending estimated at approximately \$90 million. Along with lost revenues, while acknowledging the lack of participation by breeders in the process, the commenter asserts that compliance costs for breeders will be substantial if breeders are required to rebuild kennels to replace flooring and increase the size of cages and other enclosures, pay licensing fees, and veterinarian costs.

The Commission believes any potential loss of dog shows and associated revenue, if any, is not a result of the proposed rules but rather the result of general opposition to the regulation by the breeder industry. As stated in the preamble to the published rules, breeders who comply with the licensing requirements are not required to increase kennel sizes or flooring. Licensing fees and veterinarian costs are mandated by statute and the Commission, to the extent possible has, through adoption of these rules, mitigated those statutorily mandated costs.

A commenter believes the Department should have interviewed a cross section of breeders rather than rely on members of the Breeder Advisory Committee. The commenter argues that the Commission has authority to modify the federal standards downward to mitigate adverse effects of the rules on micro or small businesses.

Consistent with the requirements of HB 1451, the Commission relied on the expertise of the Advisory Committee which is made up of a cross section of stakeholders. To advance the interests of breeders, the Commission conditionally appointed breeder members to the Advisory Committee. The Commission notes that during the Committee meeting, interested breeders failed to attend those meetings to express concerns on behalf of breeders. Notwithstanding lack of participation by the breeding community, the Department attempted to actively identify breeder concerns by accepting speaking engagements. While the Commission has authority to raise certain standards, it does not have the statutory authority to lower federal standards.

Several comments observe that the standards rely on and use terms found in the United States Department of Agriculture (USDA) standards. The commenters suggest that the proposed rules be clarified by incorporating definitions from the USDA rules into the definitions section of Chapter 91. One commenter suggested adding the following definitions to §91.10: Attending Veterinarian, Carrier, Impervious surface, Indoor housing facility, Intermediate handler, Nonconditioned animals, Outdoor housing facility, Positive physical contact, Sanitize, and Sheltered housing facility. Comment asks that “licensee” be included in the definition of licensed breeder.

The Commission agrees with this comment requesting inclusion of the federal definitions. Therefore, the Commission has changed §91.100 to incorporate by reference the definitions found in 9 C.F.R. Part 1, Subpart A. Since HB 1451 defines “licensed breeder,” the Commission finds it unnecessary to add licensee to the definition. The term “licensee” is defined by the Administrative Procedures Act and includes “licensed breeder.”

Commenters challenge the definition of “adult animal” in §91.10(1). The comments suggest that an animal is not mature until at least 18-months of age. Comments suggest that the 20-puppy threshold in §91.10(8) is too low and should be raised to a higher number. Others assert that the 20 puppy threshold discriminates between breeds because the threshold does not account for different litter sizes based on the breed of the animal. Another comment asserts that the definition of a “dog or cat breeder” is confusing and should be clarified. Several comments disagree with the definition of adult animal in §91.10(1) as well as the definition of puppy in §91.10(16). The commenters note that the ages are inappropriate for describing animals used for breeding. Another comment questions the definitions of controlling person, facility, dog or cat breeder, intact female animal, as well as third party inspectors.

The Commission has insufficient information to agree or disagree with these commenters. However, since the definitions are found in statute, raising the age requirement or changing the number of puppies and other changes to the statutory definitions is beyond the authority of the Commission through the rule-making process.

One commenter asks if a license is required to breed animals if a person has less than 11-intact females. Several question the proof required to show that an animal is or is not intact. Other commenters ask about circumstances in which intact female animals (to keep coat in top

condition) are kept for shows but not entered in hunts or other competitions. Several commenters asked that special consideration be given to people who keep animals as pets and breed as a hobby.

Because the exemptions are established by statute, the Commission notes that unless an animal meets one of the exemptions, each intact female animal must be counted toward the 11-intact female threshold for licensing purposes. The statute makes no distinction between pets and hobby breeders. Moreover, if a person has less than 11-intact females, a license is not required. Some commenters question the housing requirements for animals living in the same house as the breeder, and expressed concern about the number of qualifying animals being reduced to three.

As stated elsewhere, the Commission cannot change the statutory requirements by lowering the threshold from 11 to 3-intact females. In cases where the 11-intact female threshold is met, the Commission cannot conceive of a situation where all 11 animals would live in the house with the breeder. However, in the event the situation arises, it seems reasonable to conclude the house would meet space and size requirements; provided the rooms are standard size and the number of animals per room does not violate the rules; and further provided, the person complies with sanitation and other rule requirements.

Commenters raise questions about whether the 11-adult intact female threshold applies to brokers, animal shelters, and rescue groups.

Without knowing the specific operations model for the various groups, the Commission notes that the statute and rules contain specific criteria. If any of the listed groups trigger the requirements for licensing then a license is required.

Several commenters expressed concern about unsold puppies that reach 6-months old counting toward the 11-adult intact female threshold. One commenter suggests that the 11-adult intact female threshold be reduced to 6-adult females. Another commenter asked whether the 11-adult intact female threshold applies to the number of dogs bred or the total number of dogs possessed. The commenter questions the authority to make rules after the legislation was signed.

The Commission finds that the definition of "adult animal" includes animals that are 6-months of age or older and makes no exception for unsold puppies. The Commission further finds that HB 1451 specifically requires the Commission to adopt rules for administering the statute; but that authority does not authorize changing the number of animals triggering the threshold for licensing.

Additional comment ask if a person owns less than 11-adult intact females but produces more than 20 puppies is a license required. Other comments question whether adult intact females housed at the facility before September 1, 2012, count toward the 11-adult intact females; as well as the offering of 20 animals for sale.

In response to this comment, the Commission finds that the licensing requirement is triggered when both conditions are met (a person must possess 11-adult intact females and offer 20 of the puppies for sale). The Commission finds that HB 1451 refers to calendar years; therefore, it is reasonable to look back and include all animals housed and puppies sold as of January 1, 2012.

Another commenter asked whether once licensed always licensed or if the licensing requirement goes away if the person no longer meets the requirements of the rules. Comments asked if breeder records show an animal is not being bred (for medical or other reasons) will that animal count toward the 11-adult intact female threshold.

Since a breeder license is valid for 12-months from the date of issuance, the Commission finds that as long as the license is current, the license holder is subject to the requirements of the statute and these rules. As provided for by statute, every 6-month old intact adult female animal is presumed to be used for breeding unless the person establishes to the satisfaction of the Department, based on the person's breeding records or other evidence reasonably acceptable to the Department, that the animal is not used for breeding.

Other comment ask if breeding operations do not trigger the 11-adult intact female threshold and/or the offering of 20 puppies for sale during the calendar year, is the breeder required to request an exemption.

The Commission believes that the statutory exemption is self-executing and a person need not make a filing requesting the exemption.

The Commission received thousands of comments objecting to the use of wire or wire mesh as defined in §91.10(19) and provided for in §91.102(e)(1)(A) and §91.109(a). Generally the commenters request the elimination of wire flooring or in the alternative, request that flooring be 50% solid and 50% wire or wire mesh. These commenters claim the wire or wire mesh is inhumane, injures the paws of the animals, and allows waste material to flow between stacked cages. At least one commenter implied that the definition should remove references to walls and ceilings. Others implied that the definition precluded the use of other material for walls and ceilings. Others oppose the use of plastic material and some suggested that the use of bare wire or painted wire is sufficient. Comments suggest that the wire coating not be limited to rubberized and include power coating or plain paint. Another comment questions whether the walls and ceiling must be constructed with material impervious to moisture. The comment also questions the sanitation requirements for flooring. One commenter believes the definition of wire or wire mesh will invalidate commercial crates used in the majority of facilities in the State.

In response to these commenters, the Commission notes that wire flooring is not prohibited by HB 1451 or the federal regulations. As such, the Commission cannot make the assumption as some commenters argue that state law and federal regulation authorize the use of flooring that is inhumane. The Commission believes the assumption is not valid. Balancing the well being of the animals with concerns of breeders, the Commission believes the requirement that wire flooring be encased in a protective coating designed to prevent a paw from passing through will prevent injuries to the paws of animals housed in such enclosures. With respect to the wire walls and ceilings, the Commission amended the definition of wire or wire mesh to remove the reference to wire walls and ceilings. The Commission further amended the definition of wire or wire mesh to include rubber and plastic materials consistent with industry standards. The Commission believes that merely painting wire provides little to no protection to the paws, therefore declines to include painted wire in the definition of wire or wire mesh. The Commission acknowledges that all flooring will present sanitation problems. However, sanitation standards are addressed elsewhere in this chapter. With regard to waste material flowing between stacked cages, in addition to sanitization requirements, the Commission notes that the statute and rules require an impervious barrier between stacked cages.

One commenter asked whether the definition of wire or wire mesh in §91.10(19) means that dogs are to be kept in fiber glass crates during feeding instead of wire crates.

Nothing in the proposed or adopted rules requires that dogs be kept in fiber glass crates during feeding instead of wire crates.

Additional comment would redefine wire or wire mesh to replace plastic or rubberized with "thick bonded vinyl" and require the openings be designed so that an animal cannot chew through or get any part of a paw or toenail caught in an opening.

In response to this comment and others, the rules have been changed to include plastic, rubberized, and thick bonded vinyl. The Commission believes it is unreasonable to require openings be designed so that an animal cannot chew through or get any part of a paw or toenail caught in an opening.

Instead of rules and regulations, one commenter suggests guidelines be adopted and when met breeders get a certificate or seal to display. This commenter also suggests that a list of breeders failing to meet the guidelines be published.

The Commission finds this comment inconsistent with the regulatory scheme established by HB 1451 and declines to make changes to the rules in response to this comment.

One commenter suggest moving the exemptions listed in §91.30 to §91.20.

The Commission finds that §91.20 (applicability) and §91.30 (presumptions) are stand-alone provisions. As such it is inappropriate to combine the two sections.

Some commenters oppose the presumption in §91.21 that animals are presumed to be used for breeding purposes unless the breeding records or other evidence proves otherwise. The suggestion is to allow breeders to sign statements certifying the animals are not used for breeding.

The presumption in §91.21 is created by statute and therefore cannot be changed by rule. The request to allow breeder certification is beyond the Commission's authority.

Some commenters state that §91.22 prevent persons who breed animals but who are not required to obtain a license from using the term or being designated as a breeder. The commenters suggest that the prohibition be limited to use of the term "licensed breeder."

In response to this comment, the Commission amends §91.22 to prohibit the use of "licensed breeder" rather than the generic term dog or cat breeder.

One commenter states that §91.22 contain several loopholes (unidentified in the comments) and ask for clarification to eliminate the loopholes. The commenter raises questions and seeks answers to several potential licensing scenarios. Another commenter believes the language in §91.22(c) is confusing and should refer instead to tracks of land, adjoining tracks of land or tracks of land within 500 feet of each other. One commenter asked about breeders sharing facilities but maintaining separate licenses (is that the same facility if the animals are separated).

Absent specificity describing the alleged loopholes the Commission has insufficient information with which to respond to this commenter, including the hypothetical questions posed by the comments. With respect to the adjoining tracks of land, the rules have been changed to allow for noncontiguous tracks of land within 300-feet of each other to be considered a single facility for purposes of licensing.

A commenter requests clarification about the meaning of "exemption certificate" required by §91.23. One commenter suggests that income tax returns be required as proof that breeders are paying profit on income (amended to show retirement and disability income). Another asked about criminal convictions that would disqualify a person from obtaining a license. The same commenter asked the intent of the background check and how criminal convictions impact prisoner groups that work with and train animals. Other comments ask for the types of disqualifying convictions. Additional comments asked who pays for the background checks. Another commenter states that kennels are not tax exempt and cannot provide an exemption

certificate. One commenter suggest that §91.23(5) and §91.51 be changed to require Class A license be in good standing with no associated violations or unpaid penalties. Comments request that certain persons (employees) be deleted from the definition of controlling persons.

Since the sales exemption certificate has been deleted, the Commission need not respond to this comment. The Commission finds it unreasonable to require the filing of tax returns for breeders to show payment of taxes. With respect to criminal background checks, HB 1451 lists specific disqualifying criminal convictions and in a separate proceeding, the Commission may approve additional criminal convictions that might prevent an applicant from receiving a license. Since the statute and rules do not address persons engaged in training animals, the concern about prisoner groups need not be addressed. Costs related to background checks are embedded in the application fees and thus will be paid by applicants. Since the exemption from a prelicense inspection is established by statute, the Commission is not authorized to expand the requirements or the statutory definition of controlling persons.

Commenters object to the provision in §91.24(b) regarding the inability to perform breeder activity with an expired license. These commenters imply that the needs of the animals continue and must be addressed with or without a license. If a license lapses, several breeders suggest that breeders be allowed to feed and care for the animals but be prohibited from selling until they are in compliance with the licensing requirement. Other comment question the meaning of “commission order.” One commenter states that violations incurred in a different jurisdiction should not be considered or used to deny a license application.

The Commission understands that breeders must continue to care for animals even when a license expires. Failure to do so could constitute animal cruelty or endangerment. Nothing in these rules imply otherwise. The point of this section is to clarify that operating (which included more than the selling of animals) with an expired license is a violation subjecting the licensee to administrative penalties. Licensed breeders avoid the consequences of administrative penalties for unlicensed activity by timely submitting a renewal application. The Commission believes the term phrase “commission order” is self explanatory and needs no additional clarification. Since the statute makes no distinction between criminal convictions occurring in different jurisdictions, the Commission declines to make the distinction.

Other comments assert that some of the reasons for denial of a license listed in §91.25 are tantamount to a “one-strike and you’re out” provision. The commenter believe the “or” should be replaced with an “and” to allow denial when all of the listed violations occur. The “one strike and you’re out” argument is also discussed in comment related to §91.92.

The Commission finds that the violations identified in §91.25 and §91.92 are statutory and cannot be modified by changing the “or” provision to “and.”

Commenters request that §91.27 be changed to provide that once the statutory requirements are met the Department “shall issue” a license. A commenter asserts that this section should include provisions for administrative appeals and other due process rights.

The rules have not been changed in response to this comment. When an applicant meets the requirements of the rules a license will be issued. In addition, the due process requirements in the Administrative Procedures Act apply to the entirety of this chapter.

With respect to the notification provision in §91.28, a comment suggests the rule only use email notification when the person provides an email address; and for those without an email, notice to be sent, by certified mail, to the address shown on the application.

The Commission notes that an email address is just another resource available to the Commission to reduce administrative costs associated with providing various notices to licensees. If statute requires notice by certified mail, the Commission is required to comply with the statute and provide notice by certified mail.

Some comments oppose getting a prelicense inspection when other occupations are not required to be preinspected. Other commenters oppose unannounced inspections.

In response to this comment, the Commission notes that every program statute is different. Unless the applicant holds a current federal Class A license, HB 1451 requires a mandatory prelicense inspection. This requirement cannot be waived by rule. With regard to unannounced inspections, the Commission finds that unannounced inspections are effective in other regulatory programs; they are not prohibited by statute and will be equally effective in the administration of the licensed breeder program.

Other commenters oppose the licensing requirement, arguing that some breeders will remain unlicensed and in position to unfairly compete by selling puppies at reduced prices based on lower expenses because of no regulatory expense.

The Commission agrees that an unlicensed breeding operation has the potential to provide unlicensed breeders an unfair competitive advantage over licensed breeders. To remedy this situation, the Commission believes the reward program authorized by statute and implemented by this chapter will assist with the identification of unlicensed breeding operations, thus leveling the competitive playing field.

With respect to §91.29, a commenter asked if the license is applicable to the person named on the license, how are employees held accountable for violations.

Unlike several other trades and occupations regulated by the Department, HB 1451 does not require a license to work at a breeding facility. Therefore, the regulations only apply to the owner or person named on the license. The owner or person named on the license is responsible for ensuring employees comply with the requirements of this chapter.

Several commenters suggest the §91.30 requirement that owners of special purpose dogs described in the Texas Occupations Code, §802.005 exemptions for certain persons who breed special purpose dogs present proof or entitlement to the exemption is contrary to the intent of the legislative exemption.

Proposed §91.30 did not specifically require a person request an exemption. The section offered methods and illustrative examples of evidence that would satisfy the Department in the event questions arise related to the status of an animal. While the Department will accept evidence consistent with the published rules, the specific examples have been deleted from the adopted rules to reinforce the self-executing nature of the §91.30 exemptions.

Commenters ask if proof of the exemption is required for every dog owned to qualify for the exemption and whether the exemption is an annual exemption. Some commenters raised concern that hunting, service, and other working dogs do not compete in competitive events and would not have the type of evidence required to support an exemption.

As stated above, the §91.30 exemptions are self-executing. However, the Commission recognizes that situations change and that an animal may exempt one year and be counted toward the 11-intact female threshold in later years as provided for by §91.30(c) which converts personal use animals based on the activity of the animal. The Commission restates that the examples published in §91.30 were not intended to be exhaustive but merely illustrative.

Other commenters believe §91.30 is vague and unclear because the rule does not establish procedures or timing for claiming the exempt status. One commenter believes the Department should not have open discretion whether evidence is sufficient to prove entitlement to the exempt status. Some comments oppose the requirement that evidence of exempt status uniquely and conclusively relate to a specific dog. Some commenters question who is required to pay (administrative expense and cost of appeals) to obtain evidence to satisfy the burden of proof related to the exemptions. Some comments suggest the requirements in the rule improperly narrow the exemption allowed by statute and makes it uncertain what evidence is acceptable to obtain the exemption. One comment suggests that catalogs listing the dog's name and ID/Registration number be used as proof of exemption, as well as listings of websites. Commenters inquire if the exemption must be proven each year. One commenter asks for clarification for years the animal does not compete and recommends the language refer to intact female rather than just "dog". Comments inquire if medical records (including fertility testing records) will be acceptable proof that an animal is not or had not been used for breeding; as well as the age and size of the animal relative to breeding practices.

The Commission reiterates that the exemptions are self-executing and one need not make a formal application to invoke the protections afforded by the exemptions. In order to guide and provide notice to the public about how the Department would exercise its discretion to determine the sufficiency of evidence, the published rules contained examples. To clarify the section, the examples have been deleted. But as previously stated, the principles outlines in the published rules remain valid and will be considered as proof of entitlement to an exemption. The §91.30 exemptions apply to individual dogs and not to groups of dogs owned or possessed by a person. Thus the requirement that the evidence uniquely and conclusively relate to a specific dog is reasonable and required as part of an exemption analysis. If necessary, persons are allowed to present whatever proof is available to them based on the unique circumstances under which they may find themselves. Section 91.30 refers to "dogs." Therefore, the Commission makes no changes to that reference.

Commenters suggest that the Texas Occupations Code, §802.005 exemption should be based on the intent or intended use of the animal by the person/owner and not evidence of the actual use of the animal.

The Commission agrees with this comment but notes that actual use is also evidence of intent; and thus a valid consideration in determining whether an exemption is applicable.

Several commenters suggest the type of evidence required to prove an exemption under §91.30 be expanded to include competitive events such as conformance, agility, rally, and every kind of AKC type of event.

Rather than prejudge the various types of competitive events, the Commission believes it reasonable to make such determinations on a case-by-case basis. The case-by-case approach will afford breeders wide latitude to assert entitlement to an exemption.

Commenters complain and seek clarification about the requirement in §91.40 restricting third-party inspectors to employees of fire departments. These commenters observe that a substantial portion of the state is covered by volunteer fire departments. Another commenter says the section is too broad and would allow the appointment of an entire fire department or agency. This commenter questions how inspectors will qualify and states that third party inspectors should be required to provide the same personal information as breeders. A commenter suggests that all references to inspector be amended to refer to third party inspector. This commenter would also include Department inspectors as subject to continuing education.

Since the Commission deleted §91.40 from the adopted rules, the Commission need not respond to these comments.

Another commenter asked whether keeping AKC records comply with the record-keeping requirement of these rules.

The rules as published and adopted merely identify the information that must be contained in the medical records related to each animal. The rules do not require a specific record-keeping format. Therefore, as long as the records contain the required information, licensees have complete flexibility to organize and maintain medical records in the form and format consistent with business operations.

Another comment asked for clarification of what is meant by reasonable inspection fees/expenses referenced in §91.50 and will reasonable fees exceed the prelicense fees. Comment asked that §91.50 be amended to refer to prelicense inspection and reference the fee schedule in §91.80. Comments also seek precedent and question the requirement for breeders to pay inspection fees which are not imposed on other regulated businesses. Other comments question the incentives inspectors have to fail a facility in order to charge additional inspection fees.

In response to other comments related to fees, the Commission deleted fees for prelicensing inspections. Therefore, the Commission need not respond to these comments. Commenters object to the requirement to pay for prelicense inspections required by §91.50(c). The commenters believe the reinspection fees are open-ended.

The Commission believes that payment of prelicense inspection fees is reasonable. However, in response to the other comments related to fees, the Commission amends the adopted rules to eliminate prelicense inspection fees.

Comments question and seek clarification about §91.51 and the need for a Class A animal breeders license. The commenter asked if the license is available in advance of the license required by 16 TAC Chapter 91. Another commenter asked if all medical records and other recordkeeping requirements must be in place to pass the prelicense inspection or whether the prelicense inspection is just of the facilities. Other comments request deletion of the requirement that Class A license holders certify they meet the requirements of Chapter 91.

In response to these comments, the Commission clarifies that a USDA Class A animal breeders license is available prior to September 1, 2012. As stated in response to other comments, the Commission further clarifies that the focus of the prelicense inspection is on the facilities. With respect to deletion of the certification requirement, the Commission declines this request because the requirement is statutory.

Several comments question the inspection provision in §91.52 authorizing inspections during normal business hours. Commenters claim that hobby breeders may not keep traditional business hours or may be absent from the facility for extended periods of time, such as vacations. Some comments question the need to perform inspections of AKC facilities since those facilities have already been inspected.

The Commission acknowledges that normal business hours relate to the hours kept by each breeder. Therefore, for purposes of inspections, inspectors have flexibility and are authorized to visit a facility on days and at hours kept by the facility. With regard to extended absences from the facility, the Commission observes that facilities unmanned for an extended period of time have potential to run afoul of various rules. Thus, it is reasonable that in the event of an extended absence of the owner, a representative of the owner will be present. Except for the waiver of a facility holding a current Class A federal license, HB 1451 requires, without exception, an

inspection of each breeding facility even if those facilities are members of or inspected by membership clubs.

With respect to §91.52, a commenter suggests deletion of references to proof of inspection and instead refer to a preliminary report acknowledged with a signature without admission of liability.

The Commission agrees with this comment and the rules have been changed to reflect this suggestion.

Comment inquire whether the at least every 18-months provision in §91.52 means periodic inspections may occur more frequent. A commenter questions the potential expense for out-of-cycle inspection fees if there is a need for multiple inspections and believes reporting violations should require corrective actions without incurring out-of-cycle inspection fees. The commenter also questions whether the 15-day corrective action period in §91.54 is sufficient for breeders to make noted corrections. For purposes of entering a residence to investigate unlicensed activity, a commenter asks for clarification about what “is necessary to access animals or other property relevant to the care of the animals.”

The Commission finds that the “at least every 18-months provision in §91.52” is statutory and does not require clarification. With regard to correction of violations, the Commission amended the published rules to bring them in-line with the federal regulations allowing discretion for time allotted to correct violations. Beyond the situations explicitly stated in statute, the Commission believes the determination of when it is necessary to enter a residence is best determined on a case by case basis.

One commenter suggests the way to keep standards high is to conduct surprise inspections of licensed facilities. Other comments question when or what is meant by “appropriate” with respect to inspections without notice. Comments suggest that the term relevant document is vague and unconstitutional. This commenter ask for set penalties and not reference to the general administrative penalty authority. Other comments asked whether the inspector provides the proof of inspection or the Department; whether the proof of inspection is in addition to the report of violations; and what are the consequences for failure to provide the proof or report. Comment states that the inspector should be prevented from including violations in the report that are not in the proof of inspection.

The Commission agrees that unannounced inspections are effective and the rules provide for surprise inspections without notice. Under the statute breeders are not entitled to notice of inspections. Absent a right to notice, the Commission finds the rule requirement for inspectors to articulate a reason for not providing notice is a restriction on the inspector and does not infringe upon rights of breeders. With respect to relevant documents, the Commission notes that relevant documents relate to any document or records required by this chapter. With respect to penalties, the Commission reiterates that a penalty will be established in a separate proceeding. The Commission clarifies that the ‘proof of inspection’ has been changed to a preliminary report and is in addition to the final report. The failure to leave a preliminary report does not invalidate the final report or its content.

Regarding out-of-cycle inspections required by §91.53, one commenter ask and express concern if four consecutive inspections are necessary once compliance is achieved. Another commenter suggest only two additional inspections are necessary.

The Commission notes that the out-of-cycle inspection requirements have been changed to delete one of the tiers and the associated number of re-inspections.

Comment seeks to make the occurrence and frequency of the §91.53 out-of-cycle inspections mandatory with the deletion of “may” and insertion of “will” in subsection (d). In the frequency of inspections chart, the commenter inserts the phrase “at least” in front the published frequency schedule. This commenter asks for a new §91.53(i) to provide for additional inspections in addition to those referenced in the published chart.

The concept of mandatory out-of-cycle inspections is inconsistent with the Department’s policies and procedures; therefore, the rules have not been changed in response to this comment, including the request to insert “at least” into the out-of-cycle inspections frequency chart. The Commission notes that it has the authority to investigate all complaints and need not change the rules in response to this comment.

Several commenters question §91.55 and §91.56 regarding the Department’s responsibility to create and maintain a disciplinary database. The comments seek clarification about the types of information that will be available online about residences used for business purposes and expressed concern about subjecting themselves to the Public Information Act. Comments ask for procedures for the removal from the database required by §91.55 as well as the disciplinary database required by §91.56. Some comments request that physical addresses be protected from disclosure. Other comment suggests that §91.56 include the name, nature of violation, and outcome information be included in the disciplinary database. Other comments asked for the inclusion of Department inspectors as well as third party inspectors and requested the policy reason for the database. Comments raised concern about identity theft and questioned the information that will be made public. Other comment asked for clarification about the breeders’ ability to preview the information or get off the list.

The Commission notes that the requirement to maintain a disciplinary database is statutory and therefore a policy justification for the database is not necessary. The database will contain basic information about the proceeding leading to the violation contained in the pleadings initiating the enforcement action, including but not limited to, the name of the offender, nature of the offense, and penalty amount. The Commission further notes that information related to violations and the disciplinary database are subject to the Public Information Act which may allow for disclosure of additional information, including the address of the facility. The third party inspector provision has been removed from these rules and therefore for purposes of these comments the issue is mooted and no response is necessary. With regard to the ability to preview what information gets entered into the databases, the rules have not been changed because licensees will not be allowed to preview the data. To the extent allowed by the Public Information Act and as with all other regulatory programs, the Commission and the Department will make all reasonable efforts to prevent unauthorized access to sensitive information that may lead to identity theft.

Several comments state that a hands-on examination of each animal is cost prohibitive and oppose the requirement for annual examinations for each animal.

While an annual examination is required, the Commission believes that the examination should be conducted in accordance with accepted veterinarian practices. Therefore, the Commission deletes the hands-on examination requirement.

In response to the Department’s responsibility in §91.57 to provide the public with consumer interest information, a commenter asked about the complaint handling process and whether breeders will have an opportunity to resolve complaints before the complaint is made public. Other comment asserts that complaints should not be anonymous; breeders should be given a hearing after investigation with rights to appeal. Questions are asked about the level of detail that will be provided to the public.

In response to this comment, the Commission notes that as with all other programs, breeders will have an opportunity to resolve complaints informally. However, it must be noted that under the Public Information Act, even if a complaint is resolved informally, the complaint and resolution are still subject to disclosure under the Act. The Commission further notes that anonymous complaints are processed based on the sufficiency of information in the complaint. An anonymous complaint with insufficient information will be disposed of accordingly. An anonymous complaint with sufficient information will be processed as other complaints and the due process protections under the Administrative Procedures Act are applicable to the complaint.

A commenter suggests that the Commission delete §91.58(a) regarding the acceptance of donations. The commenter states the authority to accept donations is discretionary. In the event the section is adopted, the commenter asks that the provision be changed to disclose identifying information about each donor. Other comments asked that a monthly report be made available accounting for funds.

While acceptance of donations may be discretionary, the Commission believes they are necessary to an effective and efficient education and enforcement program. Therefore, donations that comply with the statute will be accepted and reports will be prepared and submitted to the Commission as required by statute. Donations and reporting are subject to the disclosure requirements of the Public Information Act.

Many commenters oppose the §91.59 reporting of violations provision related to unlicensed activity. These commenters believe the reward program will lead to nuisance complaints and deny breeders the right to confront their accusers. Rather than implement an online reporting system, the commenter suggest the Department explore less costly approaches. One commenter claims that breeders should be compensated when reward tips are determined to be false. Another commenter suggests the rules contain a warning that false reporting is subject to criminal penalties. One comment suggests that the reward program be limited to information related to sick puppies. An additional comment request that records be kept to track the actual names and addresses of informants and to identify patterns of malicious complaints which would trigger no investigation by the Department.

The Commission believes the §91.59 reward program authorized by HB 1451 will lead to the identification and licensing of unlicensed breeding operations leading to eventual reduction of administrative costs of the program. Without cost to taxpayers or licensed breeders, the online reporting system is the most efficient and effective system available to the Department. Contrary to the comment, the Commission finds that all due process required by the Administrative Procedures Act as well as state and federal constitutions are protected under the program. Administrative proceedings will not be initiated until the information is investigated by agency investigators. If the allegations are substantiated, the investigator and not the person providing the original information will be the witness/accuser. Therefore, respondents will have the right to constitutionally confront their accuser. In the event a person incurs costs of defending administrative proceedings, HB 1451 does not provide compensation to those persons and so the Commission may not do so by rule. In a like manner, HB 1451 does not authorize payment for information related to sick puppies. As with all other complaints, the Department tracks all information related to complaints and respondents to independently evaluate each complaint. Those processes will be followed for this program as well.

Commenters question the lack of specific due process protection in §91.59 regarding online reporting of complaints. One commenter asks if the person reporting a violation will be required to come forward and identify him/herself.

In response to this comment, persons reporting unlicensed activity who wish to remain anonymous will not be required to publically identify themselves. According to opinions issued by

the Office of the Attorney General, consistent with state and federal due process requirement, the identity of such individuals is protected by the well established "informant's privilege."

Some commenters suggest deletion of the §91.60 reward program arguing it is discretionary and will lead to the harassment of breeders.

As stated elsewhere, the Commission has processes and procedures in place to monitor the reporting of unlicensed activity. To the extent a person attempts to abuse the reporting system, the Department has flexibility to handling all such abuses accordingly.

One commenter observes that §91.61 is vague because it lacks specific subject matter for inspector training. One commenter suggests that inspectors be trained on animal husbandry, animal handling, breeding experience, and other relevant subjects. This commenter asks that inspectors be required to disclose membership or affiliations with animal rights related groups. In reference to §91.61, commenters state that inspector training is vague and should include more detail as well as the need for continuing education for inspectors. One commenter suggests that inspectors be trained to prevent facility contamination by following the sanitary protocols of the facility under inspection. Other comments request that inspectors be trained in bite prevention.

The third party inspections provisions have been deleted from the adopted rules and so the training of those inspectors is no longer an issue. With respect to Department investigators, those investigators will receive training to include animal husbandry, animal handling, breeding experience, and other relevant subjects. However, it is not necessary to mandate that training by rules. Department investigators are subject to various conflicts of interest prohibitions and thus disclosure of memberships in animal rights groups is not necessary.

One commenter states that the Animal Advisory Committee in §91.65 is unfairly balanced and skewed in favor of animal welfare groups. Another comment inquires whether a quorum of the committee is necessary to act. A comment complains that breeders have no voting representation on the committee. One commenter recommends two seats on the advisory committee rotate between Texas 501(c)(3) organizations.

While appreciating this comment, the Commission finds that the current Advisory Committee consists of the stakeholders authorized by the statute. The terms of the appointed stakeholders comply with the statute and the Commission is without authority to alter those terms. With respect to the voting rights of the two appointed breeders, the Commission notes that is a function of the statute.

Comments inquire about the reasonable notice of inspection requirement in §91.66 and opportunity to be present with regard to alternative representation, rescheduling and the ability of breeders to record the inspection. Other comments request the inspector's use of discretion to conduct an inspection without notice; right to request relevant documents; and deviating from prescribed procedures (commenters suggest pictures be required). One comment asked that inspectors give at least 10-minutes notice to provide time to get aggressive animals under control.

In response to this comment, the Commission finds that nothing in the statute or Department's practices and procedures allows a licensee to reschedule an inspection, or requires the presence of the owner of the facility, or entitles a licensee to notice of the inspection. The Commission further notes that relevant documents clearly refer to any document or records required by this chapter. Inspectors will attend training which will include evidence collection, documentation, and procedures.

Many commenters request that the §91.66 provision which allows an inspector to enter a private residence to investigate unlicensed activity be deleted and that entrance only be authorized after

issuance of a search warrant by a member of the judiciary. Other comments opposed inspectors (strangers) entering a private residence for any reason.

For the reasons and subject to the limitations set forth in HB 1451, the Legislature authorized inspectors to enter a private residence. The rule as adopted is consistent with that statutory authority.

A commenter seeks to modify §91.66 to provide for “unannounced inspection” and remove references of investigations from the section.

In response to this comment, the Commission changed §91.66 by breaking the section into three subsections (inspections is now subsection (a); investigations are now in subsection (b); and reports of animal cruelty now appear in subsection (c). Nothing in these rules prevents unannounced inspections.

With respect to §91.71, a commenter questions whether the false advertising provision is necessary since false advertising is prohibited under the Business and Commerce Code.

The Commission agrees that false advertising is prohibited under the Business and Commerce Code. However, the Commission is without jurisdiction to enforce provisions of the Business and Commerce Code. Therefore, it is necessary to include the false advertising provision in this chapter.

Other comments complain about the requirement in §91.72 to post licenses in a public place. Comments assert that some small breeders do not allow access to their facilities by the public and therefore cannot comply with the requirement.

If a breeder does not allow the public to access the facility then a posting is not required.

Comments request changes to §91.73 allowing breeders to maintain a link to the rules and not require hard copies.

The Commission agrees with this comment and the rules have been changed to allow hard copy or electronic access to the rules.

Other comments opposes the mandatory contract provision in §91.74. The commenter believes that providing the license number is sufficient. The commenter notes the requirement would require redoing existing contracts; and questions if a written contract is mandatory.

The Commission notes that the contract disclosure requirement is mandatory by statute and the Department is required to enforce the provision. Any costs of redoing contracts are a result of the statute and not adoption of these rules. Without knowledge of specific sales, the Commission is without sufficient information to advise whether a written contract is required.

Other comments ask that §91.76 be changed to recognize that common practice is to temporarily house animals owned by third-parties. These commenters argue that temporarily housed animals should be excluded from the annual inventory and not counted towards the 11-adult intact females; as well as exempt animals.

The Commission clarifies that the annual inventory is mandatory by statute which requires “an accounting of all animals held at the facility at any time during the preceding calendar year.” The requirement is without exceptions and must be maintained regardless of the reason the animal is held at the facility. Whether temporarily housed, the animal count toward the 11-adult intact

females is based on whether the animals can be counted under §91.21 (presumptions) or §91.30 (exemptions).

Comment seeks clarification of §91.77 regarding record retention and suggests deletion of the reference to five years, while moving the reference to the animal disposition date.

The rules have been changed in response to this comment. The five year retention period has been reduced to two years.

Commenters ask whether the animal care records required by §91.77 can be kept with the ownership records or is a separate file required. The commenter requests deletion of the weight records since animals' weight differ from time to time. The commenter asks for clarification if records reflecting the number of puppies refer to at birth or at weaning; and whether recordkeeping forms will be provided.

Nothing in the rules requires that records be kept in a set format. Breeders have complete discretion as to how records will be maintained. With respect to weight records, the Commission is aware that weights may vary from day to day but the intent of the rules is to get a snap shot in time and not a daily weight record. The Commission finds that the statute refers to the number of puppies or kittens per litter. The Department will comply with the statute which refers to puppies at birth and will not provide forms that may be used for record keeping purposes.

Commenters state that the licensing fees in §91.80 are unreasonable because they are too high and will put some breeders out of business or discourage them from getting a license. Other commenters oppose the fee for re-inspection of facilities. Some commenters ask about the fee for breeders with less than 11-intact females. Some commenters object to the licensing fees and add that those fees combined with the increase in veterinarian fees will erode already marginal profits.

In response to comment about fees and in conjunction with other cost reduction decisions, the Commission adopts fees substantially lower than fees set forth in the published version of the proposed rules. In addition to fee reductions, the adopted rules eliminate other proposed fees. The Commission finds that the fee reductions and fee eliminations adequately address the concerns expressed in the comments.

To lower veterinarian fees several commenters suggest that medical treatment be maintained at levels required by the USDA standards. As estimated veterinarian fees, one commenter suggested fees could be as high as \$500 for a 25-mile trip charge (\$100 each additional 25 miles) in addition to \$21 per animal or \$15 per animal if over 25 animals.

As adopted, the Commission finds that elimination of the hands on requirement for annual examination makes the adopted rule consistent with USDA standards and compliant with HB 1451.

Some commenters suggest changing the fees in §91.80 to a flat fee structure rather than a tiered structure, thereby aligning state fees with the federal fee structure. Clarification is sought on the basis for the expenses used to calculate fees. Questions were asked about adjusting fees when the numbers of animals change. A commenter asked if fees are based on projected numbers and if the number of breeders and dogs affect the fee structure. One commenter asked that fees be halved with a \$10 per litter surcharge. Another commenter asked about refund of fees paid in error and the appeal rights of the payee. Comment asked if licensing fees fail to generate revenue to fund the program will the revenue short falls be passed on to breeders or the state.

As stated previously, the Commission modified the fee structure; however, those modifications do not include a flat fee. The Commission notes program costs are taken from the legislative fiscal

note (which includes projections about the number of persons subject to the licensing requirement) considered by the Legislature in passing HB 1451. Application fees are nonrefundable and will not be adjusted. The Commission finds that a per litter surcharge is administratively unsupportable. By statute, each regulatory program must recover costs which cannot be subsidized through other programs or taxpayers. Any adverse decision or action taken by the Department is subject to the due process requirement in the Administrative Procedures Act.

With regard to §91.90, several commenters asked for more defined administrative penalties and sanctions to avoid court challenges.

In compliance with other statutory requirements, a penalty matrix containing ranges of penalties for rule violation will be approved for publication in a separate proceeding.

Comments state that the revocation provision in §91.92 for convictions in other jurisdictions should be subject to review and only considered after exhaustion of all appeals. This commenter asked that the provision be broadened to prevent license revocation for a single rule violation.

The Commission notes that criminal convictions that have not become final cannot be considered during a background check. Whether a single violation results in a license revocation will be determined in a separate proceeding to approve and publish the statutorily required penalty matrix.

Several commenters complain that §91.92 related to license revocation and suspension fail to provide due process safeguards including the right to a hearing.

The Commission again notes that §91.92 and all other sections of the chapter are subject to the procedural safeguards in the Administrative Procedures Act.

One commenter asked if breeders will be required to have all veterinarian records in place for the prelicense inspection.

In response to this comment, the Commission concludes it is not necessary to have all medical records in place prior to the prelicense inspection. The prelicense inspection should focus on the physical facilities and environment of the animals. Within 12-months of receiving an initial license, breeders must be in compliance with all requirements of the chapter. This ramp up period will serve to mitigate regulatory compliance costs by allowing breeders, including small and micro businesses, to absorb statutorily imposed costs over 12 months and avoid regulatory shock.

One commenter suggests that the Commission defer adoption of the standards published at 37 Texas Register 173-180. The commenter believes the standards are overly restrictive and the Commission should exercise discretion to provide relief to micro and small businesses.

In response to this comment, the Commission is without discretion to delay implementation of the standards. Those standards are essential to the regulatory scheme established by HB 1451. As stated above, the Commission believes that the ramp up period will serve to mitigate regulatory compliance costs by allowing breeders, including small and micro businesses, to absorb statutorily imposed costs over 12 months and avoid regulatory shock.

Some commenters suggest that the Commission adopt the USDA standards without modification.

To the extent possible, the Commission finds that the rules as adopted closely track the USDA standards as modified by specific requirements in HB 1451.

Comments state the provisions related to good repair, protect from injury, restrict other animals from entering, contain securely and keep free from the accumulation of trash requirements, in §91.100 are too vague and could lead to the loss of a license since the rules do not provide due process protections. The commenter goes on to assert that housing facility is an undefined term that must be separate from other businesses. The commenter asks for deletion of the separation requirement. Another commenter states the cage material will rust over time and asked whether paint will satisfy the 'be free from excessive rust' requirement in §91.100. A commenter notes that the requirement to have drainage in §91.100(f) and washrooms and sinks in §91.100(g) will impose expensive facility improvement on some breeders. Another commenter believes that §91.100(b) should be changed to ensure the storage of dangerous substances is inaccessible to animals. Comment asks for a definition of toxic or dangerous substances.

The Commission notes that each subsection referred in the preceding paragraph is based on the federal regulations. These rules will be interpreted consistent with those regulations and determined on a case-by-case basis. The Commission notes that breeders have discretion to determine the best approach to keep cage material free from excessive rust as long as the exercise of that discretion does not adversely affect the well being of the animals or violate another provision of these rules. The Commission finds that any costs related to facility improvements such as drainage and plumbing are a direct result of the statute (mandating the federal standards as the minimum standards) and not these rules. The Commission finds that toxic and dangerous substances need no further clarification because the terms are self explanatory and should be determined based on product labeling and determined on a case-by-case basis.

With respect to §91.100 and §91.101, commenters question the reasonableness of the requirement for water (continuous access), electric power (inspectors not qualified to inspect), storage (vague and unworkable for small breeders), drainage (impossible for small breeders), waste disposal (not practical for small breeders), and interior surfaces (vague requirements). Another commenter asked if the heating / cooling and temperature requirements in §91.101(a) and §91.102(a) apply to short hair breeds acclimated to lower temperature. This commenter also asked how the acclimation requirement work with short hair breeds already acclimated. One comment states that compliance with §91.101(d) would require significant investment. Another commenter suggests §91.101(d) be reworded for clarity. Additional comments asked for the removal of all references to temperatures in §91.101 and §91.102. Instead of temperatures, the commenter asked that the rules focus on the prevention of extreme temperatures based on the age and condition of the animals. The commenter states breeders should purchase temperature data loggers to monitor and record temperatures. With respect to §91.100 general housing requirements, comment recommended changing the published rules to adopt the AVMA's Model Dog Welfare Act requirement that primary enclosures have or provide retreat areas. Other comments suggest that all of the standards (§§91.100 - 91.202) are wholly inappropriate and unworkable for breeders operating from private residences.

Section 91.101 has been changed to track the federal standards related to heating, cooling, ventilation, and temperature. The Commission notes that as modified each standard referred in the preceding paragraph will be based on the federal regulations. These rules will be interpreted consistent with those regulations and determined on a case-by-case basis.

Commenters oppose the provisions in §91.101(a) and §91.102(a) which allows breeders to use "best efforts" to maintain temperatures within the required temperature ranges. All of those commenters argue that the "best effort" standard weakens the USDA standards and is contrary to the requirement to adopt USDA standards as the minimum standard.

The Commission agrees with those comments and modifies §91.101(a) and §91.102(a) to track the temperature requirements in USDA standards. The adopted rules strengthens the federal standards by changing the duration that temperature may fall below or rise above the

temperature ranges from 4-hours to 2-hours. The Commission finds that this shorter period is consistent with improving the well being of animals.

Commenters object to the reference in §91.102 to Tufts Animal Care and Condition Scale claiming the standard is difficult to understand and could lead to a patchwork of conditions. The comments suggest that compliance may be obtained without reference to the scale. Other comments suggest the section be removed because the standard is covered by animal cruelty statutes.

The Advisory Committee recommended removal of this requirement. The Commission adopts that recommendation and amends §91.102 as stated above.

Thousands of commenters object to §91.104 concerning the stacking of cages. These commenters claim that stacking is inhumane and will allow the passage of waste between the cages.

In response to these commenters, the Commission notes that standards in HB 1451 allow stacking of cages up to three levels. As such, the Commission cannot make the assumption as some commenters argue that state law which authorizes the stacking of cages is inhumane. The Commission believes the assumption is not valid. Balancing the well being of the animals with concerns of breeders, the Commission believes the requirement that stacking up to three levels combined with the sanitation standards and the impervious barrier between stacked cages will address those concerns.

Commenters oppose the provision in §91.104 regarding the size of cages which allow breeders to maintain current cage sizes under the existing USDA standards; but requires the doubling of space in those cages if the breeders' license is obtained after September 1, 2012. Other commenters suggest that any grandfathering of the cage sizes or floor material be limited in time or eliminated to provide one standard size for all breeders to encourage compliance. Another comment suggests the grandfathering provision is oddly worded and recommended alternative wording.

In response to these comments the Advisory Committee recommended deletion of the grandfathering provisions for both floor material and cage sizes. Instead the Advisory Committee recommended a three year phase in period for all breeding facilities to migrate to at least 50% solid flooring with a doubling of cage sizes. After consideration of the grandfathering provisions and the phase in approach, the Commission finds it reasonable to implement the flooring material (as modified by §91.10) and cage sizes allowed by the USDA standards.

Comments suggest that §91.104 related to ease of access to food and water is vague and confusing, and should be reworded.

The Commission finds this section consistent with the USDA standards and declines to change the section in response to this comment.

In response to the §91.112 requirement for hands on examination of animals by a veterinarian, comment ask that the requirement be stricken and replaced with the language as stated in HB 1451 without reference to hands-on. This commenter asked that the prohibition against euthanasia and surgical procedures be deleted and replaced with the text from HB 1451 without reference to the "such as" verbiage. One commenter believes the law allows or authorizes a breeder to euthanize puppies. Another comment argues that owners should decide when to seek medical treatment and not be required to treat minor injuries. Another comment complains that the requirement to transfer records with the animal is an attempt to regulate all animals including personal pets at the facility which is beyond the Department's authority. Comments question the

period records must be maintained after transfer or sale of an animal. Other comments question the availability of medical care in rural or remote areas. Additional comment suggests amending §91.112(c) by adding “including internal and external parasite control” to the end of the section. One commenter believes that §91.112(d) requires an expensive breeding plan developed by a veterinarian. This commenter suggest deletion of §91.112 in its entirety and replace it with the position statement from the Society of Theriogenology which requires that: (1) all breeding dogs be tested for hereditary disorders; (2) prohibit breeding on the firstestrous cycle with advice of a veterinarian; thereafter regaining body condition attested to by a veterinarian; and (3) cessation of breeding as the animal approaches the critical age without the advice of a veterinarian. Another commenter states that the term “surgical procedures” is vague and asks for a definition to include other types of procedures. A commenter seeks clarification whether a visit to get a rabies shot qualify as an annual examination. One commenter believes the final decision about whether to seek treatment for all medical care rests with the breeder and the veterinarian’s opinion remain advisory. While questioning how long records must be maintained by breeders, this commenter asserts the care and treatment language is overly broad and that §91.112 attempts to regulate all animals at the facility and not just those intended by the statute.

Commenters oppose the “breeding cycles” in §91.112. Those comments state the cycles are superfluous and vague because it is unclear if this refers to reduction in exercise or skipping a breeding cycle. The commenter believes the veterinary exam should determine the breeding cycle. Another commenter opines that resting between breeding cycles is unhealthy and may lead to fatal infections.

The Commission finds that the rules merely require a veterinarian approve breeding cycles for each animal. This requirement complies with HB 1451 and is consistent with the comments because each animal is examined taking into consideration the factors expressed by the commenter.

One commenter suggest that the requirements in §91.113 are confusing and request rewording of the section. Another commenter seeks clarification about the language in §91.113 referring to a puppy being 12-weeks of age before it can be sold or transferred. Comment asked that medical records show proof of age appropriate shots before transfer of ownership.

For consistency with the statute, the Commission changed §91.113 to eliminate references to weight. The change should clarify the requirement for transferring or giving an animal away. The statute does not prohibit the transfer of an animal without age appropriate shots and the Commission declines to impose this restriction.

Some comments disagree with the age and weight restrictions in §91.113 regarding the transfer of animals or sale of animals. The commenters believe the rule restrictions are at odds with the age restriction in the statute.

The Commission agrees with this comment and changes §91.113 to track the age requirements in HB 1451.

Comments point out that the provision in §91.202 regarding research facilities should be deleted. The commenters also note that §91.202(9) is confusing and in need of edits or deletion.

The Commission agrees that the reference to research facilities is misplaced and changed the rule accordingly. After, review, the Commission agrees with this comment and further believes that §91.209(9) is not necessary; therefore, this paragraph has been deleted.

Some commenters state that it is unreasonable to require breeders to incur veterinarian fees to have healthy animals examined. Others state veterinarians should determine the frequency of medical care/exams and not the Department.

The Commission finds that annual examinations by a veterinarian are statutorily mandated by HB 1451. The Commission is without authority to eliminate or alter the frequency of this requirement. Thus, all costs associated with the mandatory annual examinations is a direct result of the statute and is not imposed by these rules.

One comment opines that puppies must be fed more than once a day.

While this commenter does not define puppies, the Commission notes that the requirement to offer food at least once every 24 hours applies to animals at least 16-weeks of age.

Several commenters submitted briefs asserting the Commission is authorized to modify the statutory standards in Texas Occupations Code §802.201(b)(2) - (13).

Consistent with and subject to the rules of statutory construction, the Commission finds it has authority to adopt rules within the range of options set forth in Texas Occupations Code §802.201(b)(2) - (13).

The new rules are adopted under Texas Occupations Code, Chapters 51 and 802, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter or a law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 802. No other statutes, articles, or codes are affected by the adoption.

§91.1. Authority.

This chapter is adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 802.

§91.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult animal--An animal six months of age or older.
- (2) Animal--A dog or a cat.
- (3) Cat--A mammal that is wholly or partly of the species *Felis domesticus*.
- (4) Commission--The Texas Commission of Licensing and Regulation under Texas Occupations Code, Chapter 51.
- (5) Controlling person--An individual who:
 - (A) is a partner, manager, director, officer, or member of a dog or cat breeder;
 - (B) possesses the authority to set policy or direct management of a dog or cat breeder; or

(C) possesses a direct or indirect control of 25 percent or more of a dog or cat breeder.

(6) Department--The Texas Department of Licensing and Regulation under Texas Occupations Code, Chapter 51.

(7) Dog--A mammal that is wholly or partly of the species *Canis familiaris*.

(8) Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.

(9) Facility--The premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property, and confinement areas used to conduct the breeding business.

(10) Federal regulations--The specifications for the humane handling, care, treatment, and transportation of dogs and cats set forth in 9 C.F.R. Part 3, Subpart A.

(11) Intact female animal--A female animal that has not been spayed and is capable of reproduction.

(12) Kitten--A cat less than six months old.

(13) Licensed breeder--A dog or cat breeder who holds a license issued under this chapter.

(14) Positive Physical Contact--Petting, stroking, or other touching which is beneficial to the well being of the animal.

(15) Possess--To have custody of or control over.

(16) Primary enclosure--Any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.

(17) Puppy--A dog less than six months old.

(18) Veterinarian--A veterinarian in good standing and licensed to practice veterinary medicine in this state.

(19) Wire or Wire Mesh--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased in thick bonded vinyl, plastic or rubberized coating designed so the animal's paws are unable to extend through, or become caught in the openings.

§91.20. Applicability.

(a) This chapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state.

(b) This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats.

(c) This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

§91.21. License Required--Presumptions.

For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

§91.22. License Required--Dog or Cat Breeder.

(a) A person required to obtain a breeder's license under this chapter may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state.

(b) A license for a single facility may cover more than one building on the same premises.

(c) For purposes of this section, each noncontiguous premise or physical location is a separate facility and must obtain a license under this chapter; unless the noncontiguous premises or physical locations are within 300 feet of each other.

§91.23. License Requirements--Dog or Cat Breeder.

(a) To be eligible for a Dog or Cat Breeders license, except as provided for in subsection (b), an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) provide a valid state sales tax identification number;
- (3) provide the name and address of each controlling person;
- (4) successfully pass a criminal background check for each applicant and controlling person;
- (5) successfully pass a facility prelicense inspection conducted by a department-approved inspector or provide a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) together with a statement certifying that the facility meets the requirements of this chapter; and
- (6) pay the fee required under §91.80.

(b) A person may also be eligible for a Dog or Cat Breeders license if that person successfully passes an administrative facility prelicense inspection conducted by a department-approved inspector by satisfying the requirements in subsection (a)(1) - (4), and provide a current Class B animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) together with:

- (1) color photographs at least 4 x 6 inches of each primary enclosure located on the premises or location for licensure;

(2) a statement certifying the number and breed of animals housed in the primary enclosures photographed in subparagraph (A); and

(3) a statement certifying that the facility meets the requirements of this chapter.

§91.24. License Requirements--Dog or Cat Breeders License Renewal.

(a) To renew a breeder license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) provide a valid state sales tax identification number;

(3) provide the name and address of each controlling person;

(4) successfully pass a criminal background check for each applicant or controlling person;

(5) be in compliance with all Commission Orders directed to applicant or a controlling person; and

(6) pay the fee required under §91.80.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal--the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.

(c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

§91.25. License Approval and Issuance.

(a) The department shall deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.

(b) The department may deny issuance of a license to, refuse to renew the license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;

(3) has falsified any material information requested by the department;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

§91.27. License or Registration--Notice of Proposed Denial, Opportunity to Comply.

(a) If the department recommends denial of an application for a license or registration under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

§91.28. Department Notifications to Licensee or Registrant.

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

§91.29. License or Registration--Term.

A license or registration issued by the department is valid only for the person named on the license or registration; applies only to the single facility, agency, department or person named on the license or registration; is nontransferable and is valid for 12 months from the date of issuance.

§91.30. Exemptions.

(a) This section applies only to a dog bred with the intent that it be used primarily for:

(1) herding livestock, as defined by §1.003, Agriculture Code, or other agricultural uses;

(2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or

(3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by subsection (a).

(c) Notwithstanding subsection (b), a person described by subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by §91.10(8).

§91.50. Inspections--Prelicense.

(a) Except as provided by §91.51, the department shall inspect a facility before a license is issued for the facility.

(b) The department may not issue a license to a breeder until the department receives a prelicense inspection report from the inspector in a format approved by the department certifying that the facility meets the prelicense inspection requirements for a license.

(c) An applicant whose facility does not meet the requirements of this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department.

§91.51. Inspections--Prelicense Exemption.

The department may not require a prelicense inspection of a facility for an applicant who:

(1) holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.); and

(2) submits to the department:

(A) a copy of the license; and

(B) on a form prescribed by the department, provide a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

§91.52. Inspections--Periodic.

(a) Each facility of a licensed breeder shall be inspected at least once in every 18-month period.

(b) The inspection must be conducted during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(c) If necessary to adequately perform the inspection, the department inspector may determine it is appropriate to not provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility. The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.

(d) An inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals.

(e) The inspector may request that relevant documents or records be provided for inspection.

(f) The inspector shall submit an inspection report to the department not later than the 10th day after the date of the inspection on a form prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

(g) Based on the results of the periodic inspection, a licensed facility may be moved to an out-of-cycle inspection provided for in §91.53. The department will notify the owner of the facility, in writing, if the facility becomes subject to out-of-cycle inspection and the scheduled frequency of inspections.

(h) The licensee, manager, or representative must, upon request, make available to the inspector all records and other documents required by this chapter.

(i) On completion of the periodic inspection and while at the facility, the inspector shall leave with the licensee or representative of licensee a preliminary report on a form approved by the department listing the items not meeting the requirements of this chapter. The preliminary report required by this section is in addition to the completed report required by this chapter and does not affect the validity of the completed detailed report.

(j) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations.

(k) The department may assess administrative penalties and/or administrative sanctions for violations disclosed during inspections under this chapter.

§91.53. Out-of-Cycle Inspections.

(a) Out-of-cycle inspections are those required in addition to periodic inspections required under §91.52 for licensed facilities to ensure compliance with this chapter.

(b) To determine which licensee will be subject to out-of-cycle inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the facility shall pay the fee required under §91.80 for each out-of-cycle inspection.

(d) Facilities subject to out-of-cycle inspections may be scheduled for inspection based on the following risk criteria and inspection frequency:

Tier, Criteria, and Total Inspection Frequency (includes both periodic and out-of-cycle inspections)

Tier 1

Criteria – A serious or repeated violation relating to sanitation violations or failure to timely remedy violations documented during periodic inspections, investigations or commission orders.
Frequency – Twice each year

Tier 2

Criteria – Repeated or serious violations related to shelter, food, water, and medical treatment or examinations.
Frequency – Four times each year

(e) At the time of inspection of a licensee, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) On completion of the out-of-cycle inspection and while at the facility, the inspector shall leave with the licensee or representative of licensee a preliminary report on a form approved by the department listing the items not meeting the requirements of this chapter. The preliminary report required by this section is in addition to the completed report required by this chapter and does not affect the validity of the completed detailed report.

(g) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations identified during the out-of-cycle inspection.

(h) Facilities on a Tier 1 out-of-cycle inspection schedule that have two inspections with no violations or Tier 2 out-of-cycle inspection schedule that have three inspections with no violations may be moved to a less frequent out-of-cycle inspection schedule or returned to a periodic schedule of inspections. The department will notify the licensee, in writing, if there is a change in the facility's out-of-cycle schedule or if the facility is returned to a periodic inspection schedule.

§91.54. Corrective Actions Following Periodic or Out-of-Cycle Inspections.

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the licensee a list of required corrective actions; and

(2) the licensee shall complete all corrective actions and provide written verification of the corrective actions to the department according to the following schedule:

(A) violations affecting an animal's health shall be corrected immediately; or

(B) after consultation with the licensee or licensee's representative, violations related to housing facilities must be corrected within a reasonable time as determined by the inspector based on a totality of the circumstances.

(3) The department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to timely complete corrective actions or timely provide written verification of the completion of corrections to the department.

§91.55. Responsibilities of the Department--Directory.

(a) The department shall maintain a directory of licensed breeders registered under this chapter.

(b) The department shall make the directory available to the public.

§91.56. Responsibilities of the Department--Disciplinary Database.

(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions.

(b) The department shall make the information maintained in the database available to the public.

§91.57. Responsibilities of the Department--Consumer Interest Information.

(a) The department shall prepare information of consumer interest describing:

(1) the functions performed by the department under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department.

(c) The department shall make the information available to the public.

§91.58. Responsibilities of the Department--Donations, Disbursements and Reporting.

(a) The executive director shall develop procedures for the acceptance, conversion, and deposit of all donations offered by individuals, clubs, organizations, and all other sources.

(b) Conversion of donations of real or personal property into United States currency shall be accomplished by the executive director or designee.

(c) Donations received shall be deposited in a dedicated training and enforcement account in the general revenue fund to the credit of general revenue subject to exemption from the application of §403.095, Government Code.

(d) The executive director shall approve in writing all disbursements from the training and information account.

(e) A disbursement under this section may include but is not limited to promotional costs to enhance the fund.

(f) All donations may be used for these purposes unless otherwise specifically prohibited by the donor.

(g) All disbursements from the accounts will be by check signed by the director.

(h) The commission will be furnished a quarterly report detailing all deposits into and expenditures from the fund.

§91.59. Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.

(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.

§91.60. Responsibilities of the Department--Payment of Rewards.

(a) The amount of reward granted to eligible applicants may not exceed \$1,000 and shall be determined on a case by case basis by the executive director.

(b) In the event two or more eligible applicants furnish information pertaining to unlicensed activity, the reward may be divided among the eligible applicants in an amount determined by the executive director.

(c) A reward under this section must be authorized by the executive director in writing stating the public purpose served by the payment.

(d) A decision by the executive director to pay or otherwise allocate reward payments is within the sole discretion of the executive director and this chapter in no way provides an independent right to such payments, if any.

(e) If the commission issues a final order finding unlicensed activity by a person named in the complaint submitted under this section, the department shall issue payment to the person or persons providing the information as soon thereafter as is practical.

§91.65. Advisory Committee.

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in §829.001, Health and Safety Code.

(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.

(f) Except for the members described by subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

(1) is required to be licensed under this chapter;

(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

(i) A decision of the advisory committee is effective only on a majority vote of the members present.

(j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

§91.66. Responsibilities of Inspectors--Inspections, Investigations, and Reports of Animal Cruelty.

(a) Inspections.

(1) An inspector must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(2) If an inspector determines it is not appropriate to provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility, the inspection report must describe the reasons supporting the determination.

(3) In conducting an inspection under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals.

(4) An inspector may request that relevant documents or records be provided for inspection.

(5) Inspectors must submit inspection reports to the department not later than the 10th day after the date of the inspection on a form and manners prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

(6) An inspector may not perform an inspection authorized by §91.52 and §91.53 unless assigned or requested by the department.

(7) Inspections must be conducted in accordance with:

(A) the training procedures and protocols approved by the department; or

(B) if good cause exist to deviate from the established procedures and protocols or if no procedure or protocol exist for the issues presented during the inspection, the inspection report must contain an explanation of the issues presented and procedures followed.

(b) Investigations. On receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, the department shall investigate the alleged violation.

(c) Reports of Animal Cruelty. A person conducting an inspection or an investigation under this chapter shall notify the appropriate local law enforcement agency not later than 24 hours after discovering evidence of animal cruelty or neglect during the inspection or investigation.

§91.71. Responsibilities of Licensee--Advertising.

(a) A licensed breeder may not engage in false, misleading, or deceptive advertising.

(b) Each advertisement must conspicuously include the facility license number in a font clearly distinguishable from the background.

(c) For purposes of this section, a website and any offer to sell is considered advertising.

§91.72. Responsibilities of Licensee--Display of Breeders License.

A licensed breeder shall prominently display at the breeder's facility, in an area readily accessible to the public, a copy of the department issued breeders license.

§91.73. Responsibilities of Licensee--Onsite Availability of Law and Rules.

A licensed breeder must maintain at each of the breeder's facilities a printed and current copy of Texas Occupations Code, Chapter 802 and rules adopted by the commission regulating licensed breeders; or electronically in a manner prescribed by the department.

§91.74. Responsibilities of Licensee--Mandatory Contract Provisions.

A licensed breeder must include in each contract for the sale or transfer of an animal:

(1) the license number; and

(2) the following statement: "Dog and cat breeders are regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, www.license.state.tx.us" or a similar statement adopted by commission rule that includes the department's name, mailing address, telephone numbers, and Internet website address.

§91.75. Responsibilities of Licensee--Change in License Information.

A licensed breeder must notify the department in writing not later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

§91.76. Responsibilities of Licensee--Annual Inventory.

(a) Not later than February 1 of each year, a licensed breeder shall submit to the department, on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year.

(b) The licensed breeder shall keep copies of the items described by subsection (a) at the licensed breeder's facility and shall make them available on request to the department inspector.

(c) A licensed breeder that has more than one facility shall:

(1) keep separate records for each facility; and

(2) submit a separate accounting of animals for each facility.

§91.77. Responsibilities of Licensee--Animal Records Content, Availability, and Retention Period.

(a) A licensed breeder shall maintain, at the licensed facility where the animal is kept, a separate record for each animal in the breeder's facility documenting the animal's care.

(1) Records required by this section must be maintained for at least two (2) years and must include:

(A) the date on which the animal enters the facility or operation;

(B) the person from whom the animal was purchased or obtained, including the name, address and phone number of such person, and license or registration number if applicable;

(C) a description of each animal, including the species, color, breed, sex, date of birth (if not known, the approximate age) and weight;

(D) any tattoo, microchip, or other identification number carried by or appearing on the animal;

(E) for breeding females:

(i) breeding dates;

(ii) whelping or queening dates;

(iii) number of puppies or kittens per litter;

(iv) sire or tom for each litter; and

(F) the disposition of each animal with date of disposition.

(2) Records required by this section are in addition to records related to preventative and therapeutic veterinary care provided each animal.

(3) The licensed breeder shall make the animal records available on request to the department inspector.

(b) Records required by this chapter shall be kept at the licensed facility where the animal was last housed for two years from the date the last entry in the records or the date the animal is no longer housed at the facility, whichever is later.

(c) When an animal subject to this chapter is transferred from one licensed facility to another licensed facility, a copy of records related to that animal and required by this chapter must be transferred contemporaneously with the transferred animal.

§91.78. Responsibilities of Licensee--Inspections.

The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.

§91.80. Fees.

(a) Application Fees

(1) Dog or Cat Breeder License (11-25 Intact Female Animals)

(A) Original Application--\$300

(B) Renewal--\$300

(2) Dog or Cat Breeder License (26 or more Intact Female Animals)

(A) Original Application-- \$500

(B) Renewal--\$500

(b) Out-of-Cycle Inspections--\$150

(c) Revised/Duplicate License/Certificate/Permit/Registration--\$25

(d) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(e) All fees are nonrefundable except as provided for by commission rules or statute.

§91.90. Administrative Sanctions and Penalties.

A person that violates Texas Occupations Code, Chapter 802, a rule, or an order of the executive director or commission will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 802 and applicable agency rules.

§91.91. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 802 and any associated rules may be used to enforce Texas Occupations Code, Chapter 802 and this chapter.

§91.92. License Revocation and Suspension.

(a) The department shall revoke a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction.

(b) The department may revoke or suspend a license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;

(3) has falsified any material information requested by the department;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

§91.100. Standards of Care--Housing Generally.

A word or term not defined in this chapter shall have the meaning set forth in 9 C.F.R. Part 1.

(1) Structure; construction. Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

(2) Condition and site. Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices. Housing facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks, and raccoons are prevented from entering it.

(3) Surfaces.

(A) General requirements. The surfaces of housing facilities--including houses, dens, and other furniture-type fixtures and objects within the facility--must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) be free of jagged edges or sharp points that might injure the animals.

(B) Maintenance and replacement of surfaces. All surfaces must be maintained on a regular basis. Surfaces of housing facilities--including houses, dens, and other furniture-type fixtures and objects within the facility--that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(C) Cleaning. Hard surfaces with which the dogs or cats come in contact must be spot-cleaned daily and sanitized in accordance with §91.109(b) to prevent accumulation of excreta and reduce disease hazards. Floors made of dirt, absorbent bedding, sand, concrete, gravel, grass, or other similar material must be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in § 91.109(b)(3) for primary enclosures.

(4) Water and electric power. The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this chapter. The housing facility must provide adequate running potable water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

(5) Storage. Supplies of food and bedding must be stored in a manner that protects the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Foods requiring refrigeration must be stored accordingly, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is currently being used may be kept in the animal areas. Substances that are toxic to the dogs or cats but are required for normal husbandry practices must not be stored in food storage and preparation areas, but may be stored in cabinets in the animal areas.

(6) Drainage and waste disposal. Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

(7) Washrooms and sinks. Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

§91.101. Standards of Care--Indoor Housing Facilities.

(a) Heating, cooling, and temperature. Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, the ambient temperature in the facility must not fall below 50°F (10°C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by a veterinarian. Dry bedding, solid resting boards, or other

methods of conserving body heat must be provided when temperatures are below 50°F (10°C). The ambient temperature must not fall below 45°F (7.2°C) for more than 2 consecutive hours when dogs or cats are present, and must not rise above 85°F (29.5°C) for more than 2 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic condition.

(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when the ambient temperature is 85°F (29.5°C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of a veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.

(c) Lighting. Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Interior surfaces. 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 (e.g., a suspended ceiling with replaceable panels).

§91.102. Standards of Care--Sheltered Housing Facilities.

(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50°F (10°C) for dogs and cats 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 infirm dogs or cats, except as approved by a veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50°F (10°C). The ambient temperature must not fall below 45°F (7.2°C) for more than 2 consecutive hours when dogs or cats are present, and must not rise above 85°F (29.5°C) for more than 2 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.

(b) Ventilation. The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when the ambient temperature is 85°F (29.5°C) or higher.

(c) Lighting. Sheltered housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must

be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Shelter from the elements. Dogs and cats must be provided with adequate shelter from the elements at all times to protect their health and well-being. The shelter structures must be large enough to allow each animal to sit, stand, and lie without its body being in contact with at least one side of the shelter walls in a normal manner and to turn about freely.

(e) Surfaces.

(1) The following areas in sheltered housing facilities must be impervious to moisture:

(A) indoor floor areas in contact with the animals may consist of flooring that is wire or wire mesh or slatted material;

(B) outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(C) all walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, absorbent bedding, sand, concrete, gravel, or grass.

§91.103. Standards of Care--Outdoor Housing Facilities.

(a) Restrictions.

(1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by a veterinarian and documented by a veterinarian in the medical records related to each dog or cat to which the exemption applies:

(A) dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(B) breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(C) sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities when the temperature is less than 50°F (10°C).

(b) Shelter from the elements. Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, and lie without its body being in contact with at least one side of the shelter walls in a normal manner, and to turn about freely. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and must:

- (1) provide the dogs and cats with adequate protection and shelter from the cold and heat;
- (2) provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;
- (3) be provided with a wind break and rain break at the entrance; and
- (4) contain clean, dry, bedding material if the ambient temperature is below 50°F (10°C). Additional clean, dry bedding is required when the temperature is 35°F (1.7°C) or lower.

(c) Construction. Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cans, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, concrete, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities--including houses, dens, etc.--that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

§91.104. Standards of Care--Primary Enclosure.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(1) General requirements.

(A) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair and shall not be placed on top of another primary enclosure unless an impervious barrier designed to prevent the transfer of fluid or animal waste separates the two primary enclosures.

(B) Primary enclosures must be constructed and maintained so that they:

- (i) have no sharp points or edges that could injure the dogs and cats;
- (ii) protect the dogs and cats from injury;
- (iii) contain the dogs and cats securely;
- (iv) keep other animals from entering the enclosure;
- (v) enable the dogs and cats to remain dry and clean;
- (vi) provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to all the dogs and cats;
- (vii) provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;
- (viii) provide all the dogs and cats with easy and convenient access to clean food and water;
- (ix) enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with §91.109(b), or be replaceable when worn or soiled;

(x) have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(xi) provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie without its body being in contact with at least one side of the shelter walls in a comfortable, normal position, and to walk in a normal manner; and

(xii) if the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

(2) Additional requirements for cats.

(A) Space. Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space in accordance with this chapter.

(B) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm).

(C) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 ft² (0.28 m²).

(D) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft² (0.37 m²).

(E) Each queen with nursing kittens must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices. If the additional amount of floor space for each nursing kitten is equivalent to less than 5 percent of the minimum requirement for the queen, such housing must be approved by a veterinarian.

(F) The minimum floor space required by this section is exclusive of any food or water pans. The litter pan may be considered part of the floor space if properly cleaned and sanitized.

(G) Compatibility. All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under 6 months of age may not be housed in the same primary enclosure with adult cats, other than the dam or foster dam. Cats with a vicious or aggressive disposition must be housed separately.

(H) Litter. In all primary enclosures, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(I) Resting surfaces. Each primary enclosure housing cats must contain a resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture, and be able to be easily cleaned and sanitized, or easily replaced when soiled or worn. Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal will be counted as part of the floor space.

(3) Additional requirements for dogs.

(A) Space.

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by a veterinarian. If the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by a veterinarian and documented in the medical records related to each dog.

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(B) Compatibility. All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under 6 months of age may not be housed in the same primary enclosure with adult dogs, other than the dam or foster dam. Dogs with a vicious or aggressive disposition must be housed separately.

(C) Prohibited means of primary enclosure. Permanent tethering of dogs is prohibited for use as primary enclosure.

(D) Prohibited stacking of primary enclosure. Primary enclosures may not be stacked above three vertical levels.

§91.105. Standards of Care--Compatible Grouping.

Dogs and cats that are housed in the same primary enclosure must be compatible, with the following restrictions:

(1) females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes;

(2) any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

(3) puppies or kittens 6 months of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams or foster dams, except when permanently maintained in breeding colonies;

(4) dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible; and

(5) dogs and cats that have or are suspected of having a contagious disease must be isolated from healthy animals in the colony, as directed by a veterinarian. When an entire group or room

of dogs and cats is known to have or believed to be exposed to an infectious agent, the group may be kept intact during the process of diagnosis, treatment, and control.

§91.106. Standards of Care--Exercise for Dogs.

(a) A licensee must develop, document, and follow an appropriate plan to provide dogs with the opportunity for daily exercise. In addition, the plan must be approved by a veterinarian and documented by a veterinarian in the medical records related to each dog. The plan must include written standard procedures to be followed in providing the opportunity for exercise.

(b) Dogs housed in groups. Dogs over 12 weeks of age housed, held, or maintained in groups do not require additional opportunity for daily exercise if they are maintained in cages, pens, or runs that provide in total at least 300 percent of the required space for each dog if maintained separately. Such animals may be maintained in compatible groups, unless:

(1) in the opinion of a veterinarian, such housing would adversely affect the health or well-being of the dog(s); or

(2) any dog exhibits aggressive or vicious behavior.

(c) Methods and period of providing exercise opportunity.

(1) The frequency, method, and duration of the opportunity for exercise of a dog 12 weeks of age or older shall be at least one hour each day unless a lesser frequency, method, and duration is determined by a veterinarian and documented by a veterinarian in the medical records related to each dog.

(2) A licensed breeder must provide positive physical contact with humans that encourage exercise through play or other similar activities. If a dog is housed, held, or maintained at a facility without sensory contact with another dog, it must be provided with positive physical contact with humans at least daily. The positive physical contact required by this section may be concurrent with the required opportunity for daily exercise required in subsection (a).

(3) The opportunity for exercise required by this chapter may be provided in a number of ways, such as:

(A) group housing in cages, pens or runs that provide at least 300 percent of the required space for each dog if maintained separately under the minimum floor space requirements of §91.104(3)(A);

(B) maintaining individually housed dogs in cages, pens, or runs that provide at least three times the minimum floor space required by §91.104(3)(A);

(C) providing access to a run or open area that provides at least three times the minimum floor space required by §91.104(3)(A); provides adequate protection against harsh weather, including exposure to the sun; and has flooring with adequate drainage which may include natural turf or soil at the frequency and duration prescribed by a veterinarian; or

(D) other similar activities approved by a veterinarian and documented by a veterinarian in the medical records related to each dog.

(4) Forced exercise methods or devices such as swimming, treadmills, or carousel-type devices are unacceptable for meeting the exercise requirements of this section.

(d) Exemptions.

(1) If, in the opinion of a veterinarian, it is inappropriate for certain dogs to exercise because of their health, condition, or well-being, the licensed breeder may be exempted from meeting the requirements of this section for those dogs. Such exemption must be documented by a veterinarian and, unless the basis for exemption is a permanent condition, must be reviewed at least every 30 days by a veterinarian.

(2) Records of any exemptions must be maintained separately for each dog and made available to the department inspector upon request.

§91.107. Standards of Care--Feeding.

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet must be appropriate for the individual animal's age and condition.

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain, sleet and snow. Feeding pans must either be made of a durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable they must be kept clean and must be sanitized in accordance with §91.109(b). Sanitization is achieved by using one of the methods described in §91.109(b)(3). If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used they must be kept clean and must be sanitized in accordance with §91.109(b). Measures must be taken to ensure that there is no molding, deterioration, and caking of feed.

§91.108. Standards of Care--Watering.

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by a veterinarian. Water receptacles must be kept clean and sanitized in accordance with §91.109(b), and before being used to water a different dog or cat or social grouping of dogs or cats.

§91.109. Standards of Care--Cleaning, Sanitization, Housekeeping, and Pest Control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process. Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with wire or mesh type floors and the ground areas under raised runs with wire or mesh or slatted floors must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards pests, insects and odors.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) Used primary enclosures and food and water receptacles must be cleaned and sanitized in accordance with this section before they can be used to house, feed, or water another dog or cat, or social grouping of dogs or cats.

(2) Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in subsection (b)(3) and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(A) Live steam under pressure;

(B) Washing with hot water (at least 180°F (82.2°)) and soap or detergent, as with a mechanical cage washer; or

(C) Washing all soiled surfaces with appropriate detergent solutions and disinfectants, or by using a combination detergent/disinfectant product that accomplishes the same purpose, with a thorough cleaning of the surfaces to remove organic material, so as to remove all organic material and mineral buildup, and to provide sanitization followed by a clean water rinse.

(4) Pens, runs, and outdoor housing areas using material that cannot be sanitized using the methods provided in subsection (b)(3), such as gravel, sand, grass, earth, or absorbent bedding, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this chapter, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

(d) Pest control. An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

§91.110. Standards of Care--Onsite Personnel.

(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

(b) Each employee of a licensed facility whose duties or responsibilities include the handling of or caring for a dog or cat shall have the appropriate training documented by the licensee; to include at the minimum subject matter covering basic animal care and handling, prevention of infectious disease, and kennel sanitization.

§91.111. Standards of Care--Grooming.

A licensed breeder shall provide basic grooming to each animal as needed to prevent soiling and matting of the fur, curled or splayed toenails, and other conditions that can hamper an animal's ability to maintain health and cleanliness.

§91.112. Standards of Care--Veterinary Care.

(a) Annual examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period. The annual examination required by this section must be conducted in accordance with practices established under the Veterinary Licensing Act and documented by a veterinarian in the medical records related to each animal.

(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical birth.

(c) Routine and preventative care. A licensed breeder shall develop and maintain at each of the breeder's facilities a written health care management protocol approved by a veterinarian that addresses routine and preventative healthcare for each animal in the facility.

(1) The breeder shall ensure that the protocol is followed and that routine and preventive healthcare is provided to each animal in the facility and that each animal received appropriate care and treatment for any injury, disease, or illness that may affect the animal's health or well-being.

(2) The written health care management protocol required by this section must contain all health care records required by this chapter including all exemptions authorized by this chapter and approved by a veterinarian.

(3) On transfer or sale of the animal, a copy of the written health care management protocol required by this section must be transferred with the animal and the original records retained by the licensee.

(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by a veterinarian based on the breed, age, and health of the individual breeding female and documented by a veterinarian in the medical records related to each animal.

§91.113. Standards of Care--Sales and Transfers.

A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age.

§91.200. Transportation Standards--Food and Water Requirements.

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. Each dog and cat must be offered potable water at least once every 12 hours. Each dog and cat must be offered food and potable water within 4 hours before being transported in commerce.

(b) A licensed breeder offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for

transporting the dog or cat, written instructions for the in-transit food and water requirements for a 24-hour period for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed and read.

(c) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

§91.201. Transportation Standards--Mobile or Traveling Facilities.

(a) Heating, cooling, and temperature. Mobile or traveling housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. The ambient temperature in the mobile or traveling housing facility must not fall below 50°F (10°C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50°F (10°C). The ambient temperature must not fall below 45°F (7.2°C) for more than 4 consecutive hours when dogs or cats are present, and must not exceed 85°F (29.5°C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.

(b) Ventilation. Mobile or traveling housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for the health and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Ventilation must be provided by means of windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature within the animal housing area is 85°F (29.5°C) or higher.

(c) Lighting. Mobile or traveling housing facilities for dogs and cats must be lighted well enough to permit proper cleaning and inspection of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals.

§91.202. Transportation Standards--Primary Enclosure Used to Transport Live Dogs and Cats.

Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

(1) Construction of primary enclosures. The dog or cat must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport dogs and cats must be constructed so that:

(A) The primary enclosure is strong enough to contain the dogs and cats securely and comfortably and to withstand the normal rigors of transportation;

(B) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(C) The dog or cat is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animals nearby;

(D) The dog or cat can be easily and quickly removed from the enclosure in an emergency;

(E) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(F) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(G) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(H) Proper ventilation is provided to the animal in accordance with paragraph (3); and

(I) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. Unless the dogs and cats are on raised slatted floors or raised floors made of mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(2) Cleaning of primary enclosures. A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in §91.109(b)(3). If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes. If it becomes necessary to remove the dog or cat from the enclosure in order to clean, or to move the dog or cat to another enclosure, this procedure must be completed in a way that safeguards the dog or cat from injury and prevents escape.

(3) Ventilation.

(A) Unless the primary enclosure is permanently affixed to the conveyance, there must be:

(i) Ventilation openings located on two opposing walls of the primary enclosure and the openings must be at least 16 percent of the surface area of each such wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(ii) Ventilation openings on three walls of the primary enclosure, and the openings on each of the two opposing walls must be at least 8 percent of the total surface area of the two walls, and the ventilation openings on the third wall of the primary enclosure must be at least 50 percent of the total surface area of that wall, and the total combined surface area of the ventilation openings must be at least 14 percent of the total combined surface area of all the walls of the primary enclosure; or

(iii) Ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each of the four walls must be at least 8 percent of the total surface area of each such wall, and the total combined surface area of the openings must be at least 14 percent of total combined surface area of all the walls of the primary enclosure; and

(iv) At least one-third of the ventilation area must be located on the upper half of the primary enclosure.

(B) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 in. (1.9 cm) between the primary enclosure and anything the enclosure is placed against.

(C) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(4) Compatibility.

(A) Live dogs or cats transported in the same primary enclosure must be of the same species and be maintained in compatible groups, except that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported in the same primary enclosure.

(B) Puppies or kittens 6 months of age or less may not be transported in the same primary enclosure with adult dogs or cats other than their dams.

(C) Dogs or cats that are overly aggressive or exhibit a vicious disposition must be transported individually in a primary enclosure.

(D) Any female dog or cat in heat (estrus) may not be transported in the same primary enclosure with any male dog or cat.

(5) Space and placement.

(A) Primary enclosures used to transport live dogs and cats must be large enough to ensure that each animal contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

(B) Primary enclosures used to transport dogs and cats must be positioned in the primary conveyance so as to provide protection from the elements.

(6) Transportation by air.

(A) No more than one live dog or cat, 6 months of age or older, may be transported in the same primary enclosure when shipped via air carrier.

(B) No more than one live puppy, 8 weeks to 6 months of age, and weighing over 20 lbs (9 kg), may be transported in a primary enclosure when shipped via air carrier.

(C) No more than two live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lbs (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier.

(D) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(7) Transportation by surface vehicle or privately owned aircraft.

(A) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) or privately owned aircraft, and only if all other requirements of this section are met.

(B) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities, and only if all other requirements in this section are met.

(8) Accompanying documents and records. Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely. Food and water instructions must be securely attached to the outside of the primary enclosure in a manner that makes it easily noticed and legible.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State, on April 11, 2012.

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation