

## **TITLE 16.ECONOMIC REGULATION**

### **Part 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **Chapter 91. DOG OR CAT BREEDERS PROGRAM**

**16 TAC §§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, 91.200 - 91.202**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 802, which authorize 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.

*§91.22. 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.

*§91.30.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:

#### [Figure: 16 TAC §91.53\(d\)](#)

(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.

*§91.66. 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.

*§91.73.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.

*§91.76.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.

*§91.80.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.

*§91.100.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 ft<sup>2</sup> (0.28 m<sup>2</sup>).

(D) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 ft<sup>2</sup> (0.37 m<sup>2</sup>).

(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:  $(\text{length of dog in inches} + 6) \times (\text{length of dog in inches} + 6) = \text{required floor space in square inches}$ .  $\text{Required floor space in inches}/144 = \text{required floor space in square feet}$ .

(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.

*§91.108. 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.

*§91.112. 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.

*§91.201. 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.

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