

Commonwealth of Pennsylvania



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2010 JUL 29 P 4: 36

DEPARTMENT OF AGRICULTURE

2785

July 29, 2010

The Honorable James E. Casorio, Jr.
PA House of Representatives
203 Irvis Office Building
Harrisburg, PA 17120-2056

Dear Representative Casorio:

Thank you for your letter regarding the Department's proposed Commercial Kennel Canine Health Regulations. The Department has taken some important steps to ensure that issues of flooring and exercise for nursing dogs are addressed. Specifically, on flooring, we have added a section to the Commercial Kennel Canine Health Regulations to mandate 50% solid flooring in "mixed" primary enclosures where both nursing mothers and their puppies are housed. For exercise, we have issued a Statement of Policy that will be published in the *PA Bulletin* on July 31. It sets standards for the mandatory exercise that is required generally but not specified for nursing mothers, by requiring daily exercise with an enforcement scheme.

Commercial kennels have solid-floored whelping boxes where mother dogs give birth and nurse their puppies. This represents an approximately six-week period that occurs no more than twice a year. Housing for this purpose must be in a separate area away from other dogs (Section 207(h)(4)). The narrow issue we needed to address was whether a nursing mother, from no more than a week before whelping until her puppies are weaned at approximately 5 weeks, can be housed in an area that includes a solid-floored whelping box, but does not have 100% solid flooring. We cannot require solid flooring for puppies 12 weeks of age and under, as the law was written to accommodate the sanitation needs for young puppies. Whelping boxes have solid flooring without exception, but this is not mandated by the law, nor is a certain size mandated, although the nursing mother must have her full space requirement found in Section 207(i)(1) plus at least 5% additional space per pup as mandated by Section 207(h)(3). What our change to the regulations does is mandate a solid-floored whelping box that is at least 50% of the total enclosure floor space.

Just as with flooring, the Department has no legal authority to require that nursing mothers with their neonatal puppies have unfettered access to an outdoor exercise area attached to their whelping pen. The Dog Law requires only that nursing mothers must be exercised separately from other adult dogs, see Section 207(i)(6)(viii). Consideration of the health, welfare and safety of neonatal puppies makes the idea of giving them unfettered "access" to an outdoor exercise area tragically misguided. Such a practice could mean death for these small puppies - they could get caught and injured in the dog door, trapped outside during hot and cold weather, lose access to their mother and the care and nourishment she must provide them, etc.

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Dog Law Enforcement

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The Department has required, under the authority of Section 207(i)(6)(viii) and as a proactive policy matter, that these nursing mothers have an opportunity for exercise, that an exercise area for them is designated by the kennel owner, and that there is a plan similar to the exercise plan for a non-commercial kennel. This has recently been formalized with a Statement of Policy. The policy must be set forth in the kennel application, and failure to follow it will be considered a material misrepresentation and a ground for license revocation under Section 211(a)(1).

You also expressed concerns about the granting of waivers to some kennel owners. Although there are 111 commercial kennels still operating, in 2009 when the waivers were determined there were 303. Nearly 2/3 of the commercial kennels in PA are now closed due to vigilant enforcement by the Department and the higher standards of the new Dog Law – your legislation.

We greatly appreciate your work and advocacy on behalf of our Commonwealth's kenneled dogs. I am looking forward to meeting with you at your convenience to discuss our 2010 Dog Law Annual Report. Thank you as always for your interest in our Department and in the welfare of dogs.

Respectfully,



Jessie L. Smith

JLS:jwb

Attachments: CKCH Regulation §28a.8.(e); Exercise Statement of Policy; Waiver Chart

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Annex A

TITLE 7. DEPARTMENT OF AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 28a.

§§ 28.1—28.8

**CHAPTER 28a. COMMERCIAL KENNEL CANINE HEALTH
REGULATION**

GENERAL PROVISIONS

Sec.

- 28a.1. Definitions
- 28a.2. Ventilation.
- 28a.3. Auxiliary Ventilation.
- 28a.4. Humidity Levels.
- 28a.5. Ammonia Levels.
- 28a.6. Carbon Monoxide Detectors.
- 28a.7. Lighting.
- 28a.8. Flooring.
- 28a.9. Scope and Effective Date.

§ 28a.1. Definitions.

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

ANSI/U.L. Standard 2034 and IAS 6-96 – Independent laboratory testing standards for carbon monoxide detectors.

Circulation or circulated air – The air that is mixed within a room and typically provides heating and cooling.

Commercial kennel – A kennel that breeds or whelps dogs and (1) Sells or transfers any dog to a dealer or pet shop kennel or (2) Sells or transfers more than 60 dogs per calendar year.

Cubic Feet per Minute or CFM – A measurement of the flow of a gas or liquid that indicates how much volume in cubic feet pass by a stationary point in one minute.

Diurnal light cycle - The daily lighting cycle provided by artificial or natural light or both which shall be twelve hours of light and twelve hours without light. The twelve hours of light shall coincide with and be provided during normal daylight hours.

Excessive light—Direct, undiffused light from either the sun or artificial light, such as from a lighting fixture of an intensity that is twelve foot candles or more greater than the maximum footcandles of light required by this chapter, which is placed or directed in a manner such that the light is allowed to or is shining directly into a primary enclosure of a dog.

Fresh Air Ventilation – That portion of circulated air that is from the outdoors.

Full-spectrum lighting - Full-spectrum light is light that covers the electromagnetic spectrum from infrared through near-ultraviolet, or all wavelengths that are useful to plant or animal life; in particular, sunlight is considered full spectrum, even though the solar spectral distribution reaching Earth changes with time of day, latitude, and atmospheric conditions. When applied to an electrical light bulb the term implies the product emulates natural light.

Heat Index (HI) or Temperature and Humidity Index (THI) - An index, published by the United States National Weather Service, that combines air temperature and relative humidity to determine the human-perceived equivalent temperature. Heat index values

are calculated based on temperature measurements taken in the shade. Exposure to full sunshine can increase index values by up to fifteen degrees Fahrenheit (15 F) and strong winds carrying very hot, dry air will add heat to the body. (United States National Weather Service).

Mechanical ventilation—Ventilation produced by operation of a machine. So long as its operation results in compliance with the standards established in this chapter, a mechanical ventilation system may range from very basic, such as an exhaust fan, to more sophisticated systems such as a HVAC system with temperature and humidity controls.

Primary enclosure—

(i) The primary structure that restricts a dog's ability to move in a limited amount of space, such as a room, cage or compartment.

(ii) The term does not include a run described in section 207(i)(6) of the act (3 P.S. § 459-207(i)(6)).

Professional engineer—

(i) An individual licensed and registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148--158.2) or a successor statute to engage in the practice of engineering.

(ii) The term does not include a person who is exempt from licensure and registration under section 5(b) of the Engineer, Land Surveyor and Geologist Registration Law (63 P.S. § 152(b)).

Ventilation or ventilating – The process of "changing" or replacing air in any space to control temperature and humidity or remove moisture, odors, smoke, heat, dust, airborne

bacteria, carbon monoxide, carbon dioxide, and to replenish oxygen. Ventilation includes both the exchange of air to the outside as well as circulation of air within the building. Ventilation is used to remove unpleasant smells and excessive moisture, introduce outside air and to keep interior building air circulating, to prevent stagnation of the interior air

§ 28a.2. Ventilation.

(a) *General Requirements:* Each area of a commercial kennel and commercial kennel housing facility where a dog is housed, kept or present, including primary enclosures, shall utilize a functional, mechanical ventilation system that provides ventilation in a manner that meets the requirements of this section and sections 28a.3, 28a.4, 28a.5 and 28a.6 of this Chapter. The kennel owner or operator shall assure the mechanical ventilation system is functional, in operation at all times and meets the standards and requirements of this section. The kennel owner or operator shall also assure the auxiliary ventilation system, humidity control system and carbon monoxide detectors are functional, operational and operated or operating in a manner that meets the standards and requirements of this section and sections 28a.3, 28a.4, 28a.5 and 28a.6 of this Chapter.

(b) *Certification of ventilation system* - The kennel owner shall supply the following information to the Department:

(1) Written Certification under the signature and seal of a professional engineer verifying the professional engineer has inspected the ventilation system to be certified, acknowledging familiarity with the requirements of the Dog Law and this

chapter and certifying that the ventilation system of the kennel meets all of the standards and requirements of this section and sections 28a.3, 28a.4, 28a.5 and 28a.6 of this Chapter. In addition, the certification shall contain the following information:

(i) The total cubic feet of the kennel and kennel housing facility, and the cubic feet of each separate room or area of the kennel and kennel housing facility where a dog is kept, housed or present.

(ii) A description of the mechanical ventilation equipment to be utilized in each room or area of the kennel and kennel housing facility where a dog is kept, housed or present, including primary enclosures. The description shall include the cubic feet per minute capacity of that equipment.

(iii) A description of the humidity control system, devices or equipment to be utilized, including the total capacity of the system, devices or equipment.

(iv) A description of the auxiliary ventilation system, devices or equipment to be utilized.

(v) The highest total number of dogs that will be kept, held or present in the kennel and kennel housing facility, including primary enclosures, at any time.

(vi) The location where each and every device for measuring temperature and humidity required by section 28a.4(b)(1) should be installed in order to accurately measure temperature and humidity as required by this chapter in each area and room within the kennel and kennel housing facility where a dog is housed, kept or present, including primary enclosures.

(2) The certification shall be submitted to the Department by May 30, 2011, for all commercial kennels licensed as of that date, and thereafter, the certification shall

be submitted as part of all commercial kennel license applications; and within 90 days of any change to the volume, cubic feet or linear dimensions of the kennel housing facility where a dog is kept, housed or present, including primary enclosures, a change in the highest total number of dogs kept, held or present, or a change to the volumetric, capacity, circulation or air exchange portions of the ventilation system or a change in any part of the auxiliary ventilation or humidity control system.

(3) A new certification shall not be required for the submission of a commercial kennel license application, if the commercial kennel submitting the kennel license application was licensed in the previous year, submitted a valid certification in that year and there have been no changes to the volume, cubic feet or linear dimensions of the kennel or kennel classification since the submission of the last kennel license application and certification. In such an instance, the certification submitted with the most recent commercial kennel license application may be re-submitted.

(4) The information submitted to the Department shall be kept as part of the kennel's records.

(c) *Inspection* –

(1) **Inspection:** A State dog warden or other employee of the Department inspecting the kennel will at a minimum:

(i) Assure the mechanical ventilation system is functional, operational and in operation.

(ii) Assure the auxiliary ventilation system is available, functional and operational and, where the temperature in the kennel exceeds 85 degrees, that the auxiliary ventilation system is in operation.

(iii) Assure the humidity control system is available, functional and operational and operating or operated in a manner that meets the standards and requirements of section 28a.4 of this chapter.

(2) A State dog warden or other employee of the Department inspecting the kennel may take ventilation, temperature, humidity and ammonia level readings and measurements to assure compliance with this chapter.

(d) *Recertification* – The Department may require recertification by a professional engineer where the ventilation, auxiliary ventilation, humidity or ammonia levels or standards fail to comply with the requirements of this chapter.

(e) *Ventilation and Circulation* - Kennels and housing facilities where a dog is housed, kept or present, including primary enclosures, shall be equipped with mechanical ventilation equipment that physically moves air and can provide ventilation, fresh air ventilation, circulation, heating, dehumidification and filtration meeting the standards of this chapter. Such equipment includes: air handlers, roof top units, dehumidifiers, furnaces, unit heaters and heat pumps.

(f) *Standards* - The standards established herein shall be met at all times that a dog is housed, kept or present in the kennel or kennel housing facility, including primary enclosures:

(1) **General:** Ventilation and circulation of air shall be provided and distributed throughout the entire area of the kennel and kennel housing facility, at the required volumetric rates and in the manner required by this chapter in all rooms or areas of the kennel and housing facility where a dog is housed, kept or present, including primary enclosures.

(2) Circulation and volumetric rates: Minimum circulation rates in each area or room of a kennel and housing facility, including primary enclosures, where a dog is housed, kept or present shall be maintained at all times at a total volumetric airflow of 100 cubic feet per minute (CFM) per dog. Volumetric air flow rates may be required to be increased as set forth in the Auxiliary Ventilation provisions of this Chapter.

(3) Design capacity: The mechanical ventilation equipment employed to physically circulate and move the air shall be designed, rated and able to circulate and move the required volume of air based on the highest total number of dogs held in the kennel and kennel housing facility, including primary enclosures, at any one time and shall do so in a manner meeting all requirements of this section.

(4) Fresh air rates: At least 30 CFM per dog of the circulated air shall be fresh air, the rest may be re-circulated air.

(5) Filtration: Filtration of circulated air shall be by disposable filters rated at a minimum efficiency reporting value (MERV) of 8 or higher.

(i) Evidence of the MERV filtration level shall be the information printed by the manufacturer on the filters.

(ii) At a minimum, filters shall be replaced quarterly in equipment serving areas of the kennel and kennel housing facility, including primary enclosures, that houses dogs.

(6) Design and placement: Ventilation shall provide circulation at the height of the dog, meaning the ventilation system shall be designed and placed in such a manner that each dog is in the moving air stream provided by the ventilation.

(g) Mechanical malfunction or failure: In the event of a mechanical system malfunction or failure, the kennel and kennel housing facility shall have windows, doors, skylights, or other openings in the structure that are operable and may be opened to provide natural ventilation and the auxiliary ventilation techniques established in section 28a.3 may be utilized. In the event of a mechanical system malfunction or failure resulting in a failure to meet the requirements set forth in sections 28a.2-28a.5 of this Chapter, the kennel owner shall do all of the following:

(1) **Kennel temperatures below 85 degrees Fahrenheit:** Take steps to correct the malfunction or failure immediately and restore the kennel and kennel housing facility, including primary enclosures, to a condition complying with sections 28a.2-28a.5 of the Chapter within seventy-two (72) hours of the occurrence of the malfunction or failure. If at any time during the seventy-two (72) hour period the temperature in the kennel or kennel housing facility, including the primary enclosures exceeds 85 degrees, the kennel owner shall follow and comply with the requirements of subparagraph (2) of this subsection (28a.2(g)(2) below).

(2) **Kennel temperatures in excess of 85 degrees Fahrenheit:** Take steps to correct the malfunction or failure immediately and restore the kennel and kennel housing facility, including primary enclosures, to a condition complying with sections 28a.2-28a.5 of the Chapter within four (4) hours of such malfunction or failure. If such malfunction or failure cannot be, or is not, corrected such that the kennel and kennel housing facility, including primary enclosures, is compliant with sections 28a.2 - 28a.5 within four (4) hours of the occurrence of the malfunction or failure, immediately notify the kennel's veterinarian and consult on the steps to be taken to

protect the health and well being of the dogs, as well as, contemporaneously keep records of:

(i) the time of the malfunction or failure;

(ii) temperature and humidity readings every four hours thereafter until the temperature is reduced to below 85 degrees;

(iii) the time of the notification to the kennel's veterinarian and all steps taken to protect the health and well being of the dogs.

(3) Malfunctions or failures reaching or exceeding 24 hours: If a failure or malfunction reaches or exceeds 24 hours, immediately notify the Department of the steps being taken to address the malfunction or failure and to protect the health and well being of the dogs. If notification to the Department is required after 4:00 p.m. on a weekday or on a weekend or holiday the kennel owner shall notify the Department by 9:00 a.m. of the next Department business day.

(4) Upon the occurrence of a malfunction or failure requiring the notification set forth in subparagraph (2) of this subsection (28a.2(g)(2) above), notify the Department of the date and time the kennel and kennel housing facility, including the primary enclosures were restored to compliance with sections 28a.2-28a.5.

(h) *Illness or stress*: If upon inspection, dogs exhibit conditions or signs of illness or stress associated with poor or improper ventilation, air circulation, auxiliary ventilation or humidity levels the State dog warden or other employee of the Department performing the inspection may take appropriate measurements and readings in all areas of the kennel where such illness or stress is present to determine if the kennel is in compliance with all provisions of this Chapter related to ventilation, auxiliary ventilation, humidity and

ammonia levels and may require a recertification under section 28a.2(d) be provided within a time period specified, but in no event shall the time period specified be more than 30 days or less than 7 days. Signs of illness or stress associated with poor or improper levels of ventilation, air circulation, auxiliary ventilation or humidity, ammonia or carbon monoxide levels include:

- (1) Respiratory distress, such as excessive panting, breathing problems and hyperventilation.
- (2) Signs of heat distress or heat stroke, including excessive panting, hyperventilation, increased salivation, gums that are dry, pale, grayish and tacky, rapid pulse, weakness, confusion, inattentive behavior, vomiting, elevated body temperature or rectal bleeding.
- (3) Matted, puffy, red or crusted eyes.
- (4) Listlessness.
- (5) Fungal and skin diseases.

§ 28a.3. Auxiliary Ventilation.

(a) *General.* When temperatures, in any part of a kennel and kennel housing facility where a dog is housed, kept or present, including primary enclosures, rise above 85 degrees Fahrenheit, auxiliary ventilation shall be provided to the dogs in that part of the kennel and kennel housing facility, including primary enclosures. The auxiliary ventilation shall provide the increased volumetric air flow rates and humidity control required by this chapter and shall be operated in addition to, not in place of, all other ventilation and humidity requirements set forth in this Chapter. Auxiliary ventilation

systems may be utilized in the event of a primary ventilation system failure or malfunction.

(b) *Types of auxiliary ventilation.* Auxiliary ventilation devices and techniques may include:

(1) Utilizing fans or air circulation equipment that increases the total volumetric airflow from 100 cubic feet per minute (CFM) per dog to 200 CFM per dog, either by utilizing any additional capacity the current mechanical ventilation system may provide or by adding additional fans or circulating equipment. The proper humidity levels, as established in section 28a.4 of this chapter, shall be maintained at all times.

(2) Providing cooling by moving or circulating air over cool water coils or piping, cooling towers or ice or providing cooling directly to the primary enclosure or space occupied by the dog by a means capable of cooling the enclosure or floor upon which the dog lays or walks, such as piping or coils capable of carrying cool water under or within the flooring system, and at the same time increasing the total volumetric airflow from 100 cubic feet per minute (CFM) per dog to 200 CFM per dog, either by utilizing any additional capacity the current mechanical ventilation system may provide or by adding additional fans or circulating equipment. The proper humidity levels, as established in section 28a.4 of this chapter, shall be maintained at all times.

(3) Air conditioning sufficient to reduce temperature and humidity levels in the kennel to the required levels.

(4) Geothermal systems sufficient to reduce temperature and humidity levels in the kennel to the required levels.

§ 28a.4. Humidity Levels.

(a) *General Standards:* A kennel and kennel housing facility, where a dog is housed, kept or present, including primary enclosures shall meet the following humidity levels:

(1) Temperatures below 85 degrees Fahrenheit. When temperatures in the kennel or kennel housing facility, where any dog is housed, kept or present, including primary enclosures, are below 85 degrees Fahrenheit (85 F), relative humidity levels shall be kept between 30% and 70%.

(2) Temperatures above 85 degrees Fahrenheit. When temperatures, in any part of the kennel or kennel housing facility, where a dog is housed, kept or present, including primary enclosures, rise above 85 degrees Fahrenheit (85 F), the relative humidity level shall be reduced to a level that will accomplish a Heat Index value of eighty-five (85 HI) or lower.

(3) Four hour window. Once the temperature in any part of the kennel or kennel housing facility, where a dog is housed, kept or present, exceeds 85 degrees Fahrenheit (85 F), the kennel owner shall have four (4) hours to accomplish and maintain a heat index of eighty-five (85 HI) or lower, as required by subparagraph (2) above. At no time during that four hour time period or at any other time shall the Heat Index value ever exceed ninety (90 HI) in any area, room or part of the kennel or housing facility, where a dog is housed kept or present, including primary enclosures. If within four hours, the kennel owner is unable to accomplish and maintain a heat index of eighty-five (85 HI) or lower, the kennel owner shall immediately notify the kennel's veterinarian and consult on the steps to be taken to protect the health and well being of the dogs, as well as contemporaneously keep the

records required by section 28a.2(g)(2)(ii)-(iii) of this Chapter. If such a failure to accomplish and maintain a heat index of eighty-five (85 HI) or lower exceeds 24 hours, the kennel owner shall contact the Department in the manner prescribed and provide them with the information required by section 28a.2(g)(3) and (4) of this Chapter.

(4) Calculation of Heat Index. The tool that shall be utilized to determine the Heat Index value and thereby the proper humidity levels when temperatures rise above 85 degrees Fahrenheit (85 F) shall be the Temperature and Humidity Index of the National Weather Service or its successor standard. This is also available at the National Weather Service web site located at: <http://www.crh.noaa.gov/>. and then search heat index; the Heat Index Calculator is located at <http://www.hpc.ncep.noaa.gov/html/heatindex.shtml>.

A chart setting forth the Heat Index values is attached to and hereby made a part of this regulation as Appendix A . (Examples of the Heat Index values are: 86 degrees F and 40 percent humidity = Heat Index of 85 degrees F; 90 degrees F and 20 percent humidity = Heat Index of 86 degree F)

(5) Condensation. Humidity levels, other than during times of cleaning and sanitizing, shall not rise to the level where condensation occurs in any area of the kennel, kennel housing facility or primary enclosures where a dog is housed, kept or present.

(b) Measurement and Control Standards:

(1) Temperature and humidity levels shall be measured in each area or room within the kennel and housing facility where a dog is housed, kept or present and

shall be measured and recorded by either a humidity gauge and a temperature gauge or by a thermo-hygrometer, which shall be installed in each room of the kennel and housing facility in which a dog is housed, kept or present.

(2) The measuring devices shall be provided by and be the property of the Pennsylvania Department of Agriculture and will meet the following minimum standards:

(i) Will not require hard wiring, and may be operated by batteries.

(ii) Shall store temperature and humidity data on an hourly basis and for a time period of at least six months.

(iii) Shall be rated as accurate to within one degree Fahrenheit (1F).

(iv) Shall be rated as accurate to within plus or minus two percent relative humidity (2% RH) from 10% to 90% RH.

(3) Evidence of humidity control devices shall be either dedicated dehumidifiers in each room and area of the kennel and housing facility in which a dog is housed, kept or present or may be air conditioning equipment. The equipment utilized shall have documented dehumidification capability.

(4) If air conditioning is utilized, the cooling capacity shall be at least 35 Btu/hr per square foot (1 ton of cooling for every 350 square feet) of animal area as demonstrated by nameplate cooling capability on the cooling equipment.

(5) The humidity gauge and temperature gauge or thermo-hygrometer installed and provided by the Department shall not be tampered with, destroyed, incapacitated, reset or disturbed, including downloading of data, by any person other than a State dog warden or an authorized employee of the Department.

(6) If such a device is tampered with, destroyed, incapacitated, reset or disturbed, it shall be the responsibility of the kennel owner to notify the Department within 24 hours on normal business days and by 9:00 a.m. of the next Department business day if the occurrence is on a weekend or holiday.

(7) The Department will remove and have the device checked for proper calibration and accuracy according to manufacturer specifications. The Department will replace any removed device with an accurate and properly calibrated humidity and temperature gauge or thermo-hygrometer.

(8) Data taken from these devices shall not be used as the sole basis for a civil penalty or criminal penalty under 3 Pa.C.S.A. § 459-903 (a) or (b) for violation of section 28a.4 of this Chapter.

§ 28a.5. Ammonia Levels.

(a) *Levels:* Ammonia levels in all areas and rooms of the kennel and kennel housing facility, where a dog is housed, kept or present, including primary enclosures shall not be greater than 15 ppm (parts per million) except within 30 minutes of the completion of active sanitation of that primary enclosure.

(b) *Measurements:* Ammonia level measurements shall be taken at the level of the dogs.

§ 28a.6. Carbon Monoxide Detectors. A kennel or kennel housing facility utilizing any carbon monoxide emitting device, shall install and maintain functioning carbon monoxide detectors in each room or area of the kennel and kennel housing facility in

which a dog is housed, kept or present. The carbon monoxide detectors shall meet or exceed the UL standard 2034 or the IAS 6-96 standard, or its successor standards.

§ 28a.7. Lighting.

(a) *General lighting standard for commercial kennels:* Lighting in commercial kennels may be provided by natural or artificial light or both. Whether lighting is provided by natural or artificial light or both, the following standards shall be met:

(1) There shall be ample lighting by natural or artificial means to provide sufficient illumination to allow routine inspection of the kennel, housing facility and primary enclosures and observation of the dogs at any time and to assure proper cleaning and good housekeeping practices and for the well-being of the dogs.

(2) Lighting shall be uniformly diffused throughout the kennel and housing facility where a dog is housed, kept or present, including primary enclosures.

(3) All areas of the kennel and housing facility in which a dog is housed, kept or present, including primary enclosures, shall be provided a regular diurnal cycle through natural or artificial light or both.

(4) The lighting range provided during the twelve hour light period of the diurnal cycle shall be forty to sixty (40 to 60) foot candles, or four-hundred thirty to six-hundred fifty (430-650) lux, in all areas and rooms of the kennel and kennel housing facility, including primary enclosures, where a dog is housed, kept or present.

(5) Primary enclosures and other areas of the kennel and kennel housing facility in which a dog is housed, kept or present shall be placed or located in a manner that protects each dog from exposure to excessive light.

(b) *Specific Lighting Standards:* The following specific standards are in addition to, not in place of, all other requirements meeting the general lighting standards established in this section. The following specific standards shall apply:

(1) *Natural light.* Where kennel and housing facility lighting is provided by natural light, any window or opening, with the exception of the openings that provide for unfettered access to the exercise area, which provides natural light shall be covered with a transparent material such as glass or hard plastic and shall remain unobstructed.

(2) *Artificial light.* Where kennel or kennel housing facility lighting is provided by artificial lighting the following standards shall apply:

(i) The artificial lighting shall be provided by full spectrum lighting.

(ii) Lighting sources and systems shall be kept in good repair and functional and shall not have any bulb or part of the system in disrepair, such as being unable to produce light, burned out or emitting irregular bursts of light, such as when a ballast is in disrepair.

(iii) Light sources, whether their primary purpose is to provide heat or light, shall be provided in a manner that prevents dogs from being injured (i.e. through contact with the light, fixture, bulb, switch or cord or through electrocution).

§ 28a.8. Flooring.

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

(a) *General requirements of the Act.*

(1) The floors of all primary enclosures shall be impervious to moisture, as required by section 207(h)(9) of the Dog Law (3 P.S. § 459-207(h)(9)).

(2) All flooring shall comply with the flooring standards established at section 207(i)(3)(i) of the Dog Law, which states “ The floor of the primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports, shall not be able to be destroyed through digging or chewing by the dogs housed in the primary enclosure, shall not permit the feet of any dog housed in the primary enclosure to pass through any opening, shall not be metal strand whether or not it is coated, shall allow for moderate drainage of fluids and shall not be sloped more than 0.25 inches per foot” (3 P.S. § 459-207(i)(3)(i)).

(b) *Flooring constructed with slats.* The Dog Law, at section 207(i)(3)(ii) (3 P.S. § 459-207(i)(3)(ii)), allows floors to be constructed with slats if the floor is in compliance with the general requirements of the Act, established at section 207(i)(3)(i) (3 P.S. § 459-207(i)(3)(i)), and set forth in paragraph (1) of this section and meets all the following conditions:

(1) Is flat.

(2) Has spaces between the slats that are no more than 0.5 inch in width.

(3) Has spaces between the slats that run the length or the width of the floor, but not both.

(4) Has slats that are no less than 3.5 inches in width.

(5) All the slats are level with the slat next to it within a single primary enclosure.

(c) *Additional flooring options.* Any flooring options that may be approved by the Canine Health Board, pursuant to their authority at section 207(i)(3)(iii) of the Dog Law

(3 P.S. § 459-207(i)(3)(iii)) shall meet the standards of the Dog Law, section 221(f) of the Dog Law, and the additional flooring requirements established by subsection (d) of this section.

(d) Additional flooring requirements.

(1) Solid flooring is approved and shall be sloped to a drain that is properly maintained, such as being free of debris and in good repair, so that the drain is functioning and capable of rapidly removing waste and water and keeping animals dry.

(2) Any drain shall have a drain cover which shall be securely fixed and made of a noncorrosive substance.

(3) Flooring shall not be made of a material, that when exposed to a heat source such as the direct rays of the sun, a lamp or radiant heating can rise to temperatures that may cause injury to the skin, feet or pads of a dog

(4) The flooring shall not splay the feet of a dog, cause or result in damage such as cuts, swelling or ulceration to the pads of a dog's foot or allow the dog toe or toenail to slip between any openings in the floor thereby causing injury.

(5) Radiant heat flooring, or a floor cooling system, may be utilized to temper the dogs' primary enclosure, but shall not be utilized as the primary heating or cooling mechanism. The temperature of such flooring shall be able to be regulated in a manner that assures it will not rise or fall to levels that would cause injury to a dog's skin feet or pads or cause hypothermia, hyperthermia, heat stress or heat stroke.

(6) The surface of the flooring shall be constructed of such material or in such a manner that it will provide the dogs with footing that is not slippery or slick, such that the

dog will have traction and may stand, walk and move about without falling, slipping, sliding or causing injury to its legs, hips or back. Utilizing non-slip coating and textures are one means of providing sure footing.

(7) Flooring shall be made of material that is impervious to moisture, capable of being cleaned on a daily basis or as often as necessary as required by the act and section 21.29 (related to sanitation)(7 Pa.Code § 21.29) of the regulations and capable of being sanitized in accordance with section 207(h)(14) (3 P.S. § 459-207(h)(14)) of the act.

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

(e) *Nursing mothers.* Primary enclosures, including whelping boxes, housing bitches with nursing litters or housing dams or foster dams with puppies under 12 weeks of age shall be constructed so that at least fifty percent (50%) of the flooring of the primary enclosure shall comply with the standards established by section 207(i)(3) of the Dog Law (3 P.S. § 459-207(i)(3)).

§ 28a.9. Scope and Effective Date.

(a) *Scope.* These regulations apply only to commercial kennels.

(b) *Effective Date.* These regulations shall become effective July 1, 2011.

APPENDIX A
85 HI

HEAT INDEX FROM TEMPERATURE
AND HUMIDITY

The following Chart Delineates the Relative Humidity Level That Shall be Reached and Maintained to Achieve a Heat Index Value of 85.

When Air Temperature In Any Part of the Kennel or Kennel Housing Facility, Where Any Dog is Housed, Kept or Present, Including Primary Enclosures Rises Above 85 Degrees Fahrenheit (85 F) The Following Relative Humidity Levels Shall be Achieved and Maintained.

Temperature (air) in Fahrenheit	Relative Humidity (RH)
86 Degrees Fahrenheit	40 % RH or less
87 Degrees Fahrenheit	34 % RH or less
88 Degrees Fahrenheit	28 % RH or less
89 Degrees Fahrenheit	21 % RH or less
90 Degrees Fahrenheit	11 % RH or less
91 Degrees Fahrenheit	6 % RH or less
92 Degrees Fahrenheit	1 % RH or less

NOTE: At temperatures in excess of 92 Degrees Fahrenheit there is no relative humidity level that will allow an HI of 85 to be achieved.

APPENDIX A

90 HI **FOUR HOUR WINDOW**

HEAT INDEX FROM TEMPERATURE **AND HUMIDITY**

The following Chart Delineates the Relative Humidity Levels That Shall Not Be Exceeded at Any Time.

Once The Air Temperature in Any Part of the Kennel or Kennel Housing Facility, Where a Dog is Housed, Kept or Present, Exceeds 85 Degrees Fahrenheit (85 F), the Kennel Owner Shall Have No More Than Four (4) Hours to Accomplish and Maintain a Heat Index of Eighty-Five (85 HI) or Lower, as Required by the Regulations. At No Time - During That Four Hour Time Period or at Any Other Time - Shall the Heat Index Value Ever Exceed Ninety (90 HI) in Any Area, Room or Part of the Kennel or Housing Facility, Where a Dog is Housed Kept or Present, Including Primary Enclosures.

Temperature (air) in Fahrenheit	Relative Humidity (RH)
86 Degrees Fahrenheit	58 % RH or less
87 Degrees Fahrenheit	53 % RH or less
88 Degrees Fahrenheit	48 % RH or less
89 Degrees Fahrenheit	43 % RH or less

Temperature (air) in Fahrenheit	Relative Humidity (RH)
90 Degrees Fahrenheit	39 % RH or less
91 Degrees Fahrenheit	35 % RH or less
92 Degrees Fahrenheit	30 % RH or less
93 Degrees Fahrenheit	25 % RH or less
94 Degrees Fahrenheit	20 % RH or less
95 Degrees Fahrenheit	13 % RH or less
96 Degrees Fahrenheit	10 % RH or less
97 Degrees Fahrenheit	7 % RH or less
98 Degrees Fahrenheit	3 % RH or less

NOTE: At temperatures in excess of 98 Degrees Fahrenheit there is no relative humidity level that will allow an HI of 90 to be achieved.

STATEMENT OF POLICY
PENNSYLVANIA DEPARTMENT OF AGRICULTURE
BUREAU OF DOG LAW ENFORCEMENT

Exercise for Nursing Mothers

Scope

This statement of policy applies to "commercial kennels" licensed by the Pennsylvania Department of Agriculture's Bureau of Dog Law Enforcement (Bureau), as defined in the Dog Law, 3 P.S. § 459-101 *et seq.*

Purpose

The purpose of this Statement of Policy is to provide direction to commercial kennel owners regarding the requirements of exercise for nursing mothers in commercial kennels.

Discussion

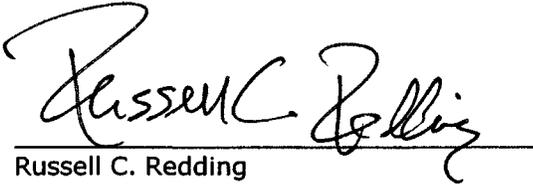
Section 207(i) of the Dog Law establishes certain commercial kennel housing standards for dogs over the age of twelve (12) weeks, including exercise area requirements (3 P.S. § 459-207(i)). However, Subsection 207(i)(6)(viii) of that section defines a separate exercise requirement for nursing mother dogs. It states: "Nursing bitches and puppies shall be exercised separately from other dogs" (3 P.S. § 459-207(i)(6)(viii)).¹ This is consistent with provisions elsewhere in the Dog Law requiring that nursing mother dogs must be housed separately with their puppies (3 P.S. § 459-207(h)(4)).

In order to address any potential uncertainty created by the absence of specific standards for the "separate" exercise required for nursing mothers, the Department sets forth the following policy for exercise of nursing mothers in commercial kennels:

1. The Bureau will consider a kennel owner to be compliant with the requirements of 3 P.S. § 459-207(i)(6)(viii) if the nursing mother is provided daily access to an exercise area meeting all of the following requirements of subsection 207(i)(6): Subsections 207(i)(6) (ii), (iii), (iv), (v), (vi) (vii) (viii) and (ix). (3 P.S. § 459-207(ii)-(ix)).
2. As part of the annual kennel application, the kennel owner applying for a license must set forth a plan to provide the nursing mothers with the opportunity for daily exercise while housed with her puppies.

¹ Dogs twelve (12) weeks of age and under, i.e. puppies, are not subject to any of the exercise area requirements of section 207(i) of the Dog Law.

3. The failure to adhere to the plan set forth in the annual kennel application may be considered a material misrepresentation pursuant to Section 211(a)(1) and (2) of the Dog Law, (3 P.S. § 459-211(a)(1)-(2)), and may be grounds for the revocation or refusal of a kennel license under Section 211(a) (3 P.S. § 459-211(a)).

A handwritten signature in black ink, reading "Russell C. Redding". The signature is written in a cursive style with a large initial "R". A horizontal line is drawn across the signature.

Russell C. Redding
Secretary of Agriculture

FINAL WAIVER STATUS AS OF DECEMBER 15, 2009			
	Good Faith	Substantial Structural Improvement	Total
Received	75	108	183
Eligible Applications	67	88	155
Approved (one year or less)	20	36	56
Approved (more than one year)	6	19	25
Approved %age	34.6%	50.9%	
Refused	49	53	102
Pending	0	0	0
Appeals	9	12	21

Note: "Approved" means that a waiver was granted from one or more subsections of Sections 207(h) or (i) of the Dog Law, not that the request was granted as requested or for the time period requested. "Refused" means that no waiver from any subsection for any time period was approved.

183 kennel owners submitted waivers from provisions of the dog law. Of those, 102 were denied for any waiver, and 81 were approved for a waiver from at least one provision of the law. 56 waivers (69%) were granted for a period of one year or less, and 25 were approved for more than a year.

Twenty-nine kennels that applied for waivers also filed closing applications. Twenty-one were refused for waivers, five of those for ineligibility. Five filed closing applications before their waivers were determined, and three are closing despite receiving a waiver (one for 6 months, 2 for one year).

The number of Lancaster County kennels that applied for waivers is 86, of which 34 were approved and 52 were refused.

There were 21 waiver appeals. Nine of these kennels appealed despite having received a waiver for a year or longer.

2785

From: Smith, James M.
Sent: Thursday, July 29, 2010 3:48 PM
To: IRRC
Subject: FW: Casorio letter and attachments
Attachments: Commercial Kennel Canine Health Final-Form Regulation w Heat index Chart.pdf; Nursing Mothers Exercise Policy 7-15-10.pdf; WAIVER STATUS - FINAL.doc; Casorio letter re. CHB regs. 7-29-10.pdf

#2785 –

From: Brownfield, Jill [mailto:jbrownfiel@state.pa.us]
Sent: Thursday, July 29, 2010 2:08 PM
To: Smith, James M.
Cc: Smith, Jessie L
Subject: FW: Casorio letter and attachments

RECEIVED
IRRC
2010 JUL 29 P 4: 23

Mr. Smith – Attached is a letter dated 7/29/10 from Deputy Secretary Jessie Smith to Rep. Casorio and the attachments that accompanied the letter. Thank you.

Jill Brownfield | Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture, Room 212
2301 N. Cameron St. | Harrisburg, PA 17110
Phone: 717.214.3758 | Fax: 717.346.3301
jbrownfiel@state.pa.us
www.agriculture.state.pa.us

From: Smith, Jessie L
Sent: Thursday, July 29, 2010 10:43 AM
To: Brownfield, Jill
Cc: ODonnell, Kelly
Subject: Casorio letter attachments