

2785

From: Jewett, John H.
Sent: Monday, November 16, 2009 12:09 PM
To: Gelnett, Wanda B.; Stephens, Michael J.; McLaughlin, William; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis
Cc: IRRC
Subject: FW: CHB Regulations
Attachments: THI for Commercial Kennels.pdf; ATT1589406.htm; Canine Health Board - Legalized.doc; ATT1589407.htm

Wanda: Please file this email and its attachments under related documents for #2785. Thanks!

From: Julian Prager [mailto:pennfedlaw@verizon.net]
Sent: Monday, November 16, 2009 12:04 PM
To: Jewett, John H.
Subject: CHB Regulations

RECEIVED
 2009 NOV 16 PM 12:30
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

John -

I have attached a version of the CHB guidelines that I sent to Jen Muller and the Department that I believe meets the requirements of the Statute and address the concerns of some CHB members.

I agree that the standard for shelters and humane societies are not directly applicable to commercial kennels since the demographics of the two populations are very different.

My comments on the attached revisions are as follows:

For section 28a.2(1), the temperature-humidity index (THI) is used to evaluate conditions when the temperature is over 85 degrees. The THI levels are in the .pdf chart below. The 78 THI standard is derived from a cow study showing stress, so its not directly applicable to dogs, but is an animal husbandry based study and may be defensible. The PVMA suggestion that real data be obtained and then base the standards on that makes a lot of sense.

The legislature has already said that a THI if 84 is permissible (85 degrees at 90 percent humidity), so that may have some impact on the suitability of a number for a standard. The only dog study, done by the FAA, showed high internal temperatures of up to 108 degrees after 6 hours at 85 degrees with 90 percent humidity. Of course, the condition was, itself stressful since it was not their normal living conditions. The study suggested a 4 percent decrease in humidity for each degree of temperature increase, which does not correlate at all with THI numbers in the cow study chart.

As you can see, at 86 degrees, the Relative Humidity has to be at 40% to be less than 78. It has to be at 25% at 90 degrees for the same THI. As a practical matter, these levels should be sufficient, especially given the fact that the THI can reach 84 at a temperature of 85 degrees and that can't be changed by regulation. Setting a number is largely guesswork without data, so I can't predict the response of the commercial kennels, but I think a level can be justified at some point between a THI of 78 and 84. As you can see from the chart, as a practical matter, it will be impossible to keep

Brachycephalic dogs in commercial kennels if the level is set at 70. Since the standard is based on the dog, not the breed, it should not run up against the law prohibiting breed specific legislation.

The explanation of my other paragraphs is as follows:

28a.2(2) prohibits dogs in the kennel if the THI conditions are not met when the temperature exceeds 85 degrees.

28a.2(3) sets ammonia levels at 20 ppm. I know that the European standard is 10, but I found studies that showed that ammonia levels in homes in across the U. S. were about 19 ppm. I don't think you can sell 10 ppm given those data, but the choice is, of course, up to the Board. I required measurements when the Wardens has reasonable cause to believe that excessive ammonia is present (the nose test) to reduce the testing burden on the Department if there isn't any undue odor. They can test anytime the Warden feels it necessary.

28a.2(4) mandates that systems be maintained in operable condition and be repaired immediately.

28a.2(5) provides for windows etc. that can be opened in new kennels in case the ventilation or humidity control fails when the THI exceeds the specified level at temperatures over 85 degrees. 28a.2(8) requires that when the building is renovated, they come into compliance with new building codes and these regulations (including the windows, etc.).

28a.2(6) specifies air change requirements with fresh air limited to a minimum of 2 changes per hours (up to 20% of the air change) and the rest with recirculated air (or fresh air if they want to). I used 2 air change minimum since that is what is required in garbage rooms of nursing homes.

28.2(7) sets the air filtering requirement when the temperature is over 85 degrees.

29a.2(9) is the neonate language. It is just a guess. I am sure the CHB can do a better job than I did.

28a.3(1) changes the minimum daytime lighting to 30 foot-candles. I know that the commercial breeders took a light meter to IRRC to show them the light levels in their offices, which were significantly less than 60 foot-candles. I changed the minimum language to restrict it to a maximum of 5 foot-candles at night when active work in the kennel is not being performed. Since dogs must have water at all times and may be fed after dark, especially in the Winter, the change was needed or they could have argued the standard would force them to violate either the standard or the law.

28a.3(2) through (6) are outside the authority of the Board, but could be implemented by the Department in its regulations as further defining their powers under the law.

(2) and (3) permit the Department to require as a condition for a waiver for indoor exercise that natural light and/or full spectrum light be provided (since the dogs won't be exposed to

outside lighting). Since the waivers have already been given, I am not sure of the retroactive effect of doing this, but it's worth a try.

(4) though (6) are the CHB standards promulgated by the Department within its authority to provide for safety and compliance with the law.

The flooring standards remain unchanged, except for (3) where I added a requirement for a thermostat control.

Julian Prager
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PROPOSED REGULATION

Title 7 - AGRICULTURE

CANINE HEALTH BOARD

[7 PA. CODE CH. 28a]

Standards for Commercial Kennels

(Canine Health Board in Black; Department in Red)

Annex A

TITLE 7. DEPARTMENT OF AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 28a. CANINE HEALTH BOARD STANDARDS FOR COMMERCIAL KENNELS

GENERAL PROVISIONS

Sec.

28a.1 Definitions

28a.2 Ventilation

28a.3 Lighting

28a.4 Flooring

§ 28a.1 Definitions

The following words and phrases when used in this Chapter shall have, unless the context clearly indicated otherwise, the meanings given to them in this section:

Brachycephalic - having a head with a cephalic index over 80; a head that is broad compared to its length.

Excessive light — Direct, undiffused light, from either the sun or a lighting fixture placed in such a manner that the light is shining directly into a primary enclosure of a dog.

THI – The Temperature Humidity Index, computed by one of the following methods:

$$THI = 0.4 (T_d + T_w) + 15$$

$$\text{THI} = 0.5T_d + 0.2T_{dp} + 17.5$$

$$\text{THI} = T_d - (0.55 - 0.55\text{RH})(T_d - 58)$$

where T_d is the dry-bulb temperature (temperature of the air) in °F, T_w is the wet bulb temperature in °F, T_{dp} is the dewpoint temperature in °F, and RH is the relative humidity expressed as a decimal.

§ 28a.2 Ventilation

The following standards shall be met at all times a dog is present in the facility:

(1) When the ambient air temperature exceeds 85° F, additional ventilation and humidity control systems shall provide the ventilation and humidity control required to reduce the temperature-humidity index (THI) to less than an index value of:

- (i) 78 in each area of the kennel in which dogs are housed, except for Brachycephalic dogs,.
- (ii) 70 in each area of the kennel for Brachycephalic dogs.

(2) If the temperature in any portion of the facility exceeds the THI defined for the types of dogs therein, despite additional ventilation and humidity control, dogs shall not be present in those portions of the facility. This paragraph shall not apply to outdoor exercise areas.

(3) Ammonia levels shall average less than 20 ppm, at the shoulder level of adult dogs housed a room. If the Dog Warden has reasonable cause to believe that there may be excessive ammonia present, ammonia levels shall be measured at the center, in the middle of the four walls and at the four corners of the room. The readings shall be averaged to determine the ammonia level present. Ammonia in a primary enclosure shall not be measured within 30 minutes, of the completion of active cleaning of that primary enclosure.

(4) In the event of a malfunction of the systems required under these regulations, the kennel owner or manager shall immediately take any necessary actions to achieve compliance with the standards established in this section and to correct the malfunction. As soon as practicable, the kennel owner or manager shall notify the Bureau of Dog Law Enforcement during normal business hours of the failure and the steps taken to achieve corrective action.

(5) Newly constructed kennels shall have windows, doors, skylights, or other openings in the structure that shall be capable of being opened to maintain ventilation in the event of a failure of the ventilation and/or humidity control systems when temperatures are above 85° F and the THI exceeds the level specified for the types of dogs therein.

(6) When the temperature is above 85 degrees, no fewer than 8 and no more than 20 air changes must be made each hour. At least 20% of the air changes shall be fresh air, with a minimum of 2 air changes per hour, with the remainder of the air changes with recycled air.

(7) When employing recycled air during periods when the temperature is above 85 degrees, the recycled air shall be filtered with small particle, non-ozone producing air filters.

(8) Ventilation systems and the provision of windows, doors, skylights, or other openings in the structure must comply with the applicable building codes and the requirements of this section at the time of construction and shall be updated to meet successor codes and the requirements of this section when major structural renovations are made.

(9) Neonates under 1 week of age shall be in an area with a THI of over 78 and less than 90 when not with their dams and neonates under three weeks of age shall be kept in an area with a THI over 78 and less than 85 when not with their dams.

28a.3 Lighting

(1) Each kennel shall have a mixture of natural and artificial light of at least 30 foot-candles during daylight hours and at no more than 5 foot-candles during nighttime hours when active work in the kennel is not being conducted.

(2) If a department grants a kennel a waiver for indoor exercise under section 207(i)(6)(x)(B) of the Dog Law (3 P. S. § 459-207(i)(6)(x)(B)), the department may require as a condition of the waiver that natural light enter into each primary enclosure for a portion of the period of natural daylight.

(3) If the department grants a waiver to a kennel for indoor exercise under section 207(i)(6)(x)(B) of the Dog Law (3 P. S. § 459-207(i)(6)(x)(B)), the department may require as a condition of the waiver that full spectrum lighting be provided for the entirety of the daytime light cycles in areas that house dogs.

(4) No lighting source shall have a visible flicker.

(5) Light, whether its primary purpose is to provide heat or light, shall be provided in a manner that prevents dogs from touching a light, fixture, bulb, switch or cord.

(6) Lighting systems must comply with the applicable building codes at the time of construction and shall be updated to meet successor codes when major structural renovations are made.

28a.4 Flooring

(1) In addition to the flooring already approved in the Dog Law (3 P.S. § 207(i)(3)), solid flooring is approved for use.

(i) Solid flooring must be sloped to a drain that is free of debris and in good repair.

(ii) Drain covers shall be provided and shall be securely fixed and made of a

noncorrosive substance.

(iii) Flooring shall not be metal nor any other material with high thermal conductance. Radiant floor heating or cooling shall be permitted provided that a thermostat controls the temperature of the floor and further provided that a dog has an area to escape the heat if it gets too warm or too cold.

(iv) All floors and drains shall comply with the latest edition of applicable codes.

(v) The surface of the flooring shall provide the dogs with good footing. Examples include sealed concrete, painted concrete, epoxy flooring, sealed wood, textured and sealed tile.

(vi) Flooring shall not be made of nor coated with materials that are toxic to dogs.