



NEBRASKA COMMERCIAL OPERATOR INSPECTION REGULATIONS TO BE AMENDED

**** November 30, 2011 COMMENT DEADLINE ****

The Issue:

The Nebraska Department of Agriculture (Department) has published proposed amendments to its rules implementing the Commercial Dog and Cat operator Inspection Act (Act). The proposal includes several new provisions but also revises existing standards. Among other things, amendments cover provisions governing inspections and complaints under the Act, exercise requirements, primary enclosures for animals, pest control, tethering, ventilation, lighting, record-keeping, and assessment of fines for violations.

The Impact:

The proposed rulemaking encompasses substantial revisions to the existing regulations promulgated by the Department pursuant to the Act. **This PetAlert summarizes the more significant changes being proposed, but those interested in the actual text of the proposed rule should review the full proposal by [clicking here](#).**

Inspections and Complaints

As required by existing law, all licenses must have their premises inspection. The proposed rule provides that the Department will make 2 consecutive attempts to conduct an inspection of licensed premises, but if the licensee is repeatedly unavailable or refuses to make the premises available for inspection, the Department will:

- Post an Attempted Inspection Notice form (a copy of which is attached to the proposal as Appendix H) in a prominent location on the premises with instructions to contact the Department within fifteen (15) calendar days; and
- If the licensee fails to contact the Department as requested after a second inspection attempt the Department may treat it as a refusal by the licensee to allow an inspection, at which point the Department may obtain an inspection warrant.

Humane Handling and Care of Animals

- Dogs and cats must be provided with food at least one time per day except as otherwise directed by the attending veterinarian and such food must be fresh, wholesome
- Water must be continually available to each dog and cat or offered as often as necessary to ensure their health and safety, but not less than twice per day for at least one hour each time, unless restricted by the attending veterinarian
- The written program of veterinary care required by the rules may be satisfied with the use of the Veterinary Care Plan form which is attached to the proposal as Appendix I
- The requirement for individual health records for animals over 8 weeks of age is revised so that such records aren't necessary until dogs and cats reach 16 weeks of age, unless they have been permanently transferred from the litter or have received an individual medical procedure
- Adequate grooming must be provided so as to avoid matted hair which significantly impairs a dog's health or safety or provides a nesting area for disease carrying pests or parasites
- Licensees must also have a written emergency veterinary care plan. This requirement may be met through use of the Emergency Veterinary Care Plan form which is included in the proposal as Appendix J

Exercise Requirements for Dogs

- Licensees must establish and follow a written exercise plan for each dog, with dogs over 12 weeks of age being provided an opportunity for exercise through methods documented by the attending veterinarian in the veterinary care plan or emergency veterinary care plan
- The exercise plan must be available to the Department at the time of inspection and must be approved and signed by the attending veterinarian, or incorporated into the veterinary care plan or emergency veterinary care plan. It must specify space and identify the frequency, method, and duration of additional exercise if the exercise requirements are not otherwise met
- Exemptions to the exercise requirement for individual dogs must be determined by the attending veterinarian and recorded in the veterinary care plan or emergency veterinary care plan.
- Acceptable methods of exercise for animal control, shelters, rescues, boarding kennels, dealers and pet shops include providing individually housed dogs with at least 200% of the minimum required floor space required by these regulations, group housed dogs with at least 100% of the minimum required floor space for each dog, access to a run or open area at the frequency and duration prescribed by the attending veterinarian, or positive interaction with humans, such as walking, playing ball, or grooming
- Commercial dog breeders must provide the opportunity for exercise at least two times daily outside of a cage or pen. Access to outdoor runs may be substituted for the twice daily exercise requirement only when approved by the Department.

Primary Enclosures

Primary enclosures must meet the minimum size requirements provided for under the federal Animal Welfare Act regulations (9 C.F.R. § 3.6), as well as meeting the following standards:

- Be cleaned as often as necessary, but at least once daily, to prevent contamination of the animal; minimize disease hazards; and reduce odors
- Daily remove any excreta and food waste by cleaning the entire primary enclosure; cleaning soiled areas only (spot-clean); or utilizing any other Department approved cleaning method
- Be cleaned in a manner that does not harm the animal through direct exposure to steam or harsh or toxic chemicals; contaminate the dog, cat, or its bedding; wet the dog, cat or its bedding; or distress the dog or cat, as evidenced by shivering, shaking, cowering, excessive howling, or whining (among other things)
- Have all excreta and food waste removed daily from under the primary enclosure to prevent or reduce soiling of animals; disease hazard; pests, insects, vermin, and odors
- Be sanitized as often as necessary, but at least once every two weeks. Hard surfaces, food and water receptacles, and watering systems may be constructed of, among other things, sealed

concrete; sealed wood; ceramic tile; stainless steel or other metals; glass board; or strong plastic laminate sheeting. Acceptable methods of sanitizing hard surfaces include washing with hot water of at least 180°F and soap or detergent; washing with a detergent solution, followed by a safe and effective disinfectant; or live steam or pressurized live steam

- “Non-hard or porous surfaces” are permitted under the regulations as well, including dirt, sand, gravel and grass. Acceptable methods of sanitizing such surfaces include, among other things, “removal of feces [and] exposure to direct sunlight or use of a safe and effective disinfectant”
- All primary enclosures must be designed, constructed, and maintained in such a manner as to be structurally sound; be kept in good repair, having no sharp or jagged edges which could injure a cat or dog; be free of excessive rust which prevents the required cleaning and sanitation; securely contain the dogs or cats; protect the dogs or cats from predators; provide shelter and protection from extreme temperatures and weather conditions; enable all surfaces in contact with the dogs or cats to be readily cleaned and sanitized, or be replaceable when worn or soiled; enable the dogs or cats to remain dry and clean; and provide the dogs or cats with easy and convenient access to clean food and water which shall be non-toxic and free from algae growth.
- Permanent tethering is prohibited for use as a primary enclosure. Temporary tethering for up to 3 days may be approved by the Department under specified conditions.

The rule notes that excessive thirst may indicate a disease condition requiring veterinary attention, and identifies factors for determining whether a dog or cat is receiving an adequate amount of water, which include:

- Ambient temperature
- A dog’s or cat’s body condition, such as sunken eyes and skin tenting
- A dog’s or cat’s behavior, such as excessive nosing at an empty water bowl

In addition to the cleaning and sanitizing requirements for primary enclosures, the proposed rule requires establishment of procedures for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris on all premises where housing facilities are located, including buildings, pens, and surrounding grounds. Waste disposal procedures must minimize pest infestation, vermin infestation, harmful odors and disease hazards. Trash containers in housing facilities, food storage areas, and food preparation areas must be leak-proof and have tightly fitted lids on them at all times.

Employee Requirements

Licensees are responsible for ensuring adequate training and guidance are provided to employees involved in the handling, care, and treatment of the dogs and cats on the licensed premises and that a sufficient number of trained employees are available to perform general husbandry tasks, as well as ensuring that employees involved in the handling, care, and treatment of dogs and cats can, and do, perform at the level required by the Act. The proposed rule identifies factors to be considered in determining the adequacy and appropriate number of employees, including:

- The number of dogs and cats maintained on the premises
- Maintenance requirements of the individual dogs or cats based on, among other things, the size, breed, and age of animals
- The design and construction of the facility
- General condition of the facility. Any facility that is routinely noncompliant in general husbandry areas would potentially indicate too few employees on site, or employees who are not sufficiently trained in the humane handling, care, and treatment of dogs and cats
- Factors indicating inadequately trained, or an insufficient number of, employees include a high incidence of injury to the dogs and cats in the facility, inadequate cleanliness of the facility, and multiple substantiated complaints against the licensed facility

Pest Control

Licensees are required to establish, maintain and follow an effective pest control program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, such as starlings and small rodents. Signs of an ineffective pest control program may include, among other things,

actual sighting of pests, droppings, rodent holes, chewed insulation on floors, walls, ceilings and other surfaces, nests, dogs or cats scratching excessively, open sores or sores due to flies and other insects, or areas of hair loss on dogs or cats.

Drainage and Shelter

Facilities are required to have a method for preventing excess or standing water and other fluids, keeping animals and their bedding dry and minimizing pest infestation, harmful odors, vermin infestation and disease hazards. Dogs and cats must be provided with adequate shelter at all times. The Tufts Weather Safety Scale may be used as a guideline to assist the Department in making a determination as to a dog's health or safety risk in adverse weather conditions. To be "adequate" the shelter must:

- Protect the dogs' and cats' health or safety
- Allow all animals in the enclosure to have access to the shelter at the same time
- Protect the animals from adverse weather conditions
- Be large enough to allow each dog or cat to sit, stand, lie down, and turn around freely
- Not include barrels, cars, refrigerators, freezers, washing machines, dryers, etc

Outdoor housing with one or more sheltered structures must be constructed so that each such shelter is accessible to every dog and cat; has a roof, floor, and sides; provides adequate protection or shelter from extreme cold or heat; provides protection from direct rays of the sun; provides protection from the direct effects of wind, rain, or snow; has a wind break and rain break at the entrance; and provides a way for the dogs and cats to keep warm, including the availability of clean, dry bedding.

Storage

Food, bedding, toxic substances and other items must be properly stored, as follows:

- Food storage methods must protect food from spoilage; contamination; deterioration of nutritive value; and vermin infestation
- Food storage areas must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials
- Toxic substances must not be stored in food storage areas, food preparation areas, or animal living areas unless such substances are stored in a secured cabinet
- Bedding must be stored and maintained in a clean, dry environment to protect it from contamination, water damage, and vermin infestation

Ventilation

All enclosed areas of a facility or shelter must be sufficiently ventilated to provide for the dogs' or cats' health or safety, and to minimize harmful odors; drafts; noxious fumes or toxic gases, including ammonia; and moisture condensation, indicative of excessive humidity. Acceptable methods of ventilation include, but are not limited to, windows; vents sufficient to allow an adequate exchange of air flow throughout the facility; fans, exhaust fans, or blowers; air conditioning; and doors.

Lighting

Indoor housing and sheltered housing facilities must have sufficient light to permit routine inspection and cleaning of the housing facility. Indoor housing and sheltered housing facilities must also have sufficient light, uniformly diffused, to observe the dogs and cats housed therein, and a regular diurnal lighting cycle of either natural or artificial light must be provided to all dogs or cats housed in an indoor housing or sheltered housing facility.

Recordkeeping

A number of additions and revisions are made to existing recordkeeping requirements under the proposed rule. All records (except for boarding kennels) must be kept and maintained for at least 3 years, unless the Director requests in writing that they be maintained for a longer period. This time period begins from the date of acquisition or disposition. Records must include a Certificate of Veterinary Inspection for dogs or

cats moving interstate, and must be physically maintained on the licensed premises, or be readily available for review at the time of inspection.

Commercial breeders, pet shops, dealers and voluntary licensees may use the form referred to as Record of Acquisition and Dogs and Cats on Hand, Animal and Plant Health Inspection Service Form 7005 (a copy of which is attached as Appendix C) or a similar Department approved form to record acquisition of dogs or cats.

Commercial breeders, dealers, pet shops and voluntary licensees must make, keep, and maintain records and forms for each dog or cat transported, sold, exchanged, leased, deceased, delivered, euthanized or otherwise disposed of. The form referred to as the Record of Disposition of Dogs and Cats, Animal and Plant Health Inspection Form 7006 (a copy of which is attached as Appendix E) may be used, or a similar Department approved form to record disposition of dogs and cats.

Individual health records of dogs and cats must be maintained and must accompany all dogs and cats upon transfer of ownership. Such records must include:

- Vaccination records and any other treatments and medications given
- All medical procedures performed
- The reasons for or the condition requiring treatment, medication, or medical procedure, including the results of such treatment, medication or medical procedure
- A record of all offspring produced, including the number of litters produced and litter size for each dog and cat
- If a dog or cat dies, the health records shall include an explanation of how the death occurred (euthanasia, natural causes or otherwise); the date of death; if euthanasia was performed, the name of the person performing the euthanasia and the method

Assessment of Fines

Detailed provisions identifying the types of fines and basis for such fines are set forth in the proposal. The “level of violation” identifies whether it is a first, second, third or subsequent violation. “Median” fines are assessed “in the absence of aggravating factors or mitigating factors or when the aggravating factors and the mitigating factors are equally applicable.”

- Aggravating factors include findings of fact which enhance the seriousness of a violation such as the gravity of the actual or potential injury to the health or safety of the animal; the potential for the violation to cause a significant health or safety threat; the actual physical harm or injury; the alleged violator’s intentional, willful, or negligent failure to avoid the violation; the failure by the alleged violator to take steps to remedy the alleged violation; the similarity of the current alleged violation to previous violations that occurred within the last three years; the likelihood that the alleged violator will repeat the violation; the alleged violator’s nondisclosure of the violation; and the alleged violator’s failure to cooperate with the investigation.
- Mitigating factors include findings of fact which reduce the seriousness of the violation such as the culpability and good faith of any past violations; the violation has no potential for causing physical injury; the unintentional, nonwillful, or non-negligent nature of the violation; the alleged violator’s attempts to take remedial action; the lack of previous similar violations within the last three years; the likelihood that the alleged violator will repeat the violation; the alleged violator’s disclosure of the violation to the Department; and the alleged violator’s cooperation with the investigation.

Violations are broken down into type I, type II, or type III violations depending on the degree of severity, type I being the least, and type III being the most, serious. Generally, type I violations are considered to be technical violations that have minimal or no potential to result in significant harm to the health or safety, and may include:

- Failing to properly identify dogs and cats
- Failing to maintain a written veterinary care plan
- Failing to develop, maintain or follow the exercise plan for dogs
- Failing to maintain premises, structures, enclosures or pens in good repair in accordance with the standards set forth in 9 C.F.R. Sections 3.1 to 3.19
- Failing to pay any required fees under the Act
- Failing to comply with any provision of the Act and regulations which may prevent the Department from carrying out its duties under the Act

Type II violations are moderately serious violations that do not result in significant harm and may include:

- Failing to keep all records required by the Department
- Failing to notify the Department of any change in the name, address, management, control or ownership of the business or operation, or of additional sites
- Failing to maintain sanitary premises, pens, enclosures or structures in such a way as to impair a dog's or cat's health or safety.
- Making a deliberate misrepresentation or concealment to the Department
- Refusing to allow an inspector access to inspect any dog or cat, premises, facility, area, equipment or vehicle as required under the Act
- Failing to comply with any provisions of the Act and regulations which may impair the health or safety of a dog or cat.

Type III violations are the most serious and may result in significant harm to a dog's or cat's health or safety, or has the potential for the death of such animal, and include:

- Failing to provide a dog or cat with necessary food or water
- Failing to maintain sanitary premises, pens, enclosures, or structures in such a way as to be a significant threat to a dog's or cat's health or safety and which may promote contamination and disease risk.
- Failing to provide shelter or protection from extreme temperatures or humidity and weather conditions
- Failing to provide dogs and cats with adequate space required for the species or breed
- Failing to maintain a dog in a healthy condition as an indicator of the overall health or safety of such dog
- Failing to provide veterinary care for a dog or cat when such veterinary care appears to be necessary, and is later determined by a veterinarian that such care was necessary
- Refusing to allow the Department to enter the premises during normal business hours for the purposes of inspection under the Act or denying access to any officer, agent, employee, or appointee of the Department
- Failing to disclose all locations housing dogs or cats owned or controlled by the alleged violator
- Interfering with the Department in the performance of its duties
- Failing to comply with an order of the Director
- Using any license issued by the Department while the license is under suspension; or, for purposes other than those authorized by the Act
- Failing to make available to the Department records, papers, and other information necessary for the enforcement of the Act

The proposed rule includes tables of fines depending upon the level and type of violation and whether there are aggravating or mitigating circumstances. Type I violations may range from \$100 for a first, mitigated offense to \$2,000 for a third, aggravated offense. Type II violations may range from \$200 for a first, mitigated offense to \$3,500 for a third, aggravated offense, and type III violations may range from \$500 for a first, mitigated offense to \$5,000 for a third, aggravated offense.

PIJAC Position:

Prevailing standards, based on objective criteria should always be used in adopting regulatory requirements for licensees, and appropriate due process should be encompassed by any rule to ensure its fair application. Over-burdensome requirements which have not been shown necessary to ensure the humane care of animals or effective administration of the law should be assiduously avoided.

Recommended Action:

All persons who are or may be subject to this rulemaking are strongly urged to review proposed changes in Nebraska's regulations and to timely submit comments on all provisions of concern. **Comments must be submitted by November 30, 2011.**

Public comments may be submitted online by any interested party at the [Department's Website](#).

The Department will also be holding a public hearing on this proposal on December 1, 2011 at 10:00 a.m. at:

Department of Agriculture
Nebraska State Office Building, 4th Floor
301 Centennial Mall South
Lincoln, NE 68509

Questions concerning the hearing may be directed to Vanessa Rohrs at 402-471-2341 or the Department may be contacted by email at agr.comments@nebraska.gov.

For other questions or additional information about this proposed rule, contact PIJAC's Michael Maddox by telephone at 202-452-1525, Ext. 106 or via email michael@pijac.org.