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INDEPENDENT REGULATORY
REVIEW COMMISSION

March 16, 2007

Ms. Mary Bender
Department of Agriculture
Bureau of Dog Law Enforcement
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

Dear Ms. Bender:

I am writing on behalf of the Humane Society of Harrisburg Area, Inc. ("Humane Society") with respect to the rulemaking proposed by the Department of Agriculture ("Department") which would amend Chapters 21, 23, 25, and 27 of the Dog Law as outlined in the *Pennsylvania Bulletin* dated December 16, 2006 ("Regulations").

I have itemized the majority of my comments to the Regulations below by section number for ease of reference. The sections itemized below present the greatest concern to the Humane Society. As discussed in more detail below, it is the opinion of the Humane Society that the fiscal impact of the Regulations has been severely underestimated.

Like many other humane societies, our Humane Society is struggling to survive. The Regulations, written without any identifiable grant money for the implementation of these Regulations, are too costly for the Humane Society and would force the Humane Society to close. The Regulations represent a costly unfunded mandate that demonstrates the Department's misunderstanding of the operational realities of a humane society.

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The humane societies of the Commonwealth of Pennsylvania ("Commonwealth") run largely on private donations and receive little to no money from the Commonwealth. Before imposing such extensive regulations the Department should gain a better understanding of the fiscal impact of such regulations. The closing of the Humane Society would fiscally impact the Commonwealth by forcing the Commonwealth to build an animal control facility to cover the Humane Society's current service area, which consists of Dauphin, Cumberland, Perry and Northern York counties.

In addition, the Regulations unfairly subject humane societies, SPCAs, rescue groups and other not-for-profit organizations to the same standards as for-profit organizations. The laws of the Commonwealth, as well as the law of the United States of America, have come to distinguish for-profit businesses from not-for-profit businesses. This is evidenced in many areas of the law, from our business corporation laws to our tax laws. If not-for-profit organizations that provide vital community services to the Commonwealth are going to be held to the same standards as for-profit organizations, grant monies or other funding must be identified by the Commonwealth to ensure these vital community services do not end. If grant monies or other funding cannot be identified by the Commonwealth, then exemptions for the not-for-profit organizations should be provided.

Section 21.14(b)

According to Section 21.14 of the proposed regulations, it shall be a violation of the act and this chapter for any kennel, including the Humane Society, to keep, harbor, board, shelter, sell, give away or in any way accept, deal or transfer any dog from a kennel or establishment operating without a license or from a kennel that has had its license suspended or revoked, without the express written permission of the Department.

The Humane Society regularly investigates cruelty complaints involving individuals or organizations that are operating a kennel without a kennel license or may have had a license suspended or revoked. Often the Humane Society seizes animals from such individuals or organizations. As Section 21.14(b) is written now, it would be a violation for the Humane Society to house the animals we seize in these situations.

Furthermore, the Humane Society is an open admission shelter and receives animals from many individuals that reside in Dauphin, Cumberland, Perry and Northern York counties. The Humane Society accepts these animals without questioning the individuals that give us the animals to determine if said individuals are operating an unlicensed kennel.

It is proposed by the Humane Society that an exemption to Section 21.14(b) is made for any humane society or similar organization that employs a licensed Humane Police Officer. If Section 21.14(b) remains as written, clarification on this section is requested as well as instructions on where the Humane Society is to house the animals seized in these situations. Please further clarify if the Humane Society unknowingly receives animals from an unlicensed kennel or a kennel that has had its license suspended or revoked,

whether or not the Humane Society is in violation of Section 21.14(b) of the proposed regulation as currently written.

Section 21.23 (a)

According to Section 21.23(a) a dog's primary enclosure should allow the dog to lie in a lateral recumbence (on its side or back) with legs fully extended, without head, tail, legs, back or feet touching any side of the enclosure.

While we do not house a majority of our dogs in crates, there are instances when a dog is kept in a crate (such as for medical purposes). Many of our dogs are large breed dogs (such as Labrador Retriever mixes, German Shepherd mixes, or Pit Bull mixes) and there are currently not crates available for purchase that would allow some of these larger breed dogs to lie down on their stomachs and stretch their front legs out in front of them and their hind legs out behind them, while at the same time not touching any side of the enclosure.

It is proposed by the Humane Society that this section be re-written to require an adequately sized primary enclosure based on the size of the dog. This section 21.23(a) as it is written would prohibit the Humane Society from using crates to house large breed dogs and would require the Humane Society to custom build primary enclosures for said large breed dogs that may need to be kept in a crate.

Section 21.23 (e)

Under Section 21.23(e), there is a subsection relating to exercise that is not labeled and thus is referred to as Section 21.23(e) for ease of reference. This subsection states that each dog shall receive 20 minutes of exercise per day and the dogs shall be observed and supervised during exercise.

This subsection further states that dogs must either be walked on a leash or put in an exercise area. If a dog is put in an exercise area, the exercise area must be equipped in a manner to allow dogs to be exercised even during inclement weather and to protect the dogs from becoming wet, matted or muddy during the exercise. The Humane Society is currently not equipped with a covered pavilion, outdoor arena, or other similar facility that could prevent the dogs from becoming wet during exercise. Thus, at the present time, the Humane Society would have to walk each dog under our care for 20 minutes. The Humane Society currently houses approximately 150 dogs at any given time. Thus, it would take 3,000 minutes or 50 hours a day to walk all of the dogs in our care. Our lowest paid employee makes \$7.16 an hour. Presuming the dog walking would be done by our lowest paid employee, the required dog walking would cost the Humane Society \$358.00 per day or \$10,740 per month.

Moreover, according to this subsection, daily records of exercise shall be kept for each dog in the kennel, which must set forth the breed, color, markings, sex, approximate weight and age of each dog or when applicable, the microchip number of each dog, the

date and the time period each dog was exercised and whether the exercise was on a leash or in an exercise area. Presuming it would take 5 minutes to fill out each daily record of exercise, it would take the Humane Society 750 minutes or 12.5 hours each day to complete the daily records of exercise for the 150 dogs in our facilities. Our lowest paid employee makes \$7.16 an hour. Presuming our lowest paid employees would also complete the daily record of exercise, the required daily records of exercise would cost the Humane Society \$89.50 per day or \$2,685 per month.

The daily exercise requirements and records of exercise would cost the Humane Society in total \$13,425 per month or \$161,100 per year.

Furthermore, the Humane Society regularly receives and holds dogs that may not be exercised for a variety of reasons. Some dogs are being quarantined due to a bite case or are too aggressive to handle. Other dogs may be held pending the return of a certified letter or pending a court case. In addition, the Humane Society holds animals temporarily for victims of domestic violence through our Safe Haven program. As section 21.23(b) is written there is no exception(s) or consideration given to any of these situations.

If the subsection remains as written, clarification on how to handle animals that are being held (as discussed above) is requested. Furthermore, a determination of the economic feasibility of increasing the annual operational costs of the Humane Society by \$161,000 per year is requested.

Currently, the dogs housed at the Humane Society are exercised in the following manners; the dogs are let out to run in a courtyard that has cement flooring with a drainage system, they are walked by volunteers or staff, and/or they have access to an outdoor run. While it would be in the best interest of the Humane Society to suggest that the exercise program of the Humane Society is the program that should be adopted, such a proposal would be detrimental to many other humane societies and similar organizations. It is instead proposed by the Humane Society, that this subsection be rewritten to reflect the intent of the drafters. Presumably, the intent of the drafters is to ensure that each dog is not be kept in a kennel or primary enclosure for long periods of time without being able to exercise. By touring humane societies and similar organizations across the Commonwealth, the Department should be able to see that there are a number of ways to ensure that a dog is not being kept in a kennel or primary enclosure for long periods of time without being able to exercise.

Section 21.21(f)(8)

According to Section 21.21(f)(8) records that evidence the date and time of day following conditions must be kept; the housing facility was cleaned, the housing facility was sanitized, each individual cage, dog box or primary enclosure was cleaned, each food and water bowl was sanitized and new food and potable water was provided each dog.

The Humane Society currently houses approximately 150 dogs at any given time. Assuming that it would take 5 minutes to complete such records this would cause the

Humane Society to spend 750 minutes or 12.5 hours per day on recording the information required by Section 21.21(f)(8). Under the current pay structure, our lowest paid employees are paid \$7.16 an hour. Presuming our lowest paid employees would complete the records required by Section 21.21(f)(8), the additional record keeping requirements would cost \$89.50 per day or \$2,685 per month.

Furthermore, a determination of the economic feasibility of increasing the annual operational costs of the Humane Society by \$32,220 per year is requested.

Section 21.21 (f)(11)

The Humane Society has indoor kennels with outdoor runs attached. According to Section 21.21 (f)(11), in kennels like the Humane Societies, drains or gutters shall be installed between the indoor and outdoor section of the kennel for sanitation and drainage purposes and half round pipe shall be installed in these areas to permit the dog to walk through.

Furthermore, indoor or outdoor kennels must be sloped in a specific manner to allow for quick water drainage and drying. The drain, gutter and sloping specifications of Section 21.21(f)(11) would require the Humane Society to reconstruct all of its 150 kennels. A specific cost estimate was not calculated by the Humane Society because any such reconstruction would be beyond the financial means of the Humane Society. If Section 21.21(f) remains as written, the Humane Society will no longer be able to operate and will be forced to close its doors. While it would be in the best interest of the Humane Society to suggest the drain, gutter and sloping specifications of our facilities are the specifications that should be adopted by the Department, such a proposal would be detrimental to many other humane societies and similar organizations. It is instead proposed by the Humane Society, that Section 21.21(f) be re-written to reflect the intent of the drafters. Presumably, the intent of the drafters is to ensure that each kennel is being kept clean and dry. By touring humane societies and similar organizations across the Commonwealth, the Department should be able to see that there are a number of ways to keep a kennel clean and dry.

Section 21.26(a)

According to Section 21.26(a), kennels must be equipped and meet specific air floor and ventilation system requirements. The specifications of Section 21.26(a) would require the Humane Society to reconstruct the HVAC units in both of its facilities. A specific cost estimate was not calculated by the Humane Society because any such reconstruction would be beyond the financial means of the Humane Society. If Section 21.26(a) remains as written, the Humane Society will no longer be able to operate and will be forced to close its doors.

While it would be in the best interest of the Humane Society to suggest the specific air floor and ventilation system requirements of our facilities are the specifications that should be adopted by the Department, such a proposal would be detrimental to many

other humane societies and similar organizations. It is instead proposed by the Humane Society, that Section 21.26(a) be re-written to reflect the intent of the drafters. Presumably, the intent of the drafters is to ensure that each kennel has a ventilation system that allows the dogs to be comfortable. By touring humane societies and similar organizations across the Commonwealth, the Department should be able to see that there are a number of ventilation systems that allows the dogs to be comfortable.

Section 21.41(e)

According to Section 21.41(e), the Humane Society will be required to keep a record of the following for each dog housed in the facility: the date, time and detail of daily feedings, cleaning of kennel, and changing and refreshing potable water, the date, time and detail of exercise activity of the dog, the date, time and detail of any medication administered to a dog, any accident or incident in which the dog is injured, the date and time of any veterinary care administered, records of veterinary care for each dog and any veterinary ordered or voluntary protocol for vaccination, medication or other recommendation for medical treatment of the dogs.

As discussed above in the comments to other sections, the additional record keeping requirements would have a large fiscal impact on the Humane Society and a determination of economic feasibility is requested.

I would invite the Department, the Governor or any senator or state representative to tour the Humane Society to better understand the operations of the Humane Society and the vital community services we provide.

Respectfully Submitted,



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