



Date: September 24, 2013

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Re: Comments on 330 CMR 30:00 Animal Rescue and Shelter Regulations

We have significant concerns about the proposed **330 CMR 30:00 Animal Rescue and Shelter Regulations** and strongly urge the Massachusetts Department of Agricultural Resources (MDAR) to make changes before a final version is adopted.

The proposed regulations will be devastating to homeless animals in our state, resulting in the unnecessary loss of animal lives. While we appreciate the importance of, and support, regulations for animal shelters and rescues, we are very alarmed by many provisions and the negative impact they will have.

Unlike pet shops, which MDAR has regulated for decades, shelter and rescue groups are non-profit organizations that play a different role in our society. Shelter and rescue groups not only help animals by covering the cost of care, vaccination, and sterilization for thousands of abandoned and surrendered animals each year, they also assist municipalities and MDAR itself with animal care. Our concerns are not a matter of resisting adjustment that would need to be made with these regulations, nor are we exaggerating the consequences, but the unique nature and purpose of shelters and rescues must be acknowledged. The regulations are much more strict and onerous than the pet shop regulations.

We understand that MDAR has seen increased problems with the proliferation of rescue and shelter organizations and the importation of homeless animals across state lines. We are not asking MDAR to ignore or dismiss the need to address these incidences. However, if these regulations are adopted as is, even the Massachusetts shelters utilizing the best practices – the ones that serve as national role models and have been operating independently for hundreds of years – won't be able to comply without unnecessarily euthanizing animals and ending services to parts of our most needy communities. If the regulations pass, there will no doubt be an increased burden on our municipal animal control facilities across the state. Additionally, many of these regulations go far beyond what we have found to exist in any other state.

Importantly, some key provisions are actually counter-productive to the stated goals of reduced disease transmission. There are also significant concerns about sections that are beyond the scope of the MDAR's authority. Much of the language is vague and unclear.

What follows are more specific comments and suggested alternatives, where applicable. Given our concerns about the scope of these regulations, our specific suggestions or comments do not imply that we accept that a noted provision is necessarily within the MDAR's authority.

We plan to follow up with MDAR with additional specific alternative language for some areas.

### **SECTION 30.09(3) – RELATING TO HEALTH CERTIFICATES**

This proposed section states that “No organization may offer for sale, advertise or transfer an animal unless...the animal has, within thirty (30) days before transfer, been examined by a veterinarian and has received a health certificate which states that the animal appears to be free of any signs of infectious or contagious disease...” This would require all animals to receive an examination and health certificate from a veterinarian within 30 days prior to transfer or adoption. The pet shop regulations require health certificates only for cats and dogs, not other animals. These proposed regulations require current health certificates for all animals, and not just those that come from out of state.

While requiring health certificates before the transfer of an animal may sound ideal, it would be impossible to implement and is unnecessary. The number of animals relinquished vastly exceeds the time that veterinarians are available to perform routine examinations and issue certificates. Most shelters do not have veterinarians on staff, while those fortunate enough to employ a veterinarian spend the vast majority of their time spaying and neutering and caring for injured and sick animals relinquished to the shelter. Hiring veterinarians or additional veterinarians is a significant expense that shelters, already straining for resources, would be unable to meet. One organization, Dakin Pioneer Valley Humane Society, estimates that with 3,400 adoptions/year, it would cost them \$110,000/year for veterinary costs and costs associated with length of stay.<sup>i</sup>

Unexamined animals would either need to be euthanized or wait for long periods of time, resulting in delays that would increase crowding, and ultimately, disease. It is for this reason that the Association of Shelter Veterinarians (ASV)<sup>ii</sup> recommends that animals be made available for adoption or transfer as quickly as possible, without waiting for a veterinary examination if that will result in delays. ASV is the leading authority on shelter medicine, nationally and internationally, comprised of hundreds of shelter veterinarians who are experts in their field. The ASV Guidelines recommend that non-veterinary shelter staff learn to recognize signs of disease in animals so that they can seek veterinary attention for sick or injured animals. The guidelines do not mandate examination by a veterinarian prior to adoption or transfer due to the expense and delays resulting from an examination which would be detrimental to the health of the animals. Importantly, the requirements in the proposed regulations *would actually increase the disease incidence in shelters*. Studies have shown that the primary risk factors for disease in shelters are the amount of time spent in the shelter and animal density. Requiring veterinary examinations and health certificates prior to the advertisement or transfer of animals would significantly increase the length of stay before adoption, resulting in delays that would increase crowding, disease, and euthanasia.

It should also be noted that having a health certificate does not hold any guarantee of health. Irresponsible organizations could obtain a health certificate within 30 days stating the animal is apparently free from contagious disease. Yet an animal could become ill within the 4 weeks covered by this certificate, permitting an irresponsible organization to transfer ownership of a sick animal with a misleading and invalid, though still technically current, health certificate.

If there are continuous problems that can be traced back to specific organizations, perhaps a better way to prevent such disease would be to review their practices. Another alternative is to require health certificates for imported animals, as is now required under the Emergency Order (1-AHO-05; May 26, 2005), though we believe that once an animal has had a health certificate issued after the quarantine period, the animal does not need to have additional certificates, unless there is a medical reason.

#### **SECTION 30.09(d) AND 30.09(5) – RELATING TO A “HEALTHY” ANIMAL**

These sections prohibit an organization from advertising or transferring an animal unless the animal appears to be “healthy” at the time of transfer and requires an animal affected by any non-contagious medical condition (such as nutritional or metabolic disease, fracture, lameness, or congenital abnormalities) be treated and stabilized by a veterinarian prior to being offered for sale or transfer.

The language in sections relating to contagious diseases is vague and does not clearly define infectious and contagious diseases. We are concerned that this requirement would prevent shelters from adopting animals, especially cats, with common conditions such as mild upper respiratory tract infections (URI), round worms, tape worms, flea allergies, ear mites, feline leukemia positive cats or animals that need dental work. Since the majority of cats harbor the herpes virus, a virus that is activated at times of stress, feline URI is endemic in shelters and nearly impossible to eradicate. For many cats, the only way for the signs to resolve is to remove them from the stressful situation, i.e. the shelter, and place them in a home. Not allowing the transfer or adoption of animals with URI or other conditions would result in thousands of animals being held for long holding periods and/or euthanasia.

Again, if there is indeed a problem with contagious disease in specific communities, perhaps a better way to prevent such disease would be to identify these organizations and review their

practices. We are also looking to propose a tiered system of diseases as an alternative, recognizing that all diseases are not the same and a one-size-fits-all prohibition is not in the best interest of the animals or necessary.

### **SECTION 30.09(3) AND 30.09(2)(c) – ANIMAL BEHAVIOR**

We believe that this goes beyond the scope (as do several other provisions) of the Department's authority in Ch. 129 sec. 2 and the MDAR's lack of staff trained in animal behavior is of great concern, especially when revocation of an organization's license could be the result for disagreement over behavior issues – issues that are often situational and complicated. We suggest these sections be removed.

The language in the sections regarding animal behavior is extremely vague. Terms such as “serious behavior issue or concern” are highly subjective. Many animals have some type of “behavior issue” and many people have different definitions of what “behavior issues” mean. What would constitute as a serious behavior issue, including certain types of aggression, varies from individual to individual. The way the language is currently written would lead to an increased length of stay (LOS) for many shelter animals which means helping fewer animals in our communities in addition to increased euthanasia in shelters.

The term “aggression” is similarly vague. It is unclear what type of behavior has to be portrayed (growling? biting?) in order for an animal to need training prior to, or post, transfer. For example, it is not uncommon for dogs to have food aggression (or aggression over other valuable items like toys) and territorial behaviors towards other dogs. Dog-to-dog food, treat, toy “aggression” is a normal species behavior. Many dog owners with multiple dogs take precautions to avoid this becoming an issue in their homes to avoid any dog-to-dog injuries or human injuries.

Additionally, this section says “any animal” and is applicable to not just dogs, but to cats (and other animals). In many shelters that work with multiple species, cats are the animals we care for in the largest numbers. Leaving this language as is would, again, create a significant increase in euthanasia and fewer cats and people in our communities that need our services being helped. Cats, naturally, can be very reactive to dogs. If a cat sees a dog, a cat might hiss, swat and exhibit other natural behaviors. However, a cat could hurt a person if accidental redirection occurs. Under the proposed regulations, we could be required to euthanize or seek behavior modification for a cat that doesn't like dogs. We could be required to make an adopter seek training for the adopted cat because it hissed at a dog while in the shelter.

Written records detailing an animal's behavior are important in order for adoptive families to be made aware of past behavioral issues, if any. However, behaviorists agree that it is not possible to administer a “test” of behavior that is analogous to the specificity of say, a blood test. Behavior is ever-changing, and behavioral problems may appear in the adoptive home that never occurred in foster or transport that are the result of the age-old nature/nurture conundrum. Also, a known behavioral issue cannot be simply treated and then be said to have been “mitigated” in some fashion. Rescue and shelter organizations need to consider an animal's potential behaviors in its new home before placement. However, these regulations are not an appropriate or effective way to ensure this.

We would also be required to require “...the adopter to employ the services of a professional dog trainer...” We do not believe we should or could mandate or ensure compliance with this, although it's a good recommendation to offer adopters (but not mandate).

### **30.04 AND 30.07(5) - FOSTER HOMES**

These sections require an organization to submit a list of foster homes to MDAR when an organization is registering with the Department and requires foster homes to be subject to inspection (citing Ch. 129 sec 7, entry on premises, Livestock Disease Control).

Foster home are essential to shelters and rescues. They provide necessary space and care for animals that would be euthanized if not for the foster home. These sections will be a deterrent for potential foster families. The requirement that a list be provided upon registration is nonsensical; a list of an organization's foster homes changes weekly and would be outdated as soon as it is sent. At the MSPCA, for example, there are more than 400 active foster homes, and an average of 25-50 new foster homes are added every month. A more effective way for MDAR to get this information would be to request it when it is needed due to a disease outbreak and therefore obtain an up-to-date list.

Chapter 129 section 7 was likely enacted without the expectation it would be used to enter private homes. We would suggest that the Department not have such blanket authority, but enter a private *home only when necessary for a significant reason (like a disease outbreak)*. Looking at limits for the numbers of animals a foster home could take care of would be another option to discuss as an alternative to the current provisions.

### **ANIMAL TRANSFER**

30.09(1)(a) Says that "no organization may offer for sale, advertise, or transfer an animal unless the animal is eight (8) weeks of age or older". The pet shop regulations specify cat or dog as should these regulations, because this regulation as written is inappropriate for animals like guinea pigs, mice, etc.

Not allowing for transfer of animals younger than 8 weeks to other organizations would mean the death of hundreds of young kittens and puppies. Organizations work closely with each other to care for kittens and puppies who come in unable to eat on their own and in need of bottle feeding. For example in 2012, the MSPCA in Boston transferred over 40 kittens to other rescue and shelter organizations that had foster homes available to bottle feed. If organizations were not allowed to transfer these kittens (and puppies) into rescue organizations, we would be forced to euthanize these healthy orphaned infant animals.

### **PUBLICATIONS**

Requiring organizations to alter publications per 30.04(7) is vague, impractical, extremely costly and unnecessary. This would not be practical for things already printed, and pieces that might mention adoption may or may not be seen as "advertisements." It is also very confusing on how this would apply to radio, television or in social media (Facebook, Twitter and other forums) where saying or writing such a number is impossible or impractical.

### **VETERINARY ESTIMATE**

Requiring a veterinarian's estimate for a non-contagious medical condition is impractical; veterinarian's estimates will vary widely as to make this meaningless (30.09(6)).

### **SPAY/NEUTER**

The spay/neuter section 30.09 (8), should mimic the state law; using different language regarding the use of a certificate process for animals adopted unaltered is confusing and unnecessary. Additionally, this section states "Organizations invoking the sterilization clause while

transferring animals shall also comply with the provisions of MGL c 140, Section 139A.” It is unclear whether this includes the transfer of ownership to another Organization.

### **ANIMAL CONTROL**

It is unclear why these regulations cite responsibilities for animal control officers (30.10 (1)). It is also confusing and contradictory that the regulations, on one hand, require a stray dog to remain in the custody of an animal control officer (30.10) and then in 30.10(3) state that the organization then bears the responsibility to locate and notify the owner and facilitate its return. Given that the stray dog would be in the possession of the animal control officer, it doesn't make sense for the Organization to be the entity to do this.

30.10(1) references stray “animals” instead of stray dogs. This puts a burden on animal shelters to communicate with animal control about non-pertinent information. Animal control agencies are not required to help cats, most don't at this time, and it would not make sense for them to hear from Organizations about the several thousand individual stray cats (or ferrets, mice, rats, rabbits etc.) we take in every year.

### **REQUIREMENT FOR A USDA ACCREDITED VETERINARIAN**

Section 30.08 (2) requires that an animal entering Massachusetts have an Official Certificate of Veterinary Inspection (OCVI) issued by a “USDA accredited veterinarian.” USDA accredited veterinarians are different than “licensed veterinarians.” The current standard is a licensed veterinarian. Increasing the standard to a USDA certified veterinarian adds a significant burden that exists above the current Emergency Order (current Order reads: “each and every animal entering the Commonwealth must be accompanied by a valid health certificate from the place of origin that meets or exceeds the Commonwealth of Massachusetts Small Animal Interstate Certificate of Health Examination.”) These forms are signed by a licensed veterinarian, but not necessarily by a USDA certified veterinarian.

### **IMPERVIOUS SURFACES**

Section 30.05(1)(a) describes “impervious surfaces” as “tile, sealed cement or concrete block treated with epoxy paint” and states that “walls and floors shall be fully impervious from floor to ceiling.” This means that painted drywall is not impervious. It is perfectly acceptable to have rooms where animals live in cages (or even healthy colonies) where painted and maintained drywall is the wall surface or where tile or sealed blocks go halfway up the wall and then are drywall above. This also states that these surfaces must be impervious where animals are housed or *treated*—meaning exam and surgery rooms. Even veterinary hospitals do not meet this standard. The standard in pet shop regulations is lower. Also, 30.05(1)(c) states “carpeted flooring shall be prohibited where animals are housed, treated or fed.” We all foster animals in offices of the buildings in which we work and many are carpeted. Our organizations have been fostering in these offices for years, without incident.

### **THERMOMETERS AND EXHAUST FANS**

If an Organization has a computerized and state of-the-art HVAC system, it would still need both a thermometer and an exhaust fan. Section 30.0 (2)(a) states “...the Organization shall install and maintain a working thermometer in all areas in which animals are maintained and cared for” and 30.05(3)(d) requires the Organization “be equipped with an exhaust fan that serves to efficiently remove air directly from the room to an area outside of the building where no other animals are located and to provide the delivery of fresh air into the room.” The standards for pet shops are lower.

## **PROTECTIVE CLOTHING**

Section 30.05 (5) (a) requires protective clothing in quarantine rooms for imported animals. Wearing protective clothing may be justified for some isolation rooms, but are unnecessary for healthy animal quarantine. Again, the standard in the pet shop regulations is lower.

## **EUTHANASIA**

There is no reason that anything besides the use of barbiturates should be allowed (30.06 (3)). We suggest using language that mimic's the state's recently adopted language for animals that are euthanized while in custody of animal control -- that animals "be euthanized only by the administration of barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia."

## **USE OF THE TERM "EVERY ANIMAL"**

There are several places where the term "every animal" is used and clearly shouldn't be.

For example, 30.06(2)(i) states that "every animal shall be given the opportunity to exercise outside of its enclosure regularly in order to maintain the animal in good health and reduce the stress of confinement." This should not apply to every animal – for example, an organization wouldn't want to let finches, mice, or snakes out of their enclosure.

Section 30.06(2)(j) states that "every animal shall be housed in compatible groups without overcrowding." The way this section is written means that shelters must house animals in groups. This needs to be modified to "when group housing is appropriate for the species/individual animals, the animal shall be housed in compatible groups without overcrowding."

See also above re: 30.10(1) and the use of "every animal" relating to animal control.

## **BREEDING**

In 30.06(4), the prohibition on breeding allows for *permanent* revocation of registration for "negligent" breeding, which could be interpreted as "accidental" breeding between animals like birds or hamsters, which aren't always easily sexed.

## **ANIMAL RECORDS**

Section 30.07(4) states that "A copy of the complete individual animal record shall be kept in the foster home where the animal is housed, or in the alternative, the Organization may choose to keep only a partial animal record...." Because many organizations have completely computerized animal records, and most foster homes have access to computers, it seems like these records could be allowed to be computerized unless the state asks for a printed version and to eliminate a waste of paper/resources.

In Section 30.11(2) shelters and rescues will be required to track 16 items on each animal they receive. Pet shop regulations have a lower standard; they are required to only track 5 items.

Section 30.11(3) states "The Organization shall provide information from the individual animal record in a format requested by the Department, or they may choose to use the standard animal record form provided by and available from the Department." While this is an improvement from an earlier draft, it still means that, despite the electronic format in which many sheltering organization's records are stored (and which has predetermined settings for printing), our inspector can decide that he/she doesn't want to see it that way and make us provide records in

the way he/she wants them. A suggested change would be that the section reads “The Organization shall provide information from the individual animal record as requested by the Department.”

### **WIRE FLOORS**

Section 30.05(1)(h) allows animal cages or enclosures to be equipped with a wire floor as long as it is of an adequate gauge to prevent sagging or injury to the animal’s feet, and that the mesh shall be small enough to prevent the animal’s feet from falling through. However, the ASV Guidelines state “Wire-mesh bottoms or slatted floors in cages are not acceptable for primary enclosures for cats and dogs.” An alternative may be, “...wire-mesh bottoms or slatted floors are not acceptable for primary enclosures for cats and dogs. When used for other species, animal cages or enclosures equipped with a wire floor shall be of an adequate gauge to prevent sagging or injury to the animal’s feet, and the mesh shall be small enough to prevent the animal’s feet from falling through...”

### **ADDITIONAL QUESTIONS/CLARIFICATIONS**

Section 30.08(2)(a)(10) requires documentation of “parvovirus” vaccination status information for the “animal.” What if the animal in question is not a dog?

Section 30.08(3)(a) requires that any “dog or cat imported into the Commonwealth for the purpose of transfer shall have a minimum of one (1) vaccine for Canine or Feline Parvovirus...”. We believe the department means the Feline Panleukopenia vaccine.

Sections 30.09(1)(d) and 30.09(5) and 30.09(6) are in direct contradiction: (1)(d) states that “No Organization may offer for sale, advertise, or transfer an animal unless the animal appears to be healthy at the time of transfer.” While (5) states that “An animal acquired by an Organization found to be affected by any non-contagious medical condition...shall be treated and stabilized by a veterinarian prior to being offered for sale or transfer.” And (6) states that “No Organization may transfer an animal with a non-contagious medical condition unless accompanied by a disclosure statement...” Must the animal be *healthy, treated/stabilized*, or the subject of a *disclosure statement*?

In 30.02 there is a definition of animal inspector, but the term is not used in the regulations.

In 30.12(3)(d) Ch. 140 sec 138 is cited, though that section no longer exists.

### **PENALTIES**

Section 30.13 allows an organization’s registration to be revoked. We’d suggest that this section states revocation only occur upon a substantial violation.

### **PHASE-IN PERIOD**

We would suggest that there be a phase-in time when the final regulations take effect so that organizations have time to ensure compliance with the many sections.

We remain committed to improving animal health and welfare in our state. It’s in the best interest of animals, people and local and state government that we work together to have animal shelters be key resources. These regulations as written simply do not meet this goal. We hope the Department will take our thorough input into account and meet with sheltering and rescue facilities to come up with regulations that make sense and work towards an ultimate goal of

decreasing the spread of contagious disease and ensuring proper care and treatment for homeless animals.

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<sup>i</sup> \$110,000 is derived from the following calculations, based on 3,400 animals/year with 10% being at the shelter longer than 30 days, requiring an additional health certificate. Veterinary costs = \$90,000. This equates to 1,078 hours (15 minutes per health certificate for the veterinarian and the veterinary assistant) and for exams. This estimate uses an average of \$65/hour for veterinarian \$16/hour for assistant. Animal care costs = \$20,000. This is based on costs for additional days at the shelter waiting for health certificate (staff, boarding, food, litter, hay, etc).

<sup>ii</sup> S. Newbury, M.K. Blinn, P.A. Bushby, C.B. Cox, J.D. Dinnage, B. Griffin, K.F. Hurley, N. Isaza, W. Jones, L. Miller, J. O'Quin, G.G. Patronek, M. Smith-Blackmore, and M. Spindel, "*Guidelines for Standards of Care in Animal Shelters*," The Association of Shelter Veterinarians (2010).