

## BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Comprehensive Animal Care Law and Related Regulations Civil Penalty Matrix Guidelines for Enforcement

**These guidelines provide direction to the State Veterinarian and Division of Animal and Food Industry Services (AFIS) staff in determining the civil penalty that may be considered appropriate for violations of certain requirements of the Virginia Comprehensive Animal Care Law, as authorized by the Board of Agriculture and Consumer Services.**

#### **SECTION 1: AUTHORITY**

The Board of Agriculture and Consumer Services shall implement a civil penalties program for Virginia's localities and animal shelters through the Virginia Department of Agriculture and Consumer Services staff, to include the Director of the Division of Animal and Food Industry Services (State Veterinarian) and Division of Animal and Food Industry Services staff, pursuant to Va. Code §§ 3.2-6546 and 3.2-6548.

#### **SECTION 2: DEFINITIONS**

Definitions listed below are in supplement to Va. Code §§ 3.2-5900 and 3.2-6500.

**“Animal Care Veterinary Supervisor”** means (i) the supervisor of the animal care unit of the Office of Veterinary Services within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services or (ii) a person designated as the Animal Care Veterinary Supervisor by the State Veterinarian who works under the direction of the State Veterinarian.

**“Animal shelter”** means a public animal shelter as defined in Va. Code § 3.2-6500 or a private animal shelter as defined in Va. Code § 3.2-6500.

**“Board”** means the Board of Agriculture and Consumer Services.

**“Critical violation”** means (i) a noncompliance, found upon inspection by an inspector, with the Code of Virginia or Virginia Administrative Code that causes animal death, serious injury, or suffering; or (ii) the denial of access of an inspector when such access is for the purpose of inspection.

**“First non-critical violation”** means the first cited non-critical noncompliance with the Code of Virginia or Virginia Administrative Code found upon an animal shelter inspection by an inspector within the preceding five calendar years.

**“Hearing officer”** means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with Va. Code § 2.2-4024.

**“Inspector”** means (i) an inspector from the animal care unit of the Office of Veterinary Services within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services or (ii) a person designated as an inspector by the State Veterinarian who works under the direction of the State Veterinarian.

**“Letter of Notification”** means a written notification to a responsible authority that an inspector cited either a first non-critical violation or no violations during the shelter inspection process.

**“Non-critical violation”** means a noncompliance with the Code of Virginia or Virginia Administrative Code cited by an inspector that is not a critical violation. A non-critical violation does not include any violation of Va. Code § 3.2-6555 or § 3.2-6556, pertaining to animal control officer training.

**“Notice of Violation and Opportunity for Good Faith Consideration”** means a written notification

from the Animal Care Veterinary Supervisor to a responsible authority that (i) identifies a (a) critical violation, (b) repeat non-critical violation, or (c) violation of Va. Code § 3.2-6555 or § 3.2-6556; (ii) indicates the dollar amount of the potential civil penalty based on Section 6 of this document; and (iii) offers the opportunity to submit additional facts or documentation to the Animal Care Veterinary Supervisor for consideration.

**“Notice of Penalty Dismissal”** means a written notification from the Animal Care Veterinary Supervisor to a responsible authority that the civil penalty associated with a violation is rescinded based on the additional facts or documentation submitted by the responsible authority after the issuance of the Notice of Violation and Opportunity for Good Faith Consideration.

**“Notice of Violation and Penalty Assessment”** means a written notification from the Animal Care Veterinary Supervisor to a responsible authority that (i) documents a (a) critical violation, (b) repeat non-critical violation, or (c) violation of Va. Code § 3.2-6555 or § 3.2-6556; and (ii) states the civil penalty assessment based on Section 6 of this document.

**“Program Manager”** means (i) the manager of the Office of Veterinary Services within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services or (ii) a person designated as the Program Manager by the State Veterinarian who works under the direction of the State Veterinarian.

**“Responsible Authority”** means the (i) governing body of a locality or (ii) owner or operating entity of a private animal shelter.

### **SECTION 3: ANIMAL SHELTER INSPECTION PROCESS**

All animal shelters, including vehicles used by such to transport companion animals, are subject to inspection by the State Veterinarian or his representative. An inspector will identify critical or non-critical violations and cite such violations.

#### **A. Critical Violation upon Inspection**

If an inspector cites a critical violation, he will (i) ensure that corrective actions are immediately undertaken to prevent further death, serious injury, or suffering; and (ii) submit documentation concerning the violation to the Animal Care Veterinary Supervisor within five business days of the inspection for assessment of civil penalties.

#### **B. First Non-Critical Violation upon Inspection**

If an inspector cites a first non-critical violation, he will provide the responsible authority a Letter of Notification within a reasonable time after the inspection. The Letter of Notification will include (i) a copy of the inspection report, (ii) an explanation of the cited violation, including relevant section(s) of the Code of Virginia or Virginia Administrative Code, and (iii) a statement of first non-critical violation.

#### **C. Repeat Non-Critical Violation upon Inspection**

If the cited violation is a repeat of a previously cited non-critical violation, an inspector will provide the Animal Care Veterinary Supervisor (i) a copy of the inspection report, (ii) an explanation of the violation, including relevant section(s) of the Code of Virginia or Virginia Administrative Code, and (iii) a statement of repeat non-critical violation within 15 business days of the inspection.

#### **D. No Violation upon Inspection**

If an inspector does not find evidence of noncompliance, he will provide the responsible authority a copy of the inspection findings and a Letter of Notification indicating no violations were cited. These documents will be sent to the responsible authority within a reasonable time after the inspection.

#### **E. Determination of Repeat Violation**

An inspector will determine that a repeat violation has occurred upon review of inspection findings if a similar violation based on the same factual basis was cited within the preceding five calendar years.

**SECTION 4: ANIMAL CONTROL OFFICER TRAINING**

An inspector will annually collect and review animal control officer (ACO) training information from every locality employing an animal control officer. Upon review of the training information, an inspector will determine if a violation of Va. Code § 3.2-6555 or § 3.2-6556 has occurred and then submit documentation concerning the violation to the Animal Care Veterinary Supervisor for assessment of civil penalties.

An inspector will determine that a repeat violation has occurred upon review of training information if a similar violation based on the same factual basis was cited within the preceding five calendar years.

**SECTION 5: CIVIL PENALTY ASSESSMENT**

Upon receipt of documentation from an inspector concerning a (i) critical violation, (ii) repeat non-critical violation, or (iii) violation of Va. Code § 3.2-6555 or § 3.2-6556, the Animal Care Veterinary Supervisor will review said documentation and determine if a civil penalty will be assessed as follows:

**A. Critical Violations**

If the Animal Care Veterinary Supervisor concurs that a critical violation has occurred, the Animal Care Veterinary Supervisor will determine the appropriate civil penalty in accordance with Section 6 of this document and prepare a Notice of Violation and Opportunity for Good Faith Consideration. The Notice of Violation and Opportunity for Good Faith Consideration will be sent to the responsible authority and include a (i) summary of the violation(s), supporting documentation, and previous violation history, if applicable; (ii) notification of the maximum potential civil penalty assessment; and (iii) statement advising that the responsible authority may provide any additional, relevant facts to the Animal Care Veterinary Supervisor, including facts that demonstrate a good-faith attempt to achieve compliance, which shall be due within 30 days after the date of receipt by the responsible authority. If the responsible authority submits no additional facts or supplemental documentation, the Animal Care Veterinary Supervisor will evaluate the violation using current and historical records and information. Upon receiving any additional facts or supplemental documentation or after the date on which the responsible authority was required to submit additional facts or supplemental documentation, the Animal Care Veterinary Supervisor will review all relevant history and facts and provide a written response as to whether the penalty assessment is upheld, revised, or rescinded by issuing either (i) a Notice of Violation and Penalty Assessment or (ii) a Notice of Penalty Dismissal.

A Notice of Violation and Penalty Assessment shall include a (i) summary of the inspection or review findings, supporting documentation, and previous violation history, if applicable, including relevant section(s) of the Code of Virginia or Virginia Administrative Code; (ii) notification of the civil penalty assessed; and (iii) statement advising that the responsible authority may (a) agree to the assessment, sign a consent resolution, waive his rights to an informal fact finding conference pursuant to Va. Code § 2.2-4019, and pay the civil penalty, which shall be due within 30 days after the date of receipt by the responsible authority, or (b) request an informal fact finding conference pursuant to Va. Code § 2.2-4019.

If the Animal Care Veterinary Supervisor determines that the cited violation occurred but was non-critical in nature, penalties will be assessed as appropriate for non-critical violations.

If the Animal Care Veterinary Supervisor determines that no violation occurred, a written notice will be sent to the responsible authority documenting this determination.

**B. Non-Critical Violations**

If the Animal Care Veterinary Supervisor concurs that a repeat non-critical violation or a violation of Va. Code § 3.2-6555 or § 3.2-6556 has occurred, the Animal Care Veterinary Supervisor will determine the appropriate civil penalty in accordance with Section 6 of this document and prepare a Notice of Violation and Opportunity for Good Faith Consideration. The Notice of Violation and Opportunity for Good Faith Consideration will be sent to the responsible authority and include a (i) summary of the violation(s), supporting documentation, and previous violation history, if applicable,

including relevant section(s) of the Code of Virginia or Virginia Administrative Code; (ii) notification of the maximum potential civil penalty assessment; and (iii) statement advising that the responsible authority may provide any additional, relevant facts to the Animal Care Veterinary Supervisor, including facts that demonstrate a good-faith attempt to achieve compliance, which shall be due within 30 days after the date of receipt by the responsible authority. If no additional facts or supplemental documentation is submitted by the responsible authority, the Animal Care Veterinary Supervisor will evaluate the violation using current and historical records and information. Upon receiving any additional facts or supplemental documentation or after the date on which the responsible authority was required to submit additional facts or supplemental documentation, the Animal Care Veterinary Supervisor will review all relevant history and facts and provide a written response as to whether the Penalty Assessment is upheld, revised, or rescinded by issuing either a (i) Notice of Violation and Penalty Assessment or (ii) Notice of Penalty Dismissal.

A Notice of Violation and Penalty Assessment shall include a (i) summary of the inspection or review findings, supporting documentation, and previous violation history, if applicable, including relevant section(s) of the Code of Virginia or Virginia Administrative Code; (ii) notification of the civil penalty assessed; and (iii) statement advising that the responsible authority may (a) agree to the assessment, sign a consent resolution, waive his rights to an informal fact finding conference pursuant to Va. Code § 2.2-4019, and pay the civil penalty, which shall be due within 30 days after the date of receipt by the responsible authority, or (b) request an informal fact finding conference pursuant to Va. Code § 2.2-4019.

If the Animal Care Veterinary Supervisor determines that no violation occurred, a written notice shall be sent to the responsible authority documenting this determination.

#### **C. Informal Fact Finding Conference**

Should the responsible authority dispute (i) the factual basis of a cited violation and the civil penalty assessed or (ii) the upheld or revised violation and civil penalty assessed in the case where additional, relevant facts were provided by the responsible authority to the Animal Care Veterinary Supervisor, the responsible authority shall request an informal fact finding conference within 30 days of receipt of the Notice of Violation and Penalty Assessment. The Program Manager will hold an informal fact finding conference pursuant to Va. Code § 2.2-4019 prior to making a case decision. Following the informal fact finding conference, the Program Manager will send to the responsible authority a written final notice of the findings via certified mail along with the factual basis for the findings and the civil penalty assessed.

#### **D. Formal Hearing**

The responsible authority may appeal a case decision by the Program Manager to the Board pursuant to Va. Code § 2.2-4020. If the responsible authority intends to appeal the final notice of the Program Manager, he shall notify the Secretary of the Board in writing within 30 days following his receipt of the Program Manager's findings. The Secretary of the Board will arrange for a hearing officer, arrange the location of the formal hearing, and arrange for a court reporter. The hearing officer will hear the relevant information about the case, consider the facts of all violations identified in the case, and evaluate the civil penalty assessed. The hearing officer shall transmit his findings and recommendations to the Board as required in Va. Code § 2.2-4024(D) and inform the respondent of his right under § 2.2-4021(A) to address the Board. The Board shall consider the findings and recommendations of the hearing officer and render a case decision within the timeframe established in Va. Code § 2.2-4021(C). The Board may establish limits on how much time the responsible authority will be afforded to address the Board with respect to the formal hearing officer's findings and recommendations.

#### **E. Recovery of Civil Penalties, Use of Civil Penalty Funds**

If the civil penalty is not paid within the allowed time period, the case will be referred to the Office of the Attorney General for further action. All civil penalties assessed and not paid within the time specified in the Notice of Violation and Penalty Assessment shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the

purposes of the Virginia Comprehensive Animal Care laws.

**SECTION 6: DETERMINATION OF CIVIL PENALTY**

The following matrix will be used to determine the dollar amount of the civil penalty to be assessed for a violation. The matrix, in conjunction with the assessment procedure, considers (i) the history of previous violations by the responsible authority; (ii) whether the violation has caused injury to or death or suffering of an animal; and (iii) the demonstrated good faith of the responsible authority to achieve compliance after notification of the violation. The matrix provides for an escalating penalty assessment based on the number of repeat violations. All violations within the preceding five calendar years will be considered.

The penalty for a critical violation will be assessed for each day the violation occurs and is calculated on a case-by-case basis. The State Veterinarian or his representative will establish criteria to be used to determine the daily penalty rate, not to exceed \$1,000 per day. Criteria will include factors such as public health and safety, animal health and safety, duration of the violation, number of past occurrences of the violation, and the potential impact on an animal owner's property rights.

The penalty for a non-critical violation that is cited by an inspector four or more times within the preceding five calendar years will be assessed for each day the violation occurs and is calculated on a case-by-case basis. The State Veterinarian or his representative will establish criteria to be used to determine the daily penalty rate, not to exceed \$1,000 per day. Criteria will include factors such as public health and safety, animal health and safety, duration of the violation, number of past occurrences of the violation, and the potential impact on an animal owner's property rights.

The penalty for a violation of Va. Code § 3.2-6555 or § 3.2-6556 that is cited by an inspector four or more times within the preceding five calendar years will be assessed for each day the violation occurs and is calculated on a case-by-case basis. The State Veterinarian or his representative will establish criteria to be used to determine the daily penalty rate, not to exceed \$1,000 per day. Criteria will include factors such as public health and safety, animal health and safety, duration of the violation, number of past occurrences of the violation, and the potential impact on an animal owner's property rights.

	Authority	Category	Total Cited Violations (Preceding 5 Calendar Years)			
			1	2	3	≥4
<b>Non-Critical Violations</b>	§ 3.2-6546 § 3.2-6562 Code of Virginia	Confinement and Disposition, Public Animal Shelters	No penalty	\$500	\$1,000	Assessed at a rate up to \$1,000 per day cumulative**
	§ 3.2-6548 Code of Virginia	Confinement and Disposition, Private Animal Shelters	No penalty	\$500	\$1,000	
	§ 3.2-6557 Code of Virginia	Animal Custody, Records, and Limitations	No penalty	\$250	\$750	
	§ 3.2-6574 § 3.2-6575 Code of Virginia	Sterilization	No penalty	\$100	\$600	
	2 VAC 5-111-10 through 2 VAC 5-111-40 Virginia Administrative Code	Shelter Regulations*	No penalty	\$250	\$750	
	2 VAC 5-150-120 through 2 VAC 5-150-170 Virginia Administrative Code	Transport Regulations	No penalty	\$100	\$600	

	Authority	Category	Penalty
<b>Critical Violations</b>	§ 3.2-6502 § 3.2-6566 Code of Virginia	Right to Inspect	Assessed at a rate up to \$1,000 per day cumulative**
	§ 3.2-6503 Code of Virginia	Animal Care	
	§ 3.2-6546 § 3.2-6562 Code of Virginia	Confinement and Disposition, Public Animal Shelters	
	§ 3.2-6548 Code of Virginia	Confinement and Disposition, Private Animal Shelters	
	§ 3.2-6557 § 3.2-6574 § 3.2-6575 Code of Virginia	Recordkeeping, Sterilization	
	2 VAC 5-111-10 through 2 VAC 5-111-40 Virginia Administrative Code	Shelter Regulations*	
	2 VAC 5-150-120 through 2 VAC 5-150-170 Virginia Administrative Code	Transport Regulations	

	Authority	Category	Total Cited Violations (Preceding 5 Calendar Years)			
			1	2	3	≥4
<b>ACO Training Violations</b>	§ 3.2-6555 § 3.2-6556 Code of Virginia	Animal Control Officer Employment and Training	\$200	\$500	\$1,000	Assessed at a rate up to \$1,000 per day cumulative**

\* Failure to comply with state laws and regulations governing the disposal of solid waste will be reported to appropriate authorities. Civil penalties will not be assessed in such cases.

\*\*The penalty for more than three non-critical violations, more than three violations of Va. Code § 3.2-6555 or § 3.2-6556, or any critical violation is calculated at a daily rate on a case-by-case basis (Va. Code §§ 3.2-6546 and 3.2-6548).