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Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-61
Regulation title(s)	Rules and Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock
Action title	Proposal to replace 2 VAC 5-60 and 2 VAC 5-120 with 2 VAC 5-61, providing updated language with respect to disease eradication efforts and animal disease traceability.
Date this document prepared	June 15, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulation establishes recordkeeping requirements for Virginia's livestock dealers as well as the rules for the operation of Virginia's livestock marketing facilities, including sanitation requirements. These requirements are necessary in order to be able to effectively trace livestock for the purposes of minimizing and controlling significant livestock disease outbreaks. The proposed regulation also removes the current requirement that breeding cattle sold at livestock markets be tested for brucellosis and supports USDA's Animal Disease Traceability Rule.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“VDACS” means the Virginia Department of Agriculture and Consumer Services
 “USDA” means the United States Department of Agriculture
 “ADT” means Animal Disease Traceability
 “RFID” means Radio Frequency Identification

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On May 21, 2015, the Board of Agriculture and Consumer Services of the Virginia Department of Agriculture and Consumer Services voted to adopt 2 VAC 5-61, *Rules and Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock*, as final and to repeal 2 VAC 5-60, *Rules and Regulations Governing the Operation of Livestock Markets*, and 2 VAC 5-120, *Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

1. State Authority: this regulation is promulgated pursuant to the Code of Virginia as detailed below (portions of each section provided in quotes):
 - a. § 3.2-109 – **Board of Agriculture and Consumer Services; appointments; qualifications; terms of office** – “The Board of Agriculture and Consumer Services is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government and may adopt regulations in accordance with the provisions of this title.”
 - b. § 3.2-6001 – **Protection of livestock and poultry** - “The Commissioner, the Board, the State Veterinarian and all other veterinarians within the Commonwealth shall use their best efforts to protect livestock and poultry from contagious and infectious disease. It shall also be the duty of the Commissioner, the Board, and the State Veterinarian to cooperate with the livestock and poultry disease control officials of other states and with the U.S. Department of Agriculture in establishing interstate quarantine lines and

- regulations so as to best protect the livestock and poultry of the Commonwealth against all contagious and infectious diseases.”
- c. § 3.2-6002 – **Contagious and infectious diseases; prevention and eradication** - “The State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases. The Board may adopt regulations as may be necessary to effectuate the purposes of this article. The Board and Commissioner are also authorized to make the regulations adopted under this article conform, insofar as practicable, to those regulations adopted under federal statutes governing animal health.”
 - d. § 3.2-6012 – **Duty of operators of stockyards and poultry slaughter facilities** - “Any person who operates a stockyard, poultry slaughter facility, or any other premises where livestock or poultry are repeatedly assembled: (i) shall maintain such premises in a sanitary condition as directed by the State Veterinarian; (ii) shall obey all orders or regulations adopted pursuant to this chapter as to handling livestock or poultry that may be affected with contagious or infectious disease, or that have been exposed to contagious and infectious disease; and (iii) shall clean and disinfect such premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative.”
 - e. § 3.2-6016 – **Altering disease control identification of livestock or poultry** – “It shall be unlawful for any person to, unless in accordance with regulations adopted pursuant to this article, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county, the Commissioner, the Board, the U.S. Department of Agriculture, or any other state for the identification of any animal in the Commonwealth for the purpose of controlling or eradicating disease.”
2. Federal Authority: Under federal law, implementation of some of the requirements of this regulation is now mandatory. Effective March 11, 2013, the USDA Animal and Plant Health Inspection Service added Part 86 to Title 9 of the *Code of Federal Regulations* (9 CFR), Chapter 1, Subchapter C, requiring that breeding cattle and certain other livestock moving interstate be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation, with some exemptions.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This proposed regulatory action addresses the need for updating current state rules for the operation of Virginia's livestock markets and covers recordkeeping by Virginia's cattle dealers and permanent animal identification, as is necessary in order to facilitate animal disease traceability. The intent of the planned action is to update and enhance requirements concerning animal disease traceability and to ensure that state regulations comply with related federal regulations recently issued by the USDA. The proposed regulation will provide for timely and accurate tracing of animal disease outbreaks and will maintain and strengthen Virginia's reputation as a reliable source of animals for both domestic and international markets.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The proposed regulatory action includes the following substantive changes to the regulation:

1. Removal of the requirement currently in 2 VAC 5-60 to collect blood samples for brucellosis testing from breeding cattle handled at livestock facilities (this requirement has not been enforced since 2001).
2. Retention of the requirement that breeding cattle be officially identified at livestock facilities, as was the case when they were being bled for brucellosis. It is the responsibility of the livestock dealer or livestock marketing facility to place identification, if needed, and maintain a record of it.
3. Requirement for official identification and recordkeeping of dairy type feeder calves. This requirement was included in order to comply with the new USDA animal disease traceability rule.
4. Application of this regulation to buying stations, auctions, and other types of sales where livestock from multiple owners are commingled and assembled for sale in addition to livestock markets and other cattle dealers.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Through the implementation of 2 VAC 5-141, **Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia**, the State Veterinarian and the Office of Veterinary Services have laid much of the groundwork over the past several years in supporting livestock marketing facilities and cattle dealers to be compliant with this regulation. The majority of livestock markets in the state are currently working with VDACS to have all breeding cattle handled at these markets to be officially identified. It is recognized that the USDA requirement for official ID on dairy type feeder calves will cause some difficulty for livestock marketing facilities due to the costs associated with livestock tagging, tag reading, and recordkeeping. However, VDACS will continue to work to encourage identification of those feeders before arrival at the marketing facility. An efficient system of tracing animal diseases assists in protecting the food supply, thereby protecting public health as well as the welfare of livestock producers, and assists in maintaining and strengthening Virginia's reputation as a reliable source of animals for both domestic and international markets.
2. The primary advantage to the agency of the proposed regulatory action is improved efficiencies in the animal disease traceability system. This regulatory action poses no disadvantages to the Commonwealth.
3. VDACS will continue to support livestock marketing facilities to maintain the required records for animal disease traceability, especially when that data can be collected and searched electronically.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are

no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The federal Animal Disease Traceability rule applies to covered livestock moved interstate, with the requirement that such covered livestock be officially identified for interstate movement. In order to achieve this, there must be some method by which the Commonwealth requires the covered livestock to be so identified before they move interstate. The requirement for this identification and associated recordkeeping to occur by livestock dealers, including livestock marketing facilities, is due to the fact that significant numbers of animals that move interstate are handled by one of these entities before interstate movement. Of the alternatives that would achieve the result of having the federally required identification in place before interstate movement, the requirement to have this official identification happen at livestock marketing facilities and dealers was considered to be the least burdensome.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Localities containing a livestock marketing facility and livestock dealers will be most affected. These entities are mostly located west of Interstate 95.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will have no impact on the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
10*	Definitions.	Remove “Camels, llamas, and alpacas” from the definition of “Livestock”.	Changes were made to remove the reference to alpacas, camels and

			llamas in response to industry feedback that the inclusion of those animals is not practical or necessary.
30	Identification of livestock.	Add "upon arrival at the marketing facility"	Changes were made to clarify that the covered livestock should be identified upon arrival to the livestock marketing facility in response to industry feedback.
		Strike "each" and add "for those livestock that are not identified upon arrival, each"	Changes were made to clarify that it is a livestock market's responsibility to place identification and record such identification on any covered livestock that are not officially identified upon arrival in response to industry feedback.
*		Add "before leaving the marketing facility and may charge a fee for this service"	Changes were made to clarify that it is a livestock market's responsibility to place identification and record such identification on any covered livestock that are not officially identified before leaving the facility and that the facility may charge a fee for this service in response to industry feedback.
*		Remove "Official identification for alpacas, camels, and llamas shall be a microchip, scrapie serial tag, or other forms of identification approved by the State Veterinarian." from the listed official identification requirements.	Changes were made to remove requirements for alpacas, camels and llamas in response to industry feedback that the inclusion of those animals is not practical or necessary.
		Renumber subdivision 5	This change was made in order to correct numbering of subdivisions to reflect the removal of the fourth subdivision.
60*	Operation of marketing facilities.	Changes were made to allow livestock markets 48 hours instead of 24 hours to remove dead livestock from the premises	This change was made in response to industry concerns that 24 hours was not sufficient.
*		Added provision prohibiting a marketing facility from slaughtering	Changes were made to establish consistency

		or processing livestock	between the proposed and relevant state and federal laws regarding the slaughtering and processing of livestock, as well as to prevent disease spread that may result from slaughter at a marketing facility.
*		Added provision prohibiting a marketing facility from allowing livestock to reside at the facility	Changes were made to establish consistency between the proposed regulation and federal livestock marketing facility rules.
80	Penalty.	Add "Penalty" section 2VAC-5-61-80	Changes were made to clearly state the penalty for violation as established in Va. Code § 3.2-6018.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Jason Carter, Virginia Cattlemen's Association	[Provided via town hall website] Support for changes - The Virginia Cattlemen's Association fully supports the proposed changes and language to the regulations pertaining to the operation of livestock markets as well as the definition of dealers to be inclusive of all permitted points of sale and transfer of ownership of livestock.	The agency thanks Mr. Carter for his interest in the proposed regulation.
Bill Josephs, Shenandoah Valley Livestock Market	[Provided via phone conversation] Regarding animal identification, as a business, Mr. Josephs states that he does not have enough time in the day to do the required tagging of cattle, especially dairy calves, and that he is against requiring markets to do it. Also, he is concerned about the death loss and broken legs of cattle put through the chute, and questions who is liable	The agency thanks Mr. Josephs for his interest in the proposed regulation. The agency understands the time requirements associated with placing official identification in covered cattle, and will work with the affected business to facilitate the accurate capture of the official identification number. However, in order to achieve traceability of livestock covered by USDA's Animal Disease Traceability Rule, the covered cattle need to have official identification placed, and the proposed

	<p>for injured cattle and livestock market personnel. He says it should not be the markets. In addition, he is also concerned about the requirement for a microchip for llamas, as he has no way to do or scan for that.</p>	<p>regulation requires that the livestock marketing facility place and record the tag if it is not present upon arrival to the market. The marketing facility may certainly charge a fee for this activity, which would capture some of the costs associated with tagging as well as encourage consignors to identify covered livestock before bringing them to the point of sale. The agency agrees with Mr. Josephs about the requirement for a microchip for llamas, and has removed this requirement.</p>
<p>John Kissee, Livestock Marketing Association</p>	<p>[Provided via e-mail] Please note the areas of concern we (Virginia Livestock Marketing Association) has with the proposed changes:</p> <ol style="list-style-type: none"> 1. The responsibility for tagging should fall on the producer not the market. Wording in the proposal could imply that it is primarily the market's responsibility. 2. The proposal to move dead livestock within 24 hours may not be logistically possible. We suggest as soon as possible. 3. We would suggest both markets and dealers/buying stations be registered and inspected bi-annually. 4. One key problem area is on dairy steers under 18 months. We continue to ask that an effort be made to educate Dairy farmers to tag all of their animals on the farm as born. <p>Thank you for allowing us the opportunity to provide input.</p>	<p>The agency thanks Mr. Kissee for his interest in the proposed regulation, and responds in turn to each area of concern:</p> <ol style="list-style-type: none"> 1. Wording in the proposed regulation was changed to clarify that the covered livestock should be identified upon arrival to the livestock marketing facility but that it is the market's responsibility to place identification and record such identification on any covered livestock that are not officially identified before leaving the facility. The facility may charge a fee for this. 2. Since "as soon as possible" may be difficult to enforce, the agency has suggested that dead livestock be required to be removed from the premises within 48 hours. 3. The agency agrees that all dealers, which include the operator/manager(s) of marketing facilities, be registered and inspected every two years. 4. The agency agrees that official identification on dairy steers under 18 months is a difficult area, and we will continue to educate dairy farmers of the importance of tagging their cattle before they leave the farm. Also, if official identification other than an ear tag (such as a backtag) can provide the necessary traceability, that form of identification may be allowed as an "other form of identification approved by the state veterinarian."

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2VAC5-60-10 and 2VAC5-120-10	2VAC5-61-10	Definitions	Updated and clarified definitions, consistent when possible with USDA's ADT Rule. "Dealer" definition includes those handling livestock. "Marketing facility" definition includes buying stations and other facilities in addition to a typical livestock market. "Livestock" definition means all cattle, sheep, swine, goats, horses, donkeys, and mules.
2VAC5-60-20 through 2VAC5-60-90	2 VAC5-61-50 and 2VAC5-61-60	Inspection and Operation of Livestock Markets	Removed outdated language, including the requirement for breeding cattle to be brucellosis tested, while retaining the requirement that the cattle be identified. Simplified requirements regarding the inspection and operation of livestock marketing facilities. Stated that livestock may not be slaughtered at the marketing facility and that they are not allowed to reside at the marketing facility.
2VAC5-120-20 through 2VAC5-120-80	2VAC5-61-20 through 2VAC5-61-40	Dealer Registration and Recordkeeping	Simplified language and updated identification of livestock description to be consistent with USDA. Stated that livestock should be identified upon arrival at the marketing facility, but that for those not identified upon arrival, the marketing facility shall identify the livestock before leaving the marketing facility and may charge a fee for this service. Established a penalty for non-compliance.
2VAC5-60-90	2VAC5-61-70	Restriction of Livestock Movement	Added a section to state that shipment of livestock into other states shall comply with pertinent federal regulations
N/A	2VAC5-61-80	N/A	State penalty for violation as established in Va. Code § 3.2-6018 in order to help encourage compliance.