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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 5-110 (repeal) 2 VAC 5-111 (enact)
Regulation title(s)	Rules and Regulations Pertaining to a Pound or Enclosure to be Maintained By Each County or City (2 VAC 5-110) Rules and Regulations Pertaining to Public and Private Animal Shelters (2 VAC 5-111)
Action title	2 VAC 5-110, which pertains solely to public animal shelters, will be repealed. 2 VAC 5-111, which pertains to public and private animal shelters, will be enacted.
Date this document prepared	March 25, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 regulation 2 VAC 5-110 has not been substantively amended since 1985 and only applies to public animal shelters. The proposed regulation will replace 2 VAC 5-110 and applies to both public and private animal shelters. The proposed regulation removes requirements that are already fully addressed elsewhere in the Code of Virginia or Virginia Administrative Code. It updates and clarifies general requirements concerning enclosures, ventilation, delivery of feed and water, and sanitation. The proposed regulation maintains strict construction requirements for enclosures only for animals subject to a holding period. Animals with unidentified ownership are required to be confined for a minimum of five days or, if the animal possesses any form of identification, for 10 days. While confined, these animals are

maintained in the public trust, and as such, should be housed in a way that maximizes safety and health and protects the animal from injury or escape. Once the holding period expires, the animal becomes the lawful custody of the shelter, and, under the proposed regulation, all shelters will have more flexibility in how they house this population of animals. New components include clarifying expectations concerning the statutory mandate to provide veterinary treatment and requiring resting platforms or bedding for each animal.

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.

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 March 24, 2016, the Board of Agriculture and Consumer Services adopted as final Rules and Regulations Pertaining to Public and Private Animal Shelters (2 VAC 5-111) and repealed Rules and Regulations Pertaining to a Pound or Enclosure to be Maintained By Each County or City (2 VAC 5-110).

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.

Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services (Board) as a policy board and grants the Board the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia.

This action is proposed pursuant to § 3.2-6501 of the Code of Virginia, which authorizes the Board to adopt regulations consistent with the intent and objectives of the Comprehensive Animal Care Laws (Chapter 65 of Title 3.2 of the Code of Virginia) pertaining to the care of animals.

Specifically, this proposed action is consistent with the intent and objectives of Va. Code § 3.2-6546, which pertains to public animal shelters and Va. Code § 3.2-6548, which pertains to private animal shelters.

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.

The Board currently regulates public animal shelters under 2 VAC 5-110. This body of regulation, which has not been substantively amended since 1985, sets standards of facility construction and animal housing intended to ensure that companion animals held in the public interest are protected from injury or illness. These regulations apply to all animals housed in the facility, including those that have satisfied or are not subject to a stray or other holding period. Private animal shelters that confine companion animals subject to a holding period are currently unregulated.

The proposed regulation is intended to ensure that a consistent standard of confinement and care is applied to all companion animals held in the public trust while removing redundant provisions and provisions that are burdensome to public animal shelters holding animals for the purpose of facilitating adoption. It also seeks to ensure proper oversight of the provision of veterinary treatment and requires that all animals be provided a resting platform, bedding, or a perch as appropriate.

The confinement of animals in animal shelters is intended to protect citizens from potential public health and safety risks associated with free-roaming dogs. Additionally, the regulations requiring confinement of loose animals and a holding period are intended to protect the property rights of individuals, as companion animals are considered personal property under Virginia law.

Substance

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

VDACS intends to repeal 2 VAC 5-110, the current regulation pertaining to public animal pounds, and replace it with the proposed regulation pertaining to both public and private animal shelters. The following points will be addressed in this regulatory action:

- The current language concerning minimum animal housing standards and individual cage construction and size has been refined and applied to the housing of animals subject to a holding period in both public and private animal shelters.
- The current language concerning facility sanitation, ventilation, food preparation and storage, and drinking water devices has been refined and applied to both public and private animal shelters.
- The current language in 2 VAC 5-110 concerning water supply, waste disposal, and euthanasia was not included in the proposed 2 VAC 5-111. These topics are fully addressed in the Code of Virginia or elsewhere in the Virginia Administrative Code.

New provisions have been put in place concerning the provision of veterinary treatment, control of contagious and infectious disease, the care of compromised animal populations, and the provision of a resting platform or bedding.

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.

This regulatory action offers advantages to the public and the Commonwealth. The currently regulated community—public animal shelters and the localities that operate them—have asked VDACS to provide them with greater flexibility in housing animals that are not subject to a holding period. This flexibility will allow localities to better serve their public. Clarification of expectations regarding veterinary treatment will help to better protect the public's interests in Virginia's companion animal populations.

2 VAC 5-110 has not been substantively amended since 1985. In the past 30 years, the scope of activities of many public animal shelters throughout the Commonwealth has significantly increased. Such facilities are routinely housing companion animals beyond the statutory holding periods established for stray animals in order to promote the adoption or transfer of these animals. The current regulations can preclude the implementation of housing and enrichment practices that are considered industry-standard for the long-term housing of animals. Concurrently, private animal shelters are confining companion animals subject to holding periods on a routine basis without regulation. VDACS has determined that it is in the public interest to ensure that all companion animals in shelter facilities subject to a holding period be maintained in a manner that protects the animals from injury, illness, and theft for this short period while allowing public animal shelters greater freedom in their housing of animals that have satisfied holding period requirements.

VDACS has also determined that greater direction concerning the provision of veterinary treatment is needed. The Code of Virginia mandates that veterinary treatment be provided to all animals when needed. Public and private animal shelters need to allocate sufficient resources for this mandated treatment and to follow an appropriate protocol in making decisions as to when treatment is warranted.

Finally, VDACS has determined that the provision of resting platforms or bedding to each animal housed in Virginia's animal shelters will offer substantive improvement in animal care in those few facilities that do not already provide such provisions.

VDACS does not foresee disadvantages to the public or the Commonwealth.

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.

There are no applicable federal requirements.

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.

The proposed regulation will equally impact all localities.

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 regulation 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.*

No changes were made to the proposed regulation.

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
Rebekah DeHaven – Staff Attorney – Alley Cat Allies Comment received via the Town Hall	A major component of this proposal is the heightened standards that 2 VAC 5-111 will require for private shelters’ housing of stray animals. We applaud efforts to enhance oversight and regulations of shelters, and to mandate high standards of care for all animals, be they surrendered or stray. Simultaneously, we recognize that resources are limited, and we urge careful contemplation of any proposed changes that could hinder private shelters who want to care for stray animals and maximize their opportunities for positive dispositions. The Economic Impact Analysis provided by the Department of Planning and Budget determined	Private animal shelters are not mandated to house stray or unowned animals that are subject to a holding period. Section 3.2-6546 of the Code of Virginia requires localities to maintain a public animal shelter to house stray or unowned animals that are subject to a holding period. Public animal shelters are already subject to these housing requirements and will not have to make any changes. The purpose of the housing requirements for all animals subject to a holding period is to bring equity and consistency to housing animals in the public trust. Thus, if a private animal shelter chooses to refer all animals subject to a holding period to the appropriate public animal shelter, it will not incur any costs related to obtaining compliant housing.

	<p>that “[p]rivate animal shelters that currently take in stray animals will either have to incur costs for purchasing holding period compliant housing or they will have to stop taking in strays. All costs associated with this proposed regulation must be weighed against any improvements that may accrue on account of these new regulations.</p> <p>We urge the Department’s implementation of standards, but also ask that the Department carefully consider unintended consequences of such actions, such as the possible curtailment of private shelters’ intake of stray animals and the void in services that would follow.</p>	
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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

The proposed regulatory action repeals 2 VAC 5-110 and replaces it with 2 VAC 5-111. The chart below indicates which provisions of 2 VAC 5-110 are included in the new regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale.
N/A	2VAC5-111-10	N/A	This section establishes definitions that will assist regulants in complying with the proposed regulation.
2VAC5-110-10	N/A	Water for drinking shall originate from a potable source.	Repeal. This provision is a statutory requirement found in Va. Code § 3.2-6503.
2VAC5-110-20	2VAC5-111-20	Requires that confinement areas have a durable, nontoxic water bowl or an automatic watering device that is in a fixed position or be of the type that cannot be tipped over by the animal.	2 VAC 5-111-20 C clarifies the current requirement and recognizes those situations in which veterinary orders may be contrary to drinking water being available for an animal at all times.
2VAC5-110-30	N/A	The disposal of all solid wastes shall meet the requirements of any applicable local ordinances, state laws, or regulations governing the disposal of solid wastes.	Repeal—already addressed in 2 VAC 20-81 and local ordinance.
2VAC5-110-40	2VAC5-111-20, 2VAC5-111-40	Requirements pertain to enclosure conditions and to	2VAC5-111-20 A and B pertain to enclosure conditions, which are largely unchanged, but

		protecting animals from injury.	will apply to public and private animal shelters. 2VAC5-111-40 prescribes construction requirements for enclosures similar to those in 2 VAC 5-110 but limits the requirements only to the housing of animals subject to a holding period. This will allow public shelters to have greater flexibility when housing animals that are not subject to a holding period.
2VAC5-110-50	2VAC5-111-20, 2VAC5-111-40	Prescribes acceptable materials for cage construction, the provision of pallets to allow animal to sleep off of the floor is discretionary, requires that enclosures have sufficient space to allow certain movements by animals.	2VAC5-111-20 E requires that each animal is provided a resting platform. This has become industry standard and will improve animal health. 2VAC5-111-40 limits strict material requirements to the housing of animals subject to a holding period, providing strict safety standards for animals held in the public interest and allowing greater flexibility in the housing of animals not subject to a holding period.
2VAC5-110-60	2VAC5-111-20	Requires a faucet and hose connection for cleaning the animal housing area. Requires the use of disinfectants or germicidal agents to clean the animal housing area.	The faucet and hose connection requirement is being repealed because it is addressed in Virginia Administrative Code by the State Water Control Board and local ordinance. 2VAC5-111-20 B requires the use of a disinfectant or germicidal agent when cleaning an enclosure in order to assist in protecting animals from illness.
2VAC5-110-70	2VAC5-111-20	Prescribes requirements for food preparation utensils and food storage.	2VAC5-111-20 D prescribes requirements for cleaning food delivery utensils and for food storage to assist in protecting animals from illness.
2VAC5-110-80	N/A	Requires that euthanasia be performed in compliance with methods approved by the State Veterinarian.	Repeal. This provision is addressed in Va. Code § 3.2-6546 and by Division of Animal and Food Industry Services Administrative Directive 79-1, "Methods Prescribed or Approved for Animal Euthanasia and Competency Certification Requirements."
2VAC5-110-90	N/A	Prescribes requirements regarding the disposal of dead animals.	Repeal. These requirements are already established in Va. Code § 3.2-6554.
2VAC5-110-100	2VAC5-111-30	Prescribes requirements for the isolation of incoming ill animals.	2VAC5-111-30 establishes requirements for the development of protocol to provide care for ill animals, to control infectious disease, and to care for neonatal and medically compromised animals. These requirements will assist in protecting animal health.
2VAC5-110-110	N/A	Recommends that localities submit construction plans for shelter facilities to the agency for review and approval.	Repeal. Although a section similar to 2VAC5-110-110 is not included in the proposed new regulation, VDACS will continue to provide this service.