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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-100
Regulation title	Rules and Regulations Governing the Qualifications for Humane Investigators
Action title	Repealing 2 VAC 5-100, Rules and Regulations Governing the Qualifications for Humane Investigators
Date this document prepared	May 15, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Virginia Department of Agriculture and Consumer Services (VDACS) proposes the repeal of 2 VAC 5-100, Rules and Regulations Governing the Qualifications for Humane Investigators. Humane investigators are volunteer animal welfare investigators. The regulation was promulgated in order to fulfill the statutory requirements of the State Veterinarian as listed in §§ 3.1-796.106, 3.1-796.106:1, and 3.1-796.106:2 of the Code of Virginia. In 2003, these sections of the Code were amended and reenacted in Chapter 858 of the 2003 Acts of Assembly, removing the direct authority of the State Veterinarian over humane investigators. VDACS' Office of the State Veterinarian proposes to repeal the regulation governing the qualifications for humane investigators because the regulation is no longer authorized by law.

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.

Final action was taken on May 15, 2008, by the Board of Agriculture and Consumer Services to repeal 2 VAC 5-100, Rules and Regulations Governing the Qualifications for Humane Investigators.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Humane investigators are volunteer animal welfare investigators. On November 27, 1985, 2 VAC 5-100, Rules and Regulations Governing the Qualifications for Humane Investigators became effective. These regulations were promulgated in order to fulfill the statutory requirements of the State Veterinarian as listed in §§ 3.1-796.106, 3.1-796.106:1, and 3.1-796.106:2 of the Code of Virginia.

In 2003, these sections of the Code were amended and reenacted in Chapter 858 of the 2003 Acts of Assembly, to limit humane investigator positions, remove the authority of the State Veterinarian over humane investigators, remove the authority of the Board of Agriculture to establish by regulation the qualifications for humane investigators, and remove the requirement for the State Veterinarian to maintain a current list of persons meeting the qualifications for humane investigators. Since 2003, the Code of Virginia has required that humane investigators report to the local animal control administrative agency instead of the State Veterinarian.

Since these sections of the Code were amended, the Code no longer provides authority to the VDACS Board to establish these regulations, or to the agency to administer these regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

VDACS' Office of the State Veterinarian proposes to repeal the regulation governing the qualifications for humane investigators because the regulation is no longer authorized by law.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulation is no longer authorized by law. Additionally, authority over Humane Investigators is now granted to local governing authorities. Utilizing the fast-track process to repeal the regulation will quickly remove the unauthorized regulation from the books, which is necessary to eliminate confusion over the requirements of the regulation. There are citizens within Virginia who still refer to the requirements of this regulation, and they do not understand that these requirements no longer have any legal standing.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

In 2003, the humane investigator program was limited to the existing localities with humane investigators and to the existing numbers of positions. The localities have been allowed to reappoint for three year terms those humane investigators that were appointed prior to July 1, 2003 and have been allowed to fill vacancies created when those humane investigators that were appointed prior to July 1, 2003, are no longer willing or eligible to continue serving. The number of humane investigators has been dwindling as existing positions were vacated and not filled. VDACS estimates there may be less than a dozen and possibly as few as six humane investigators with current appointments.

The qualifications for humane investigators were added into the statute in 2003, alleviating the need for a regulation on the prescribed training program (2 VAC 5-100-20) and a written examination (2 VAC 5-100-30). The local animal control administrative agency now has oversight over humane investigators and the circuit court appoints or reappoints humane investigators, thus removing the authority and need for the State Veterinarian to verify training, review applications (2 VAC 5-100-10) or maintain a list of humane investigators (2 VAC 5-100-40). If an individual private citizen desires any information on a particular humane investigator or a particular position, the information is available from the animal control administrative agency in that locality.

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.

There are no disadvantages to the public or the Commonwealth associated with the repeal of this regulation. The local animal control administrative agency and the circuit court currently have authority and oversight over the humane investigator appointments and reappointments in that jurisdiction, not the State Veterinarian. The humane investigators and the localities with current appointments would benefit from the repeal of the regulation because it would eliminate confusion regarding which entity has authority over humane investigators.

The primary advantage of the proposed action is that a regulation with no legal standing will be repealed.

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 or no requirements that exceed 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.

No particular locality would be affected by the repeal of this regulation.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation does not pertain to small businesses and there would be no impacts to small businesses associated with the repeal of this regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0.00
Projected cost of the regulation on localities	\$0.00
Description of the individuals, businesses or other entities likely to be affected by the regulation	The humane investigators with current appointments would benefit from the repeal of the regulation because there would be less confusion over which entity has authority over them.

<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>6-12 individuals-negligible to no effect 0 small businesses 6-12 local governments-negligible to no effect</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>\$0.00</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Repeal of the regulation is considered to be the least burdensome or intrusive alternative. No other alternatives have been considered because the regulation no longer has any legal standing.

Family impact

Please assess the impact of the proposed 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.

There is no impact of the proposed action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

The proposal is to repeal the regulation in its entirety. Consequently, there are no proposed changes.