



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-141
Regulation title	Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia
Action title	Fast-track action to amend this body of regulations in order to simplify, clarify, and increase compliance with importation requirements necessary to protect Virginia's animal agriculture industry.
Date this document prepared	April 29, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposed changes are intended to clarify, simplify, and increase the ability of animal importers to comply with this regulation while maintaining those requirements that are necessary to protect Virginia's animal agriculture industry. 2 VAC 5-141 was adopted under the standard regulatory process in 2012; it was anticipated that some clarification would be necessary both after evaluating these requirements in action and to incorporate new animal disease traceability requirements.

The changes include: updating definitions, including vesicular stomatitis restrictions, incorporating avian influenza testing requirements, removing the requirement for tuberculosis testing, and simplification of the pseudorabies and brucellosis testing requirements for swine.

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.

CVI means Certificate of Veterinary Inspection, an official document, which may be in an electronic format, issued by a federal, state, tribal or accredited veterinarian certifying the inspection of animals.

USDA means United States Department of Agriculture

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 27, 2014, the Board of Agriculture and Consumer Services adopted amendments to 2 VAC 5-141, *Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia*.

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 3.2-5902 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to establish the health of certain pet animals imported into Virginia.

Section 3.2-6001 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations in coordination with other states and the USDA to protect the livestock and poultry of Virginia.

Section 3.2-6002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to prevent, control or eradicate infectious or contagious diseases in livestock and poultry in Virginia.

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.

The current regulations concerning the importation of animals into Virginia need minor revisions to align them with the current priorities and methodology of state, federal, and international animal disease and marketing programs. The proposed regulation will bring Virginia current with federal and other state

animal movement requirements, both ensuring that Virginia animal producers and owners are not placed at a disadvantage in interstate trade and protecting the continued viability of Virginia's animal industries. As Virginia is a net exporter of agricultural animals, these entry requirements are designed to minimize the risk of disease introduction, allow rapid response and control should such occur, and concurrently promote unimpeded commerce.

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 30-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 objections 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.

The proposed amendments are noncontroversial changes that are the consensus of many stakeholder organizations. These changes have been discussed with and are supported by the leaders of Virginia's animal agriculture industries. This recently revised regulation does not require significant revision, but rather clarification and minor update.

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.) Please be sure to define any acronyms.

- Definitions - Several definitions are modified to make the definitions consistent with definitions used by USDA and in the Board's proposed Livestock Dealers and Markets Regulation.
- Vesicular stomatitis restrictions - Addition of restrictions placed on the importation of livestock in the event of an outbreak of vesicular stomatitis (VS) in another state. VS occurs sporadically every several years, typically in the American Southwest, and non-affected states including Virginia place import restrictions to ensure that steps are taken to minimize the chance of importing an affected animal into Virginia. In the past, this has been addressed through a Proclamation issued by the State Veterinarian; however, including the language in this regulation will address the situation in a more timely manner.
- Avian influenza testing requirements included – Currently, there is a stand-alone avian influenza Proclamation that addresses the specific avian influenza testing requirements for imported poultry. The proposed regulation includes these same requirements, and is intended to simplify and unify the two sets of requirements under the same standard.
- Tuberculosis testing requirement removed for cattle, sheep, and goats – due to USDA's requirement for official identification for cattle in interstate transit, removal of the requirement for tuberculosis testing is proposed. Focus will be placed on adequate traceability of susceptible animals rather than individual testing of imported animals. This will improve the capability to minimize losses associated with introduction of the disease and better facilitate open trade.

- Pseudorabies and brucellosis testing requirements for swine – the testing requirements are maintained for swine coming from herds or regions not considered free of the disease, but the distinction between commercial and non-commercial swine is removed. Therefore, as is currently the case for commercial swine, pseudorabies and brucellosis testing would not be required for non-commercial swine from regions considered free of the disease. The proposed revision does require testing for those swine that are or have come into contact with free roaming swine.

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.*

The primary advantages of the proposed revisions are to increase compliance with the regulation by simplifying it, and placing focus on areas that are most effective in mitigating animal disease introduction and resultant losses. Thus, both the public and the agency benefit from the proposed changes.

This proposed regulatory action poses no 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.

Federal regulations concerning the interstate movement of animals are designed to ensure the marketability of animals and animal products internationally. These regulations are not in and of themselves sufficient to fully protect the animal health status of an individual state. The proposed regulation, in keeping with those of many other states, is designed to provide comprehensive coverage of all animal species of interest. Therefore, the proposed regulation does include animal species, and testing requirements, that are in addition to those imposed by federal regulation. These additional requirements are intended to safeguard Virginia animal industries, and ensure their free and ready access to interstate and international markets.

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 should have no impact on localities.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, 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.

Alternative regulatory methods have been analyzed, and the agency feels that the proposed regulation represents the least burdensome and simplest regulation to achieve the stated goals. These regulations are a crucial component of protecting Virginia’s agriculture industries and companion animal populations from being compromised by the importation of animals with health or other issues. The amendments make the regulation less stringent as they remove the requirement for tuberculosis testing. In an effort to simplify the regulations, the avian influenza testing requirements have been incorporated and the pseudorabies and brucellosis testing requirements for swine have been streamlined. As most of the stakeholders covered by this regulation are small businesses, it is not possible to exempt them from the regulation based on that status.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The proposed regulation will not have a significant impact on individuals or businesses dealing in avian, companion animal, horse, primate, or swine importations. The proposed regulation will clarify the entry requirements for such animals, but does not place more stringent requirements than the current regulation.</p> <p>The proposed regulation will affect individuals and businesses importing certain classes of cattle, sheep, goats, pigs, and primates, as well as livestock markets that deal in agricultural animals entering from states adjacent to Virginia.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 26,000 farms with livestock in Virginia. Not all of these farms import livestock. There are approximately 30 livestock markets in Virginia. The majority of these businesses would be considered small.</p>
<p>Benefits expected as a result of this regulatory</p>	<p>The primary advantages of the proposed revisions</p>

proposal.	are to increase compliance with the regulation by simplifying it and focusing on areas that the agency and industry believe are more effective at mitigating animal disease losses.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	There are no additional costs to the state to implement the proposed regulation.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	There are no costs to localities.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	These amendments will not increase costs for any of the affected individuals, businesses, or other entities. These amendments will remove the tuberculosis testing requirement for cattle, sheep, and goats which will reduce veterinary costs for people importing those animals.

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.

Alternatives to the proposal include the following:

Maintaining the regulation in its current form. This alternative is not acceptable. Though these changes are minor, failure to bring Virginia’s animal entry requirements in line with those of other states will compromise Virginia’s animal agriculture sector.

Removing all requirements pertaining to animal importation. This alternative is not acceptable given the considerable economic value of animal industries to the state, as well as the value the public places on their companion animals. Were Virginia to eliminate all animal entry requirements, the loss of parity with all other states would in effect make Virginia the prime market for all animals barred entry to other states for health or other reasons, severely compromising Virginia’s agriculture industries and companion animal population.

The agency believes that the proposed regulation is the least burdensome approach to updating Virginia’s animal entry requirements.

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.

The agency estimates that overall the proposed regulatory action will have a neutral impact on family and family stability across the state. The agency recognizes that lack of adequate animal disease control can

have a devastating impact on a farm family that depends on the Commonwealth’s protection of its animals in maintaining profitability and economic stability. To the extent that the proposed regulatory changes will provide greater protection for agricultural enterprises, they will provide greater financial stability for hundreds of families who depend on agricultural animals for income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
2VAC5-141-10		This section provides definitions.	Several definitions are modified to make the definitions consistent with definitions used by USDA and in the proposed VDACS Livestock Dealers and Markets Regulation.
2VAC5-141-20		This section pertains to the requirements for a certificate of veterinary inspection.	The addition of “state”, “federal”, and “tribal” to describe the veterinarian conducting or collecting required testing is intended to make this language consistent with the terminology used by USDA.
2VAC5-141-30		This section establishes acceptable official identification of certain animals.	The proposed amendments clarify that tattoos are an acceptable form of identification for registered goats.
2VAC5-141-40		This section pertains to the restriction of entry of certain animals into Virginia.	The proposed amendments include restrictions on the importation of livestock in the event of an outbreak of vesicular stomatitis (VS). These restrictions related to a VS outbreak currently appear in a proclamation issued by the State Veterinarian. VS occurs sporadically every several years, typically in the American Southwest. Non-affected states, including Virginia, place import restrictions to ensure that steps are taken to minimize the chance of importing an affected animal into Virginia. In the past, this has been addressed through a proclamation issued by the State

			Veterinarian, but including the language in this regulation will address the situation in a timelier manner.
2VAC5-141-60		This section establishes the entry requirements for poultry.	The proposed amendments include the avian influenza testing requirements for imported poultry that are currently established in a stand-alone avian influenza proclamation. The proposed regulation is intended to simplify and unify the two sets of requirements under the same standard.
2VAC5-141-70		This section establishes the entry requirements for cattle, including the requirement that cattle 18 months of age or older that are imported into Virginia are required to have a negative tuberculosis test within the last 60 days	Due to USDA's requirement for official identification for cattle in interstate transit, we propose to remove the requirement that cattle be tested for tuberculosis. Focus will be placed on adequate traceability of susceptible animals rather than individual testing of imported animals. This will improve the capability to minimize losses associated with introduction of the disease and better facilitate open trade.
2VAC5-141-80		This section establishes the entry requirements for companion animals.	The proposed amendment replaces the term "Commonwealth" with "Virginia" and is intended to clarify this section.
2VAC5-141-90		This section establishes the entry requirements for sheep and goats, including the requirement that sheep and certain goats 18 months of age or older that are imported into Virginia are required to have a negative tuberculosis test within the last 60 days	The proposed amendments remove the tuberculosis testing requirement for sheep and certain goats. Focus will be placed on adequate traceability of susceptible animals rather than individual testing of imported animals. This will improve the capability to minimize losses associated with introduction of the disease and better facilitate open trade.
2VAC5-141-100		This section establishes the entry requirements for horses.	The proposed amendments replace "official health certificate" with clarifying language and clarify that certain requirements pertain to sexually intact horses.
2VAC5-141-120		This section establishes the entry requirements for swine. The importation of swine is currently divided into two categories, commercial and noncommercial swine. There are different requirements for each category.	Simplification of the pseudorabies and brucellosis testing requirements for swine. The testing requirements are maintained for swine coming from herds or regions not considered free of the disease, but the distinction between commercial and non-commercial swine is no longer in place. Therefore, as is currently the case for commercial swine, pseudorabies and brucellosis testing would not be required for non-commercial swine from free regions. The proposed revision does require testing for those swine that are or have come into contact with free roaming swine. These changes will make the regulations easier to understand and

			equally apply standards.
2VAC5-141-130		This section establishes the entry requirements for primates. Specific details regarding the intradermal tuberculosis test are required.	The proposed amendments remove a requirement that certain, now unnecessary, information be reported. The proposed amendments allow for alternative approved tests. Also, since primates must be sedated for tuberculosis testing, allowing them to be imported and isolated with pending test results allows them to be sedated once instead of twice, thereby increasing expected compliance with the tuberculosis testing requirement.