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Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-115
Regulation title(s)	Regulations for Determining Whether A Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals
Action title	Promulgate regulation required by Chapter 319 of the 2016 Acts of Assembly
Date this document prepared	March 27, 2017

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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This new regulation will be used to determine whether a facility meets the purpose of finding permanent adoptive homes for animals. Legislation approved during the 2015 Session of the General Assembly amended the Virginia Comprehensive Animal Care Law's definition for "private animal shelter" to require that a facility that is a private animal shelter be "operated for the purpose of finding permanent adoptive homes for animals." Legislation approved during the 2016 Session of the General Assembly then directed the Board of Agriculture and Consumer Services to promulgate this proposed regulation to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.

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.

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 (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board.

Chapter 319 of the 2016 Acts of Assembly requires the Board to “adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.”

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.

Legislation approved during the 2015 Session of the General Assembly amended the Virginia Comprehensive Animal Care Law’s definition for “private animal shelter” to require that a facility that is a private animal shelter be “operated for the purpose of finding permanent adoptive homes for animals.” In the year that followed this amendment, there was significant controversy among stakeholders as to what determines a facility’s purpose. In response to stakeholders, the 2016 Session of the General Assembly passed House Bill 340, which requires the Board to promulgate regulations to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

The proposed regulation establishes criteria to determine if a facility is operating for the purpose of finding permanent adoptive homes for animals by requiring that a facility adopt animals and engage in activities that promote adoption such as being accessible to the public, advertising adoption, transferring animals to other releasing agencies for adoption, temporarily placing animals in a foster home while awaiting adoption, or offering services to keep animals in their permanent home.

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.

Chapter 319 of the 2016 Acts of Assembly requires the Board to promulgate this proposed regulation to determine whether a facility is operating for the purpose of finding permanent adoptive homes for animals. Identifying potential criteria has proven to be a contentious issue for the interested stakeholders. The regulation will affect private animal shelters, which are regulated by VDACS. Certain private animal shelters that are currently in operation may not be in compliance with the required criteria or may incur increased costs in order to come into compliance with the criteria.

The regulation will also affect VDACS, which will be tasked with ensuring compliance with the criteria determined in the new regulation. VDACS's Animal Shelter Inspector currently inspects all private animal shelters for compliance with Virginia's Comprehensive Animal Care Law; once the proposed regulation becomes effective, the inspector will inspect for the required criteria as well.

There is significant disagreement among stakeholders as to the intended purpose behind the aforementioned 2015 and 2016 legislation. Some stakeholders believe that private animal shelters should operate for adoption only and feel strongly that the criteria should include a metric or required percentage for adoptions or allowable euthanasia. Other stakeholders believe that shelters should be allowed to determine which of the four methods of disposal prescribed in the Comprehensive Animal Care Law is appropriate for each individual animal.

Chapter 319 of the 2016 Acts of Assembly consists of one sentence: "That the Board of Agriculture and Consumer Services shall adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals." The General Assembly provided no further guidance to the Board to determine the criteria that would serve to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals. Stakeholder opinions on both the legislative intent and the proposed regulation are widely divergent and contentious. Some stakeholders believe the intent of the language is to subject private animal shelters to strict rules regarding euthanasia rates in order to force certain facilities currently operating with high euthanasia rates to stop operations. Alternatively, some stakeholders believe the intent of the language is unclear, and regulations should not impose any numerical metrics on private animal shelters. VDACS expects that private animal shelters may need to adjust their operations in order to come into compliance with the proposed criteria.

Currently, the Code defines a "private animal shelter" as operating for the purpose of finding permanent adoptive homes for animals. This definition does not give VDACS specific guidance on how to interpret whether a private animal shelter is meeting that definition appropriately. The proposed regulation will give VDACS specific criteria to use to determine if a facility meets the definition of being a private animal shelter.

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.

No locality will be particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code. Information may include 1) projected reporting, recordkeeping, and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Dr. Kathryn MacDonald, 102 Governor Street, Richmond, VA 23219, phone: 804-692-4001, fax: (804) 371-2380, email: kathryn.macdonald@vdacs.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

<p>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</p>	<p>Implementation of the proposed regulation will be handled through VDACS's existing animal shelter inspection program. The new requirements will be handled by existing staff reprioritizing work assignments. No new costs to the state will be associated with this proposal.</p>
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<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Implementation of the proposed regulation will not have a projected cost to localities, as it only affects non-profit private animal shelters, and not public animal shelter facilities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The proposed regulation will impact non-profit organizations that maintain a private animal shelter facility.</p>
<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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 46 private animal shelters in the Commonwealth. This regulation will not impact small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Implementation of the proposed regulation may result in increased costs to those non-profit organizations that maintain a private animal shelter that need to conduct additional activities to comply with the regulation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>There are no expected economic benefits as a result of this proposal.</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.

There are no viable alternatives to this regulation. The promulgation of this regulation is required by Chapter 319 of the 2016 General Assembly.

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.

The promulgation of this regulation is required by Chapter 319 of the 2016 General Assembly. This regulation will have no adverse impact on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Stakeholder opinions on the legislative intent of Chapter 319 of the 2016 Acts of Assembly and the proposed regulation are widely divergent and contentious. Some stakeholders believe the General Assembly intended to subject private animal shelters to strict rules regarding euthanasia rates in order to force certain facilities currently operating with high euthanasia rates to stop operations. Alternatively, some stakeholders believe the legislative intent is unclear and regulations should not impose any numerical metrics on private entities.

A majority of commenters expressed their personal opinions regarding the private animal shelter facility run by People for the Ethical Treatment of Animals (PETA). Many commenters expressed that they feel the intent of Chapter 319 of the 2016 Acts of Assembly was to “shut down PETA.” The comments listed below reflect those comments that included specific suggestions regarding the proposed regulatory action.

Commenter	Comment	Agency response
Jo Ann Abell; Evelyn Black; Julie M. Burke; Shawn Crisp; Beth Fulgenzi; Mary Maier; Kay Quam; Noel Miller; Marta Swymelar Vanech; Linda J. Wilkinson; Morgan Spicer; Kristin Dreyer; Deborah C. Donour; Jean M. Linman; Amanda D. Barton-Epple; Kelly Duer; Suzanne Auckerman; Sarah Crawford; Christine Korkalo; Julie L. Sokolowski; Meagan Storey; David Libert; Mrs. John Gannon; Sharon White; Josie Kinkade	Private citizens who support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in proposed criteria (24)	While private animal shelters must operate for the purpose of finding permanent adoptive homes for animals, they are authorized under the Code of Virginia to dispose of animals by one of four methods: return to owner, adopt, euthanize, or transfer. Except for returning an animal to its rightful owner, Virginia law does not rank or provide preference to the other lawful dispositions. Utilization of a metric would be arbitrary, especially given the lack of consensus on what the metric should be and the lack of a national model or metric that has been effective in another state. The proposed regulation does not include specific metrics for any one lawful disposition. The agency has proposed criteria that focus on the actions private animal shelters take to facilitate and promote adoption.

<p>Travis Shrewsbury, Member, Alleghany Humane Society Board of Directors; Marya Odham, President, Alleghany Humane Society; Waneta G. McKinney, Member, Alleghany Humane Society Board of Directors; Trish Manes, President, No Kill Maricopa County; Robert Blizzard, Executive Director, Norfolk SPCA; Debra Griggs, President, Virginia Federation of Humane Societies; Stephanie Segretto, Kitten Coordinator for Humane Society of Loudoun County; Melinda See, Advocates for Valley Animals; Robin Robertson Starr, Chief Executive Officer, Richmond SPCA</p>	<p>Representatives of organizations that support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in proposed criteria (9)</p>	<p>While private animal shelters must operate for the purpose of finding permanent adoptive homes for animals, they are authorized under the Code of Virginia to dispose of animals by one of four methods: return to owner, adopt, euthanize or transfer. Except for returning an animal to its rightful owner, Virginia law does not rank or provide preference to the other lawful dispositions. Utilization of a metric would be arbitrary, especially given the lack of consensus on what the metric should be and the lack of a national model of metric that has been effective in another state.</p> <p>The proposed regulation does not include specific metrics for any one lawful disposition. The agency has proposed criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p>Barbara Homberger; Alysoun Mahoney; Najwa Ghazale</p>	<p>Private citizens who do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in proposed criteria (3)</p>	<p>The proposed regulation does not include specific metrics for any one lawful disposition. The agency has proposed criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p>Susan DeFazio, Director and Board Chairperson, Prevent A Litter Veterinary Hospital; Robin Schmitz, Executive Director, Virginia Veterinary Medical Association; Sharon Adams, Chair, Virginia Alliance for Animal Shelters; Dia DuVernet, President & CEO, Virginia Beach SPCA; Kathy Strouse, Legislative Liaison, Virginia Animal Control Association (VACA); Gabe Walters, Counsel and Manager of Legislative Affairs, PETA Foundation; Anne Y. Anderson, Executive Director, Rockingham-Harrisonburg SPCA</p>	<p>Representatives of organizations that do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in proposed criteria (7)</p>	<p>The proposed regulation does not include specific metrics for any one lawful disposition. The agency has proposed criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>

Delegate Stephen E. Heretick, 79 th District; Senator Barbara A. Favola, 31 st District	General Assembly members who do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in proposed criteria (2)	The agency is always appreciative of input from legislators, particularly when the intent of the law that initially changed the definition of “private animal shelter” is controversial among stakeholders. In response to the legislators’ comments, the agency has proposed criteria that focus on the actions private animal shelters take to facilitate and promote adoption.
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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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions of terms	N/A	The proposed definitions are intended to help regulants interpret the text of the regulation.
20	The proposed section establishes specific requirements that facilities must meet in order to be considered as operating for the purpose of finding permanent adoptive homes for animals.	N/A	The proposed requirements provide a method for determining whether a facility operates for the purpose of finding permanent adoptive homes for animals, as required by Chapter 319 of the 2016 Acts of Assembly.
30	The proposed section does not establish new requirements, but describes	N/A	The proposed section clarifies for regulants the agency’s response if a regulant fails to

	results of failing to meet the requirements detailed in Section 20.		meet requirements established in the proposed regulation.
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