



[townhall.virginia.gov](http://townhall.virginia.gov)

## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	2 VAC 5-115
<b>Regulation title(s)</b>	Regulations for Determining Whether A Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals
<b>Action title</b>	Promulgate regulation required by Chapter 319 of the 2016 Acts of Assembly
<b>Date this document prepared</b>	March 22, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. 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 of "private animal shelter" to require a facility identified as 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 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.

### 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 21, 2019, the Board of Agriculture and Consumer Services adopted as final 2 VAC 5-115, *Regulations for Determining Whether a Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals.*

### Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’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 regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

Legislation approved during the 2015 Session of the General Assembly amended the Virginia Comprehensive Animal Care Law’s definition of “private animal shelter” to require a facility identified as 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. This regulatory action does not impact public health or safety; however, general public welfare is protected when regulations are promulgated in compliance with statutory requirements.

### 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 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 regulatory change, 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, include a specific statement to that effect.*

Chapter 319 of the 2016 Acts of Assembly requires the Board to promulgate this 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 compliant with the required criteria or may incur increased costs in order to reach 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 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 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 that 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 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 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 list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.*

There are no applicable federal requirements and no change to previously-reported information.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.*

No other state agency will be particularly affected by the regulation.

No locality will be particularly affected by the regulation.

No other entity will be particularly affected by the regulation.

There are no changes to previously-reported information.

**Public Comment**

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Town Hall (12): Kristin Stanley, Teresa McKinney, Lisa Kirk,	<b>Private citizens who support the use of</b>	While private animal shelters must operate for the purpose of finding

<p>Beth Harris, Sarah Canafax, Kathleen Contratto, Lynne Rhode, Josie Kinkade, Sonja Musser, Chris Bowlen, Jo Ann Abell, Julie Sokolowski</p> <p><u>Letter/Email (5):</u> David &amp; Elizabeth Evans, Heather Heft, Mary Obee, Alice O'Connor, Jaquelyn Walsh</p> <p><u>Town Hall and Letter/Email (1):</u> Suzanne Auckerman</p>	<p><b>specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 18</b></p>	<p>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.</p> <p>The regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p><u>Town Hall (17):</u> Travis Shrewsbury, Alleghany Humane Society; Charlene Farthing, President, Friends of Russell County Animals; Patty Doss, Friends of Russell County Animals; Loudoun Community Cat Coalition; Melony Ellington, Rainbow Animal Rescue; Gloria Haislip, Animal Resources of Tidewater; Susan Corbitt, Animal Resources of Tidewater; Sarah Crawford, Animal Resources of Tidewater; Stephanie Roulet, Animal Resources of Tidewater; Kimberly Owen, Volunteer, Feral Cat Rescue; Judith Harvell, Animal Welfare League of the Northern Neck, Inc; Joyce Page, Shirley Perkins Memorial Fund for Animals; Diane Miller, Louisa County Animal Shelter; Melinda See, Advocates for Valley Animals; Wendy Reidler, Advocates for Valley Animals; Lana Mohler, Advocates for Valley Animals; “Blue Ridge Dog”</p>	<p><b>Representatives of organizations that support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 32</b></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 regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>

<p><u>Letter/Email (6):</u> Juanita Easton, President of the Board of Directors, Humane Society of Loudoun County; Susan Laume, Board, Northern Virginia Coalition for Animals; Marya Odham, President, Alleghany Humane Society; Tonja Reynolds, President, SPCA of Pittsylvania County; Esther Williams, Rainbow Animal Rescue; Christine Williams, President, Bassett Rescue of Old Dominion</p> <p><u>Public Hearing (1):</u> Molly Armus, Staff Attorney, Alley Cat Allies</p> <p><u>Town Hall &amp; Letter/Email (6):</u> Donna Essig, President, Humane Society of Franklin County; Gina Marie Lynch, Community Outreach Manager, Humane Society of Fairfax County; Waneta McKinney, Alleghany Humane Society; Alice O'Connor, VA Federation of Humane Societies 'High Five' program; Patricia A. Werick, President, Culpeper Humane Society; Kelly Duer, NOVA Pets Alive</p> <p><u>Town Hall, Letter/Email, &amp; Public Hearing (2):</u> Debra Griggs, President, VA Federation of Humane Societies (read into record at the Public Hearing by Ann Fitzgibbon); Robin Robertson Starr, CEO, Richmond SPCA</p>		
<p><u>Letter/Email &amp; Public Hearing (1):</u> Senator Stanley (read into record at the Public Hearing by Richard Crouse)</p>	<p><b>General Assembly members who support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 1</b></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</p>

		<p>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 regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p><u>Town Hall (10):</u> Stephen D. Haner, Barry McCabe, Jeff Smith, Ann Sasser Evans, Bonny T. Lee, Karen Porreca, Tracy Brune, Annie VanHook, Alexis Abad, Tina Pounds</p> <p><u>Letter/Email (18):</u> Collista McPherson, Anita Underwood, Jenny Teed, Jessica Johnson, Archna Oberoi, Linda Seely, George F. West, Jr., Bernard Mrstik, Pamela S. Withrow, Alysoun Mahoney, Jamie O’Grady, Roger and Frances Spuler, Jerry Foley, Heather Smith, Elvira Rose; J. Bryan Plumlee, Esq., Reeves W. Mahoney, Susan DeFazio</p>	<p><b>Private citizens who do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 28</b></p>	<p>The regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p><u>Town Hall (3):</u> Melinda Seemar, Volunteer, Norfolk Animal Care Center; Michelle Keith, Volunteer, Norfolk Animal Care Center; Jennifer Rennekamp, Volunteer, Norfolk Animal Care Center</p> <p><u>Letter/Email (6):</u> Lacy Kuller, Executive Director, Chesapeake Humane Society; S. L. Sockman, Superintendent, Chesapeake Animal Services; Kimberly Sherlaw, Executive Director, Norfolk SPCA; Anne Y. Anderson, Rockingham-</p>	<p><b>Representatives of organizations that do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 13</b></p>	<p>The regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>

<p>Harrisonburg SPCA; Derby D. Brackett, Interim CEO, Virginia Beach SPCA; Susan E. Gaines, Board, Friends of Norfolk Animal Care Center</p> <p><u>Letter/Email &amp; Public Hearing (4):</u> Daphna Nachminovitch, PETA; Kathryn Strouse, Legislative Liaison, Virginia Animal Control Association; Paulette Dean, Director, Danville Area Humane Society; Sharon Quillen Adams, Chair, Virginia Alliance for Animal Shelters</p>		
<p><u>Letter/Email (8):</u> Delegate Jennifer Boysko, Delegate C. E. Cliff Hayes, Jr., Delegate Joseph Lindsey, Delegate Danny Marshall, Delegate Robert Orrock, Sr., Delegate David Yancey, Delegate Mark Sickles, Senator T. Montgomery Mason</p>	<p><b>General Assembly members who do not support the use of specific metrics, percentage requirements, or a “quota” on adoptions or euthanasia in criteria</b></p> <p><b>Total #: 8</b></p>	<p>The regulation does not include specific metrics for any one lawful disposition. The regulation includes criteria that focus on the actions private animal shelters take to facilitate and promote adoption.</p>
<p><u>Town Hall (2):</u> “NACC foster parent”, Chris G.</p>	<p><b>Private citizens in opposition to the regulation</b></p> <p><b>Total #: 2</b></p>	<p>This comment has been reviewed and taken into consideration.</p>
<p><u>Letter/Email (1):</u> Susan Bradshaw</p>	<p><b>Private citizens in support of the regulation</b></p> <p><b>Total #: 1</b></p>	<p>This comment has been reviewed and taken into consideration.</p>
<p><u>Town Hall (1):</u> “Health Care Products”</p>	<p><b>Advertisement for personal care products</b></p> <p><b>Total #: 1</b></p>	<p>This comment is not relevant to the regulation.</p>

**Detail of Changes Made Since the Previous Stage**

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

No changes have been made since the previous stage.



**Detail of All Changes Proposed in this Regulatory Action**

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
N/A	115-10*	N/A	This section contains a definition of terms, which is intended to help regulants interpret the text of the regulation.
N/A	115-20*	N/A	This 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. The requirements provide a method for determining whether a facility operates for the purpose of finding adoptive homes for animals, as required by Chapter 319 of the 2016 Acts of Assembly.
N/A	115-30*	N/A	This section describes the results of failing to meet the requirements detailed in Section 20. It clarifies for regulants the agency’s response if they fail to meet requirements established in this regulation.