

BOARD OF AGRICULTURE AND CONSUMER SERVICES

**Virginia Livestock and Poultry Law and Related Regulations
Civil Penalty Matrix
Guidelines for Enforcement**

SECTION 1: AUTHORITY

Statutory Authority: § 3.2-6044 of the Code of Virginia (1950), as amended.

SECTION 2: DEFINITIONS

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

“Board” means the Board of Agriculture and Consumer Services.

“Hearing officer” means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia.

“Notice of Alleged Violation and Penalty Assessment” means a written notification from the case reviewer to the person or facility alleged to have committed a violation of the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 of the Law, or regulations adopted pursuant to the Law, that identifies the specific violation(s) committed and indicates the amount of the civil penalties based on the included Civil Penalty Matrix.

“Program Manager” means the manager of the Office of Veterinary Services within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, or a person designated by the State Veterinarian, who works under the direction of the State Veterinarian.

“Responsible party” means the person or business alleged to have violated the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 of the Law, or regulations adopted pursuant to the Law.

“Virginia Livestock and Poultry Law” or “Law” means Chapter 60 of Title 3.2 of the Code of Virginia.

SECTION 3: PROVISION FOR CIVIL PENALTIES GENERALLY

Any responsible party violating any section of the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 the Law, or regulations adopted pursuant to the Law may be assessed a civil penalty by the Board in an amount not to exceed \$1,000 per violation.

SECTION 4: PROCEDURE FOR CIVIL PENALTY ASSESSMENT

A. Witness of Alleged Violation

An Office of Veterinary Services (OVS) staff member, upon witness of an alleged violation of the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 the Law, or regulations adopted pursuant to the Law, shall submit documentation of proof of alleged violation, including all relevant facts, for review to the appropriate OVS personnel according to the table below.

Staff member noting alleged violation	Case Reviewer
Livestock Inspector	Livestock Inspector Senior
Livestock Inspector Senior	Regional Veterinary Supervisor
Regional Veterinary Supervisor	Richmond Staff Veterinarian
Richmond Staff Veterinarian	Regional Veterinary Supervisor

B. Notice of Alleged Violation

Upon review of the documentation of proof of alleged violation, if the OVS Case Reviewer concurs that an alleged violation has occurred, he shall mail, by certified mail, the Notice of Alleged Violation and Penalty Assessment, including all documentation of relevant facts, notice of civil penalty amount, and consent resolution to the responsible party. The notice shall advise the responsible party that he may (i) agree to the assessment, sign a consent resolution, waive his rights to an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia (Code), and pay the civil penalty (due within 30 days after the date of receipt by the responsible party), or (ii) request an informal fact finding conference pursuant to § 2.2-4019 of the Code.

C. Informal Fact Finding Conference

Should the responsible party dispute the initial alleged violation and civil penalty assessed, the responsible party shall request an informal fact finding conference within 30 days of receipt of the Notice of Alleged Violation and Penalty Assessment. The Program Manager will hold an informal fact finding conference pursuant to § 2.2-4019 of the Code prior to making a case decision. Following the informal fact finding conference, the Program Manager will send to the responsible party a written final notice of the findings via certified mail along with the fact basis for the findings and the civil penalty assessed.

D. Formal Hearing

The responsible party may appeal a case decision by the Program Manager to the Board pursuant to § 2.2-4020 of the Code. If the responsible party intends to appeal the final notice of the Program Manager, he shall notify the Secretary of the Board in writing within 30 days following his receipt of the Program Manager’s findings. The Secretary of the Board will arrange for a hearing officer, arrange the location of the formal hearing, and arrange for a court reporter. The hearing officer will hear the relevant information about the case, consider the facts of all violations identified in the case, and evaluate the civil penalty assessed. The hearing officer shall transmit his findings and recommendations to the Board as required in § 2.2-4024(D) of the Code and inform the respondent of his right under § 2.2-4021(A) of the Code to address the Board. The Board shall consider the findings and recommendations of the hearing officer and render a case decision within the timeframe established in § 2.2-4021(C) of the Code. The Board may establish limits on how much time the representative of the responsible party will be afforded to address the Board with respect to the formal hearing officer’s findings and recommendations.

SECTION 5: ASSESSMENT OF SEPARATE VIOLATIONS

- A. Each violation of the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 the Law, or regulations adopted pursuant to the Law, shall be assessed separately for the purpose of determining the total civil penalty assessment.

- B. In the event of a fifth or more occurrence of a violation within a period of five calendar years, a civil penalty shall be assessed in accordance with Section 7 of these guidelines separately for each day of the violation, beginning with the date of notification of the alleged violation and ending with the date of abatement, to a maximum of \$1,000 per violation.

SECTION 6: RECOVERY OF CIVIL PENALTIES, USE OF CIVIL PENALTY FUNDS

If the civil penalty is not paid within the allowed time period, the case will be referred to the Office of the Attorney General for further action. All civil penalties assessed and not paid within the specified time shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and credited to the Livestock and Poultry Disease Fund, as prescribed in § 3.2-6045 of the Law.

SECTION 7: DETERMINATION OF CIVIL PENALTY

The following matrix will be used to determine the dollar amount of civil penalties to be assessed for violations. Cumulative penalties, where indicated, will be assessed for each day of the period from the day of the first violation through the day of the current violation, up to a maximum of \$1,000. When noted in the following matrix, the responsible party shall be educated on the relevant law or regulation to which the first violation occurred. When noted in the following matrix for second violations, the responsible party shall be issued a warning letter via certified mail detailing the violation and informing the responsible party of the potential for civil penalty assessment. When evidence suggests that the responsible party has intentionally falsified records required by the Virginia Livestock and Poultry Law, with the exception of § 3.2-6023 the Law, or regulations adopted pursuant to the Law, the Case Reviewer shall assess the civil penalty as if the violation is the fourth occurrence of the violation.

Violation		Penalty			
Authority	Category of Violation	1 st Violation	2 nd Violation	3 rd Violation	4 th and Subsequent Violation
2 VAC 5-70-20	Failure to observe requirement for official negative test for equine infectious anemia	Education	Warning	\$50	\$100
2 VAC 5-141-20	Importation of agricultural animals, companion animals or any other animals or birds into Virginia without an official certificate of veterinary inspection or alternate movement documentation	Education	Warning	\$50	\$100
2 VAC 5-141-30 thru 2 VAC 5-141-130	Failure to observe all relevant import requirements, except for the certificate of veterinary inspection, in the importation of animals into Virginia	Education	Warning	\$50	\$100
2 VAC 5-61-20, 2 VAC 5-170-30	Failure to register a livestock market or poultry dealer	Education	Warning	\$50	\$100
2 VAC 5-61-40, 2 VAC 5-170-50	Failure of a poultry dealer or livestock marketing facility to maintain accurate records	Education	Warning	\$50	\$100
2 VAC 5-61-60	Failure to properly maintain a livestock marketing facility	Warning	\$50	\$100	\$250
2 VAC 5-61-30	Failure to officially identify livestock	Education	Warning	\$50	\$100
Va. Code § 3.2-6016	Intentional alteration or removal of official identification of livestock	\$100	\$250	\$500	\$750
2VAC 5-40-40	Failure to observe requirements for limited movement and permits for Tuberculosis positive reacting cattle	\$50	\$100	\$250	\$500
Va. Code § 3.2-6032	Feeding of garbage to swine	Education	Warning	\$50	\$100

Violation		Penalty			
Authority	Category of Violation	1 st Violation	2 nd Violation	3 rd Violation	4 th and Subsequent Violation
Va. Code §§ 3.2-6010, 3.2-6011, 3.2-6043(B)	Failure to observe any proclamation issued by the State Veterinarian	\$100	\$250	\$500	\$750
Va. Code §§ 3.2-6003, 3.2-6005, 3.2-6007, 3.2-6043	Failure to observe and/or meet all requirements of a Notice of Quarantine	\$250	\$500	\$750	\$1,000
Va. Code §§ 3.2-6008, 3.2-6009, 3.2-6043(B)	Failure to meet all requirements of a destruction order issued by the State Veterinarian	\$250	\$500	\$750	\$1,000
Va. Code § 3.2-6000 et seq. and regulations adopted pursuant thereto	Other violation of Va. Code § 3.2-6000 et seq. and regulations adopted pursuant thereto	Education	Warning	\$50	\$100

Adopted: December 8, 2016

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