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Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-60
<b>Regulation title</b>	Rules and Regulations Governing the Operation of Livestock Markets
<b>Action title</b>	Proposal to amend 2 VAC-5-60, providing updated language with respect to disease eradication efforts and animal disease traceability
<b>Date this document prepared</b>	April 16, 2013

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*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This planned regulatory action addresses the need for updating current state rules for the operation of Virginia's livestock markets. The intent of the planned action is to update and enhance requirements concerning animal disease traceability and to ensure that state regulations comply with related federal regulations recently issued by the United States Department of Agriculture. The expected amendments to the current regulations will provide the Commonwealth's animal industry with the level of disease monitoring and protection needed in order to ensure Virginia's access to domestic and international markets.

### 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.*

This regulation is promulgated pursuant to Code of Virginia as detailed below (parts of each section provided in quotes):

- § 3.2-6001 – **Protection of livestock and poultry** - “The Commissioner, the Board, the State Veterinarian and all other veterinarians within the Commonwealth shall use their best efforts to protect livestock and poultry from contagious and infectious disease.”
- § 3.2-6002 – **Contagious and infectious diseases; prevention and eradication** - “The State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases. The Board may adopt regulations as may be necessary to effectuate the purposes of this article. The Board and Commissioner are also authorized to make the regulations adopted under this article conform, insofar as practicable, to those regulations adopted under federal statutes governing animal health.”
- § 3.2-6012 – **Duty of operators of stockyards and poultry slaughter facilities** - “Any person who operates a stockyard, poultry slaughter facility, or any other premises where livestock or poultry are repeatedly assembled: (i) shall maintain such premises in a sanitary condition as directed by the State Veterinarian; (ii) shall obey all orders or regulations adopted pursuant to this chapter as to handling livestock or poultry that may be affected with contagious or infectious disease, or that have been exposed to contagious and infectious disease; and (iii) shall clean and disinfect such premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative.”
- § 3.2-6016 – **Altering disease control identification of livestock or poultry** – “It shall be unlawful for any person to, unless in accordance with regulations adopted pursuant to this article, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county, the Commissioner, the Board, the U.S. Department of Agriculture, or any other state for the identification of any animal in the Commonwealth for the purpose of controlling or eradicating disease.”

Under federal law, implementation of some of the requirements of this regulation is now mandatory. Effective March 11, 2013, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) has added a new section to Title 9 of the *Code of Federal Regulations* (9 CFR) which requires that breeding cattle and certain other livestock moving interstate be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other documentation, with some exemptions.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action is essential to protect the health, safety and welfare of Virginia's citizens because it provides critical measures in responding to animal disease outbreaks that could impact human health and the availability of relatively economical, safe and wholesome food products produced through the efforts of the state's animal industry. The proposed action is expected (1) to enhance the health and well-being of Virginia livestock and poultry; (2) to promote the financial interests of the livestock producers; and (3) to enhance human health in cases of zoonotic (shared human and animal pathogens) disease transmission. Finally, this proposed action is expected to address the need for complying with USDA's recently issued rule on animal disease traceability.

**Substance**

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The existing regulation will be amended to remove the specific language requiring the brucellosis testing of all cows offered for sale at the livestock markets. The requirement for permanent identification that was associated with that testing will need to remain in the regulation.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

One alternative would be to leave the current regulation as it is. However, 2 VAC 5-60 needs to be revised to reflect significant changes in the national animal health field that have taken place in the last 30 years as well as new federal requirements relating to animal disease traceability and permanent animal identification. The second alternative would be to repeal the current regulation and rely on voluntary action by livestock market operators to cooperate with state animal health officials in response to animal disease outbreaks. Unfortunately, an effective response to these outbreaks is expected to require an organized and orderly approach involving state and federal officials and the private sector to identify the sources of an outbreak and taking appropriate actions to stop the movement of diseased animals. Also, without state requirements that comply with USDA's new requirements for disease traceability and animal identification, Virginia would be at a great disadvantage in competing with other states and other governments in the sale and movement of domestic animals in domestic and international markets.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the

probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Dr. Charles C. Broaddus, 102 Governor Street, Richmond, VA 23219; phone: (804) 786-2483; fax: (804) 371-2380; e-mail: [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@vdacs.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

An advisory panel will be appointed. Contact Dr. Charles C. Broaddus if you're interested in serving on the panel. He may be reached at 102 Governor Street, Richmond, VA 23219; phone: (804) 786-2483; fax: (804) 371-2380; e-mail: [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@vdacs.virginia.gov).

### Family impact

*Assess the potential 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.*

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This regulatory action will have no impact on the institution of the family or family stability.

### Periodic review/small business impact review result

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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This NOIRA is the result of a periodic review that ended November 26, 2012. There was one public comment received during the Notice of Periodic Review (listed below). This regulation is necessary for

the protection of public health, safety, and welfare because it helps safeguard the health of livestock and poultry, which can directly impact human health. There is a continued need for this regulation to help establish effective animal disease traceability to prevent the spread and eradication of contagious and infectious livestock and poultry diseases. The comment from the public was supportive of amending the regulation. The regulation is designed to achieve its intended objective in the most efficient manner, be clearly written, easily understandable, and not complex. This regulation does not duplicate other laws or regulations, but should be amended to ensure no conflicts with the new USDA requirements for animal disease traceability. This regulation was last evaluated in 2000 and since then there have been many changes that impact this industry.

<b>Commenter</b>	<b>Comment</b>
Tony Banks, Virginia Farm Bureau Federation	The regulation contains language and references that may be outdated. The USDA is developing federal regulation concerning animal disease traceability. Once federal regulation is finalized it is expected to impact this state regulation. It is anticipated that this regulation will need to be revised in order to protect Virginia livestock producers' and markets' interests in interstate commerce. VDACS should consider whether it is more prudent to revise its regulation now or wait until USDA completes its rulemaking.