



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-61
<b>Regulation title</b>	Rules and Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock
<b>Action title</b>	Proposal to replace 2 VAC-5-60 and 2 VAC-5-120 with 2 VAC-5-61, providing updated language with respect to disease eradication efforts and animal disease traceability
<b>Date this document prepared</b>	December 6, 2013; revised December 23, 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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulation provides the recordkeeping requirements by Virginia's livestock dealers as well as the rules for the operation of Virginia's livestock marketing facilities, including sanitation requirements. These requirements are necessary in order to be able to effectively trace livestock for the purposes of minimizing and controlling significant livestock disease outbreaks. The proposed regulation also removes the current requirement that breeding cattle sold at livestock markets be tested for brucellosis, and supports USDA's Animal Disease Traceability Rule.

### 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 – Virginia Department of Agriculture and Consumer Services  
USDA – United States Department of Agriculture  
ADT – Animal Disease Traceability  
RFID – Radio Frequency Identification

### 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.*

1. State Authority: this regulation is promulgated pursuant to the Code of Virginia as detailed below (portions of each section provided in quotes):
  - a. § 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. It shall also be the duty of the Commissioner, the Board, and the State Veterinarian to cooperate with the livestock and poultry disease control officials of other states and with the U.S. Department of Agriculture in establishing interstate quarantine lines and regulations so as to best protect the livestock and poultry of the Commonwealth against all contagious and infectious diseases.”
  - b. § 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.”
  - c. § 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.”
  - d. § 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.”

2. Federal Authority: 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 part, Part 86, to Title 9 of the *Code of Federal Regulations* (9 CFR), Chapter 1, Subchapter C, 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.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

This planned regulatory action addresses the need for updating current state rules for the operation of Virginia's livestock markets and covers recordkeeping by Virginia’s cattle dealers and permanent animal identification, as is necessary in order to facilitate animal disease traceability. 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 for a timely and accurate tracing of animal disease outbreaks. An efficient system of tracing animal diseases assists in protecting the food supply, thereby protecting public health as well as the welfare of livestock producers, and assists in maintaining and strengthening Virginia’s reputation as a reliable source of animals for both domestic and international markets.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

Substantive changes to the regulation:

1. Removal of the requirement currently in 2 VAC5-60 to collect blood samples for brucellosis testing from breeding cattle handled at livestock facilities (this requirement has not been enforced since 2001).
2. Retention of the requirement that breeding cattle be officially identified at livestock facilities, as was the case when they were being bled for brucellosis. It is the responsibility of the livestock dealer or livestock marketing facility to place identification, if needed, and maintain a record of it.

3. Requirement for official identification and recordkeeping of dairy type feeder calves. This requirement was included in order to comply with the new USDA animal disease traceability rule.
4. Application of this regulation to buying stations, auctions, and other types of sales where livestock from multiple owners are commingled and assembled for sale in addition to livestock markets and other cattle dealers.

**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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

1. Through the implementation of 2VAC5-141, ***Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds Into Virginia***, the State Veterinarian and the Office of Veterinary Services have laid much of the groundwork over the past several years in supporting livestock marketing facilities and cattle dealers to be compliant with this regulation. The majority of livestock markets in the state are currently working with VDACS to have all breeding cattle handled at these markets to be officially identified. It is recognized that the USDA requirement for official ID on dairy type feeder calves will cause some difficulty for livestock marketing facilities due to the costs associated with livestock tagging, tag reading, and recordkeeping. However, VDACS will continue to work to encourage identification of those feeders before arrival at the marketing facility. An efficient system of tracing animal diseases assists in protecting the food supply, thereby protecting public health as well as the welfare of livestock producers, and assists in maintaining and strengthening Virginia’s reputation as a reliable source of animals for both domestic and international markets.
2. The primary advantage to the agency of the proposed regulatory action is improved efficiencies in the animal disease traceability system. This regulatory action poses no disadvantages to the Commonwealth.
3. VDACS will continue to support livestock marketing facilities to maintain the required records for animal disease traceability, especially when that data can be collected and searched electronically.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.*

The federal Animal Disease Traceability rule applies to covered livestock moved interstate, with the requirement that such covered livestock be officially identified for interstate movement. In order to achieve this, there must be some method by which the Commonwealth requires the covered livestock to be so identified before they move interstate. The requirement for this identification and associated recordkeeping to occur by livestock dealers, including livestock marketing facilities, is due to the fact that significant numbers of animals that move interstate are handled by one of these entities before interstate movement. Of the alternatives that would achieve the result of having the federally required identification in place before interstate movement, the requirement to have this official identification happen at livestock marketing facilities and dealers was considered to be the least burdensome.

**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.*

Localities containing a livestock marketing facility and livestock dealers will be most affected. These entities are mostly located west of Interstate 95.

**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.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a 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) 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 comments may do so via the Regulatory Town Hall website, [www.townhall.virginia.gov](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 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.

**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><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<ol style="list-style-type: none"> <li>1. Livestock marketing facilities and livestock dealers will continue to be affected in a similar manner as they are under existing regulations.</li> <li>2. Livestock producers will continue to have the ability to market their product interstate and will be better protected from an animal disease event.</li> </ol>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> 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>	<ol style="list-style-type: none"> <li>1. Livestock marketing facilities: There are currently 32 facilities recognized as such by their USDA Livestock Marketing Facility Agreement</li> <li>2. Livestock dealers: There are currently 176 registered livestock dealers.</li> </ol>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>Unspecified benefits will be realized through the minimization of losses associated with a livestock disease outbreak, reduced costs for routine disease traces, and/or through higher prices for livestock associated with increased market confidence.</p>
<p><b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b></p>	<p>No cost, as oversight of the livestock dealers and marketing facilities will continue as is currently the case under existing regulations.</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>None.</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities.</u></b> 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.</p>	<p>Costs associated with the tagging will continue to be assumed by the livestock marketing facility or dealer. Metal tags are available at no cost, and as funding allows, VDACS may provide some RFID tags at no cost. The facilities or dealers may elect to absorb the cost associated with tagging themselves, pass the cost on to the producer, or require that animals</p>

	<p>consigned be officially identified before arrival. The costs associated with the tag reading and recordkeeping will also be covered by the marketing facility or dealer.</p> <p>All cost estimates are per head of cattle, and assume that the facility uses existing livestock handling equipment, applies and/or reads 50% RFID tags and 50% metal tags, and pays for labor required at a rate of \$10/hour:</p> <ul style="list-style-type: none"> <li>• Projected annual cost of applying 30,000 tags: \$32,400             <ul style="list-style-type: none"> <li>○ Assumptions:</li> <li>○ \$1.50 per RFID tag</li> <li>○ \$0 per metal tag</li> <li>○ \$0.33 for 2 minutes of labor to place tag</li> </ul> </li> <li>• Projected annual cost of reading 60,000 tags: \$12,600             <ul style="list-style-type: none"> <li>○ Assumptions:</li> <li>○ \$0.04 for 15 seconds of labor to read RFID tags</li> <li>○ \$0.05 for reading equipment (based on \$100/yr equipment costs, per 2,000 head)</li> <li>○ \$0.33 for 2 minutes of labor to catch, read, and manually record tag</li> </ul> </li> </ul>
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**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.*

An alternative to the proposed regulatory action would be to request voluntary compliance by all cattle dealers (including livestock marketing facility operators) to officially and permanently identify cattle they offer for sale, keep corresponding records, and maintain sanitary conditions. However, there is a time and financial cost to applying permanent identification, keeping these records, and operating sanitary facilities. As long as some cattle dealers do not provide these services, there is the potential for an inequitable situation. In order to fulfill the statutory mandate of the State Veterinarian, as well as to comply with USDA’s ADT rule, it is necessary to have effective animal disease traceability and take proper biosecurity precautions.



### 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.*

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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. In order to protect the animal agriculture industry from disease, it is necessary for livestock facilities to be maintained in a sanitary manner. As is required by USDA's ADT Rule, official identification records should be retained for 5 years. In an effort to simplify the regulation, it is proposed that two existing regulations be consolidated. Compliance with the regulation will be monitored by assessing the ability of the covered entities to meet performance standards, but the proposed regulation is necessary in order to provide the requirements needed to ensure a fair approach to livestock dealers. 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.

### Public comment

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

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Following publication in the Register on June 17, 2013 of the NOIRAs for 2 VAC5-60 and 2 VAC 5-120, with the comment period ending July 17, 2013, no comments were received.

### 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.*

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This regulatory action 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. 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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
2VAC5-60-10 and 2VAC5-120-10	2VAC5-61-10	Definitions	Updated and clarified definitions, consistent when possible with USDA's ADT Rule. "Dealer" definition includes those handling livestock. "Marketing facility" definition includes buying stations and other facilities in addition to a typical livestock market.
2VAC5-60-20 through 2VAC5-60-90	2 VAC5-61-50 and 2VAC5-61-60	Inspection and Operation of Livestock Markets	Removed outdated language, including the requirement for breeding cattle to be brucellosis tested, while retaining the requirement that the cattle be identified. Simplified requirements regarding the inspection and operation of livestock marketing facilities.
2VAC5-120-20 through 2VAC5-120-80	2VAC5-61-20 through 2VAC5-61-40	Dealer Registration and Recordkeeping	Simplified language, updated identification of livestock description to be consistent with USDA.