



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2VAC5-60
Regulation Title:	Rules and Regulations Governing the Operation of Livestock Markets
Action Title:	Amend
Date:	September 11, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Enter Statement Here

The present regulation relevant to the operation of livestock markets establishes requirements for the regulatory supervision of livestock markets including, but not limited to, monitoring the actual livestock market operation to enforce disease and sanitation regulations, making general inspections of all livestock on premises to determine health status and disposition of all sick or diseased livestock, and issue all necessary certificates and permits, including those required for transportation of livestock. The present regulation contains the requirement to test certain classes of cattle for the brucellosis disease (brucellosis is a bacterial infection of cattle which results in abortion and causes undulant fever in humans).

Earlier (i.e., April 30, 2001), the Virginia Board of Agriculture and Consumer Services proposed four substantive changes to this regulation. However, subsequent review of one of the proposals, which expanded the emergency powers for the State Veterinarian to restrict the operation of markets in cases of an incursion of animal disease, seemed to give the State Veterinarian more authority than the law allowed. It was determined that the present wording of the regulation on this matter does provide adequate authority for the State Veterinarian to act responsibly and restrict the operation of markets if a threat to the livestock industry and public safety in the form of an animal disease occurs. Consequently, this specific proposal has been withdrawn and there are now three substantive changes proposed that include the following:

1. As opposed to the current requirement for the continuous presence of a State veterinarian's representative in the market during the market's operation, the proposed change would only require that the market be monitored for animal disease and for facility construction soundness to ensure that the buildings, pens, alleys, and equipment are adequate to safely contain the animals processed and sold through the markets.
2. Elimination of testing cattle for brucellosis, because the state has maintained its Brucellosis-Free status since achieving this rating from the U.S. Department of Agriculture in 1988.
3. Identification of animals processed or sold through livestock markets.

There are several non-substantive amendments that the agency is proposing. References to livestock inspectors have been changed to representatives of the state veterinarians to conform to existing nomenclature within the agency. The definition of "slaughter swine" has been clarified to in order to accommodate the limited practice of "home slaughter" of swine purchased in a market for the personal use of the buyer. Finally, a cross-reference to another regulation that contains already existing requirements for horses sold through markets has been added.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

§3.1-724 of the Code of Virginia states that it is the "duty" of the Board of Agriculture and Consumer Services to establish rules and regulations "as to best protect the livestock and poultry of this Commonwealth against all contagious and infectious diseases."

§3.1-726 of the Code of Virginia authorizes the Board to "adopt such regulations as may be necessary to effectuate the purposes of this article." (The article referred to in the immediately preceding sentence contains the general provisions of the Code of Virginia relating to livestock and poultry under the title relating to agriculture, horticulture and food.)

§3.1-730 of the Code of Virginia requires the Board or the State Veterinarian to "give and enforce such directions and prescribe such rules and regulations as to separating, feeding and

caring for diseased or exposed animals or poultry as shall be necessary to prevent the animals or poultry so affected with such disease, or capable of communicating disease, from coming in contact with other animals or poultry not so affected.”

The language of §3.1-724 of the Code of Virginia uses the word “duty, and the language of §3.1-730 uses the word “requires,” both being words of mandate. §3.1-726 of the Code of Virginia uses the word “authorizes,” which is discretionary.

These cited Code sections of the Code of Virginia provide the agency ample authority to institute or repeal the requirements covering the testing of cattle for brucellosis in the markets.

Cited legal authority can be located at: <http://legis.state.va.us/codecomm/codehome.htm>

The Office of the Attorney General has certified that the agency has the required statutory authority.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The brucellosis eradication program is a national effort. The provision requiring the testing of eligible cattle for brucellosis sold through markets in the present regulation is part of Virginia’s contribution to this national effort. Virginia’s success in eradicating brucellosis now allows the repeal of the brucellosis-testing requirement for cattle sold through markets. The repeal of this part of the regulation has certain benefits. Deleting the requirement for testing of cattle in markets reduces the stress and hazards of handling of the cattle for testing, thereby improving the safety and health of market operators, citizens in attendance at the markets, and the animals being processed or sold at the markets. Additional benefits include reduced costs to the livestock markets that will be passed on to buyers of cattle at market, thereby minimizing overhead costs to both and improving the economic welfare of each. (In Virginia, it has been the practice for the buyer of cattle to pay the testing fee.) The current testing fee is \$3.00 per head. In fiscal year 1999-2000, there were 52,471 cattle tested for brucellosis in Virginia markets. Another benefit is the improved quality of the cattle sold because of the reduced handling of cattle. Bruising of animals occurs when they are put through a chute to collect the blood samples. These benefits are important to the welfare of citizens. These outcomes facilitate achievement of the first goal of the proposed regulatory changes: to protect the public’s health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The second goal, to minimize and control the spread of animal diseases among animals passing through livestock markets located in Virginia, is advanced by reducing the stress to animals handled at livestock markets which can be conducive to exacerbation of animal diseases. Monitoring markets not only for animal diseases, but also to identify and minimize factors conducive to harboring and transmission of animal disease, will work to minimize and control the spread of animal diseases among animals passing through livestock markets. Market

surveillance for animal disease and animal identification also enables effective trace back to herds of origin in case there is an incursion of disease. While Virginia has achieved a brucellosis-free status, the sustaining of such a free status is crucial to protecting the public from the disease.

The monitoring of the markets for sanitation, construction soundness and safety will facilitate the establishment of sanitary standards for markets and assure that both the animals and individuals in the markets will not be subject to injury due to poor or deteriorating structure of the facility which is the third goal of the proposed regulatory changes.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

There are three proposed substantive changes to the present livestock market regulation. The first proposed amendment would eliminate the required testing of cattle in the markets for brucellosis. The second proposed amendment would require the State veterinarian's representatives to monitor the operation of Virginia auction markets for surveillance of animal diseases, and to determine that the construction of the market facility is adequate to safely contain the animals processed through the market. The third proposal amplifies the present requirement for identifying animals processed through the market so that the animals can be traced to their herds of origin if a disease is evident.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

There are no disadvantages to the public or the Commonwealth or the agency associated with the proposed rule making because it relieves (1) the affected entities of having to brucellosis test cattle purchased through a market and (2) the Commonwealth and the agency from having to provide personnel in the market to accomplish the testing. The major advantages to the public (primarily the cattle industry and the livestock markets) are discussed above in the Purpose section. The primary advantage to the agency or the Commonwealth is a reduction in personnel now assigned to the livestock markets. These reductions in person hours at the markets are possible because the agency proposes striking language in the regulation associated with testing of cattle for brucellosis at the market. That language required personnel to be present at the market during such time that the market was in operation or when livestock were on its premises and to test eligible cattle for brucellosis. The agency expects to reduce personnel hours in the markets due to changes in this regulation and reallocate those resources to other purposes.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There are no fiscal impacts to the state, localities, or any private entity to implement or enforce the proposed regulation. The individuals, businesses or other entities likely to be affected by the regulation are: livestock market operators, livestock producers, and cattle dealers. We estimate there are approximately 30 livestock market operators, thousands of livestock producers, and 235 cattle dealers in Virginia.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

In section 2 VAC 5-60-10 a definition has been added for "State Veterinarian's representative," and the definition for "Livestock inspector" has been deleted. The term "State Veterinarian's representative" includes state employees under the direction of the State Veterinarian, as well as employees of the U.S. Department of Agriculture authorized by the State Veterinarian to perform specific activities. The definition for "Official brucellosis test" was modified to reflect that all diagnostic tests for brucellosis that are approved by the U.S. Department of Agriculture are acceptable. The definition of "Slaughter swine" was broadened so as to allow the home slaughter of swine for the buyer's consumption of such pigs. Appropriate changes have been made throughout the regulation to conform to these definitions.

All references to testing cattle for brucellosis in the markets, will be removed from 2VAC 5-60-40. Because of the removal of the brucellosis testing requirement in the market, personnel are no longer required to be present in the market at all times during operation or when it has livestock on its premises. However, identification of all cattle and the recording of the name and address of both the buyer and seller of such cattle sold through markets have been included in an expanded section 2 VAC 5-60-50. This requirement is a part of the national program for the eradication of brucellosis that provides surveillance and trace back to farms of origin in cases where cattle have shown suspicious reactions to tests for brucellosis.

Section 2 VAC 5-60-50, which indicates the requirements relative to the identification and handling of feeder or breeder swine and slaughter swine (as defined in the regulation) sold through markets, remains unchanged except for terms that have been changed to conform to existing nomenclature used within the agency. Section 2 VAC 5-60-60 has been deleted as a stand-alone section, and its requirements for sheep and goats sold through markets have been incorporated in 2 VAC 5-60-50. A new sub-section (D) for equines (horse-like animals) has been included under 2 VAC 5-60-50. This sub-section indicates that equine presented for sale in a livestock market are subject to the requirements stated in 2VAC 5-70-30 and 2 VAC 5-70-40 and 2 VAC 5-70-50 in the Rules and Regulations Pertaining to the Health Requirements Governing the Control of Equine Infectious Anemia (EIA) in Virginia. This proposed addition serves to remind market operators that there are requirements for EIA testing for equine presented for sale in markets, but contains no new requirements.

Alternatives

Please describe the specific 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.

The alternative is to continue testing cattle in the livestock markets. This alternative is rejected because it would impose an unnecessary economic burden on Virginia's cattle industry without creating a benefit. In the case of required monitoring for animal diseases and for facility construction soundness, the alternative is to have no such monitoring activity in the markets. This alternative is rejected because the lack of such monitoring neither provides surveillance for neither new disease incursions nor continuous evaluation of the market's construction or facilities to safely contain the animals and prevent injury to both the animals and the individuals who patronize the market.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no comments during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency will submit the regulation to review every three years after the effective date of this amended regulation.

Goals:

1. The protection of the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. The minimization and control of the spread of animal diseases among animals passing through livestock markets located in Virginia.
3. The establishment of sanitary standards for livestock markets and methods for their enforcement.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

Unless otherwise discussed in this report, this regulation has no impact upon families.