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Fast-Track Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-200
Regulation title(s)	Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry
Action title	Repeal
Date this document prepared	December 11, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The existing regulation provides the framework for the disposal of entire flocks of dead poultry, including provisions for transportation, disposal pits, incinerators, landfills, and rendering.

The regulation has not been utilized or applied since it was adopted over 25 years ago, and the agency cannot foresee a circumstance where the regulation would be needed in the future. The regulation includes outdated language, including references to Department of Environmental Quality (DEQ) regulations that are no longer valid or applicable. It is generally redundant with Section 3.2-6026 of the Code of Virginia (Code), which lists the same methods of disposal as the regulation.

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.

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 December 10, 2015, the Board of Agriculture and Consumer Services (Board) voted to repeal 2 VAC 5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry, and the Board authorized staff to take any and all steps necessary to repeal this regulation through fast-track regulatory action.

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.

Section 3.2-109 of the Code establishes the Board as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-6001 of the Code authorizes the Board and the State Veterinarian to protect livestock and poultry from contagious and infectious disease. Section 3.2-6002 of the Code authorizes the Board to adopt regulations to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulation was adopted in the late 1980s and describes rules that pertain to a poultry producer with 500 or more poultry needing to dispose of his entire flock of dead poultry. Recent discussion with the poultry industry indicated that the regulation has not been utilized or applied since it was adopted over 25 years ago and the agency cannot foresee a circumstance where the regulation would be needed in the future. The regulation includes outdated language, including references to DEQ regulations that are no longer valid or applicable. It is generally redundant with a similar section in the Code titled "Disposal of Dead Poultry." This section of the Code lists the same methods of disposal that are listed in this regulation.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The regulation has not been utilized or applied since it was adopted over 25 years ago, and the agency cannot foresee a circumstance where the regulation would be needed in the future. There is no longer a need for this regulation. The agency is not aware of any stakeholders who think that the regulation should be retained or that the regulation is of any benefit to them.

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.

Due to an existing Code section that makes the regulation redundant and the fact that the regulation has never been utilized or applied since its adoption, this regulation is no longer needed. Therefore, the agency proposes to repeal the regulation.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public in repealing the regulation is that there would no longer be an outdated regulation that specifies actions that are no longer taken. The agency and Commonwealth will no longer be in a position of having an outdated regulation that is not enforced. This action is part of good governance in that an outdated, unnecessary regulation will be eliminated. There are no disadvantages to the public or the Commonwealth associated with repealing the regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.

Repealing this regulation does not lead to any state requirements that exceed applicable federal requirements.

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.

There are no localities that are particularly affected by the repeal of this regulation.

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.

Repealing this regulation will result in less stringent requirements and will not jeopardize the welfare of the Commonwealth's poultry industry.

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.

There will be no economic impact associated with the repeal of this regulation.

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.

Viable alternatives to this action would be to retain the regulation as is or to revise it. The retention of an outdated regulation that is no longer applicable is unnecessary and inefficient. The agency could revise the regulation, but with an existing Code section that sufficiently addresses the poultry disposal, a regulation addressing the same issue is no longer necessary.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

This action is the result of a periodic review and small business impact review. During the public comment period from January 12, 2015, through February 2, 2015, the agency did not receive any comments. During the periodic review, staff determined that this regulation is no longer necessary.

Family impact

Please assess the impact of this 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.

This regulatory action has 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; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

This regulatory action proposes to repeal all of 2 VAC 5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry.