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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-510
<b>VAC Chapter title(s)</b>	Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products
<b>Date this document prepared</b>	July 27, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

"USDA" means the U.S. Department of Agriculture.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5212 of the Code authorizes the Board to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream, ice milk, frozen custards, sherbets, water ices, related foods, other similar products and those products manufactured or sold in semblance to or as substitutes.

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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The agency has determined that no viable alternatives exist to achieve the purpose of this regulation. The Code does not provide specific regulatory requirements governing the production, processing, and sale of ice cream, frozen desserts, and similar products. The regulation establishes a permit to manufacture, process, and sell ice cream and similar frozen desserts in Virginia and establishes standards of identity, labeling requirements, quality standards, and requires pasteurization for ice cream, frozen desserts, and similar products.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in the periodic review.

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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The regulation is necessary to ensure the safe production and distribution of ice cream, frozen desserts, and similar products, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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The agency recommends that this regulation stay in effect without change. The regulation is consistent with the stated objectives of the Code. The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe production of ice cream and frozen desserts.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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- (1) There is a continued need for the current regulation as it provides necessary safeguards to ensure the safe manufacture and distribution of ice cream and frozen desserts in the Commonwealth.
  - (2) The agency has not received any comments or complaints about the regulations from the public.
  - (3) The regulations are clearly written and not unnecessarily complex and allow for the safe manufacture of various forms of ice cream and frozen desserts.
  - (4) This regulation does not conflict or overlap with federal or state regulations. Section 3.2-5201 of the Code requires that regulations adopted pertaining to milk or frozen desserts be in conformity with the U.S. Department of Health and Human Services and USDA. The current frozen desserts regulations are in conformance with the USDA model regulations.
  - (5) This regulation last underwent periodic review in 2015. Although certain portions of the industry have evolved, the regulations are still relevant and help to ensure the safe production of ice cream frozen desserts.

Since the agency is electing to retain its current regulation, there will be no impact on small businesses.