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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- 600
<b>VAC Chapter title(s)</b>	Regulations Pertaining to Food For Human Consumption
<b>Date this document prepared</b>	September 30, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

## 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 and authorizes the Board to adopt regulations in accordance with the provisions of Title 3.2 of the Code. Sections 3.2-5101 and 3.2-5121 of the Virginia Food and Drink Law

(Va. Code § 3.2-5100) (Law) provide the legal basis for the promulgation of these regulations and authorize the Board to adopt regulations, as needed, for the efficient enforcement of the Law.

### 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.*

A possible alternative is to utilize the existing Law as the only basis for regulating the approximately 13,000 food establishments that process, package, or sell food in Virginia. However, the Law is necessarily broad and does not contain the level of regulatory requirements and specific level of guidance necessary to ensure a proper level of safety for the number of food commodities, food products, and food processes that exist in the Commonwealth. Another alternative would be to create and promulgate regulations separate and apart from existing federal requirements. However, this action would result in a lack of uniformity relative to existing federal requirements as well as other food related requirements and regulations existing in other states. This alternate process would be contrary to current efforts underway to develop a nationally integrated and uniform food safety system. Adoption of federal regulations, which have already been thoroughly examined and vetted, is the most efficient and least burdensome method for achieving the purpose of the regulation.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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.*

An informal advisory group was not formed for the purpose of assisting in this periodic review.

Commenter	Comment	Agency response
Virginia Farm Bureau Federation (VFBF)	VFBF reviewed the regulation and indicated that it recommended no amendments at this time.	The agency appreciates the commenter’s participation in this periodic review.

### Effectiveness

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

The regulation assists in ensuring that food and dietary supplement products produced, packaged, and sold to the citizens of the Commonwealth are safe and properly labeled and, thus, is necessary for the protection of public health and welfare. Absence of this regulation could result in foods being processed or sold under conditions that would lead to a foodborne illness outbreak thus causing illness or death that could have been prevented by the presence of and adherence to this regulation.

## 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).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

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The agency has determined that the regulation should stay in effect without change because it assists in ensuring that food and dietary supplement products produced, packaged, and sold to the citizens of the Commonwealth are safe and properly labeled.

## 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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These regulations are necessary for the protection of the health and welfare of citizens in the Commonwealth. Without specific regulations to address safety related requirements for multiple commodities, multiple food processes, adulterants in food products, food additives, proper labeling, and sanitary requirements for food establishments, there is no reasonable way to provide an appropriate level of food safety oversight for the various food product processes and food products that are prepared, held, or sold to consumers in Virginia. These regulations are not complex. However, they do provide an appropriate level of guidance as well as the requirements necessary to ensure that consumers in Virginia purchase and consume safe food products. The one comment received recommended no amendments to the regulation.

As this regulation incorporates provisions of Title 21 of the Code of Federal Regulations, it is duplicative of existing federal regulations. However, enforceability relative to regulatory requirements for food establishments, food products, and food processes within Virginia's boundaries lies primarily with the Virginia Department of Agriculture and Consumer Services and not the federal government. Therefore, the adoption and enforcement of these regulations at a state level is appropriate and necessary to ensure a proper level of food safety within the Commonwealth. Technology and economic conditions have changed minimally since the last evaluation of this regulation. The regulation provides basic, essential requirements for food establishments, food commodities, and food processes while simultaneously minimizing the economic impact on small businesses. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

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