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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-570
VAC Chapter title(s)	Rules and Regulations Defining Standards for Grades/Sizes of Shell Eggs
Date this document prepared	September 8, 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.

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 3.2-5302 of the Code authorizes the Board to adopt standards, grades, and size-weight classes including standards for the term "ungraded" for eggs marketed in the Commonwealth.

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.

The agency could attempt to enforce the standards for eggs such as grades and size and weight classes via the general statutes in the Egg and Hatchery Products Law (Va. Code § 3.2-5300 *et seq.*). However, those statutes lack the specific language necessary to enforce standards and the specific tolerances and quality factors noted in this regulation. The standards as identified in this regulation are reasonable and enable producers and retailers to market egg products that meet consumer expectations. The established standards for grade "AA", "A", "B" and "Ungraded" are reasonable and provide consistency, uniformity, and a specific set standards for egg quality. The requirement to properly label the eggs ensures that consumers are fully informed regarding the number of eggs purchased and where the eggs originated. This labeling requirement is not extensive but is in fact informative and necessary. The regulation also contains a general requirement to ensure that the eggs be produced, transported, and stored under sanitary conditions, which is not a difficult requirement and ensures consumer safety. Therefore, this regulation is the least burdensome alternative available 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 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.

Commenter	Comment	Agency response
Tony Banks, Virginia Farm Bureau Federation	The current regulation is sufficient.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

The agency did not form an informal advisory group to assist 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 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.

The regulation is necessary for the protection of public health because it ensures that consumers are provided egg products that meet specific quality standards. It 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).

The agency recommends that the regulation be retained as is.

The regulation provides for eggs that are properly graded, in adherence to a specific standard. Additionally, the regulation requires that eggs be produced, distributed, and sold under conditions that are sanitary. It meets consumer expectations for a quality egg product while ensuring that those eggs are produced and held under sanitary conditions thus ensuring public health. The standards are easily achievable and are not burdensome to the industry.

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.

The agency has determined there is a continued need for this regulation. The regulation provides for eggs that are properly graded, in adherence to a specific standard. Additionally, the regulation requires that eggs be produced, distributed, and sold under conditions that are sanitary. The agency has not received any complaints or comments regarding this regulation. The regulation is not complex. It is written in a straightforward manner and is easily understandable and enforceable by regulators. It is also easily understood by the regulated industry. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was evaluated during the periodic review conducted in 2016. Since that time, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending this regulation. This regulation was promulgated with due concerns for industry and has minimal impact on small businesses. Compliance with the regulations will not require a significant effort by industry. The regulations are not complex, are easily understandable, and will present a minimal financial cost to the industry. Thus, although essential, the regulation will have minimal economic impact on businesses.
