



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-600
<b>Regulation title</b>	Regulations Pertaining to Food For Human Consumption
<b>Document preparation date</b>	March 30, 2012

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

Sections 3.2-5101 and 3.2-5121 of the Code of Virginia provide the legal basis for the promulgation of the regulation and authorize the Board of Agriculture and Consumer Services to adopt regulations, as needed, for the efficient enforcement of the Virginia Food Laws.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

A possible alternative might be to utilize the Virginia Food Laws as the only basis for regulating multiple food commodities, food products and food processes. However, the laws are very general and do not contain the level of regulatory requirements and specific level of guidance necessary to ensure a proper level of safety for these multiple food commodities, food products and food processes. 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 and would be contrary to current efforts underway to develop a national 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**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received following the publication of the Notice of Periodic Review. An informal advisory group was not formed to assist in the periodic review.

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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This regulation meets the criteria set out in Executive Order 14 (2010). It is necessary for the protection of the health, safety and welfare of citizens in the Commonwealth. The regulation has been thoroughly vetted and is clearly written and easily understandable by both regulators and the food industry.

**Result**

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The agency is recommending that the regulation stay in effect without change.

**Small business impact**

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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There is a continued need for this regulation. This regulation is necessary for the protection of the health, safety and welfare of citizens in the Commonwealth. Without a specific regulation governing multiple commodities, multiple processes, pesticides in foods, food additives as well as sanitary requirements for food establishments, there is no way to provide an appropriate level of food safety oversight for the various food products and food product processes that are prepared, held and sold to consumers in Virginia.

This regulation is not complex. However, it does provide appropriate guidance and the requirements necessary to ensure that consumers in Virginia purchase and consume safe food products. Since this regulation adopts provisions of the Code of Federal Regulations (Title 21), it is duplicative of existing federal regulations. However, enforcement of the regulatory requirements for food establishments, food products and food processes within Virginia's boundaries lies primarily with the Commonwealth, not the federal government. Enforcement of this regulation is appropriate and necessary to ensure the proper level of food safety within the Commonwealth. No comments or complaints were received concerning the regulation during the public comment period. Technology and economic conditions have changed minimally since the adoption and evaluation of this regulation. This regulation provides basic, essential requirements for food establishments, food commodities and food processes, while simultaneously minimizing the economic impact on small businesses. This regulation should remain in effect without change.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

The impact of the regulation on the institution of the family and family stability is from the perspective of foodborne illness and availability of safe food for the consumer. It is based, in part, on providing practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness. It is a goal of all government food safety agencies within the United States to reduce the incidence of foodborne illness and ensure that foods available to consumers are safe to consume. Ensuring the safety of the food supply and reducing the level of foodborne illness have direct impacts on the family and family stability by positively affecting a family's disposable income, improving family health, reducing medical care costs, reducing absences from the work place, and reducing mental, physical and emotional pain and suffering.