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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

<b>Agency name</b>	Commissioner of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-195
<b>Regulation title</b>	Prevention and Control of Avian Influenza in the Live-Bird Marketing System
<b>Date</b>	April 3, 2017

This information is required pursuant to Executive Order 17 (2014).

### 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.*

Section 3.2-6023 of the Code of Virginia (Code) authorizes the Commissioner of the Virginia Department of Agriculture and Consumer Services (Commissioner) to adopt regulations to prevent and control avian influenza (AI) in the live-bird marketing system, authorizes the Commissioner to participate in the federal Live Bird Marketing Program of the U.S. Department of Agriculture (USDA), and requires the Commissioner to establish by regulation a registration or licensing system to regulate the live-bird marketing system in Virginia.

### 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.*

The Code mandates the establishment of this regulation; therefore, there is no current legal alternative to the existence of this regulation. The statute and regulation were adopted to protect the poultry industry from AI. If the regulation were repealed or replaced with an ineffective regulation, the result would increase the probability that AI could spread from a live bird market to Virginia poultry producers, which would have the potential to cause significant economic loss.

An alternative method of achieving the purpose of the existing regulation would be to request voluntary compliance with similar standards to those included in this regulation. This alternative is unacceptable because in order to protect the welfare of all avian species and public health, the requirements must be clearly stated, and failure to comply must be associated with legal action. This regulation is the least burdensome alternative 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.*

No comments were received during the public comment period that followed the publication of the Notice of Periodic Review that ended on February 27, 2017, and an informal advisory group was not formed for the purpose of assisting in this periodic review.

**Effectiveness**

*Please 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.*

This regulation is necessary for the protection of public health, safety, and welfare because it prevents and controls AI in the live-bird marketing system. The regulation is clearly written and easily understandable.

**Result**

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

The agency recommends that the regulation remain in effect without change because it is mandated by law. In addition, the regulation is necessary to protect the Virginia poultry industry from AI.

**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 basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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The agency has determined that there is a continuing need for this regulation in order to protect the Virginia poultry industry, which includes many small businesses, from the spread of AI through the live-bird marketing system.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. The regulation does not specifically duplicate any federal or state law or regulations. The regulation is reviewed periodically but has not changed substantially since it was adopted in 2006. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.