



Periodic Review / Retain Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-195
Regulation title	Prevention and Control of Avian Influenza in the Live-Bird Marketing System
Document preparation date	January 3, 2013

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.

This regulation is authorized by § 3.2-6023, which states in part A that “The Commissioner may adopt regulations to prevent and control avian influenza in the live-bird marketing system and is authorized to participate in the federal Live Bird Marketing Program of the U.S. Department of Agriculture, as it may be amended from time to time. In adopting such regulations, the Commissioner shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) and from public participation guidelines adopted pursuant thereto. The State Veterinarian and his representatives are authorized and empowered to enter the premises of any entity within the live-bird marketing system to carry out the provisions of any regulations adopted pursuant to this section.”

Part B of this same section states that “The Commissioner shall establish by regulation a registration or licensing system to regulate the live-bird marketing system in Virginia.”

Furthermore, Part C of this same section states that “Any person violating any regulation adopted pursuant to this section may be assessed a civil penalty by the Commissioner in an amount not to exceed \$2,500 per day per violation. In determining the amount of any civil penalty, the

Commissioner shall give due consideration to: (i) the history of the person's previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the regulation after notification of the violation.”

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.

Virginia law provides a mandate to establish this regulation. Therefore, there is no current legal alternative to the existence of a regulation. The statute and regulation were adopted in order to provide protection of the poultry industry from avian influenza. The alternative of a non-existent or ineffective regulation would be a situation in which avian influenza could more easily spread from the live bird market to Virginia poultry producers, potentially causing large monetary losses.

If permitted by law, an alternative to 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 rejected because in order to protect the welfare of all avian species and ultimately 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.

Commenter	Comment	Agency response
Tony Banks, Virginia Farm Bureau Federation	This regulation is very important to Virginia's poultry industry for the surveillance, monitoring and prevention of avian influenza and other important avian diseases. VDACS should determine if any revisions are necessary for compliance with USDA APHIS regulations governing avian diseases.	It is agreed that regulations to prevent and control avian influenza in the live-bird marketing system can be an effective method of disease control. This comment is interpreted as being generally supportive of the regulation.

The single comment above was received. No advisory group was 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.

The regulation is necessary for the protection of public health. It is clearly written and easily understandable.

Result

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

The agency is recommending that the regulation remain 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.

This regulation is not expected to have a significant economic impact on small business. There is a continued need for the regulation in order to protect the avian species and public health. The regulation itself is not complex, and the only potential impact on a small business would be if a violation would occur and the owner was charged with a civil penalty. The regulation does not specifically duplicate any state laws. The regulation is reviewed periodically but has not changed substantially since it was adopted in 2006. Consistent with the stated objectives of this law, this regulation should be maintained.

Family impact

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

This regulatory action will have no impact on the institution of the family or family stability.