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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC 5-150
VAC Chapter title(s)	Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish
Date this document prepared	December 22, 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.

"Board" means the State Board of Health.

"Regulations" means the Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish.

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.

The agency is the State Board of Health (Board). Chapter 8 of Title 28.2 of the Code of Virginia grants legal authority to the Board to promulgate regulations related to the sanitary control of shellfish and crustacea and mandates the State Health Commissioner enforce the provisions of Chapter 8.

Section 28.2-801 of the Code of Virginia states, in part,

“A. The State Health Commissioner and the Commissioner of Marine Resources shall enforce the provisions of this chapter and regulations promulgated thereunder.

B. The State Board of Health and the Marine Resources Commission may promulgate regulations necessary to carry out the provisions of this chapter.”

In addition, Section 28.2-806 of the Code of Virginia states,

“The State Health Commissioner may establish and change standards, examinations, analyses, and inspections which control the taking and marketing from a health standpoint, of crustacea, finfish or shellfish. He shall be the sole judge of whether or not such crustacea, finfish or shellfish are sanitary and fit for market.”

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.

There are no viable alternatives for achieving the purpose of the Regulations. The Regulations enable the Board to fulfill its statutory mandates in Chapter 8 of Title 28.2 of the Code of Virginia. Further, the Regulations are necessary to ensure that statutory requirements of the Board are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety, and welfare of all people in Virginia.

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.

No comments were received during the public comment period following the publication of the Notice of 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.

Upon a review of the Regulations, the Board determined they are essential to protecting public health by requiring that molluscan shellfish establishments obtain approval from the State Health Commissioner before beginning operations or renovations. They further require such establishments to maintain sanitary conditions, thus protecting all people in Virginia. The Regulations meet the criteria set forth in

Executive Order 19 (2022). The Regulations are necessary to interpret and apply the requirements of the Code of Virginia and are clearly written and 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).

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

The Board has determined that the Regulations should be amended to ensure that they reflect the most updated science and best practices, including feedback from relevant industry experts and other stakeholders.

The Regulations have not undergone a comprehensive review since their initial administrative codification approximately 50 years ago. In addition, at the conclusion of a periodic review conducted in 2017, the Office of the Attorney General (OAG) advised VDH that sections of the Regulations were inconsistent with the Code of Virginia and require amendment.

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.

Chapter 8 of Title 28.2 of the Code of Virginia authorizes the Board to promulgate regulations necessary to protect public health and safety as it pertains to crustacea and shellfish. The continued need for the Regulations is established in statute. No comments were received during the public comment period from 10/10/2022 to 10/31/2022. The last periodic review of this chapter was completed in 2017.

The Regulations are clearly written and easily understandable; however, they overlap, duplicate, or conflict with state laws and regulation, specifically Code of Virginia § 28.2-823 and 12VAC 5-160. An evaluation is necessary to determine how or if technology, economic conditions, or other factors could have an impact on the regulated industry and the general public.

VDH staff will engage with stakeholders and the regulated community regarding any proposed amendments to minimize the economic impact of regulations on small businesses while maintaining appropriate regulatory standards to ensure the safety, health, and welfare of the public.
