



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC 5-160
VAC Chapter title(s)	Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption
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 the Picking, Packing and Marketing of Crab Meat for Human Consumption.

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 to 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.

The Board has determined that the Regulations be repealed because they overlap and duplicate the intent of 12VAC 5-150. Language from 12VAC 5-160 can be incorporated into 12VAC 5-150 while maintaining a high level of public health protection and lessening burden on the regulated industry.

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 crustacea 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. However, the intent of the Regulations can be incorporated into 12VAC 5-150, reducing the burden on the regulated industry.

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 be repealed. Language from 12VAC 5-160 can be incorporated into 12VAC 5-150 to maintain public health protection, safety, and welfare.

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 10/24/2022 to 11/14/2022. The last periodic review of this chapter was completed in 2017.

The Regulations are clearly written and easily understandable but overlap with state law and regulation. As a result, VDH recommends this chapter be repealed. This action will reduce burden on the regulated industry.
