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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-195
VAC Chapter title(s)	Prevention and Control of Avian Influenza in the Live-Bird Marketing System
Date this document prepared	September 30, 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.

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.

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 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 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

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.

An informal advisory group was not formed for the purpose of assisting in this periodic review.

Commenter	Comment	Agency response
Virginia Farm Bureau Federation (VFBF)	VFBF has no recommended changes for 2VAC5-195 but reserves the right to provide additional comment should regulatory changes be proposed. VFBF states that current regulation is sufficient and likely contributed to limiting spread of avian influenza.	The agency appreciates the commenter’s participation in this 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.

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.

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 agency has decided that this regulation should remain in effect without change because the regulation is mandated by law. In addition, the regulation is necessary to protect the Virginia poultry industry from avian influenza.

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.

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.

This regulation is expected to have a minimal impact on small businesses. There are currently three live bird markets in Virginia, along with thirty production and distribution units. The required avian influenza testing is provided to the small business owner free of charge. However, there is a minimal economic impact of selling down poultry quarterly and the down time while disinfecting the sites between quarters.
