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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 – 210
VAC Chapter title(s)	Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act
Date this document prepared	September 6, 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.

"FSIS" means the United States Department of Agriculture, Food Safety and Inspection Service.

"FMIA" means the Federal Meat Inspection Act.

"PPIA" means the federal Poultry Products Inspection Act.

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 § 3.2-5406 of the Virginia Meat and Poultry Products Inspection Act authorizes the Commissioner of Agriculture and Consumer Services to adopt by reference any regulation promulgated pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601, et seq.) and the federal Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451, et seq.). Pursuant to this authority, the Commissioner promulgated 2 VAC 5-210, which adopts by reference certain provisions of Title 9, Chapter III, Subchapters A and E of the Code of Federal Regulations.

FMIA and PPIA provide for FSIS to cooperate with state agencies in developing and administering their own meat or poultry inspection programs and restrict each state meat and poultry inspection program to the inspection and regulation of product that is produced and sold within the state. The FMIA and PPIA mandate that each State Cooperative Inspection Program operate in a manner and with authorities “at least equal to” the antemortem and postmortem inspection, re-inspection, sanitation, and recordkeeping provisions set out in the federal statutes. Additionally, State Cooperative Inspection Programs need enforcement authorities that are “at least equal to” those provided by the FMIA and PPIA. FSIS defines “at least equal to” as meaning that the food safety and other consumer protection measures effected by a state program address the same issues addressed by FSIS, and the results of the state’s approach are to be at least as effective as those of the federal program.

This regulation is necessary to comply with FMIA and PPIA. Compliance with these federal laws allows Virginia to operate an intrastate meat and poultry inspection program and to provide inspection service to federal interstate plants.

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 alternatives to this regulation. Failure to maintain and enforce the regulatory requirements would forfeit the state inspection program, causing state facilities to lose their grants of inspection. Virginia’s inspection program is able to respond to new and existing facilities more efficiently and in a timelier manner than the federal inspection program. Questions and information requests can be directed to one person in the state inspection program, and Virginia inspectors have a more flexible work schedule, which ultimately enables inspected businesses to better meet their customer needs.

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.

The agency received no public comment in response to the Notice of Periodic Review published on August 15, 2022, and did not form an informal advisory group for the purpose of assisting 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 assists in controlling outbreaks of foodborne illness originating from state inspected meat or poultry plants. The regulation is clearly written and easily understood by the regulated entities.

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 is recommending that the regulation should stay in effect without change because the regulation is necessary to maintain a state meat and poultry inspection program and is effective in its current format. There also have not been any changes to agency or industry practices to necessitate any modifications.

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.

This regulation is necessary to maintain a state meat and poultry inspection program. Without this regulation, state-inspected businesses would have to obtain a federal grant of inspection in order to legally sell their meat and poultry products. The agency has not received any complaints or comments regarding this regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency evaluates the regulation annually to determine if changes to the area affected by the regulation have occurred.

The agency's decision minimizes the economic impact of the regulations on small businesses. Without this regulation, small businesses operating under a state grant of inspection would have to apply for a federal grant of inspection. This would increase administrative costs, require new labeling and label approval, and would delay their production due to the shortage of federal inspectors.
