



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5 - 540
Regulation title	Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages
Action title	Repeal Regulations
Date this document prepared	May 12, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

These regulations provide basic requirements for carbonated and still water bottling plants. The repeal of these regulations is requested because the essential elements of the regulations have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 3.2-5101 and 3.2-5121 of the Code of Virginia (1950), as amended provide the legal basis for the promulgation of these regulations and authorize the Board of Agriculture to adopt regulations (as needed) for the efficient enforcement of the Virginia Food Laws.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Action is being taken to rescind these regulations because the essential components of the regulations have already been incorporated into the Virginia Food Laws. These requirements (which now exist in the Virginia Food Laws) ensure that establishments that process carbonated and still water beverages do so in a manner that renders the food/drink safe and unadulterated.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

These regulations provide basic requirements for carbonated and still water bottling plants. The repeal of these regulations is requested because the essential elements of the regulations have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia).

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The alternative is to give consideration to retaining the regulations. However, the essential components of these regulations have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia). The requirements for carbonated and still water bottling plants and beverages will be enforced via these laws and other associated regulations.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of the proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of rescinding the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the

Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Ryan Davis, 102 Governor Street, Richmond, Va. 23219, Ph: 804-786-8899, Fax: 804-371-7792 or e-mail: ryan.davis@vdacs.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held during the proposed stage and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisors (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Advisors (e.g., ad hoc advisory committees, technical advisory committees) will not be involved in the repeal of the regulations. The agency is not using the participatory approach in repealing the regulations because the agency has authorized proceeding without using the participatory approach

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposal will have no family impact. The essential components of the regulations are present in the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia) and will continue to be enforced via that route.

Periodic review – Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether

the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

There were no comments received during the public comment period following the publication of the Notice of Periodic Review. The regulations meet the criteria set out in Executive Order 36. The essential elements of the regulations have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia).

Periodic review - Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

The regulations, which consist of no more than seven (7) basic regulatory requirements, are no longer required since all essential components of the regulations have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 52 of the Code of Virginia). The regulations were evaluated during a regulatory periodic review which occurred in December 2008. The Agency has determined that the regulations are duplicative and should be repealed. Repeal of the regulations will have no negative economic impact on small businesses.