



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5 - 540
<b>Regulation title</b>	Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages
<b>Action title</b>	Repeal Regulations
<b>Date this document prepared</b>	December 16, 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*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulation provides basic requirements for carbonated and still water bottling plants. The repeal of this regulation is requested because the essential elements of the regulation have already been incorporated into the Virginia Food Laws (Title 3.2, Chapter 51 of the Code of Virginia).

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

Carbonated water/beverage – water or a beverage to which carbon dioxide gas has been added.  
Still water – water without the addition of carbon dioxide gas.

### 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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Sections 3.2-5101 and 3.2-5121 of the Code of Virginia (1950), as amended provide the legal basis for the promulgation of this regulation and authorize the Board of Agriculture and Consumer Services to adopt regulations (as needed) for the efficient enforcement of the Virginia Food Laws. However, we are requesting that the subject regulation be repealed.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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It is proposed that these regulations be rescinded. This proposal resolves the issue of duplicative requirements as the requirements of the subject regulation already exist in the Virginia Food Laws. The requirements ensure that establishments that process carbonated and still water beverages do so in a manner that renders the food/drink safe and unadulterated. Since the requirements of this regulation are already enforced via the Virginia Food Laws, their repeal will result in no negative impact on the health, safety and/or welfare of the citizens of the Commonwealth.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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Substantive changes will be the repeal of these regulations. Requirements relating to the facility, sanitation, restrooms and infectious diseases have already been incorporated into the Virginia Food Laws.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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It is requested that these regulations be repealed. The primary advantage of this action will be the elimination of duplicative requirements. The elimination of these requirements, which are already part of the Virginia Food Laws, will result in the elimination of potential confusion regarding regulatory requirements relative to certain food establishments. Elimination of duplicative provisions will also result in

more efficient enforcement of requirements relating to food safety by agents of the Commonwealth. This will positively impact the public, the food industry and the Commonwealth. There do not appear to be any disadvantages to this particular action.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

It is requested the regulation be repealed. None of the requirements, which have been incorporated into the Virginia Food Laws, are more restrictive than applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities which will be particularly affected by the repeal of these regulations.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the VDACS is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, VDACS is 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 written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Ryan Davis, 102 Governor Street, Richmond, Virginia 23219, [ryan.davis@vdacs.virginia.gov](mailto:ryan.davis@vdacs.virginia.gov), Ph. 804/786-8899, Fax 804-371-7792. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	\$0.00
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	\$0.00
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	There will be no businesses affected by the repeal of these regulations. The requirements are already present in the Virginia Food Laws.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	0
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	\$0.00
<b>Beneficial impact the regulation is designed to produce.</b>	Elimination of this regulation will prevent duplicative regulations which will ultimately be less confusing to regulators, the industry and the public.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Alternatively, the regulation could be left in place. However, this would result in duplicative regulations which will potentially result in less efficient enforcement of food safety related requirements by regulators. Additionally, leaving the regulation in place will potentially cause confusion regarding regulatory requirements for the industry, the public and regulators. This may ultimately result in additional costs incurred by stakeholders. Elimination of the regulation is the least burdensome and least costly alternative.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

It is proposed that this regulation be repealed. The essential requirements of this regulation have already been incorporated in to the Virginia Food Laws. Elimination of duplicative requirements will ultimately have a positive impact on the regulated industry. The requirements of this regulation (now incorporated into the Virginia Food Laws) are not burdensome on small businesses and are essential to the providing of a safe food supply for the citizens of Virginia. Exemption from the requirements is not a viable option. There are no “reporting requirements” contained in the regulation (now incorporated into the Virginia Food Laws).

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response

No comments were received.

**Family impact**

*Please assess the 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.*

The impact of the proposed regulatory action on the institution of the family and family stability is from the perspectives of foodborne illness and availability of safe food for the consumer. Elimination of the regulation should provide for more efficient, less confusing and more manageable enforcement of food safety requirements for the food industry. This should ultimately result in a safer food supply thus ensuring that foods available to consumers are safe to consume. Ensuring the safety of the food supply and reducing the level of foodborne illness have direct impacts on the family and family stability by positively affecting a family’s disposable income, improving family health, reducing medical care costs, reducing absences from the work place, and reducing mental, physical and emotional pain and suffering.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

We are proposing that the entire regulation be repealed.

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
N/A	N/A	N/A	N/A

For new chapters, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
N/A	N/A	N/A	N/A

Enter any other statement here