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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-590
VAC Chapter title(s)	Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef
Date this document prepared	August 3, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board and grants the Board the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5101 of the Code requires the Board to adopt regulations fixing and establishing for any food or class of food: labeling requirements; a reasonable definition and standard of identity; and a reasonable standard of quality and fill of container, or tolerances or limits of variability.

Section 3.2-5121 of the Code allows the Board to adopt regulations that ensure that food and drink products marketed in Virginia are accurately represented to the consumer.

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 agency has determined that no viable alternatives exist to achieve the purpose of this regulation. Ensuring the safety and accurate representation of ground beef is necessary in order protect food safety and to reduce the incidents of food borne illness. While the Virginia Food and Drink Law (Va. Code § 3.2-5100 et seq.) (Law) does address food safety, the Law is very general and does not contain the necessary detail needed to regulate the tolerances and prohibitions for ground beef. This regulation is the least burdensome alternative to achieve this purpose.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency 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 did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), 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 to protect the public's health, safety, and welfare as it pertains to ground beef, including its labeling and fat declaration requirements. This regulation ensures that consumers purchasing a ground beef product are offered a product that contains no more than the maximum allowable fat content and ensures that the ground beef products are accurately represented to the consumer. The regulation is clearly written and easy to understand.

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).

The agency is recommending that this regulation stay in effect without change.

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.

1. This regulation is still needed because it is still necessary to ensure that ground beef products are produced according to and meet minimum acceptable standards relative to product formulation and saturated fat content. It also ensures that consumers are duly informed via product labeling and placard displays regarding the fat content of ground beef products and allows consumers to make optimal health choices regarding the level of saturated fat consumed when ground beef products are purchased. Without this regulation, it will be difficult to find other means by which to ensure that ground beef products meet acceptable standards.
2. There have been no complaints or comments received regarding this regulation.
3. The regulation is written in a form that is not overly complex and is easily understandable by regulators as well as the regulated industry.
4. There are federal regulations that also mandate a maximum fat content of 30 percent in ground beef products. However, these regulations are primarily enforced and policed at meat processing facilities. This regulation typically applies to ground beef products formulated or sold at retail food stores and creates specific production standards applicable to retail environments.
5. This regulation last underwent periodic review in 2014, and since that time, there have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation that would require amendments.

This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.
