



COMMONWEALTH of VIRGINIA
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Richmond 23219

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Robert B. Stroube, M.D., M.P.H.
State Health Commissioner
Department of Health
P.O. Box 2448
Richmond, Virginia 23218-2448

Food Regulations

Dear Dr. Stroube:

I have reviewed the proposed amendment to the Food Regulations which will revise Chapter 421 of the *Virginia Administrative Code* at Title 12, Agency 5 (12 VAC 5-421-10 *et seq.*). Virginia Department of Health staff prepared the amendment to make the Food Regulations consistent with the 2003 Supplement to the 2001 Food and Drug Administration *Food Code*.

It is my view that the Board of Health, contingent on approval by the Governor, has legal authority to promulgate the subject regulations pursuant to *Code of Virginia* §§ 35.1-11 and 35.1-14. Furthermore, the provisions of the Administrative Process Act, *Code of Virginia* § 2.2-4000 *et seq.*, do not apply to this amendment if the Board of Agriculture and Consumer Services adopts the same edition of the *Food Code*, or the same portions thereof, and the regulations adopted the Boards of Health and Agriculture and Consumer Services have the same effective date. *Code of Virginia* § 35.1-14 E.

The purpose of this communication is to provide legal advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.

Sincerely,

D. Nelson Daniel
Assistant Attorney General

cc: Robert W. Hicks, Director, Office of Environmental Health Services
Gary L. Hagy, Director, Division of Food and Environmental Services