



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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December 23, 2015

Marissa Levine, M.D., M.P.H.
State Health Commissioner
Department of Health
109 Governor Street
Richmond, Virginia 23219

Dear Dr. Levine:


Re: Authority to Promulgate Amendments to the Food Regulations (12 VAC 5-421-10, *et seq.*)

I have reviewed the proposed amendments to the *Food Regulations*, 12 VAC 5-421-10, *et seq.* The regulations are being amended in light of the 2013 FDA Food Code and the 2015 supplement thereto.

It is my opinion that the State Board of Health has authority to promulgate the amendments to the regulations under applicable law, including Code of Virginia §§ 35.1-11 and 35.1-14. It is also my view that the adoption of these amendments as they relate to the FDA Food Code and any supplements thereto are exempt from certain provisions of the Administrative Process Act pursuant to Code of Virginia § 35.1-14 as long as the Board of Agriculture and Consumer Services adopts the same edition of the FDA Food Code, or the same portions thereof, and the regulations adopted by the Board of Health and the Board of Agriculture and Consumer Services have the same effective date.

If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me.

Sincerely,


Grant E. Kronenberg
Assistant Attorney General