



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-230
<b>Regulation title</b>	Rules and Regulations Applicable to Controlled Atmosphere (CA) Apples
<b>Document preparation date</b>	April 4, 2012

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

Sections 3.2-4601 and 3.2-4605 of the Code of Virginia require the Board of Agriculture and Consumer Services to adopt regulations to carry out the purposes of Chapter 46 of Title 3.2, which became effective October 1, 2008. The Board may adopt rules and regulations, after consultation with the Board of Directors of the Virginia State Horticultural Society or the Virginia Apple Growers Association, that prescribe temperature and oxygen level and duration of that level in storage facilities, minimum and maximum exposure of fruit to those conditions, and grade and condition standards applicable to CA apples.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

The agency considered repealing the regulation. However, the regulation is needed to clarify certain provisions of the Code of Virginia pertaining to controlled atmosphere storage of apples.

The agency believes the present version is the least burdensome and least intrusive alternative. For these reasons, the Agency rejected consideration to repeal the regulation.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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The agency published its notice in The Virginia Register of Regulations on February 27, 2012, communicating the opportunity to comment on this regulation pursuant to Executive Order Number 14 (2010). The agency did not receive any public comments concerning this regulation. An informal advisory group was not formed for the purpose of assisting with this periodic review.

### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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The specific and measurable goals of the regulation are:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure that, when apples offered for sale are identified as having been stored in a controlled atmosphere (CA), they meet the requirements for such designation.

The regulation is effective in achieving the goals.

The regulation promotes the welfare of citizens by making available to the public better quality fruit throughout the year, and it provides equitable pricing for fruit producers and sellers.

The regulation is clearly written and easily understood by the individuals and entities affected.

### Result

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The agency is recommending that the regulation should remain in effect without change.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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, 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.*

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The regulation will have a minimal impact on small businesses. The agency is recommending that the regulation should remain in effect without change. The regulation promotes the welfare of citizens by making available to the public better quality fruit throughout the year, and it provides equitable pricing for fruit producers and sellers. No comments or complaints were received during the public comment period. The regulation does not duplicate any state or federal laws or regulations. The regulation is not overly complex. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency believes the current version of the regulation is the least burdensome and least intrusive alternative for the apple industry and small businesses.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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Unless otherwise discussed in this report, this regulation has no impact upon families.