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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-510
Regulation title	Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products
Date	September 8, 2015

This information is required pursuant to Executive Order 17 (2014).

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.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5212 of the Code authorizes the Board to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream, ice milk, frozen custards, sherbets, water ices, related foods, other similar products, and those products manufactured or sold in semblance to or as substitutes.

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.

This regulation creates specific requirements for the issuance of permits, labeling, and sanitary standards for the frozen dessert industry. The agency considered repealing this regulation and regulating the frozen dessert industry utilizing Chapter 52 of Title 3.2 of the Code instead. However, the Code does not provide the specific regulatory requirements that are set forth in the current regulation and does not conform to the model regulations set forth by the U.S. Department of Agriculture (USDA). Section 3.2-5201 of the Code requires that regulations adopted pertaining to milk or frozen desserts be in conformity with the U.S. Department of Health and Human Services and the USDA. The current frozen dessert regulation conforms to the USDA model regulations.

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.

The agency received no comments during the public comment period and did not form an informal advisory group.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare because it provides for the oversight of the production, processing, and sale of ice cream, frozen desserts, and similar products before their consumption by the public. Since a safe food supply is imperative to the public's health, it is important that this regulation stay in place for the continued protection of the public. The regulation is clearly written and easily understandable.

Result

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

The agency is recommending that the regulation stay in effect without change because the regulation is consistent with current model USDA ice cream and frozen dessert regulations. This regulation addresses the current issues and concerns that exist within the frozen dessert industry and provides an appropriate framework for the protection of public health.

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 basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The current regulation should be retained in its current form as it provides sufficient safeguards to ensure the safe manufacture and distribution of ice cream and frozen desserts in the Commonwealth. The agency has not received any comments or complaints about the regulation from the public. The regulation is clearly written and allows for the safe manufacture of various forms of ice cream and frozen desserts. This regulation is adopted from the USDA model regulations for the production of frozen desserts and ice cream. The regulation does not conflict with any state or federal regulation. This regulation has been reviewed periodically and was last amended in 2008 to incorporate recommendation from the Attorney General's Government and Regulatory Reform Task Force. Although certain portions of the industry have evolved, the regulation is still relevant and helps to ensure the safe production of ice cream and frozen desserts. This regulation is consistent with the stated objectives of Section 3.2-5212 of the Code. The regulation is not overly burdensome to the industry, including the small businesses within the industry, is clear and concise, and is necessary to ensure the safe production of ice cream and frozen desserts.