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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 5-560
Regulation title	Rules and Regulations Pertaining to Labeling and Sale of Infant Formula
Date	March 25, 2016

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 3.2-5101 of the Code of Virginia authorizes the Board to adopt regulations that will promote honesty and fair dealing in the interest of consumers that purchase food products, including regulations that establish standards of identity and tolerances or limits of variability.

Section 3.2-5121 grants the Board authority to adopt regulations for the efficient enforcement of Article 3 of Chapter 51 of the Code of Virginia.

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 requires that an expiration date established by the manufacturer utilizing valid scientific data with both a calendar month and year appear on all containers of powdered or liquid infant formula. Furthermore, it declares any infant formula sold either beyond the expiration date or with no expiration date to be adulterated and makes it possible to have substandard or out of date infant formula removed from sale. The agency could attempt to enforce the standards relating to infant formula through the general provisions of the Virginia Food Laws (Chapter 51 of Title 3.2 of the Code of Virginia). However, those statutes lack the specific language necessary to enforce existing standards. The agency also considered the adoption of existing federal regulations relating to infant formula. However, those regulations are likely to be significantly more burdensome to the industry. This regulation is the most efficient and least burdensome method of achieving the purpose of 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.

The agency received no comments during the public comment period and did not form an informal advisory group to assist in this periodic review.

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 ensures that infant formula offered for sale in the Commonwealth is fresh and has the appropriate nutritive value to support infant growth and development. Since a safe and nutritious food supply is imperative for 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 easy to understand.

Result

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

The regulation should stay in effect without change because it provides for a significant level of public health protection relative to infants, and it is not burdensome to the industry.

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 agency has determined that there is a continued need for this regulation in order to ensure that infant formula offered for sale in Virginia is accurately represented to the consumer and is fresh and capable of providing infants with appropriate nutrition. There have been no comments or complaints received from the public for this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated by periodic review in 2011. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors. The regulation has minimal impact on small business.