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

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| Agency name | Board of Agriculture and Consumer Services |
| Virginia Administrative Code (VAC) citation | 2 VAC 5-600 |
| Regulation title | Regulations Pertaining to Food For Human Consumption |
| Date | March 29, 2017 |

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 and authorizes the Board to adopt regulations in accordance with the provisions of Title 3.2 of the Code. Sections 3.2-5101 and 3.2-5121 of the Code provide the legal basis for the promulgation of these regulations and authorize the Board to adopt regulations, as needed, for the efficient enforcement of the Virginia Food Laws.

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 utilizing the Virginia Food and Drink Law (Va. Code § 3.2-5100 et seq.) as the sole basis for the regulation of the existing 13,000 food establishments that process, package, and sell a virtually unlimited number of food commodities in the Commonwealth. However, the Code is necessarily

broad and does not contain the level of regulatory requirements and specific level of guidance necessary to ensure a proper level of safety for the number of food commodities, food products, and food processes that exist in the Commonwealth. Another alternative would be to create and promulgate regulations separate and apart from existing federal requirements. However, this action would result in a lack of uniformity relative to existing federal requirements as well as other food related requirements and regulations existing in other states. This alternate process would be contrary to current efforts underway to develop a nationally integrated and uniform food safety system. The adoption of federal regulations, which have already been thoroughly examined and vetted by both the agency and the Virginia food industry, is the most efficient and least burdensome method for achieving the purpose of the regulation. Therefore, alternatives to this regulation were rejected.

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.

| Commenter | Comment | Agency response |
|------------------|---|--|
| Keith Richardson | Commenter has indicated that the regulations should be supplanted with regulatory requirements relating to gluten free foods, the labeling of allergens, levels of arsenic in rice, the contamination of seafood, the introduction of trans fats into the diet, and other similar concerns. | A thorough review of the current regulations as adopted will reveal that existing regulations already address the proper labeling of food, the introduction of trans fats into the diet, seafood issues, the presence of gluten in food products, allergens, and the adulteration of food such as rice as well as a multitude of other food related issues. Existing regulations already address the issues and concerns indicated by the commenter. |

Only one comment (as noted above) was received following the publication of the Notice of Periodic Review that ended on February 27, 2017, and an informal advisory group was not formed for the purpose of assisting 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.

These regulations meet the criteria set out in Executive Order 17 (2014). They are necessary for the protection of public health and the safety and welfare of citizens in the Commonwealth. The regulations have been thoroughly vetted and are 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 recommends that the regulation stay in effect without change because it is necessary to enforce the Virginia Food and Drink Law and is effective in its current format.

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.

This regulation is necessary for the protection of public health and the safety and welfare of citizens in the Commonwealth. Without specific regulations to address safety related requirements for multiple commodities, multiple food processes, adulterants in food products, food additives, and proper labeling as well as sanitary requirements for food establishments there is no reasonable way to provide an appropriate level of food safety oversight for the various food product processes and food products that are prepared, held, and sold to consumers in Virginia. This regulation is not complex. However, it does provide an appropriate level of guidance as well as the requirements necessary to ensure that consumers in Virginia purchase and consume safe food products.

This regulation adopts by reference certain parts of the Code of Federal Regulations (Title 21), so it is duplicative of existing federal regulations. However, the enforcement of regulatory requirements for food establishments, food products, and food processes within Virginia's boundaries lies primarily with the Commonwealth itself and not the federal government. Therefore, the adoption and enforcement of these regulations at a state level are appropriate and necessary to ensure a proper level of food safety within the Commonwealth. The regulation is not unnecessarily complex. The agency has determined that minimal changes have occurred in technology and economic conditions in the area affected by this regulation since the last periodic review, but that these changes do not necessitate amending or repealing the regulation. The regulations, as they currently exist, provide basic, essential requirements for food establishments, food commodities, and food processes while simultaneously minimizing the negative economic impact on small businesses. The agency has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.