

April 20, 2009

Karen Remley, M.D., M.B.A.  
State Health Commissioner  
Department of Health  
109 Governor Street  
Richmond, Virginia 23219

**Food Regulations**

Dear Dr. Remley:

I have reviewed the proposed amendments to the *Food Regulations*, 12 VAC 5-421-10 *et seq.* The regulations are being amended to be consistent with the current 2007 supplement to the 2005 Food and Drug Administration's (FDA) Food Code. The current Food Regulations are based on the 2003 Supplement to the 2001 FDA Food Code.

It is my view that the Board of Health, contingent on approval by the Governor, has legal authority to promulgate the subject amendments to the regulations pursuant to *Code of Virginia* § 35.1-11 and § 35.14.

The purpose of this communication is to provide legal advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.

Sincerely,

Karri B. Atwood  
Assistant Attorney General

cc: Robert W. Hicks, Director, Office of Environmental Health Services  
Gary Hagy, Director, Division of Food and Environmental Services