

**Preliminary Determination Package (“Pre-NOIRA”)
For the Adoption of *Regulations for the Repacking of Imported Crab Meat*
12 VAC 5-165**

Item 1: An explanation of the specific reason for the proposed regulation.

The purpose of this regulation is to adopt the protocols for repacking of foreign and domestic crabmeat as accepted by the *Shellfish and Crustacea Advisory Committee*.*

Background: The Department of Health has regulated the processing of crab meat based on good manufacturing standards as well as Board of Health regulations adopted in 1964. A court case in June, 1997, revealed that a portion of these regulations had not been adopted according to the administrative guidelines in place at the time, and thus were invalid.

One of these regulations was a prohibition on the repacking of crab meat which had already been picked and packed at another location. The regulation had originally been established because the intimate hand contact involved in the picking process and additional exposure to ambient temperatures too greatly affected the product quality and safety. Changes in the seafood markets over time increasingly required a more steady supply of crab meat to meet their needs. The crab meat industry, as a result, requested that the issue of repacking be revisited to determine if there were extra precautions that they could incorporate into their operations which would allow the safe repacking of crab meat.

Consistent with the industry request, the Department of Health, with the assistance of the *Shellfish and Crustacea Advisory Committee*, revisited the issue of repacking crab meat in the late 1980's. At that time, the committee recommended to the State Health Commissioner that repacking be allowed by variance, provided that the meat comes from a facility within the United States which is regulated and inspected within the state of origin, and the repacking plant in Virginia follows specific guidelines and record keeping to assure a safe and wholesome product. Product originating from outside the United States was specifically excluded at that time. However, after a more detailed protocol was developed to assure the safety and quality of imported product, the decision was made to allow the practice by variance provided the processor agreed to meet the requirements of the new protocol.

In summary, although the repacking of crab meat was prohibited for many years, the Virginia crab meat industry often needs the option to repack crab meat in order to

* The *Shellfish and Crustacea Advisory Committee* is a group representing the shellfish and crustacea industries, seafood technology experts, the Health Department and the public-at-large which meets for the purpose of establishing, reviewing, and revising the regulations and policies of the Department of Health regarding shellfish and crustacea harvesting and processing.

maintain a constant supply of product to their markets during times of resource fluctuation. The Virginia crab industry supports the regulation of repacking by the Department of Health. Since the previous repacking regulation was deemed unenforceable, the Department of Health is seeking promulgation of a new repacking regulation to provide the guidelines for the safe repacking of crab meat.

Item 2: Legal authority for the proposed regulations.

Sections 28.2-801 and 28.2-803 of the Code of Virginia provide the authority for the State Board of Health to adopt regulations to protect public health by ensuring the sanitation of finfish, crustacea and shellfish.

Item 3. Reasoning for concluding that the regulation is essential.

The intended regulations would specify the conditions under which crab meat, both foreign and domestic, may be repacked and maintain the safety and quality to the consumer. These conditions were developed jointly by members of the crustacea industry, university food technologists and Health Department representatives in order to protect public health from unwholesome crab meat.

Item 4. Process by which less burdensome and intrusive alternatives were considered.

The Virginia crab industry supports the regulation of crab meat repacking in order to maintain Virginia's reputation as a producer of high quality product. The Department could accomplish this by reestablishing the now unenforceable prohibition on repacking of crab meat by proper promulgation. It would serve the industry better, however, to allow repacking and to establish as regulation the steps determined by the *Shellfish and Crustacea Advisory Committee* as necessary to assure the safety and quality of repacked meat. This committee, representing private industry and public health interests has discussed various alternatives and believes that the best approach is to adopt the intended regulation.

Item 5. Family impact assessment.

Virginia is one of the leading blue crab producers in the nation, and more than fifty companies are certified to pick and pack crab meat. The proposed regulation will benefit families across Virginia, indeed across the country, in that they can have confidence in the safety and quality of crab meat both fresh picked or repacked in Virginia. In addition, Virginia's families will benefit from the employment opportunities and economic advantages afforded by the reputation as a producer of high quality crab meat.