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Exempt Action: Final Regulation Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-600
VAC Chapter title(s)	Regulations Pertaining to Food for Human Consumption
Action title	Remove CFR revision date and remove reference to 21 CFR Part 152
Final agency action date	December 11, 2025
Date this document prepared	December 12, 2025

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Regulations Pertaining to Food for Human Consumption (2 VAC 5-600) adopts by reference specific parts of Title 21 and Title 40 of the Code of Federal Regulations (CFR) that are promulgated by the U.S. Food and Drug Administration.

This regulatory action removes the revision date from the references to the CFR so that Virginia's regulation will always refer to the most current version of the federal regulation. Maintaining this regulation to always be up to date with the current version of the CFR benefits the Virginia food manufacturing industry by having current regulations consistent with surrounding states, thus facilitating more effective and efficient integration into interstate commerce by the food manufacturing industry. This allows for a level playing field across the nation.

FDA last amended the federal regulations that are referenced in 2 VAC 5-600 in 2023. FDA's 2023 amendments to the 2019 revision of the referenced CFRs include the removal of numerous food additives from the list of approved additives; the addition of gardenia blue as an approved food color; and the elimination of the standard of identity for fruit pies (21 CFR Part 152), which FDA deemed obsolete.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

VDACS's Food Safety Program implemented and is in full conformance with the FDA's Manufactured Food Regulatory Standards, which consists of 10 standards. Conformance with the program standards requires a regulatory agency to annually assess, evaluate, and take necessary corrective action to address gaps. As part of this assessment one of the standards requires that the agency determine if the regulations it administers are equivalent with the current CFRs. In the recent evaluation it was determined that VDACS needed to update this regulation to reference the current version of the relevant CFRs. In addition, VDACS determined it would be efficient to remove the revision date so that Virginia's regulation will always reference the most current version of FDA's regulations.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

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. Section 3.2-5121 of the Food and Drink Law authorizes the Commissioner of Agriculture and Consumer Services (Commissioner) to adopt any regulation under the federal Food, Drug, and Cosmetic Act without public hearing and provides that (i) such regulation shall be effective upon filing with the Registrar of Regulations and (ii) the Board, at its next regular meeting, shall adopt the regulation after notice but without public hearing unless a petition is filed.

On October 30, 2025, the Commissioner of Agriculture and Consumer Services adopted final amendments to Regulations Pertaining to Food for Human Consumption. On December 11, 2025, the Board adopted final amendments to Regulations Pertaining to Food for Human Consumption.