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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5 - 510
<b>VAC Chapter title(s)</b>	Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products
<b>Date this document prepared</b>	March 25, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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*.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

"USDA" means United States Department of Agriculture.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Board of Agriculture and Consumer Services (Board) serves as the promulgating entity for this regulation. Section 3.2-109 of the Code of Virginia (Code) establishes the Board as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5212 of the Code authorizes the Board to establish definitions and standards of quality and identity and to adopt and enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream, ice milk, frozen custards, sherbets, water ices, related foods, other similar products, and those products manufactured or sold in semblance to or as substitutes.

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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The agency considered regulating the frozen desserts industry utilizing the Milk, Milk Products, and Dairies Law (Va. Code § 3.2-5200 et seq.) in the absence of specific regulations. However, the Code does not provide specific requirements governing the production, processing, and sale of ice cream, frozen desserts, and similar products. Additionally, § 3.2-5201 of the Code requires that regulations adopted pertaining to milk and/or frozen desserts be in conformity with the U.S. Department of Health and Human Services and USDA. The current frozen desserts regulations are in conformance and consistent with the model regulations as set forth by the USDA.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on October 20, 2025. An informal advisory group was not formed for the purpose of assisting in the periodic review.

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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The regulation is necessary to ensure the safe production and distribution of ice cream, frozen desserts, and similar products, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

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This regulation was recently amended in 2025. Therefore, the agency has elected to retain the regulation as is. It is consistent with the stated objectives of the Milk, Milk Products, and Dairies Law. The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe production of ice cream and frozen desserts.

### **Small Business Impact**

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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(1) The current regulation should be retained in its current form as it provides sufficient safeguards to ensure the safe manufacture and distribution of ice cream and frozen desserts in the Commonwealth.

(2) The agency has not received any comments or complaints about the regulations from the public.

(3) The regulations are clearly written and allow for the safe manufacture of various forms of ice cream and frozen desserts.

(4) This regulation is adopted from the USDA model regulations for the production of frozen desserts and ice cream. Those model regulations were developed by the USDA for the states to adopt. The regulations do not conflict with any state or federal regulation.

(5) The regulation was amended in February 2025. The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the ice cream and frozen dessert industry. Although certain portions of the industry have evolved, the regulations are still current and relevant and help to ensure the safe production of ice cream and frozen desserts.

There is no direct cost to small businesses to apply for a permit to manufacture ice cream and frozen dessert products. Small businesses may have indirect costs associated with complying with the sanitary, storage, and inspection requirements in the regulation. Equipment costs for small businesses are typically lower because they are based on production volume and scale.

There are direct and indirect benefits to small businesses because the regulation ensures consumer confidence in the sanitary condition of small businesses that manufacture ice cream and the quality of the ice cream product.

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