



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5 - 585
<b>Regulation title</b>	Retail Food Establishment Regulations
<b>Action title</b>	Amendment of Existing Food Regulations
<b>Final agency action date</b>	August 4, 2009
<b>Document preparation date</b>	September 17, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Retail Food Establishment Regulations establish minimum sanitary standards for retail food establishments such as supermarkets, grocery stores and convenience stores. Those standards include the safe and sanitary maintenance, storage, operation and use of equipment, the safe preparation, handling, protection and preservation of food including necessary refrigeration or heating methods, procedures for vector and pest control, requirements for toilet and hand washing facilities for employees, requirements for appropriate lighting and ventilation, requirements for an approved water supply and sewage disposal system, personal hygiene standards for employees, and the appropriate use of precautions to prevent the transmission of communicable diseases. Current Regulations are based on the Food and Drug Administrations (FDA) 2001 Food Code and the 2003 Food Code Supplement. Our existing regulations are being amended in order to be consistent with the current 2005 FDA Food Code as well as the 2007 Food Code Supplement. Many of the changes simply refine and provide further clarity to the existing regulations. Significant changes include (1) a revised, more inclusive definition of Potentially Hazardous Foods including any food product that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation; (2) a definition of food allergen that is now consistent with the Food Allergen Labeling and Consumer Protection Act of 2004; (3) the inclusion of the viral pathogen Norovirus in the list of food employee diseases that require an employee to be

excluded from a food establishment as well as the inclusion of Norovirus in the list of employee diseases that food establishment managers or owners must report to the regulatory authority; (4) amended hand washing procedures including new protocols relative to the washing of hands as well as protocols to avoid recontamination of the hands after hand washing. The new procedures are now consistent with the recommended hand washing procedures in CDC's Hygienic Practice Guidelines for Health Care Workers; (5) refocused date-marking provisions on foods that present a higher risk of contamination. Deli salads (e.g., ham, chicken, egg, seafood, pasta, potato and macaroni) prepared and packaged in a food processing plant as well as cultured dairy products and certain types of hard and semi-soft cheeses will now be exempt from date marking; (6) amended procedures for reduced oxygen packaging (ROP). New requirements have been added relative to specific temperature controls for cook-chill and sous vide packaging; (7) additional labeling requirements for food products packaged in a food establishment. Labels on foods packaged in a food establishment will include the name of each major food allergen contained in the food, unless it is already part of the common name or ingredients; (8) additional options for freezing to control parasites as well as exemptions for certain fish that are aquacultured; (9) additional provisions allowing time to be used as a food safety control measure for 6 hours if certain requirements are met; and (10) the addition of sprouted beans or seeds to the list of products that require a HACCP plan if the products are sprouted at the retail establishment. The changes are necessary in order to ensure that the current food safety issues and concerns are properly addressed and consumers are adequately protected from unsafe foods. These changes are also being proposed concurrently with the Virginia Department of Health's adoption of the updated portions of the 2005 FDA Food Code and the associated 2007 supplement. Pursuant to § 3.2-5121(C) of the Code of Virginia, this action is exempt from portions of the Administrative Process Act (APA) provided VDH adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that end.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On August 4, 2009, the Board of Agriculture and Consumer Services approved the amended final regulation (2VAC5-585, Retail Food Establishment Regulations).

## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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Ensuring the safety of the food supply and reducing the level of foodborne illness have direct impacts on the family and family stability by positively affecting a family's disposable income, improving family health, reducing medical care costs, reducing absences from the work place, and reducing mental, physical and emotional pain and suffering. It is based, in part, on providing practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness. It is a goal of all government food safety agencies within the United States to reduce the incidence of foodborne illness and ensure that foods available to consumers are safe to consume.