



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	5
Regulation Title:	Food Regulations
Action Title:	Final Adoption
Date:	1/08/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Food Regulations establish minimum sanitary standards for operating restaurants. These standards include standards for the safe and sanitary maintenance, storage, operation, and use of, the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, procedures for vector and pest control, requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code, requirements for an approved water supply and sewage disposal system, personal hygiene standards for employees, particularly those engaged in food handling, and the appropriate use of precautions to prevent the transmission of communicable diseases. The regulations also inform potential restaurant owners or operators how to obtain a permit to operate a restaurant from the Department.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

Most of the changes were editorial or "word-smithing" in nature due to the updating from 1997 FDA Model Food Code to the 1999 Model Food Code. Other changes that were not the result of the update include deleting the exemptions for owner-occupied Bed and Breakfast establishments with 6 bedrooms or less, 18 or fewer guests that serve only breakfast. This change was made at the request of the Virginia Bed and Breakfast Association (change to the definition of a food establishment). All other changes were a result of updating to the FDA 1999 Food Code which did not include any change in standards or procedures.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Health adopted the Food Regulations as final regulations on December 7, 2001 and concurrently repealed the existing Regulations Governing Restaurants, effective March 1, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The regulations are authorized and mandated by Sections 35.1-11 and 35.1-14 of the Code of Virginia. The code requires the regulations to provide minimum standards for the following: (i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage, operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant; (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; (viii)

requirements for an approved water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly those engaged in food handling; and (x) the appropriate use of precautions to prevent the transmission of communicable diseases.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations is to ensure that the dining public is protected by establishing minimum sanitary standards for restaurants. The regulations provided minimum standards for the source of foods in restaurants, the safe handling, storage, preparation and serving of food, personnel hygiene of the employees, precautions to prevent the transmission of diseases communicable through food, and the general sanitation of the facility. When followed, these minimum standards will protect the public’s health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action’s detail.

The regulations will be replacing the existing Regulations Governing Restaurants that were last revised in 1984. Since then the emergence of new strains of bacteria and other organisms, such as E. coli O157:H7, cyclospora, and Listeria have greatly affected the food industry. With the emergence of these new organisms come new control measures that must be instituted to prevent a foodborne outbreak. The proposed regulations incorporate new control measures for prevention of foodborne disease. The regulations also incorporate the principles of Hazard Analysis Critical Control Point (HACCP) in the food service establishment. HACCP focuses on the flow and handling of food through the establishment, focusing on the hazards encountered rather than structural requirements of the building. These regulations are based on the FDA 1999 Model Food Code, which is supported by the National Restaurant Association.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of the regulations to the public is that they establish modern science based standards that has broad support in the food service and food regulatory communities. More emphasis is placed on the flow and handling of the food through the establishment. Several new standards are the result of new pathogens that have emerged since the regulations were last revised. The regulations will better protect the public from outbreaks due to E. coli O157:H7, Listeria monocytogenes, and salmonella. The primary advantage to the agency is the regulations will be based on current food science and several areas that are regulated via recommendations and policy will now be in regulatory form. The primary advantage to the regulated community, particularly chains that operate in other states, will be better consistency between states as more adopt the FDA Model Food Code. There will be no disadvantages to the public or the Commonwealth with the adoption of these regulations.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Two main comments resulted from the public hearings. The Virginia Restaurant Association asked that the proposed regulations (which were based on the 1997 FDA Model Food Code) be updated to include changes in the 1999 FDA Model Food Code. The Virginia Bed and Breakfast Association asked that the proposed regulations be amended to delete the exemptions for bed and breakfasts facilities. The agency accepted both recommendations and changed the regulations accordingly.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Most of the changes were editorial or "word-smithing" in nature due to the updating from 1997 FDA Model Food Code to the 1999 Model Food Code. Other changes that were not the result of the update include deleting the exemptions for owner-occupied Bed and Breakfast establishments with 6 bedrooms or less, 18 or fewer guests that serve only breakfast. This change was made at the request of the Virginia Bed and Breakfast Association. All other changes were a result of updating to the FDA 1999 Food Code which did not include any change in standards or procedures.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulations should not have any impact on the institution of the family and family stability.