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Fast-Track Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-585
VAC Chapter title(s)	Retail Food Establishment Regulations
Action title	This regulatory action will update the existing regulation, which is based on the 2013 Food and Drug Administration Food Code with the 2015 Supplement, so that it is consistent with the 2017 Food and Drug Administration Food Code and 2019 Food Code Supplement as well as the regulations enforced by the Virginia Department of Health. The new regulations are necessary to ensure food safety regulations reflect the most current science available and evolve to reflect new science, knowledge, and emerging technologies; to remain current with other federal laws; and to provide the highest level of public health protection.
Date this document prepared	May 22, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

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. The current regulation is based on the U.S. Food and Drug Administration’s (FDA) 2013 Food Code and the 2015 Food Code Supplement.

This regulatory action will amend the current regulation so that it is consistent with FDA’s 2017 Food Code and the 2019 Food Code Supplement. Many of the changes simply refine and clarify provisions in the existing regulation. Substantive amendments include (i) providing an exemption from the requirement that a food establishment have a person in charge present during all hours of operation for certain types of food establishments; (ii) requiring that the person in charge be a Certified Food Protection Manager (CFPM) and providing exemptions for certain low risk establishments; (iii) requiring an impermeable cover, such as a bandage, that is located on the wrist, hand, or finger of a food employee be covered with a single-use glove; (iv) labeling requirements for commercially slaughtered or processed rabbits; (v) harmonizing cooking time/temperature parameters for intact and non-intact meat and poultry in accordance with guidance from the U.S. Department of Agriculture (USDA) and adding cooking time/temperature for commercially slaughtered rabbits; and (vi) allowing the regulatory authority to allow the continued operation of a food establishment in the event of an extended interruption of electrical or water service, if certain conditions are met.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

"CFPM" means Certified Food Protection Manager.

"FDA" means the U.S. Food and Drug Administration.

"Food Code" means the food safety regulations developed by FDA for adoption by states and localities.

"USDA" means the U.S. Department of Agriculture.

"VDH" means the Virginia Department of Health.

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) the name of the agency taking the action; and 3) the title of the regulation.

On July 23, 2019, the Board of Agriculture and Consumer Services (Board) adopted amendments to 2 VAC 5-585, *Retail Food Establishment Regulations*, to reflect certain provisions of the 2017 Food and Drug Administration Food Code.

On May 21, 2020, the Board adopted amendments to 2 VAC 5-585 to reflect certain provisions of the 2019 Food Code Supplement.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14

(as amended, July 16, 2018), “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.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The proposed amendments are not the result of a directive from the General Assembly, the federal government, or a court.

This regulatory action will update the existing regulation, which is based on FDA’s 2013 Food Code and the 2015 Food Code Supplement, so that it is consistent with FDA’s 2017 Food Code and the 2019 Food Code Supplement as well as the regulations adopting FDA’s Food Code that the Virginia Department of Health (VDH) enforces. The proposed amendments are necessary to address changes that have occurred in the food industry and emerging science relating to the prevention of foodborne illnesses. The new regulations will assist in optimizing public health protection.

This regulatory action is expected to be noncontroversial because the proposed amendments were generated from the Conference for Food Protection, which provides a formal process whereby members of industry, regulatory, academia, consumer, and professional organizations are afforded equal input in the modification of the FDA Food Code.

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 and 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 is the promulgating entity. 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 3.2-5121 of the Code provides the legal basis for the promulgation and modification of this regulation.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

This regulation is essential to the protection of the health and welfare of citizens in that it sets the necessary standards of operation for the retail segment of Virginia’s food industry to (i) provide a system of prevention and overlapping safeguards designed to minimize foodborne illness; (ii) ensure employee health, industry manager knowledge, safe food, equipment used is easily cleaned and kept in a sanitary condition, acceptable levels of sanitation for food establishments; and (iii) promote fair dealings with the consumer. The regulation is essential in order to provide a regulatory framework necessary to educate the industry and protect the public.

The first goal of the regulation and the proposed amendments is to maintain a scientifically sound basis for regulation of the retail food industry. The modifications proposed to the existing regulation are necessary to ensure appropriate measures are in place to address emerging and ongoing food safety concerns that exist within an evolving food industry.

The second goal is to facilitate the shared responsibility of the food industry and the government in ensuring that food provided to the consumer is safe and does not become a vehicle in a disease outbreak or in the transmission of communicable disease. Foodborne disease in the U.S. is a major cause of personal distress, preventable death, and avoidable economic burden. The U.S. Centers for Disease Control and Prevention estimate that foodborne diseases cause approximately 48 million people to become ill, 128,000 hospitalizations, and 3,000 deaths in the U.S. each year. Epidemiological outbreak data repeatedly identify five major risk factors related to employee behaviors and preparation practices in retail and food service establishments as contributing to foodborne illness. Those risk factors include (i) improper holding temperatures; (ii) inadequate cooking, such as undercooking raw eggs; (iii) contaminated equipment; (iv) food from unsafe sources; and (v) poor personal hygiene. This regulation and the proposed amendments address controls for these risk factors. The regulation also provides the necessary guidance to the retail food industry relative to controlling risk factors and implementing appropriate intervention strategies.

The third goal of the proposed regulation is to ensure a regulatory approach that is uniform throughout the retail segment of Virginia’s food industry by administering standards that are equivalent to those administered by VDH in restaurants and food service establishments. This regulatory uniformity also extends throughout the nation, as most states have adopted versions of FDA’s Food Code.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The proposed changes would: (i) allow an exception for providing a person in charge for certain types of food establishments; (ii) require that the person in charge be a CFPM (exemptions for certain low risk establishments); (iii) require, if used, an impermeable cover such as a bandage located on the wrist, hand, or finger of a food employee be covered with a single-use glove; (iv) add information regarding labeling requirements for commercially slaughtered or processed rabbits; (v) harmonize cooking time/temperature parameters for intact and non-intact meat and poultry in accordance with guidance from USDA and add cooking time/temperature for commercially slaughtered rabbits; and (vi) allow the regulatory authority to agree to continuing operation in the event of an extended interruption of electrical or water service if certain conditions are met.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

Public:

The proposed amendments to this regulation will further enhance the safety of food products sold through the retail segment of the food industry. The regulation and the proposed amendments are based on the most current sound science available. Consumers purchasing food products from retail establishments should develop greater confidence in the safety of the retail food supply.

There do not appear to be any disadvantages to the public.

Regulated entities or businesses:

The advantages of well-written, scientifically sound, and up-to-date retail food safety requirements have long been recognized by industry and regulatory officials. Industry conformance with acceptable procedures and practices is far more likely where regulatory officials “speak with one voice” about what is required to protect public health, why it is important, and which alternatives for compliance may be accepted. With both VDACS and VDH administering equivalent food safety requirements in each agency’s respective portion of the retail segment of the food industry, Virginia’s regulatory officials will be “speaking with one voice,” greatly enhancing the uniform application of retail standards and requirements. This will in turn prevent the retail food industry from adhering to separate standards, which will ultimately eliminate confusion and additional costs relative to compliance with two different regulations and will further enhance the industry’s ability to comply with existing food safety standards. The standards and requirements of this proposal can also be used by the retail segment of the food industry in training and quality assurance programs.

The requirement that each retail food establishment have a Person in Charge that is a CFPM may pose an initial disadvantage in that it may require some level of effort by them to ensure the presence of a CFPM at the establishment. However, the designation of a Person in Charge within each retail food establishment who is knowledgeable regarding food safety will ultimately provide an advantage to each establishment, as taking additional steps to further ensure that food products produced and offered for sale should enhance consumer confidence and ultimately food product sales.

The Agency and the Commonwealth:

The advantage to the agency and the Commonwealth is that the proposed changes will further ensure the safety of the food supply. This will, in turn, engender a greater level of confidence by the public that both the agency and the Commonwealth are taking the necessary steps to provide an appropriate level of public health protection. This confidence in the food supply should ultimately enhance Virginia’s economy via enhanced food product sales.

There do not appear to be any disadvantages to the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this proposal that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other specific state agencies particularly affected by the proposed amendments.

Localities Particularly Affected

There are no specific localities particularly affected by the proposed amendments.

Other Entities Particularly Affected

There are no other specific entities particularly affected by the proposed amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The proposed amendments will assist in ensuring the safety of the food supply, which will, in turn, engender a greater level of confidence by the public that both the agency and the Commonwealth are taking the necessary steps to provide an appropriate level of public health protection.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be	Entities affected by the proposed regulatory amendments include the general public and retail
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affected, include a specific statement to that effect.	food establishments (i.e. grocery stores, supermarkets, convenience stores, etc.).
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	General public – 8 million – no projected cost Total retail food stores – 9,411 Estimated retail food stores that are small businesses – 4,705
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Cost to the industry as a result of amended regulations would be the requirement to have a Person in Charge that is a CFPM. The estimated cost to meet this certification requirement is \$100. It is estimated that 40 percent of the impacted industry already meet this requirement. There are no fees resulting from the proposed amendments. Food establishments will be given 24 months after the date that the regulation becomes effective to comply with the CFPM requirement.
Benefits the regulatory change is designed to produce.	Benefits are a reduction in foodborne illnesses and a greater degree of public confidence in the safety of the food supply.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The alternative to the proposed amendments would be to leave the regulation in place without the proposed amendments. However, this will result in a regulation that does not incorporate the latest science-based principles and requirements to address the evolving food industry. The result will be a food supply that is not optimally safe and a lower level of public health protection for the citizens of the Commonwealth. Other than the requirement to have a Person in Charge that is a CFPM at each retail food establishment to ensure that proper and appropriate food safety principles are adhered to, the amendments proposed will not result in a financial impact to the industry. Although this requirement could be eliminated from the proposed amendments, the result would be a lower level of food safety protection for Virginia’s citizens and a potential increase in foodborne illnesses and death. The proposed amendments allow the food vendor additional flexibility with respect to sanitation and product processing.

Congress has mandated, through the 2011 Food Safety Modernization Act, the establishment of a national food safety system that integrates federal, state, and local food protection agencies. One component of this integration process is the establishment of uniform regulations at all levels. Currently, most states and localities have adopted FDA’s Food Code and continue to update their regulations as new versions of the Food Code are released by FDA. This ensures that states are enforcing the same science-based regulations that are focused on public health protection and is a significant step in the integration of all states into one singular national food safety system. Failure to incorporate the proposed amendments to this regulation will result in VDACS enforcing regulations that are out of step with the rest of the nation.

Additionally, it will result in the enforcement of regulations that are not uniform with those of VDH. This situation could be both costly and confusing to retail food business. Uniform regulations will result in a regulatory environment that allows food businesses to grow and flourish.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

1. There are only minimal reporting requirements relative to the proposed amendments. Food establishments should provide documentation to the Food Safety Specialist verifying that they have a CFPM at the establishment. This is necessary in order to ensure that the Person in Charge at the establishment fully understands food safety risk factors, practices, and principles. Elimination of the requirement to have a Person in Charge that is a CFPM will result in the dissemination of food products at retail stores whose safety may be compromised that will cause an increase in foodborne illness linked to retail food establishments. This will result in a significant negative impact on the economic stability of that industry. The requirement to document the safety of alternate processes and to verify to the regulatory authority that necessary and critical information regarding public health has been disseminated to employees will require minimal cost and time and is necessary to ensure the safety of the food supply.
2. Rather than requiring compliance with the requirement that the Person in Charge at a food establishment be a CFPM upon the effective date of this regulatory action, food establishments will have two years from the effective date of this regulatory action to achieve compliance with this provision.
3. Compliance requirements are already streamlined and, to ensure the protection of public health, cannot be further simplified.
4. Retail food establishments may apply to the regulatory authority for a variance to use a specific food safety performance standard for a product or a process in lieu of compliance with otherwise applicable specifications in this regulation as long as the establishment can show that the controls are in place to ensure that the standard is being met.
5. Small businesses can readily comply with the requirements of this regulation and the proposed amendments. Elimination of the requirements of this regulation for small businesses will compromise the safety of the food products produced or sold by these businesses and may lead to an increase in foodborne illnesses. Foodborne illnesses associated with these small businesses will have a significant negative economic effect on said businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the

applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Agriculture and Consumer Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail or email to:
 Ryan Davis, Program Manager
 VDACS Office of Dairy and Foods
 P.O. Box 1163
 Richmond, VA 23218
Ryan.Davis@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

The following sections include amendments to replace “regulation” with “chapter”:20, 30, 3520, 3540, 3541, and 3815.

The amendments in the following sections or subsections are technical in nature, do not change the existing requirement, and are intended to clarify the existing provisions:

40 – definition for “Core Item,” “Fish,” “Food establishment,” “Grade A standards,” “HACCP plan,” “Injected,” “Mechanically tenderized,” “Priority foundation item,” “Pure water,” “Ready-to-eat food,” “Sewage,” “Vending machine,” and “Waterworks.”

80, 100, 255, 300, 310, 400, 410, 440, 470, 540, 720, 730, 740, 790, 820, 850, 870, 880, 950, 980, 1180, 1190, 1230, 1300, 1310, 1430, 1435, 1535, 1620, 1700, 1780, 1900, 2100, 2120, 2190, 2200, 2230, 2270, 2320, 2460, 2520, 2570, 2750, 2790, 3390, 3510, 3541, 3542, 3630, 3800, 3820, 3860, 3940, 4050, and 4060.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are

being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20	None	Purpose	Amended to comply with Register Form, Style, and Procedure Manual
30	None	Statement	Amended to comply with Register Form, Style, and Procedure Manual; addition of food establishment plan review, which was inadvertently left out of previous versions.
40	None	Definitions section	<ul style="list-style-type: none"> • Board – strike definition, as term is not used in document • Core item – add acronym "SSOPs" to definition to conform to 2017 FDA Food Code • Fish – revised to conform to 2017 FDA Food Code and to correct grammatical error • Food establishment – revised to conform to 2017 FDA Food Code • Grade A standards – replaced 2013 with 2017 to conform to 2017 FDA Food Code and most up to date document • HACCP plan – revised to conform to 2017 FDA Food Code • Injected – revised to conform to 2017 FDA Food Code • Addition of a definition for the term "intact meat." This definition will provide greater clarification and understanding to the users of this regulation; amended to conform to 2017 FDA Food Code Supplement • Mechanically tenderized – amended to conform to 2017 FDA Food Code • Priority foundation item – moved to be in alphabetical order • Pure water – strike through potable water as this is redundant and already stated in the potable water definition • Ready-to-eat-food – replaced fruits and vegetables with plant food to be consistent with the

			<p>referenced regulation 2VAC5-585-720; amended to conform to 2017 FDA Food Code</p> <ul style="list-style-type: none"> • Sewage – adding language to definition that aligns with the State Water Control Board definitions 9VAC25-790-10 • Addition of reference to “electronic transaction” to the definition of “vending machine” to reflect current device technology; conforms to 2017 FDA Food Code. • Waterworks – amend definition for clarity and to align with the definition of a “waterworks” in 12VAC5-590
50	None	Requires assignment of responsibility to a person in charge during all hours of operation of a food establishment.	Addition of an exception for certain types of food establishments deemed by the department to pose minimal risk of causing or contributing to foodborne illness based on the nature of the operation and extent of the food preparation; Amended to conform to 2017 FDA Food Code
65	None	Requires at least one employee to be a certified food protection manager.	Requires the person in charge to be a certified food protection manager. Goes into effect 24 months after effective date of the amendments to this chapter. Necessary for the control of foodborne disease and assurance of food safety; Amended to conform to 2017 FDA Food Code
67	None	Incorporates by reference the April 2012 edition of the Standards for Accreditation of Food Protection Manager Certification Programs	Updates reference to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs to the April 2018 edition; amended to conform to 2017 FDA Food Code.
80	None	Requires person in charge to require employees of applicants who have been offered employment to report to the person in charge their health and activities as they relate to diseases that are transmissible through food	Amended to conform to 2017 FDA Food Code
100	None	Identifies when exclusions or restrictions or food employees diagnosed with certain diseases can be removed by the person in charge	Revised catchline to conform to 2017 FDA Food Code
180	None	Incorporates by reference the 34 th edition of FDA’s	Updates reference to FDA’s Approved Drug Products with Therapeutic

		Approved Drug Products with Therapeutic Equivalence Evaluations. Incorporates by reference the June 17, 1994, FDA tentative final monograph for over the counter Health-Care Antiseptic Drug Products	Equivalence Evaluations to the 39 th edition; Updates reference to FDA's monograph for over the counter Health-care Antiseptic Drug Products to the December 20, 2017 list; amended to conform to 2017 FDA Food Code
N/A	235	N/A	Requires, if used, an impermeable cover, such as a bandage, located on the wrist, hand, or finger of a food employee be covered with a single-use glove. Assures the greatest level of public health protection. Necessary for the control of foodborne disease and assurance of food safety. Minimal impact of new requirement. Amended to conform to 2017 FDA Food Code
255	None	Requires facility to have procedures to clean up vomit or diarrheal events.	Amends section to require written procedures regarding cleanup of vomit or diarrheal events; conforms to 2017 FDA Food Code
300	None	Establishes the standard by which food establishments may offer for sale or service fish and molluscan shellfish.	Amend subsection A (2) to strike, "...by a regulatory authority." This amendment conforms this section to the 2017 FDA Food Code.
310	None	Incorporates by reference the 2013 revision of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish	Updates reference to the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish to the 2017 revision; conforms to 2017 FDA Food Code
330	None	Requires game animals, with the exception of rabbits, that are received for sale or service be commercially raised for food and raised, slaughtered, and processed under a voluntary inspection program.	Addition of a new subsection that requires commercially slaughtered or processed rabbits that are offered for sale or service be labeled with certain information, including a producer number, safe handling instructions, identifying code, and a warning statement. Adds a new subsection that exempts an entity commercially slaughtering or processing rabbits that have elected to be under a voluntary inspection from the new labeling requirements. Necessary for the control of foodborne disease and assurance of food safety; conforms to § 3.2-5121(H) of the Virginia Food and Drink Law.
400	None	Outlines packing and identification standards for shucked shellfish.	Amends subsection A 2 to conform with language from the National Shellfish Sanitation Program Guide.
410	None	Outlines the criteria of shellstock identification	Amends subsection A to recognize the most recent version of the U.S

			Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, which includes amending shellstock label language.
440	None	Outlines requirements to maintain shellstock identification.	Amend section to include "...or shucked shellfish" to the list of food products that if removed from its tagged or labeled container, may not be commingled with other shellstock of shucked shellfish from another container or of different harvest dates or growing areas.
470		Outlines the requirement for protecting food from cross-contamination during storage, preparation, holding and display.	Amends subdivision A 1 c to require the protection of prewashed fruits and vegetables from cross contamination by separating them from raw animal foods during storage, preparation holding, and display. This amendment conforms this subdivision to the 2017 FDA Food Code.
540		Outlines the requirements of food contact equipment and utensil sanitation	Changed to correct typographical error of wrong placement of P
700	None	Requires raw animal foods to be cooked to certain time/temperature parameters.	Narrows to "intact meat" that meat that needs to be cooked to 145°F for 15 seconds. Revises cooking time from 15 to 17 seconds for raw animal foods that need to be cooked to 155°F. Added commercially raised rabbits to a raw animal food that needs to be cooked to 165°F. Necessary for the control of foodborne disease and assurance of food safety. Also harmonizes cooking time/temperature parameters with USDA requirements. Revisions also made to conform to the 2017 FDA Food Code.
720	None	Specifies the proper hot holding temperature for plant foods.	Strike "Fruits and vegetables", insert "Plant foods", new term encompasses both fruits and vegetables; conforms to 2017 FDA Food Code.
730	None	Requires appropriate freezing of fish before the sale or service of ready-to eat raw, raw-marinated, partially cooked, or marinated- partially cooked fish (sushi) to destroy parasites	Amends section 730 B. This amendment corrects a typographical error; conforms to 2017 FDA Food Code.
740	None	Specifies record retention for raw, marinated, raw-marinated, partially	Strikes "marinated", as this term is unnecessary. Will clarify that raw-marinated, not cooked-marinated, types of fish are subject to freezing records.

		cooked, or marinated-partially cooked fish	
790	None	Specifies how time/temperature control for safety food needs to be properly thawed	Revises the risk designation from a core item to a priority foundation item. This conforms with changes in the 2017 FDA Food Code.
820	None	Specifies hot and cold holding temperatures for time/temperature control for safety food	Revises the risk designation from a core item to a priority foundation item. This conforms with changes in the 2017 FDA Food Code and with previous version of the Food Code dating back as far as 2009 or earlier. Inadvertently left out of regulations.
850	None	Outlines requirements for use of time as a public health control	Allows an initial temperature of 70 degrees F or less under certain circumstances to align with the changes in the 2017 FDA Food Code Supplement.
870	None	Outlines the requirements necessary to package foods using a reduced oxygen packaging method	Amended for clarity, to correct typographical errors and to conform to the 2017 FDA Food Code Supplement.
880	None	Outlines the requirements for standards of identity for packaged food	Amended to remove headings and comply with Register Form, Style, and Procedure Manual
950	None	Outlines prohibitions to services of certain pasteurized foods	Revised due to changes in 2VAC5-585-3630 and for correction of typographical errors to conform with changes to the 2017 FDA Food Code. Subdivision 6 c 4 amended to clarify requirements.
980	None	Outlines limits of lead use	Amended to clarify requirement
1180	None	Specifies scaling of food temperature measuring devices	Section amended to conform to the 2017 FDA Food Code.
1190	None	Specifies scaling of ambient air and water temperature measuring devices	Section amended to conform to the 2017 FDA Food Code.
1230	None	Incorporates by reference the 2012 edition of the NSF/ANSI Manual Food and Beverage Dispensing Equipment	Updates reference to the NSF/ANSI Manual Food and Beverage Dispensing Equipment to the 2016 edition.
1300	None	Requires a variance and a HACCP plan for food establishments to use molluscan shellfish life support system display tanks.	Section amended to conform to the 2017 FDA Food Code.
1310	None	Requires an automatic shutoff for a machine that vends time/temperature control for safety food	Amended to comply with Register Form, Style, and Procedure Manual

1430	None	Outlines requirements for vending machine doors and openings	Amended to clarify requirement.
1435	None	States that equipment that is ANSI certified is deemed to comply	Section amended to conform to the 2019 FDA Food Code Supplement.
1535	None	Specifies necessity of cleaning agents and sanitizers to clean equipment and utensils	Section amended to conform to the 2019 FDA Food Code Supplement.
1620	None	Specifies limitations of use of warewashing sinks	Amend section to correct cross reference, strike "2VAC5-585-1880 et seq." and insert "2VAC5-585-1885 et seq."
1700	None	Outlines the minimum concentration and temperature of chemical sanitation of manual and mechanical warewashing equipment	Amended to clarify requirement.
1780	None	Outlines when equipment food-contact surfaces shall be cleaned	Amended for correction of typographical errors
1900	None	Outlines requirements for hot water and chemical sanitization	Amended to clarify requirement
2100	None	Specifies sampling requirements of private wells.	Add "Pf" superscript to section 2100 A to conform to the 2017 FDA Food Code and amend language to include timelines to report nitrate, coliform, and E. coli positive lab results to the department.
2120	None	Specifies water source and system capacity requirements	Technical change only; remove the requirements that the water source and system be of sufficient capacity to meet the "maximum daily water demands;" however, "peak water demands" are essentially the same as the language that is being eliminated
2190	None	Outlines requirements for handwash sink water temperature and flow	Section amended to conform to the 2017 FDA Food Code and VDH regulations. Outlines requirements for an automatic handwashing facility but does not require the use of one.
2200	None	Outlines requirements for an air gap when used for backflow prevention	Strike through inlet and replace with outlet based on a review from the Department of Housing and Community Development, which administers Virginia's state building codes, which recommended that it be changed from inlet to outlet as outlet is the more appropriate term in Virginia plumbing requirements.

2230	None	Outlines requirements for numbers and capacities of handwashing sinks	Section amended to conform to the 2017 FDA Food Code.
2270	None	Specifies circumstances for use of backflow prevention device with carbonator	Section amended to conform to the 2017 FDA Food Code.
2320	None	Outlines where a cross connection is prohibited	Section amended based on updated definitions that comply with waterworks definitions.
2460	None	Outlines when a water tank, pump, and hoses need to be flushed and sanitized	Section amended to conform to the 2017 FDA Food Code.
2520	None	Outlines where backflow prevention is required	Strike through "culinary" sink based on a review from the Department of Housing and Community Development, which administers Virginia's state building codes and recommended that this term be removed to meet current Virginia plumbing requirements
2570	None	Requires food establishments to utilize an approved sewage disposal system.	Section amended to include sewage disposal systems allowed by law such as local ordinances.
2750	None	Requires cleaning and cleaning frequency of receptacles and waste handling units	Section amended to correct error in cross reference citation, strike "2VAC5-585-2550," insert "2VAC5-585-2540".
2790	None	Requires indoor areas to have certain surface characteristics	Section amended to conform to the 2017 FDA Food Code.
3390	None	Outlines the criteria for the use of chemicals when washing fruits and vegetables	Section, including catchline, amended to conform to 2017 FDA Food Code. The regulation as it was currently written does not allow for antimicrobial treatments other than ozone, but there may be other antimicrobial chemicals that have been approved. The way the regulation is currently written would allow for other antimicrobials to be used in washing, treating, storing, and processing fruits and vegetables.
3510	None	General provision of the applicability of this chapter as it pertains to public health protection	Strike through 2VAC5-585-3660 and replace with 2VAC5-585-3750 since 3660 was repealed.
3520	None	States the department may impose additional requirements to protect public health	Amended to comply with Register Form, Style, and Procedure Manual
3540	None	Outlines when a variance, modification, or waiver may be granted by the department	Amended to comply with Register Form, Style, and Procedure Manual

3541	None	Outlines information that must be provided by the person requesting the variance	Amended to comply with Register Form, Style, and Procedure Manual; Section amended to conform to the 2017 FDA Food Code, which requires the variance be retained by the food establishment.
3542	None	Outlines what is required by the operator if a variance is granted or a HACCP plan is required	Section amended to conform to the 2019 FDA Food Code Supplement; which requires that the operator maintain the variance at the food establishment; updated based on revisions to 2VAC5-585-3630
3630	None	Outlines the content requirements of a HACCP	Amended to provide clarity to the operator; amended to conform to the 2019 FDA Food Code Supplement
3655	3740	Requires that the department provide to the operator a copy of this chapter so the operator is notified of the compliance requirements and the conditions of retention that are applicable to the food establishment.	No change. Section number change to match section number in related VDH regulation.
3660	3750	Outlines the responsibilities of the operator of the food establishment.	No change. Section number change to match section number in related VDH regulation.
N/A	3740	Outlines the responsibilities of the operator of the department	Section amended to conform to the 2017 FDA Food Code.
3800	None	Establishes inspection frequency/intervals for food establishments	Amended to reflect updated cross references due to the addition of 3542 1, amended to conform to the 2017 FDA Food Code Supplement
3815	None	Requires inspectors to have the knowledge, skills, and ability to adequately perform abilities	Amended to comply with Register Form, Style, and Procedure Manual
3820	None	Allows access to the establishment at reasonable time	Changed to correct grammatical error
3860	None	Outlines what information and observations shall be documented	Strike through inspection report form; amended to conform to current administrative practices
3910	None	Requires an operator immediately discontinue operations and notify the department if an imminent health hazard may exist because of an emergency.	Addition of a new subsection that allows the department to agree to continuing operation in the event of an extended interruption of electrical or water service if certain conditions are met. Gives greater flexibility to retail food establishments to continue operations if they have a written emergency operation plan that has been approved by the department; Amended to conform to the 2017 Food Code

3940	None	Requires verification and documentation of corrections made by the operator	Strike through scheduled as inspections are not scheduled but rather unannounced
4050	None	Outlines that the department may issue control measures in relation to employees suspected of being infected or diseased	Updated catchline based on 2017 Food Code
4060	None	Outlines that the department may issue an order of restriction or exclusion without prior warning	Updated catchline based on 2017 Food Code

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage