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## Fast-Track Regulation Agency Background Document

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| <b>Agency name</b>                                    | Virginia Department of Health                                   |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 12VAC5-421  |
| <b>Regulation title(s)</b>                            | Food Regulations  |
| <b>Action title</b>                                   | Amend Regulations to Update Documents Incorporated by Reference |
| <b>Date this document prepared</b>                    | September 13, 2018  |

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please 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 Virginia Department of Health Office of Environmental Health Services proposes to amend a section of the Food Regulations (12VAC5-421) to update a document incorporated by reference and the document's title.

Section 12VAC5-421-3815.A of the Food Regulations references the 2014 edition of the "Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff" (Standard). The purpose of the Standard is to promote uniformity of regulatory inspections of food establishments throughout the Commonwealth and outline the process of training (field and classroom) that is required of environmental health staff who perform regulatory inspections of food establishments.

The Standard was recently updated to reflect changes and a 2017 edition is now available.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

No acronyms or technical terms were identified that were not included in the “Definitions” section of the regulations.

### 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.*

The State Health Commissioner approved this final action to amend the Food Regulations (12VAC5-421) on behalf of the State Board of Health, on September 13, 2018 when the Board was not in session, pursuant to section 32.1-20 of the Code of Virginia.

### Mandate and Impetus

*Please 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, board decision, etc.). 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, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

The proposed amendment updates a document incorporated by reference, the Standard. The Standard applies only to VDH staff and all amendments to the Standard are necessary to provide clarification of expectations of environmental health staff undergoing or maintaining their standardization status. The Standard, in its proposed form, does not have an adverse impact on the regulatory community.

Therefore, VDH believes the proposed change will be noncontroversial allowing use of the fast-track process.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.*

Section 35.1-3 of the Code of Virginia (Code) states, in part, the Commissioner shall be vested with the authority of the Board pursuant to Title 35.1 of the Code when the Board is not in session. Such authority is subject to rules and regulations as may be prescribed by the Board.

Sections 35.1-11 and 14 of the Code authorizes and requires the Board to promulgate and enforce regulations governing restaurants in accordance with the provisions of Title 35.1 of the Code.

The imperative form of the verb “shall” and “require” are used, making the Board’s authority to regulate mandatory rather than discretionary.

## Purpose

*Please 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.*

Section 12VAC5-421-3815.A of the Food Regulations references the 2014 edition of the “Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff.” The purpose of the Standard is to promote uniformity of regulatory food inspections throughout the Commonwealth and outline the process of training (field and classroom) that is required of environmental health staff who perform regulatory inspections of food establishments. The Standard requires amendment in order to ensure the standardization process meets industry standards (Conference for Food Protection), guidance from the Food and Drug Administration (FDA), and conforms with current VDH policies.

Such changes include: (1) Clarification of the prerequisite training required to enroll in the standardization process, (2) update terminology to reflect changes adopted from the 2013 FDA Food Code, (3) revise scoring and “level of agreement” regarding evaluation of standardization candidates, (4) updating and clarifying provisions to maintain standardization, and (5) updating and revision of forms utilized in the Standard.

## Substance

*Please 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 amendment to the Food Regulations include updating section 12VAC 5-421-3815.A which states in part, “...Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff, 2014”. The proposed change will update “2014” to “2017”, change the document title to “Virginia Department of Health Procedures for Certification and Standardization of Food Inspection Staff”, and upload the new 2017 edition of the Standard as a document incorporated by reference.

## Issues

*Please 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.*

The primary advantage to the public, the agency or Commonwealth is in providing transparency as to the training standards of environmental health staff who conduct regulatory inspections of food establishments. This information is contained in the Standard. By updating the Standard, the VDH is

providing the public, which includes the regulated community and interested stakeholders, detailed information regarding the criteria the VDH utilizes to determine if environmental health staff conducting regulatory inspections of food establishments have the knowledge, skills, and ability to adequately perform their duties.

The proposed regulatory action poses no disadvantage to the public or the Commonwealth.

**Requirements More Restrictive than Federal**

*Please 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 exceed federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please 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

No locality will be particularly affected by the proposed regulation.

Localities Particularly Affected

No locality will be particularly affected by the proposed regulation.

Other Entities Particularly Affected

No locality will be particularly affected by the proposed regulation.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: | There is no projected cost to the state to implement the proposed regulatory change. |
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| <p>a) fund source / fund detail;<br/>                 b) delineation of one-time versus on-going expenditures; and<br/>                 c) whether any costs or revenue loss can be absorbed within existing resources</p> |   |
| <p><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.</p>                                 | <p>There is no projected cost to the state to implement the proposed regulatory change.</p>   |
| <p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>   | <p>To improve clarity of the criteria utilized by the VDH as it pertains to standardization of VDH staff who conduct inspections of food establishments and to align the Standard with changes to the most recent edition of the FDA Food Code.</p> |

**Impact on Localities**

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| <p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p> | <p>There is no projected cost to localities.</p>  |
| <p>Benefits the regulatory change is designed to produce.</p>                           | <p>To improve clarity of the criteria utilized by the VDH as it pertains to standardization of VDH staff who conduct inspections of food establishments and to align the Standard with changes to the most recent edition of the FDA Food Code.</p> |

**Impact on Other Entities**

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| <p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>  | <p>VDH staff who conduct regulatory inspection of food establishments.</p>   |
| <p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:<br/>                 a) is independently owned and operated and;<br/>                 b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>  | <p>NA. External entities will not be affected by this regulatory action. No small businesses will be affected by this regulatory action.</p> |
| <p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:<br/>                 a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br/>                 b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br/>                 c) fees;<br/>                 d) purchases of equipment or services; and<br/>                 e) time required to comply with the requirements.</p> | <p>There are no projected costs for affected individuals, businesses, or other entities.</p>   |
| <p>Benefits the regulatory change is designed to produce.</p>   | <p>To improve clarity of the criteria utilized by the VDH as it pertains to standardization of VDH staff</p>                                 |

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|  | <p>who conduct inspections of food establishments and to align the Standard with changes to the most recent edition of the FDA Food Code.</p> |
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## Alternatives

*Please 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.*

No other viable alternatives to the proposed amendment were considered. The proposed change does not impose a burden or cost to small businesses, the regulated community, or to the public at large.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.*

An analysis of alternative regulatory methods was not performed as the proposed change does not consist of compliance or reporting requirements, schedules or deadlines for compliance, or performance standards for small businesses.

The proposed regulatory action merely updates the edition year of a document incorporated by reference, the Standard. The Standard does not have an impact on the regulated community or its stakeholders, only staff of VDH.

## Public Participation

*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.*

## Detail of Changes

*Please 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.*

*If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

| Current section number | New section number, if applicable | Current requirement   | Change, intent, rationale, and likely impact of new requirements   |
|------------------------|-----------------------------------|---|--|
| 5-421-3851             | N/A                               | Competency determination of staff who conduct regulatory inspections of food establishments is determined by the criteria outlined in the “Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff, 2014” edition. | Proposing to update the title to “Virginia Department of Health Procedures for Certification and Standardization of Food Inspection Staff” and incorporate by reference the 2017 edition of the Standards. |