



## Exempt Action Final Regulation Agency Background Document

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| <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>                                | Promulgate 2 VAC 5-585 pertaining to the Retail Food Establishment Regulations/Repeal 2 VAC 5-580 Rules and Regulations pertaining to the Sanitary and Operating Requirements in Retail Food Stores |
| <b>Final agency action date</b>                    | December 7, 2006  |
| <b>Document preparation date</b>                   | September 12, 2007  |

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.*

2 VAC 5-585 Retail Food Establishment Regulations is promulgated to replace existing regulation 2 VAC 5-580 Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores to: (1) be consistent with regulations enforced by the Virginia Department of Health in restaurants and food service operations, by adopting appropriate portions of the 2001 edition and 2003 supplement of the U.S. Food and Drug Administration's Food Code; (2) provide practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne disease; (3) significantly expand the definitions section, providing much greater clarification; (4) require the demonstration of knowledge by the food establishment operator for foodborne disease prevention, application of Hazard Analysis Critical Control Point principles, and the requirements of the regulation; (5) require minimal bare-hand contact with ready-to-eat foods; (6) allow greater flexibility with respect to properly cooling hot foods; (7) require colder holding temperatures for refrigerated foods (41°F as opposed to 45°F) but allow a four year phase-in period for existing equipment that can't currently meet the 41°F requirement; (8) allow a lesser temperature for foods required to be held hot (135°F as opposed to 140°F) (9) permit the use of time as a public health control, as appropriate, in place of the

typical time in conjunction with temperature; (10) require that food establishments obtain a variance from the agency if performing certain high-risk processing operations not typically performed at the retail level; (11) require the use of a disclosure statement indicating that the consumption of raw or undercooked animal foods significantly increase the risk of foodborne disease to the consumer; (12) identify requirements that are necessary to properly protect highly susceptible populations from foodborne disease; and (13) lessen the restrictions contained in the existing regulation by allowing all service animals controlled by disabled persons.

Due to the extensive amendments to the existing regulation, 2 VAC 5-580 Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Store) is being repealed and 2 VAC 5-585 Retail Food Establishment Regulations is being adopted concurrently.

**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 December 7, 2006, the Board of Agriculture and Consumer Services approved the promulgation of 2 VAC 5-585, 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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The impact of the regulatory action on the institution of the family and family stability is positive from the standpoint of preventing foodborne illnesses and ensuring the availability of safe food for the consumer. As previously stated, the regulation 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. 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.