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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-421
VAC Chapter title(s)	Food Regulations
Action title	Amend Chapter 421 to Adopt 2017 FDA Food Code
Date this document prepared	Originally prepared November 15, 2019

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 Food Regulations (12VAC5-421 et seq.) establish minimum sanitary standards for the operation of restaurants, herein after referred to as food establishments. Those standards include: (1) the safe and sanitary maintenance, storage, operation, and use of equipment; (2) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration and heating methods; (3) procedures for vector and pest control; (4) requirements for toilet and cleansing facilities for employees and customers; (5) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; (6) requirements for an approved water supply and sewage disposal system; (7) personal hygiene standards for employees, particularly those engaged in food handling; and (8) the appropriate use of precautions to prevent the transmission of communicable diseases. The proposed regulatory action would amend the existing Food Regulations to incorporate, in part, the 2017 Food and Drug Administration (FDA) Food Code and the Supplement to the 2017 FDA Food Code Annex I. Additional amendments are intended to ensure clarity and uniform application.

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.

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

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.

The Virginia Board of Health approved this Fast Track to amend the Food Regulations on December 12, 2019.

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.

VDH is initiating this regulatory action: (1) to amend its regulations to comport the Food Regulations with the current FDA Food Code, and (2) to amend its regulations to ensure clarity and ensure uniform application. The FDA Food Code, revised approximately every four years, serves as a model document to assist state and local agencies with regulatory authority over food safety by creating a regulatory scheme that reflects the most current science available to reduce the risk of food borne illnesses associated with food establishments. VDH has revised the Food Regulations to reflect updates to the FDA Food Code, which include updates to effective controls as a means to reduce the risk of foodborne illness that contribute to financial losses and have dire health consequences. The 2010 and 2016 revision of the Food Regulations incorporated the 2009 and 2013 FDA Food Code, respectively. As the regulations have not undergone a cumulative review in nine years, a thorough review is necessary to ensure the regulations are necessary to protect the public health, safety, and welfare pursuant to the policies and principles enumerated in E.O. 14 (2018). This regulatory action is best suited for the fast track process as it is expected to be non-controversial. The proposed changes will ensure the Food Regulations reflect changes made to the 2017 FDA Food Code, complements current Virginia law, and provide minimal burdens on regulants while protecting public health.

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.

Sections 35.1-11 and 14 of the Code of Virginia (Code) authorize and require the Board of Health (Board) to promulgate and enforce regulations governing restaurants in accordance with the provisions of Title 35.1 of the Code. Section 35.1-14.C of the Code provides the legal basis for the promulgation and modification of this regulation when the Board elects to adopt any edition of the FDA Food Code, or any portion thereof. The authority to adopt the FDA Food Code is discretionary; the authority to regulate food establishments is not.

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.

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 United States each year. This translates into 1 in 6 Virginians who become ill. The purpose of these regulations is to prevent foodborne illness by ensuring that foods prepared and served at food establishments in Virginia are safe, unadulterated, and prepared under sanitary conditions. This is accomplished by ensuring regulations reflect current science and technology regarding minimum sanitary standards for food establishments to protect the dining public. These standards include approved sources for foods used in food establishments, specifications for safe handling, storage, preparation and serving of food, personal hygiene of 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. In addition, amending the Food Regulations to conform to the 2017 FDA Food Code will ensure the regulation promotes uniformity in administration of the food safety program. The benefits of adopting and implementing uniform standards have shown to lead to higher compliance, consistent training of public health staff, and an increased shared responsibility of the food industry and the government in ensuring food provided to the consumer is safe and does not become a vehicle for a disease outbreak or for the transmission of communicable disease.

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 to the Food Regulations will revise the regulations to incorporate the 2017 FDA Food Code and the 2017 FDA Food Code Annex I, in part. The proposed changes also ensure that the regulations complement current Virginia law and provide minimal burdens on regulants while protecting public health.

Substantive changes include: (1) removal, addition, and revision of definitions, (2) language amended to require the person in charge to be a certified food protection manager, (3) language added to include standards for the use of bandages, finger cots, or finger stalls, (4) language added to require written procedures for the clean-up of vomiting and diarrheal events, (5) language added to require the separation of raw animal foods from fruits and vegetables in certain instances, (6) language amended to reflect new cooking time for raw animal foods, (7) removal of the Food Service Advisory Committee to reflect changes within the Food and Drug Administration, and (8) language added to provide clarity to enforcement procedures when impounding food.

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.

The primary advantage of the regulations to the public is the establishment of modern science-based standards that support the prevention of foodborne illness risk factors and ensure the safety of food service within the Commonwealth. The revisions will also make the regulations more understandable and align them with best practices. The primary advantage to the agency is that the regulations will be based on current food science and clarify ambiguous areas relating to enforcement and inspection standards. Staff, who better understand the regulatory scheme of food safety, provide enhanced communication to the public and regulant community on how to prevent food borne illness. The primary advantage to the regulated community, particularly chains and franchises that operate in other states as well as in multiple jurisdictions across the Commonwealth that have adopted the current version of the FDA Food Code, will be more consistent regulatory application. There are no known disadvantages to the public or the Commonwealth with the adoption of these regulations.

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 known requirements in the proposed regulations that would be more restrictive than those currently required in federal law.

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

No state agencies will bear any identified disproportionate material impact not experienced by other agencies, localities, or entities.

Localities Particularly Affected

No localities will bear any identified disproportionate material impact not experienced by other agencies, localities, or entities.

Other Entities Particularly Affected

No other entities will bear any identified disproportionate material impact not experienced by other agencies, localities, or entities.

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

<p><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</p>	<p>The Board does not expect any changes to costs, savings, fees or revenues as a result of the proposed regulatory change.</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>The Board does not expect any cost savings by other state agencies as a result of the regulatory change. In addition, the Board does not expect any changes to costs, fees or revenues for other state agencies as a result of the regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Benefits include alignment with the 2017 FDA Food Code, which promotes uniformity of food safety standards, reflects the most current science and knowledge regarding food safety, and improvement of agency understanding of food safety expectations.</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no projected cost to localities.
Benefits the regulatory change is designed to produce.	Benefits include alignment with the 2017 FDA Food Code, which promotes uniformity of food safety standards, reflects the most current science and knowledge regarding food safety, and improvement of local health department staff understanding of regulation administration such as licensing, inspection, and enforcement.

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 affected, include a specific statement to that effect.	The regulations pertain to food establishments operating in the Commonwealth.
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.	There are approximately 38,000 food establishments in the Commonwealth. Based on employing 500 or fewer employees, an estimated 95 to 100% of the total number of food establishments will fall into the small business category.
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.	The proposed amendments would require a certified food protection manager (CFPMs) on the premises of a food establishment at all times of operation. The current regulations require food establishments to employ a CFPM; however, they are not required to be onsite at all times of operation. Certification costs range from \$28.00 to \$100.00 per individual and requires renewal every five years. VDH anticipates any costs associated with this regulatory change to be minimal as current regulations, adopted July 2016, require food establishments to employ a CFPM.
Benefits the regulatory change is designed to produce.	Benefits include alignment with the 2017 FDA Food Code which promotes uniformity of food safety standards, reflects the most current science and knowledge regarding food safety, and improvement of consumer and regulant understanding of food safety expectations.

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 this proposed regulatory action is not to incorporate the 2017 FDA Food Code and Supplement to the 2017 FDA Food Code. This option would result in a regulation that does not incorporate the latest science based principles and FDA-recommended requirements to address an evolving food industry. 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 FDA releases newer versions. 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 VDH enforcing regulations that are out of step with the rest of the nation and with several localities within Virginia.

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.

VDH has assessed the requirements of the regulations and has not identified alternative methods of achieving the goals of this regulatory action.

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 VDH 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, email or fax to Kristin Marie Clay, 109 Governor St., Richmond, VA 23219, 804-864-7474, 804-864-7475 and Kristin.Clay@vdh.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.

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 section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12VAC5-421-10		Definitions	<ul style="list-style-type: none"> • Agent of the commissioner-Strike definition for clarity of authority. • Approved water system-Amend definition to include regulatory citations for clarity. • Board- Strike definition, term defined in the Code of Virginia. • Catering operation- Amend definition to clarify term is only applicable to a permitted food establishment. • CIP- Amend definition to include “Clean in Place”, acronym previously did not include full spelling of term. • Commissioner- Strike definition, term defined in the Code of Virginia. • Confirmed disease outbreak-Amend definition to align with 2017 FDA Food Code definition of same term.

			<ul style="list-style-type: none"> • Delicatessen- Strike definition for clarity, term not used in regulations other than definitions section. • Department- Strike definition, term defined in the Code of Virginia • Disclosure- Amend definition to align with the 2017 FDA Food Code definition of the same term. • F- Strike definition as it is well understood in the regulated community to mean Fahrenheit. • Fish- Amend definition to correct grammatical error. • Food establishment- Amend definition to strike sections cited in the Code of Virginia, to remove regulatory exemptions not under the Board’s authority, and to add language from the 2017 FDA Food Code. • Game animal- Amend definition for clarity. • HACCP Plan- Amend definition to include “Hazard Analysis and Critical Control Point”, acronym previous did not include full spelling of term. • Injected- Amend definition to align with the 2017 FDA Food Code definition of the same term. • Intact Meat- Add definition to align with the 2017 FDA Food Code definition of the same term. • Permit- Amend definition for clarity. • Pure Water- Amend definition to include regulatory citations for clarity. • Pushcart- Strike definition for clarity, term not used in regulations other than definitions section. • Ready-to-eat food- Amend definition to correct cross reference and improve definition structure for clarity.
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			<ul style="list-style-type: none"> • Reservice- Amend definition to correct grammatical error. • Sanitization- Amend term to align with the 2017 FDA Food Code definition of the same term. • Sealed-Amend definition for clarity. • Shiga toxin-producing Escherichia coli- Amend definition to correct grammatical error. • Variance- Amend definition for clarity. • Vending machine- Amend definition to align with the 2017 FDA Food Code definition of the same term. • Waterworks- Amend definition for clarity and to align with the definition of a “waterworks” in 12VAC5-590.
12VAC5-421-30		Outlines the purpose of this chapter	Section amended for clarity; strikes “be connected to and use” as certain classifications of food establishments may be permitted without direct connections to water source (mobile food unit).
12VAC5-421-40		Outlines administration of regulations	Section amended for clarity.
12VAC5-421-55		Requires at least one employee to be a certified food protection manager	Section amended to require the person in charge to be a certified food protection manager. Requirement has a deferred enactment of two years from the effective date of the regulations.
12VAC5-421-65		Outlines the standard of accreditation of certified food protection manager certification.	Requires the person in charge obtain food protection manager certification from an accredited program.
12VAC5-421-70		Identifies the responsibilities of the person in charge	Section amended for clarity, addition of regulatory citation.
12VAC5-421-80		Requires person in charge to require employees or 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 align with 2017 FDA Food Code, language added “...the last”.
12VAC5-421-100		Identifies when exclusions or restrictions of food	Insert missing superscript at 1.e (2).

		employees diagnosed with certain diseases can be removed by the person in charge	
12VAC5-421-180		Identifies acceptability for use of hand sanitizers and chemical hand sanitizing solutions.	Update edition of document incorporated by reference "Approved Drug Products with Therapeutic Equivalence Valuations" to 2019 version in line with industry standards; and amendments to conform with 2017 FDA Food Code.
12VAC5-421-190		Outlines standard for maintenance of fingernails	Section amended to conform with the Virginia Register of Regulations style requirements.
	12VAC5-421-235	N/A	Section added to conform to 2017 FDA Food Code. Intended to reduce the likelihood of disease transmission through a permeable bandage and that it does not become a physical contaminate by the transfer of the finger cot or finger stall into the food. No impact foreseeable.
12VAC5-421-255		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.
12VAC5-421-260		Requires food served in food establishments be safe, unadulterated and honestly presented.	Amend superscript from "Pf" or priority foundation to "P" or priority to conform to the 2017 FDA Food Code.
12VAC5-421-270		Establishes criteria by which a food establishment may individually portion whole muscle, intact beef steaks in a food establishment	<ol style="list-style-type: none"> 1) Amending superscript at 12VAC5-421-270. E.3 (a) from "Pf" or priority foundation to "P" or priority to conform with the FDA Food Code. This change corrects a typographical error. 2) Amend 12VAC421-270.G to amend the term "shell eggs" to "eggs" to conform to the 2017 FDA Food Code. This change corrects a typographical error.
12VAC5-421-295		Establishes the standard by which food establishments may offer for sale or services treated juice.	Amend section as prepackage juice must meet the requirements of both subsection 1 and 2. Adding an "and" between the subsections provides clarity and conforms to the 2017 FDA Food Code.
12VAC5-421-300		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 agency of competent jurisdiction." This amendment conforms this section to the 2017 FDA Food Code.

12VAC5-421-310		Requires that molluscan shellfish be obtained from an approved source.	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.
12VAC5-421-340		Outlines the appropriate temperatures to receive food products	<ol style="list-style-type: none"> 1) Amends 12VAC5-421-340.C to amend the term "shell eggs" to "eggs" to conform to the FDA Food Code. This change corrects a typographical error. 2) Strike "t" from section D, typographical error.
12VAC5-421-350		Outlines the standards and allowance for the use of additives to food	Corrects federal citation, amends "40 CFR Part 185" to "40 CFR Part 180" and changes "allowed" to "specified". These amendments correct a typographical error and conforms this section to the 2017 FDA Food Code.
12VAC5-421-400		Outlines packing and identification standards for shucked shellfish	Amends subsection A. 2 to conform with language from the National Shellfish Sanitation Program Guide.
12VAC5-421-410		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.
12VAC5-421-440		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.
12VAC5-421-450		Outlines processes to prevent contamination from hands	Amend title of section to conform to 2017 FDA Food Code.
VAC12VAC5-421-470		Outlines the requirement for protecting food from cross-contamination during storage, preparation, holding and display.	Adds subsection 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 subsection to the 2017 FDA Food Code.

12VAC5-421-540		Outlines the requirements of food contact equipment and utensil sanitation	Amends section to correct cross reference; strike 12VAC5-421-1870 and add 12VAC5-421-1860. Section 1870 was repealed.
12VAC5-421-700		Specifies the required cooking temperature and the length of time for raw animal foods	<ol style="list-style-type: none"> 1) Amends the section to add “intact meat” as a food product to be cooked at 145F or above for at least 15 seconds. 2) Amends 700.A.2 to increase cooking time from 15 to 17 seconds for certain raw animal foods. 3) Amends 700.A.3 to reduce cooking time from 15 seconds to less than one second for certain raw animal foods. 4) Amend charts under 700 B to reverse placement, Chart under B 1 moved to B2; Chart under B 2 moved to B 1. <p>All amendments conform this section to the 2017 FDA Food Code.</p>
12VAC5-421-720		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.
12VAC5-421-730		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 where shucked abductor muscle was combined with molluscan shellfish as 700 B.1.; conforms to 2017 FDA Food Code.
12VAC5-421-740		Specifies record retention for raw, marinated, raw-marinated, partially cooked, or marinated-partially cooked fish	<ol style="list-style-type: none"> 1) Amends cross reference from 12 VAC5-421-730 B 3 to 12VAC5-421-730.4. 2) Strikes “marinated”, term unnecessary. <p>This conforms with proposed changes to 12VAC 5-421-730.</p>
12 VAC5-421-830		Specifies the proper temperature and time line to retain ready-to eat foods and methods to date mark and dispose of food	Amends cross references in section A and B to correct typographical errors. Subsections were incorrectly cited during previous amendment of regulations; conforms to 2017 FDA Food Code.
12VAC5-421-850		Specifies the methods of compliance and time allowances for utilization of time as a public health control	Amends superscript from “P” or Priority to “Pf” or priority foundation at 850.B2 and C.2.; conforms to 2017 FDA Food Code.

12VAC5-421-870		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.
12VAC-421-900		Specifies requirements for food label information	Amended for clarity, to correct typographical errors and to conform changes to the 2017 FDA Food Code.
12VAC5-421-930		Specifies when a consumer advisory is require for consumption of raw or undercooked animal foods and required language in disclosures	Amended for clarity, to correct typographical errors and to conform to the 2017 FDA Food Code.
12VAC5-421-940		Specifies criteria to which food must be discarded or reconditioned	Amends for clarity, to correct typographical errors and to conform to the 2017 FDA Food Code.
12VAC5-421-950		Outlines prohibitions to services of certain pasteurized foods	Insert superscripts under 950 1.c and 3, Strikes CFR title language to remain consistent throughout the document when citing CFRs, and correction of typographical errors to conform with changes to the 2017 FDA Food Code. Subsections 6(4) amended to comply with Register Style Manual.
12VAC5-421-1180		Specifies scaling of food temperature measuring devices	Section amended to conform to the 2017 FDA Food Code.
12VAC5-421-1190		Specifies scaling of ambient air and water temperature measuring devices	Section amended to conform to the 2017 FDA Food Code.
12VAC5-421-1300		Requires a variance and a HACCP plan for food establishments to use molluscan shellfish life support system display tanks.	Amend cross reference regulations to correct citation.
12VAC5-421-1380		Specifies requirements of flow pressure devices in warewashing machines	Insert "and" between section A and B. Section amended to conform to the 2017 FDA Food Code.
12VAC5-421-1520		Specifies requirements of temperature measuring devices for manual and mechanical warewashing	Insert "priority foundation" superscripts to section A and B to conform to 2017 FDA Food Code.
12VAC5-421-1535		Specifies necessity of cleaning agents and sanitizers to clean equipment and utensils	Section amended to correct cross-reference, Change "Article 6" to "Article 7".
12VAC5-421-1550		Outlines standards of spacing and sealing of fixed equipment	Amend language in 1550.B to conform to 2017 FDA Food Code.

12VAC5-421-1620		Specifies limitations of use of warewashing sinks	Amend section to correct cross reference, strike “12VAC5-421-1880 et seq.” and insert “12VAC5-421-1885 et.seq.”
12VAC5-421-1700		Outlines the minimum concentration and temperature of chemical sanitation of manual and mechanical warewashing equipment	Amends section 1700.A to add reference to 40 CFR 180.2020 to conform to 2017 FDA Food Code.
12VAC5-421-1920		Specifies frequency to launder linens, cloth gloves, napkins and wiping cloths	Amended 1920.B, insert “poultry”; Amend 1920.C to Strike “napkins” to conform to 2017 FDA Food Code.
12VAC5-421-2090		Requires that nondrinking water is only used if approved and only for non-culinary purposes	Strike “irrigation”. Amended language to conform to the 2017 FDA Food Code.
12VAC5-421-2100		Specifies sampling requirements of private wells.	Add “Pf” superscript to section 2100 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.
	12VAC5-421-2140	N/A	This amendment allows for mobile food units and temporary food establishments to obtain water in a way other than a direct connection to a water main. No impact foreseeable.
12VAC5-421-2270		Specifies circumstances for use of backflow prevention device with carbonator	Amend language, strike “approved”, insert “provided” to conform to 2017 FDA Food Code.
12 VAC5-421-2330		Requires scheduling of inspection and services of water treatment devices or backflow preventer as necessary	Amend language to include timeline to retain service records and to require such records be available upon the request of the regulatory authority.
12VAC5-421-2350		Requires plumbing systems to be repaired and maintained	Reformat section for clarity, and conformance to the 2017 FDA Food Code.
12VAC5-421-2570		Requires food establishments to utilize an approved sewage disposal system.	Amend 2570.B to remove reference to 12VAC5-640 as an approved sewage disposal system. Chapter 640 pertains to alternative discharge system for individual single-family dwellings. In addition, section amended to include sewage disposal systems allowed by law such as local ordinances. Current language is restrictive.
12VAC5-421-2720		Requires food establishments to cover waste handling receptacles	Section amended for clarity and conformance to the 2017 FDA Food Code.

12VAC5-421-2750		Requires cleaning and cleaning frequency of receptacles and waste handling units	Section amended to correct error in cross reference citation, strike "12VAC5-421-2550, insert "12VAC5-421-2540".
12VAC5-421-3040		Outlines restrictions of use of sinks for food preparation and utensil washing	Section amended to conform to 2017 FDA Food Code, specifically formatting.
12VAC5-421-3360		Outlines conditions of use of poisonous or toxic materials in food establishments	Section amended to conform to 2017 FDA Food Code.
12VAC5-421-3390		Outlines the criteria for the use of chemicals when washing fruits and vegetables	Section, including title, amended to conform to 2017 FDA Food Code.
12VAC5-421-3410		Establishes requirements for the use of drying agents used in conjunction with sanitation.	Section amended to correct error in referenced federal regulation, strike, "175", insert "174", conforms to 2017 FDA Food Code. Strike "generally recognized as safe", insert acronym GRAS.
12VAC5-421-3510		General provision of the applicability of this chapter as it pertains to public health protection	Section amended to conform to 2017 FDA Food Code.
12VAC5-421-3550		Establishes the Food Service Advisory Committee (FSAC) which provides policy and program advise to the Commissioner	Established in the regulations in 2002, the FSAC was modeled after the FDA Food Advisory Committee. To date the committee has never convened and the FDA Food Advisory Committee was terminated in December of 2017. The Food Protection Task Force(FPTF), a multifaceted group consisting of government agencies, industry, and academia, was established under a FDA grant to address food safety and defense in the Commonwealth. In light of the establishment of the FPTF, the FSAC is duplicative. Action does not create a new requirement.
12VAC5-421-3560		Outlines exemptions to the regulations	Section repealed, exemptions exist in the Code of Virginia under sections 35.1-25 and 26. Duplicative in regulation. Action does not create a new requirement.
12VAC5-421-3570		Outlines criteria for the submission of a variance	Section amended for clarity.
12VAC5-421-3580		Outlines the variance evaluation process by the commissioner	Section amended to correct error in cross referenced regulation, add "section C" to 12VAC5-421-3570.
	12VAC5- 421-3595	N/A	Requires permit holders, who apply for a variance or HACCP

			Plan to comply with the approved variance and/or HACCP Plan. Section added to conform to 2017 FDA Food Code. No impact foreseeable
12VAC5-421-3620		Outlines when a HACCP plan is required	Section amended for clarity.
12VAC5-421-3630		Outlines the content requirements of a HACCP	Section amended to conform to 2017 FDA Food Code.
12VAC5-421-3660		Establishes the requirements pertaining to obtaining and maintaining a food establishment permit	Language added to clarify expiration dates of permits, not to exceed twelve months from date of issuance.
12VAC5-421-3670		Outline the application procedure for a food establishment permit	Amends section to expand on general application procedures and the disposition of applications after one year.
12VAC5-421-3690		Outlines with the qualifications and responsibilities of applicants	Section amended for clarity.
12VAC5-421-3710		Establishes a requirement to submit plans for new, converted, or remodeled food establishments	Section amended to clarify cross reference and conformance to 2017 FDA Food Code.
12VAC5-421-3720		Establishes process to renew a permit or issue a new permit.	Amends section to include the requirement to notify the department of change of legal ownership of a food establishment.
12VAC5-421-3750		Establishes responsibilities for permit holders which includes reporting and operating requirements	Amends section to correct cross references, adds language to require food establishments to notify the public a copy of the most recent inspection report is available upon request, and conformance to the 2017 FDA Food Code.
12VAC5-421-3770		Outlines process of summary suspension of permit, include notification to permit holder	Amended for clarity and to adhere to current administrative process.
12VAC5-421-3780		Establishes when the director may revoke a permit.	Section amended for clarity.
12VAC5-421-3800		Establishes inspection frequency for food establishments	Section amended for clarity, additional cross reference added to conform to the 2017 FDA Food Code.
12VAC5-421-3815		Establishes standard for competency of environmental health specialists.	Section amended to comply with 1VAC7-10-140.D.
12VAC5-421-3830		Outlines process for staff to follow when access to a food establishment is denied.	Section amended to correct error in regulatory cross reference, Strike "12VAC5-421-3750.F" insert "12VAC5-421-3750.6" and amended for clarity.

12VAC5-421-3850		Outlines process of applying to circuit court to obtain inspection warrant if denied access to a food establishment	Strike “or his designee”, commissioner’s authority to elect a designee is in statute.
12VAC5-421-3860		Outlines the information required for an inspection form.	Amended to conform to current administrative practices, insert item “core” as these items are currently documented on inspection form.
12VAC5-421-3870		Establishes timeline food establishments must correct violations.	Amended to relocate language referencing timeline for temporary food establishments to correct violations to 12VAC5-421-3930. Section 3930 is titled, “ Timely correction.”
12VAC5-421-3910		Establishes operating process for food establishments when imminent health hazards are identified.	Amended to conform to the 2017 FDA Food Code; add language to outline terms in which a food establishment may operate with department approval after interruption of electric or water service.
12VAC5-421-3930		Establishes corrective action timeline for food establishments	Relocates language from 12VAC5-421-3870 regarding corrective action timeline for temporary food establishments.
12VAC5-421-3940		Requires verification and documentation of potential violations to be recorded on the inspection report and the agency’s records.	Amended to conform to the 2017 FDA Food Code; add language to include correction of HACCP plan deviation.
12VAC5-421-3960	12VAC5-421-3961 to 12VAC5-421-3966	Outlines process when impounding food	Section repealed and replaced with language to clarify process of impounding food, requiring notification of due process rights to food establishment, and documentation. Action does not create a new requirement for the regulant population.
	12VAC5- 421-3961	N/A	Requires staff, when impounding food products, to provide a written order outlining the reason for the impoundment. Section added to conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
	12VAC5- 421-3962	N/A	Outlines language required on impoundment/hold orders of food products. Section added to conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
	12VAC5- 421-3963	N/A	Outlines procedures for staff to properly label food under a hold order and label language. Section added to

			conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
	12VAC5- 421-3964	N/A	Requires permit holders not to move, use, or sell food under a hold order. Section added to conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
	12VAC5- 421-3965	N/A	Outlines process a permit holders may use to appeal a hold order to impound food and when staff shall release food under a hold order. Section added to conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
	12VAC5- 421-3966	N/A	Outlines when staff may order a permit holder to comply with regulations or destroy or denature food and due process rights of permit holder. Section added to conform to 2017 FDA Food Code, expands on section 12VAC5- 421-3960. No impact on regulated community.
12VAC5-421-3970		Outlines enforcement authority of the regulation	Amended for clarity, strike section already in the Code of Virginia section 35.1-2. Duplicative in regulation.
12 VAC5-421-4010		Outlines penalties, injunctions, civil penalties and charges for violations to this chapter.	Section repealed, exists in Code of Virginia Section 35.1-14. Duplicative in regulation. Action does not create a new requirement.
12VAC5-421-4020		Establishes requirement that food establishments comply with the Uniform Statewide Building Code	Section amended for consistency in terminology; strike "restaurant" insert "food establishments."
12VAC5-421-4035		Outlines operational requirements for facilities that otherwise are exempt from the requirement of a permit that choose to be regulated	Section repealed, strike allowance for food establishments who would otherwise be exempt from permitting from voluntarily obtaining a permit.
12VAC5-421-4040		Establishes process of when to obtain medical information of food employees or conditional employees suspected of transmitting of being infected with an illness transmissible through food.	Section amended to comply with 2017 FDA Food Code, clarifies this section is applicable to "food employees" and "conditional employees" as defined.