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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12 VAC 5-421
<b>VAC Chapter title(s)</b>	Food Regulations
<b>Date this document prepared</b>	June 24, 2021

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**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

"Board" or "State Board" means the State Board of 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 or 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 agency is the Virginia Department of Health. The Food Regulations, 12VAC5-421. Chapter 2 of Title 35.1 of the Code of Virginia enumerates the legal authority for VDH to regulate restaurants.

Section 35.1-11 states,

“The Board shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of this title and to protect the public health and safety. In promulgating regulations, the Board shall consider the accepted standards of health including the use of precautions to prevent the transmission of communicable diseases, hygiene, sanitation, safety, and physical plant management.

In addition, Section 35.1-14 of the Code of Virginia states, in part,

A. Regulations of the Board governing restaurants shall include but not be limited to the following subjects: (i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage, operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant; (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; (viii) requirements for an approved water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly those engaged in food handling; (x) the appropriate use of precautions to prevent the transmission of communicable diseases; and (xi) training standards that address food safety and food allergy awareness and safety.

B. In its regulations, the Board may classify restaurants by type and specify different requirements for each classification.

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

No viable alternatives for achieving the purpose of the regulation could be determined. The regulations enable the Board to fulfill its statutory mandates as established in Chapter 2 of Title 35.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety and welfare of the citizens of Virginia.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

No comments received.

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The General Assembly has charged the Board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect public health and safety as it relates to restaurants. The regulations were reviewed and it was determined they are essential to protecting public health.

The regulation helps fulfill the statutory mandate from the General Assembly by ensuring that restaurants who receive a license from the Board meet minimum requirements to include i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage, operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant; (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; (viii) requirements for an approved water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly those engaged in food handling; (x) the appropriate use of precautions to prevent the transmission of communicable diseases; and (xi) training standards that address food safety and food allergy awareness and safety.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation is necessary to interpret and apply the requirements imposed by the Board and is clearly written and understandable. Lastly, the regulation is designed to achieve its objective in the most efficient and cost effective manner.

### Decision

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

The agency is recommending that the regulation be retained as is.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

Chapter 2 of Title 35.1 of the Code of Virginia mandates the Board to make, adopt, regulate, and enforce regulations necessary to protect public health and safety as it pertains to restaurants. The continued need for the regulation is established in regulation and is not discretionary. The sole comment received regarding the regulation was in support of maintaining the regulation in its current state.

The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with any federal or state law or regulation. The regulation was previously amended on June 24, 2021, to incorporate the 2017 Food and Drug Administration Food Code, a model that assists food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry (restaurants and grocery stores and institutions such as nursing homes). In addition, the June 2021 revision incorporated the concerns outlined in certification memo from the Office of the Attorney General. Lastly, staff evaluated the regulations in consideration of changes in technology, economic conditions, and other factors which may have an impact on the citizens of the Commonwealth. At that time, staff engaged stakeholders and the regulated community regarding amendments. As the regulations have not changed since, retaining them in their current state will not have a negative impact on small businesses throughout the Commonwealth.

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