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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	Amendments to Align Regulation with 2022 FDA Food Code
Date this document prepared	May 28, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

This regulatory action will update the existing Retail Food Establishment Regulations (Regulations), which are based on the 2017 Food and Drug Administration (FDA) Food Code and its 2019 Supplement, so that they are consistent with the 2022 FDA Food Code as well as the Food Regulations (12 VAC 5-421) enforced by the Virginia Department of Health (VDH). The amendments are necessary to ensure food safety regulations reflect the most current science available and reflect new science, knowledge, and emerging technologies; to remain current with other federal laws; and to provide the highest level of public health protection.

The 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 proposed regulatory action would amend the existing Regulations to incorporate, in part, 2022 amendments to the FDA Food Code. Proposed amendments include the addition and revision of certain definitions, updated cross references, the inclusion of sesame as an allergen, changes to standards related to temperatures, added provisions for food donations, and updated references to permit holders.

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.

"Board" means the Board of Agriculture and Consumer Services.

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

"Food Code" means the model food safety rules developed by FDA for use by states and localities in developing their own food safety rules.

"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 December 7, 2023, the Board adopted amendments to 2 VAC 5-585, *Retail Food Establishment Regulations*, to reflect certain provisions of the 2022 Food Code.

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 the ORM procedures, "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."

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

This regulatory action will update the existing Regulations so that they are consistent with FDA's 2022 Food Code as well as the Food Regulations VDH is concurrently proposing or currently enforces. The proposed amendments are necessary to address changes that have occurred in the food industry and emerging science related to the prevention of foodborne illnesses. The amended regulations will assist in optimizing public health protection.

This regulatory action is expected to be noncontroversial because the proposed amendments were generated from the national Conference for Food Protection, which provides a formal process whereby

members of industry, regulatory, academic, 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.

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 of Virginia. Section 3.2-5121 of the Food and Drink Law authorizes the Board to promulgate and amend 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 is 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 that employees are healthy, industry managers have knowledge, food is safe, equipment used is easily cleaned and kept in a sanitary condition, and acceptable levels of sanitation are maintained in 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 Regulations 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 for a disease outbreak or 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 result in approximately 48 million people becoming 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 for 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 establishing 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.

Substantive changes to the Regulations are as follows:

1. Definitions
 - a. Add and amend definitions to conform with the 2022 FDA Food Code.
 - b. Add definitions for permit and permit holder.
 - c. Add sesame as a major food allergen.
2. Food
 - a. Update terminology, cross-references, and clarification of handling and tagging of shellfish products.
 - b. Add clarification for manufacturer cooking instructions.
3. Water, Plumbing, Waste, Physical Facilities
 - a. Decrease the hot water temperature requirements at hand sinks.
4. Compliance and Enforcement
 - a. Amend regulations to conform with 2022 FDA Food Code related to variances and food donation.
 - b. Add and clarify requirements for a permit application, permits, transferability of a permit, and posting a permit for public view. Chapter 204 of the 2022 Acts of Assembly directs the Commissioner of Agriculture and Consumer Services to issue a permit to any food manufacturer, food storage warehouse, or retail food establishment that is in compliance with the Food and Drink Law and regulations adopted pursuant thereto. These amendments are necessary to reflect this permit requirement.

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 proposed amendments for the public is the reduction of the risk of foodborne illnesses within food establishments, thus protecting consumers and industry from potentially devastating health consequences and financial losses. 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 will have a better understanding of the improved regulatory scheme of food safety, thus providing enhanced communication to the public and retail food establishments on how to prevent foodborne 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 the proposed 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 amendments to the regulation that would be more restrictive than those currently established in federal law.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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 agency will bear a disproportionate material impact.

Localities Particularly Affected

No locality will bear a disproportionate material impact.

Other Entities Particularly Affected

No specific entity will bear a disproportionate material impact not experienced by other entities.

Economic Impact

Consistent with § 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 the proposed 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;</p>	<p>No expected changes to costs, savings, fees, or revenues as a result of the proposed regulatory change.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<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.	No expected costs, savings, fees, or revenues by other state agencies as a result of the proposed regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Benefits include alignment with the 2022 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.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	Analysis of the impact of the proposed amendments on localities has been reported on the ORM Economic Impact form under Table 2.
Benefits the regulatory change is designed to produce.	Analysis of the benefit of the proposed amendments on localities has been reported on the ORM Economic Impact form under Table 2.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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.	Analysis of the impact of the proposed amendments on other entities has been reported on the ORM Economic Impact form under Table 1, 2, 3, and 4.
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.	Analysis of the impact of the proposed amendments on other entities has been reported on the ORM Economic Impact form under Table 1, 2, 3, and 4.
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;	Analysis of the impact of the proposed amendments on other entities has been reported on the ORM Economic Impact form under Table 1, 2, 3, and 4.

c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	Analysis of the benefit of the proposed amendments on other entities has been reported on the ORM Economic Impact form under Table 1, 2, 3, and 4.

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.

Analysis of alternatives to the regulation has been reported on the ORM Economic Impact form under Table 1c.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

No alternative methods are available, as the proposed regulations are necessary and do not impose unreasonably stringent compliance or reporting requirements. The amendments represent the simplest and most effective standards related to compliance and reporting requirements, and they contain exemptions from certain regulatory requirements to allow flexibility for small businesses while protecting public health.

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.

Consistent with § 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, email or fax to:

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 VDACS Office of Dairy and Foods
 102 Governor St, 1st Floor
 Richmond, VA 23219
 (office) 804-786-0412
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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 chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
585-40		<p>Section: "Definitions."</p> <p>This section provides definitions to terms used throughout the regulation.</p>	<p>Intent: The proposed change amends the definitions for the following terms: "Certification Number" "Commingle" "Employee" "Intact meat" "Major food allergen" "Mechanically tenderized" "Molluscan shellfish" "Operator"</p>

			<p>"Premises" "Ready-to-eat food" "Reduced oxygen packaging" "Poisonous or toxic materials" "Shellstock" "Shucked shellfish."</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and updated terminology utilized in the food safety industry.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-40		<p>Section: "Definitions."</p> <p>This section provides definitions to terms used throughout the regulations</p>	<p>Intent: Add new definitions for the following terms: "In-shell product" "Mobile food establishment" "Permit" "Permit Holder" "Tobacco product."</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code, updated terminology utilized in the food safety industry and by VDH.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-50		<p>Section: "Assignment."</p> <p>This section assigns responsibility to a member of staff to ensure the continuous presence of someone who is responsible for monitoring and managing all food establishment operations.</p>	<p>Intent: Replace "operator" with "permit holder" and "inspected" with "permitted."</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-65		<p>Section: "Certified food protection manager."</p>	<p>Removing the date the requirement in subsection B became effective.</p>
585-67		<p>Section: "Food protection manager certification."</p>	<p>Intent: To amend subsection A and B to correct the title of the Conference for Food Protection Standard by removing the "s" at end of the word 'Standards', and to update to the current version of the Standard.</p>

			<p>Rationale: Conformance to the 2022 Edition of the FDA Food Code, to accurately reflect the name of the standardizing organization, and to utilize the current version of this document.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-70		<p>Section: “Duties of a person in charge.”</p> <p>This section outlines the duties of the Person in Charge.</p>	<p>Intent: To amend Section 70 to add a new subsection that requires the Person in Charge to ensure food employees properly maintain the temperatures of time/temperature control for safety foods. Amend an existing subsection to indicate what food allergy awareness includes.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure the Person in Charge maintains the food operations in a manner to protect the public from food borne illness.</p> <p>Impact: Improved understanding and application of the regulations; improved safety and prevention of food borne illness.</p>
585-80		<p>Section: “Responsibility of operator, person in charge, and conditional employees.”</p> <p>This section outlines when food employees and conditional employees shall report certain information regarding their health as it relates to diseases transmissible through food.</p>	<p>Intent: To amend subsection A by replacing “operator” with “permit holder” and to amend subsection D to correct a cross reference to when an employee should be excluded versus restricted.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code.</p> <p>Impact: Improved understanding and application of the regulations; improved safety and prevention of food borne illness.</p>
585-160		<p>Section: “When to wash.”</p> <p>This section outlines when food employees shall clean their hands and exposed portion of their arms prior to food preparation.</p>	<p>Intent: To amend Section 160 to replace the term “tobacco” with “tobacco product.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and avoid contamination of food with tobacco products.</p>

			<p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness and contamination of food.</p>
585-220		<p>Section: “Eating, drinking or using tobacco.”</p> <p>This section outlines the areas in which an employee must eat, drink, or may use tobacco products.</p>	<p>Intent: To amend Section 220 to replace the term “tobacco” with “tobacco product.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to add the term ‘tobacco product’ to the list of items that require usage in designated areas.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness and contamination of food.</p>
585-270		<p>Section: “Compliance with food law.”</p> <p>This section requires food meet certain standards such as being from an approved source, standards for package labeling, and proper food handling.</p>	<p>Intent: To remove cross reference to 2VAC5-585-400; amend section to clarify the types of meat obtained from a food processing plant that do not require a consumer advisory; under subdivision E 1 strikes ‘labeled by’ and replaces it with ‘received from’; strikes subdivision E 3 c.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to provide clarity to food establishments receiving whole-muscle meats and the appropriate use of consumer advisories.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>

<p>585-400</p>		<p>Section: “Shucked shellfish, packaging and identification.”</p> <p>This section requires packages or containers for molluscan shellfish to bear a tag or label that contains certain identifying information.</p>	<p>Intent: To amend the title of Section 400 from “shucked shellfish” to “molluscan shellfish.” In addition, the proposed language adds the option to use terminology of “tags” in addition to “labels” and clarifies what information is required on tags and labels.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure tags and labels contain accurate source identification of the harvesting area, harvester, and dealers so that if a shellfish-borne disease outbreak occurs, the information is available to expedite an epidemiological investigation and any necessary regulatory action.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention, and investigation of food borne illness.</p>
<p>585-420</p>		<p>Section: “Shellstock, condition.”</p> <p>This section requires a food establishment to ensure shellstock is free of mud and in good condition. Any dead or damaged shellstock shall be discarded.</p>	<p>Intent: Replace each instance of the word “shellfish” with “shellstock.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure food establishments dispose of dirty, damaged, or dead shellstock, which can contaminate and degrade live and healthy shellstock and lead to foodborne illness.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention, and investigate of food borne illness.</p>
<p>585-430</p>		<p>Section: “Molluscan shellfish, original container.”</p>	<p>Intent: To amend text to prohibit the commingling of molluscan shellfish from one container with those from another container with different certification dates, different harvest dates, and different growing areas. In addition, the proposed text reflects the addition of the terminology “in-shell product” to the regulations. The proposed</p>

			<p>amendments also update cross-references.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure lot separation of molluscan shellfish. Proper identification is vital for tracing the origin of shellfish in the event of a foodborne outbreak and is helpful when identifying products that require recall or growing waters that may need to be closed to harvesting.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention, and investigation of food borne illness.</p>
585-440		<p>Section: “Shellstock; maintaining identification.”</p> <p>This section outlines the standards for identification of molluscan shellfish and recordkeeping of tags, labels, and invoices.</p>	<p>Intent: To amend section to add the following terms: “molluscan shellfish,” “invoices,” “shucked shellfish,” and “in-shell product.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure accurate records are maintained in such a manner that enables tracing molluscan shellfish to its original source. If an outbreak occurs, accurate records are vital to take appropriate actions to prevent further illnesses.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
	585-445	N/A	<p>Intent: To add a new section that establishes standards for storage, preparation, packaging, display, and labeling of donated food.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to provide clarity to food establishments that it is permissible to donate food that complies with the Code of Virginia and the Retail Food Establishment Regulations.</p> <p>Impact: Improved understanding and application of the regulations;</p>

			to reduce food loss and waste; to reduce food insecurity; improved safety, prevention of food borne illness.
585-450		<p>Section: “Preventing contamination from hands.”</p>	<p>Intent: Replaces “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-510		<p>Section: “Washing fruits and vegetables.”</p> <p>This section outlines when certain fruits and vegetables shall be washed prior to consumption.</p>	<p>Intent: To amend section to allow the optional use of a test kit or device to measure wash solution concentration when chemical wash is used.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-620		<p>Section: “Food storage; prohibited areas.”</p> <p>This section outlines the areas where food may not be stored.</p>	<p>Intent: To amend section to change the storing of food in a toilet room from a core violation, which must be corrected within 90 days of observation, to a priority foundation violation, which must be corrected within 10 calendar days of observation.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. In addition, the amendment highlights the increased potential hazard of storing food in a toilet room as trace amounts of refuse or wastes in such areas could contaminate food.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-700		<p>Section: “Raw animal foods.”</p> <p>This section outlines the minimal cooking temperatures based on cooking methods for raw animal foods.</p>	<p>Intent: To amend section by deleting “mechanically tenderized, and injected meats” and inserting “nonintact meat” and by aligning terminology regarding</p>

			<p>mechanically tenderized beef products with the Food Code.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. In addition, the amendments ensure meats, under various types of processing, are cooked at appropriate temperatures to effectively eliminate pathogens.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-725		Section: “Noncontinuous cooking of raw animal foods.”	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	2VAC5-585-726	N/A	<p>Intent: Add new section that requires food establishments to cook commercially packaged foods according to manufacturer’s instructions or according to a time and temperature appropriate for the food.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. A food manufacturer may produce and provide food that has a known or reasonably foreseeable hazard (such as Salmonella) without first processing the food (cooking) to control that hazard so long as the manufacturer provides a disclosure. This section requires food establishments to cook such foods to control any foodborne illness hazards prior to making the food available for human consumption.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>

585-790		<p>Section: “Thawing.”</p> <p>This section outlines the process to properly thaw time/temperature for safety food.</p>	<p>Intent: To amend section by adding a cross reference to a new section, Section 726 “Manufacturer cooking instructions,” and establish that failure to thaw and cook as required in Section 726 is a priority foundation violation, which must be corrected within 10 calendar days of observation.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. In addition, amendment highlights the increased potential hazard of improper thawing of time/temperature for safety foods.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-830		<p>Section: “Ready-to-eat, time/temperature control for safety food; date marking.”</p> <p>This section outlines the process for date marking certain foods.</p>	<p>Intent: To amend section to update a citation to the Code of Federal Regulations.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to correctly reflect citations to federal regulations.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-850		<p>Section: “Time as a public health control.”</p> <p>This section outlines food handling when time and not temperature is used as a public health control.</p>	<p>Intent: To amend section to address temperatures, within a four-hour window, for ready-to-eat produce or hermetically sealed food that is rendered time/temperature control for safety food.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to recognize new technology that continuously monitors temperature control to prevent the growth of <i>C. botulinum</i> and <i>L. monocytogenes</i>, to add additional controlling factors to prevent pathogen growth.</p> <p>Impact: Improved understanding and application of the regulations;</p>

			improved safety, prevention of food borne illness.
585-870		<p>Section: “Reduced oxygen packaging without a variance; criteria.”</p> <p>This section outlines the standards, such as a HACCP plan, for reduced oxygen packaging without a variance.</p>	<p>Intent: To amend section to add a new subsection to include an additional option to package and seal food products by a cooling or sous-vide process so long as the food meets certain refrigeration standards.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to ensure ready-eat-foods are properly handled and disposed of when time and not temperature is used as a public health control prior to pathogen growth and possible toxin production.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-900		<p>Section: “Food labels.”</p> <p>This section outlines what is required on label information for food packaged at a food establishment.</p>	<p>Intent: To amend subdivision C 2 to add a cross reference that would require a food establishment to add a notification regarding potential allergens in bulk food that is available for consumer self-dispensing.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to reduce unintended food allergen exposures to consumers with food allergies.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness, reduction in serious illness such as anaphylaxis due to contact with an undisclosed food allergen.</p>
585-910		<p>Section: “Other forms of information.”</p> <p>This section outlines requirements for miscellaneous notifications to the consumer.</p>	<p>Intent: To add a new subsection that requires the food establishment to notify consumers in writing about major food allergens in unpackaged foods.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to reduce unintended food allergen exposures to consumers with food allergies.</p>

			<p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness, reduction in serious illness such as anaphylaxis due to contact with an undisclosed food allergen.</p>
585-930		<p>Section: “Consumer advisory; consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-950		<p>Section: “Pasteurized foods, prohibited reservice, and prohibited food.”</p> <p>This section sets forth the standards for the service of food to highly susceptible populations.</p>	<p>Intent: To add subdivision 3 d, which is a cross reference to manufactured packaged food. Packaged food, as specified in the cross reference, in a ready-to-eat form is prohibited from service to highly susceptible populations.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; to include additional safeguards to protect those who are particularly vulnerable to foodborne illness.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-1300		<p>Section: “Molluscan shellfish tanks.”</p>	<p>Intent: Update use of terms: “operator” to “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-1460		<p>Section: “Manual warewashing, sink compartment requirements.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p>

			Impact: Improved understanding and application of the regulations.
585-1540		<p>Section: “Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.”</p> <p>This section restricts the location of cabinets and equipment used to store food.</p>	<p>Intent: To amend section to change placing cabinets or equipment used to store food in a toilet room or vestibule from a core violation, which must be corrected within 90 days of observation, to a priority foundation violation, which must be corrected within 10 calendar days of observation.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. In addition, the amendment highlights the increased potential hazard of allowing food storage equipment in a toilet room or its vestibule as trace amounts of refuse or wastes in such areas could contaminate food.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-1700		<p>Section: "Manual and mechanical warewashing equipment, chemical sanitization - temperature, pH, concentration, and hardness."</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-2010		<p>Section: “Prohibitions.”</p> <p>This section restricts the location of where cleaned and sanitized equipment, utensils, and other items are stored.</p>	<p>Intent: To amend section to change placing cleaned and sanitized equipment, utensils, and other items in a toilet room or vestibule from a core violation, which must be corrected within 90 days of observation, to a priority foundation violation, which must be corrected within 10 calendar days of observation.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code. In addition, the amendment highlights the increased potential hazard of storing cleaned and sanitized equipment, utensils, and other items in a toilet room or its</p>

			<p>vestibule as trace amounts of refuse or wastes in such areas could contaminate food.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness.</p>
585-2100		<p>Section: “Sampling.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-2190		<p>Section: “Handwashing sinks, water temperature, and flow.”</p> <p>This section outlines standards for the installation of handwashing sinks used in a food establishment that includes the temperature of the water delivered at the sink.</p>	<p>Intent: To amend section to reduce the minimum hot water temperature at a handwashing sink from 100°F to 85°F.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and the International Plumbing Code, which defines “tempered water” as having a temperature range between 29.4°C (85°F) and 43°C (110°F).</p> <p>Impact: Improved understanding and application of the regulations; alignment of regulatory requirements to industry standard, and reduction of unnecessary regulatory burden.</p>
585-3140		<p>Section: “Employee accommodations, designated areas.”</p> <p>This section requires designated areas for employees to eat, drink, and use tobacco.</p>	<p>Intent: To amend the section to replace the term “tobacco” with “tobacco product.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness, and contamination of food.</p>
585-3150		<p>Section: “Distressed merchandise, segregation and location.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p>

			<p>Rationale: Conformance to the 2022 Edition of the FDA Food Code.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food borne illness, and contamination of food.</p>
585-3310		<p>Section: “Prohibiting animals.”</p>	<p>Intent: To amend subsection C to reflect updates to sections of the Code of Virginia pertaining to wineries, breweries, and distilleries</p> <p>Rationale: Conformance to the Code of Virginia.</p> <p>Impact: Improved understanding, coordination, and application of the regulations.</p>
585-3360		<p>Section: “Conditions of Use.”</p> <p>This section outlines the proper use and application of poisonous or toxic materials in a food establishment.</p>	<p>Intent: To amend the section to strike reference to “restricted use pesticide.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code; the definition of Poisonous or Toxic Materials with the Code of Federal Regulations was revised.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, conformance to changes in federal definitions.</p>
585-3370		<p>Section: “Poisonous or toxic material containers.”</p> <p>This section prohibits the use of poisonous or toxic material containers to store, transport, or dispense food.</p>	<p>Intent: To amend the section to prohibit the storage of equipment, utensils, linens, single-service articles, or single-use articles in containers that previously stored poisonous or toxic materials.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to reduce the risk of potential contamination of food or food contact surfaces with poisonous or toxic material.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, prevention of food contamination.</p>

585-3510		<p>Section: “Public health protection.”</p> <p>This section prohibits the use of poisonous or toxic material containers to store, transport, or dispense food.</p>	<p>Intent: To amend the section to require the department to apply the regulations to donated food and to replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and to ensure donated food products are served, stored, and prepared safely.</p> <p>Impact: Improved understanding and application of the regulations; improved safety, and prevention of food borne illness.</p>
585-3520		<p>Section: “Preventing health hazards, provision for conditions not addressed.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-3542		<p>Section: “Conformance with approved procedures.”</p> <p>This section outlines the requirements of the operator when a variance is granted, or a HACCP plan is required.</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-3600		<p>Section: “Facility and operating plans - when plans are required.”</p>	<p>Intent: Replace “operator” with “permit applicant” and “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-3620		<p>Section: “When a HACCP plan is required.”</p>	<p>Intent: Replace “operator” with “permit applicant” and “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p>

			Impact: Improved understanding and application of the regulations.
585-3630		Section: “Contents of a HACCP plan.”	<p>Intent: Replace “operator” with “permit applicant” and “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3670	N/A	<p>Intent: To add a new section to require an applicant apply for a food permit at least 30 days before planned opening.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3680	N/A	<p>Intent: To add a new section to require an applicant to apply for a food permit using the application provided by the department.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3690	N/A	<p>Intent: To add a new section to require the applicant to be the owner or officer of the ownership, comply with the requirements of this chapter, and allow access to inspect and obtain required information and records.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>

	585-3700	N/A	<p>Intent: To add a new section to require specific items in the application, such as name and address of the applicant and of the establishment, and other information required by the department.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3710	N/A	<p>Intent: To add a new section to require an application and plans for new, converted, and remodeled food establishments, and a pre-open inspection before issuing a permit.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3720	N/A	<p>Intent: To add a new section to require a new owner to apply and obtain a permit, and to require an existing food establishment to notify the department of the transfer of legal ownership or termination of permit.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-3740		Section: “Responsibilities of the department.”	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>

585-3750		Section: “Responsibilities of the permit holder.”	<p>Intent: Replace “operator” with “permit holder,” and require the permit be posted so it is conspicuous to consumers.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	585-3760	N/A	<p>Intent: To add a new section to indicate permits are not transferrable to different people, different food establishments, or different types of operations without an application and approval.</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>
585-3860 585-3890 585-3910 585-3920 585-3930 585-3940 585-3950 585-4050 585-4060		<p>Section: “Documenting information and observations.”</p> <p>“Refusal to sign acknowledgment.”</p> <p>“Imminent health hazard, ceasing operations and reporting.”</p> <p>“Resumption of operations.”</p> <p>“Priority or priority foundation item, timely correction.”</p> <p>“Verification and documentation of correction.”</p> <p>“Core items, timely correction.”</p> <p>“Restriction or exclusion of food employee or closure of food establishment.”</p> <p>“Restriction or exclusion order: warning or hearing not required, information required in order.”</p>	<p>Intent: Replace “operator” with “permit holder.”</p> <p>Rationale: Conformance to the 2022 Edition of the FDA Food Code and terminology change.</p> <p>Impact: Improved understanding and application of the regulations.</p>