



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-580
<b>Regulation Title:</b>	Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores
<b>Action Title:</b>	Repeal
<b>Date:</b>	December 6, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation establishes minimum sanitary requirements for the operation of retail food stores which are necessary to protect public health. These requirements are designed to prevent foodborne illness outbreaks among the consuming public by minimizing the public's exposure to disease causing microorganisms associated with food products manufactured, packed, stored or sold in retail food establishments. The regulation covers potentially hazardous food products; temperatures for preparing and storing hot and cold food products; reheating hot foods; methods and materials to be used in sanitizing food processing equipment; employee hygiene and

cleanliness practices; food sample demonstration and food promotion; construction and maintenance of physical facilities; and water supply and plumbing requirements.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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The legal authority for this regulation is contained in §§ 3.1-364 and 3.1-398 of the Code of Virginia (1950), as amended. The Code of Virginia provides that the Commissioner of Agriculture and Consumer Services, with the approval of the Board of Agriculture and Consumer Services, shall from time to time, fix and publish standards or limits of variability permissible in any article of food.

The Code of Virginia also vests the authority to promulgate regulations for the efficient enforcement of the Virginia Food Laws in the Board of Agriculture and Consumer Services, unless specially conferred on the Commissioner.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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The Department published its notice in The Virginia Register of Regulations on September 11, 2000 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). An informal advisory group was not formed for the purpose of assisting with this periodic review. No comments were received concerning this regulation.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The current regulation has strengthened the provisions of the Virginia Food Laws designed to ensure a safe, wholesome, unadulterated and properly labeled food supply. This regulation has been effective in achieving these goals. However, significant changes have occurred within the food industry in recent years, and food safety concerns are greater in number and more complex. There are more national chains in existence now, doing business in a number of different states. Additionally, some of these firms are manufacturing products that cross state lines, to be offered for sale in another state. The United States Food and Drug Administration (FDA), working in a concerted effort with local, state and other federal government agencies, has developed a model set of requirements for safeguarding public health and ensuring food is unadulterated and honestly presented when offered for sale to the consumer. These regulations, applicable to foods sold in retail stores or offered for consumption in restaurants, institutions, and vending machines, are being presented for adoption in many of the thousands of local, state, territorial, tribal and federal agencies so that similar requirements are applied to all food intended for human consumption, to uniformly insure that the food supply is safe nationwide.

In support of FDA's efforts of encouraging a nationwide system for assuring food safety, the agency has determined that the current regulation should be abolished and, at the same time, the 1999 FDA Food Code should be adopted. The agency has determined that the Food Code is essential to protect the health of citizens while presenting industry with uniform requirements, nationwide. The Food Code establishes requirements necessary for the safe processing, handling, storage and sale of food wherever it is offered for sale or served.

The regulation is clearly written and easily understandable.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The first alternative is to retain the current regulation. However, in the absence of a universally enforced regulation, Virginia's food protection program will be enforcing different requirements from other political jurisdictions throughout the Commonwealth and the nation that have adopted the Food Code.

The second alternative is to have no regulation. However, in the absence of a regulation, food safety will be compromised. Also, it is likely that the FDA would assert its authority and enforce all applicable federal regulations.

The third alternative is to propose to abolish the current regulation and at the same time adopt the Food Code to establish minimum sanitary and operating requirements in retail food stores which are similar to other state and local jurisdictions that have adopted the Food Code. The agency

endorses this approach because it provides for a nationally recognized set of uniform sanitary regulations in retail food stores necessary to protect public health.

**Recommendation**

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The agency is recommending the abolishment of the current regulation and at the same time, the adoption of the Food Code to bring Virginia’s regulations pertaining to food safety in retail food stores into alignment with the regulations of other states that have adopted the Food Code and to support FDA’s efforts to promote uniform, nationwide sanitary requirements for all food handling establishments.

**Substance of Proposed Action**

*Please detail any changes that would be implemented.*

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The Food Code identifies sanitary and operating requirements very similar to the regulations currently in force but is more appropriately based on current, sound science. The main substantive differences include (1) the enforcement of lower temperatures for refrigerated foods, from 45° F to 41° F\*, and (2) the requirement for a person in charge of a food establishment to be present during all hours of operation who is able to demonstrate knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of the Food Code relating to their food operation.

(\*Note: Refrigeration equipment in place as of the date of this regulation will be required to maintain temperatures of 41° F, if the equipment is capable of maintaining that temperature. If the equipment is not capable of maintaining a temperature of 41° F, it will be required to maintain the lowest temperature possible, not to exceed 45° F until the equipment is replaced or until the end of some pre-determined phase-in period. All new equipment purchased after the date of this regulation will be required to maintain temperatures of 41° F.)

**Family Impact Statement**

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The repeal of the existing regulation and the adoption of the Food Code strengthens the authority and rights of parents in the education, nurturing and supervision of their children; encourages economic self-sufficiency, self-pride and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthens the marital commitment; increases disposable family income and has a positive impact on family formation, stability and autonomy by insuring that food offered for sale, processed, manufactured or stored in Virginia's retail food stores is free from adulteration, properly labeled and honestly advertised for all of Virginia's citizens; and by providing a level playing field in which Virginia's retail food industries can compete.