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Notice of Intended Regulatory Action (NOIRA) 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	Revision of Food Regulations for Mobile Units and Temporary Food Establishments
Date this document prepared	

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Food Regulations (12VAC5-421 et seq.) establish minimum sanitary standards for the operation of the Commonwealth's food establishments, which include traditional restaurants, mobile food units, temporary food establishments, hospitals, nursing facility food service, and school food service.

The Virginia Department of Health regularly adopts the most recent version of the United States Food and Drug Administration (FDA) Food Code into 12VAC5-421 through an exempt action that does not require extensive stakeholder involvement. In contrast, this intended regulatory action addresses updates outside of the FDA Food Code. It follows a full regulatory process that includes input from stakeholders and industry representatives, aiming to address emerging and evolving business models in today's retail food industry such as mobile food units and temporary food establishments, as well as to provide other necessary clarifications to the Virginia Food Regulations.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

TFE means Temporary Food Establishments

MFU means Mobile Food Units

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."

There is no legal mandate for these changes; many of the elements considered in this regulatory action have come to the attention of the agency through feedback from regulated businesses.

Revising Virginia's Food Regulations to distinctly address evolving industries in food service such as Mobile Food Units (MFU) and Temporary Food Establishments (TFE) is essential to enhance food safety and operational clarity. Unlike traditional food establishments that operate from fixed locations with established infrastructure, MFUs and TFEs are inherently mobile and temporary, often operating in diverse environments with varying access to necessary resources. MFUs typically function year-round, requiring consistent infrastructure and equipment, while TFEs operate for short durations—no more than 14 consecutive days—during specific events such as festivals or fairs.

These operational differences necessitate tailored regulations to address unique challenges such as limited access to approved drinking water, electricity, and waste disposal, as well as the transient nature of their operations. By revising the regulations to separately define and govern MFU and TFE, Virginia can ensure more effective oversight, reduce public health risks, and provide clearer guidance to operators, ultimately fostering a safer and more efficient food service environment.

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.

The promulgating agency is the Virginia Department of Health.

[Section 35.1-11 of the Code of Virginia 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.”

[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.

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Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory revision is to update Virginia's Food Regulations to distinctly address MFUs and TFEs, recognizing their unique operational characteristics and public health considerations. Virginia's current regulatory requirements do not adequately reflect the differences between these two types of establishments and typical brick and mortar restaurants. By creating tailored requirements and exceptions for MFUs and TFEs, VDH aims to enhance food safety, improve regulatory clarity, and provide more effective oversight and guidance for operators in Virginia's evolving food service landscape.

This distinction is critical for several reasons:

- **Operational Complexity:** MFUs require robust infrastructure, including water supply, waste disposal, and power systems, and often involve complex food preparation processes. TFEs, however, operate with limited resources and equipment, necessitating different regulatory considerations.
- **Public Health and Safety:** The risk for foodborne illness may differ between MFUs and TFEs due to variations in food handling, storage, access to required resources or support systems, and preparation practices. The revised regulations will better mitigate these risks.
- **Regulatory Efficiency:** Separate requirements will allow for more streamlined permitting processes and inspections, reducing administrative burdens for both operators, and VDH.

Updating Virginia's Food Regulations to distinctly address MFUs and TFEs will enhance public health protection, improve operational clarity, and foster a more efficient regulatory environment.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The agency will conduct research on other states' approaches to MFUs and TFEs, and work with stakeholders to amend the existing Virginia food regulations to distinguish MFUs and TFEs more clearly from other food establishments and set unique requirements for those specific entities where the agency deems appropriate. This may include, but is not limited to, considering MFU and TFE operational and health standards, definitions, permitting and certification processes and requirements, utility requirements, inspection requirements, and location guidelines. VDH may also make other changes to the food regulations to clearly distinguish and set requirements for MFUs/TFEs.

Additionally, VDH will consider changes to clarify existing language in the Virginia Food Regulations, including the use of commissaries for MFUs, TFEs, and caterers; define the duration and conditions that may be applied to permits; and establish guidelines for when a permit may be transferred between different establishment types.

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 regulatory revision would be to leave the regulations as-is; this would result in a regulation that does not incorporate the latest food safety operational changes needed in today's business structure for MFUs and TFEs. The proposed revisions will provide regulatory requirements that are specific to these establishments.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the

Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 **Olivia McCormick, Director, Division of Food and General Environmental Services, 109 Governor Street Richmond, VA 23219, phone: (804) 864-8146, fax: (804) 864-7475, email address: Olivia.McCormick@vdh.virginia.gov**. In order to be considered, comments must be received on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.