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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Board of Health
<b>Virginia Administrative Code (VAC) citation(s)</b>	12VAC5-421
<b>Regulation title(s)</b>	Food Regulations
<b>Action title</b>	Amend Food Regulations to Comply with Chapter 674 of the 2018 Acts of Assembly
<b>Date this document prepared</b>	01/29/2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please 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.*

A regulatory change to the Food Regulations (12VAC5-421 et seq.) is required in order to conform to changes made to the Code of Virginia during the 2018 Legislative Session (See Chapter 674 of the 2018 Acts of Assembly; SB470).

Chapter 674 amends Section 3.2-5121 of the Code of Virginia to include the following language, in part:

No regulation adopted or amended by the Board of Agriculture and Consumer Services shall require commercially slaughtered or processed rabbits offered for sale or service be slaughtered or processed under (i) the voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or (ii) a voluntary inspection program that is administered by the U.S. Department of Agriculture.

Chapter 674 removes the requirement that rabbits must be slaughtered or processed under a voluntary inspection program prior to introduction into commerce. The Food Regulations require game animals received for sale or service to be, among several options, slaughtered and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or under a voluntary inspection program administered by the United States Department of Agriculture (USDA). Game animals, by regulatory definition, include rabbits.

The Food Regulations are in conflict with the statutory language contained in Chapter 674, which became effective July 1, 2018. The proposed regulatory action would amend the Food Regulations to comply with state law by allowing food establishments within the Commonwealth to receive for sale or service, commercially slaughtered or processed rabbits not under a voluntary inspection.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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"Board" means the State Board of Health.

## Statement of Final Agency Action

*Please 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.*

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The Board of Health approved this action to amend the Food Regulations (12VAC5-421) at its quarterly meeting on March 7, 2019.

## Mandate and Impetus

*Please 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, board decision, etc.). 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, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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Chapter 674 states, in part, no regulation adopted or amended by the Board of Agriculture and Consumer Services shall require commercially slaughtered or processed rabbits offered for sale or service be slaughtered or processed under (i) the voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or (ii) a voluntary inspection program that is administered by the U.S. Department of Agriculture.

Chapter 674 removes the requirement that rabbits must be slaughtered or processed under a voluntary inspection program prior to introduction into commerce. The Food Regulations require game animals received for sale or service to be, among several options, slaughtered and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction. Game animals, by regulatory definition, include rabbits. The Board must amend the Food Regulations as mandated by Chapter 674.

The proposed regulatory change is best suited for the fast track process for several reasons: First, the amendment is simple, easy to understand, and affects just one specific regulatory requirement, the allowance of rabbits for sale or service in food establishments without inspection. Second, the proposed change is necessary to conform the regulation to the underlying statutory change (subsection H of § 3.2-5121 of the Code of Virginia). Lastly, the rulemaking is not expected to be controversial and, therefore, appropriate for the fast track process.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

Sections 35.1-11 and 14 of the Code of Virginia authorize the Board to make, adopt, promulgate, and enforce regulations governing food establishments in accordance with the provisions of Title 35.1 of the Code of Virginia.

## Purpose

*Please 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.*

Chapter 674 enacted by the 2018 General Assembly mandates the Board of Health to promulgate regulations to allow food establishments to receive for sale or service commercially slaughtered or processed rabbits that have not undergone voluntary inspection by the state agency that has animal health jurisdiction or a voluntary inspection program administered by the USDA. The Food Regulations prohibit the receipt, by food establishments, the sale or service of rabbits that are not under a voluntary inspection program or inspected by the state agency that has animal health jurisdiction or the USDA.

The proposed regulatory change is required to conform to state law.

## Substance

*Please 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 action makes one technical edit; it amends language to allow food establishments to accept for sale or service rabbits not subject to voluntary inspection by the state agency that has animal health jurisdiction or a voluntary inspection program administered by the USDA.

## Issues

*Please 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.

- 1) The primary advantage is to ensure consistency between law and regulation.
- 2) A secondary advantage of the proposed regulatory change may include a reduction of costs to small businesses that commercially slaughter or process rabbits as costly inspections are no longer required. In addition, the proposed amendment to the Food Regulations would provide clarity to the food industry and the general public regarding approved food source.
- 3) There are no known primary advantages or disadvantages to the agency.
- 4) There are no known pertinent matters of interest to the regulated community, government officials, and the public.
- 5) There are no known disadvantages to the public or the Commonwealth.

### Requirements More Restrictive than Federal

Please 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 requirements in this proposal that exceed federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

Please 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

Virginia Department of Agriculture and Consumer Services

Localities Particularly Affected

No localities were identified to be particularly affected by the proposed regulatory action.

Other Entities Particularly Affected

No other entities were identified to be particularly affected by the proposed regulatory action.

### Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please 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>	None
<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>	None
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	None

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	None
<p>Benefits the regulatory change is designed to produce.</p>	The proposed regulatory change is designed to comply with a mandate Chapter 674 enacted by the 2018 General Assembly

**Impact on Other Entities**

<p>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.</p>	<p>Food establishments permitted by the Virginia Department of Health who sell or serve rabbit to the public.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please 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.</p>	<p>There are approximately 29,200 permitted food establishments in the Commonwealth as of October 10, 2018; it is unknown how many are selling or serving rabbit. It is unknown how many are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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.</p>	<p>There are no projected costs anticipated with the regulatory revisions.</p>

<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is designed to allow food establishments to sell and service commercially slaughtered and processed rabbits to the public without inspection. The regulatory change may reduce costs to rabbit processors and expedite the availability of commercially raised and slaughtered rabbits into commerce.</p>
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## Alternatives

*Please 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.*

As the proposed change is to conform the Food Regulations to the Code of Virginia (see Chapter 674 of the 2018 Acts of Assembly; SB470), there are no viable alternatives.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.*

There were no alternative regulatory methods identified as the proposed regulatory change does not adversely impact small business.

## Public Participation

*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.*

## Detail of Changes

*Please 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.*

*If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

<b>Current section number</b>	<b>New section number, if applicable</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
330	Amend section A	Rabbits must be inspected and certified pursuant to federal law, or under a voluntary inspection by VDACS or USDA.	Strike language referring to rabbits requiring inspection.
330	Adding subsection C	None	Add language to clarify that subsection A is not applicable to rabbits raised for food that are commercially slaughtered or processed rabbits and offered for sale or service in food establishments so long as they are slaughtered or processed in a facility regulated by the Virginia Department of Health or by the state agency that has animal health jurisdiction.