



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission of Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

October 2007 through August 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:2	September 12, 2007	October 1, 2007
24:3	September 26, 2007	October 15, 2007
24:4	October 10, 2007	October 29, 2007
24:5	October 24, 2007	November 12, 2007
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 (Tuesday)	December 10, 2007
INDEX 1 Volume 24		January 2008
24:8	December 5, 2007	December 24, 2008
24:9	December 18, 2007 (Tuesday)	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
INDEX 2 Volume 24		April 2008
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
INDEX 3 Volume 24		July 2008
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 9, dated January 8, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
Title 2. Agriculture			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-195 (Form)	Added	23:15 VA.R. 2512	--
2 VAC 5-330-30	Amended	23:20 VA.R. 3122	7/12/07
2 VAC 5-490-10 through 2 VAC 5-490-90	Amended	23:20 VA.R. 3123-3155	5/23/07
2 VAC 5-490-15	Added	23:20 VA.R. 3130	5/23/07
2 VAC 5-490-25	Added	23:20 VA.R. 3131	5/23/07
2 VAC 5-490-31 through 2 VAC 5-490-39.6	Added	23:20 VA.R. 3132-3140	5/23/07
2 VAC 5-490-73	Added	23:20 VA.R. 3154	5/23/07
2 VAC 5-490-75	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-103	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-105	Added	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-110	Amended	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-120	Amended	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-130	Repealed	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-131 through 2 VAC 5-490-138	Added	23:20 VA.R. 3157-3162	5/23/07
2 VAC 5-490-140	Amended	23:20 VA.R. 3162	5/23/07
2 VAC 5-620-10 through 2 VAC 5-620-100	Added	23:19 VA.R. 2981-2985	7/1/07
Title 3. Alcoholic Beverages			
3 VAC 5-10-40	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-50	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-60	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-130	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-150	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-230	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-360	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-400	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-480	Amended	23:13 VA.R. 2129	5/19/07
3 VAC 5-40-20	Amended	23:13 VA.R. 2133	5/19/07
3 VAC 5-40-50	Amended	23:13 VA.R. 2134	5/19/07
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*

* Objection to Fast-Track Rulemaking 24:1

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
3 VAC 5-60-20	Amended	23:13 VA.R. 2137	5/19/07
3 VAC 5-60-40	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-80	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-100	Added	23:13 VA.R. 2139	5/19/07
3 VAC 5-70-100	Amended	23:13 VA.R. 2142	5/19/07
3 VAC 5-70-150	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-160	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-230	Added	23:13 VA.R. 2143	5/19/07
Title 4. Conservation and Natural Resources			
4 VAC 20-70-100	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-200-10	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-20	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-30	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-40	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-200-50	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-270-30 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-30	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-270-40 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-40	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-300-20 emer	Amended	23:14 VA.R. 2277	3/1/07-3/30/07
4 VAC 20-300-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-310-55	Added	23:15 VA.R. 2481	3/1/07
4 VAC 20-370-10 through 4 VAC 20-370-30	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-380-50	Amended	23:21 VA.R. 3446	10/1/07
4 VAC 20-380-60	Amended	23:21 VA.R. 3447	10/1/07
4 VAC 20-430-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-430-45	Added	23:17 VA.R. 2738	3/30/07
4 VAC 20-450-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-490-42	Amended	23:10 VA.R. 1540	12/21/06
4 VAC 20-490-42	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-510-10	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-20	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-33	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-35	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-37	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-530-10 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-20 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-31 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-31	Added	23:13 VA.R. 2144	2/1/07-3/1/07
4 VAC 20-530-31	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-530-32 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-32	Added	23:13 VA.R. 2145	2/1/07-3/1/07
4 VAC 20-530-32	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-610-30	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-610-60	Amended	23:11 VA.R. 1662	2/1/07
4 VAC 20-620-50	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-60	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-70	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-670-15	Added	23:17 VA.R. 2739	3/30/07
4 VAC 20-670-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-720-10 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-720-10	Amended	23:21 VA.R. 3447	5/23/07
4 VAC 20-720-20 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-40 emer	Amended	23:10 VA.R. 1540	1/1/07-1/30/07
4 VAC 20-720-50 emer	Amended	23:10 VA.R. 1541	1/1/07-1/30/07
4 VAC 20-720-60 emer	Amended	23:19 VA.R. 2988	5/1/07-5/30/07
4 VAC 20-720-60 through 4 VAC 20-720-110	Amended	23:21 VA.R. 3447-3449	5/23/07
4 VAC 20-720-70 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-90 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105 emer	Added	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105	Added	23:21 VA.R. 3449	5/23/07
4 VAC 20-720-110 emer	Amended	23:19 VA.R. 2990	5/1/07-5/30/07
4 VAC 20-752-20	Amended	23:19 VA.R. 2990	5/3/07
4 VAC 20-752-30	Amended	23:19 VA.R. 2991	5/3/07
4 VAC 20-890-20	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-35	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-40	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-45	Added	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-25	Amended	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-35	Amended	23:19 VA.R. 2993	7/1/07
4 VAC 20-950-40 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-40	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-47	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-950-48.2 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-48.2	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-48	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-1090-30	Amended	23:11 VA.R. 1663	2/1/07
4 VAC 20-1110-10 through 4 VAC 20-1110-50	Added	23:19 VA.R. 2994	5/1/07
4 VAC 20-1120-10 through 4 VAC 20-1120-50	Added	23:19 VA.R. 2994-2995	5/1/07
4 VAC 20-1120-20 emer	Amended	23:21 VA.R. 3449	5/29/07-6/28/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-20-420	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130 (Forms)	Amended	23:20 VA.R. 3370-3372	--
4 VAC 25-130-700.12	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130-773.21	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.11	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.13	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-784.20	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-785.25	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-800.51	Amended	23:13 VA.R. 2149	4/4/07
4 VAC 25-130-816.105	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-816.116	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-817.11	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-817.64	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-817.116	Amended	23:16 VA.R. 2594	5/16/07
4 VAC 25-130-817.121	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-842.15	Amended	23:13 VA.R. 2153	4/4/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-130-843.12	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.13	Amended	23:13 VA.R. 2154	4/4/07
4 VAC 25-130-843.15	Amended	23:13 VA.R. 2155	4/4/07
4 VAC 25-130-843.16	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.13	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.15	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.18	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.19	Amended	23:13 VA.R. 2159	4/4/07
4 VAC 25-130-846.14	Amended	23:13 VA.R. 2159	4/4/07
Title 5. Corporations			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
Title 6. Criminal Justice and Corrections			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 40-50-10 through 6VAC40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
Title 8. Education			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-350-10 through 8 VAC 20-350-660	Repealed	23:12 VA.R. 1962	5/8/07
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 20-700-10 through 8 VAC 20-700-50	Added	23:10 VA.R. 1541-1543	2/21/07
8 VAC 20-710-10 through 8 VAC 20-710-30	Added	23:10 VA.R. 1543-1544	2/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
Title 9. Environment			
9 VAC 5-20-21	Amended	23:21 VA.R. 3456	8/1/07
9 VAC 5-30-15	Added	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-60	Amended	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-65	Amended	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-66	Added	23:21 VA.R. 3455	8/1/07
9 VAC 5-40-7550 through 9 VAC 5-40-7710	Added	23:21 VA.R. 3460-3463	8/1/07
9 VAC 5-50-400	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-50-410	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-60-60	Amended	23:17 VA.R. 2747	6/1/07
9 VAC 5-60-90	Amended	23:17 VA.R. 2748	6/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-60-100	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-140-1010 through 9 VAC 5-140-1060	Added	23:14 VA.R. 2279-2291	4/18/07
9 VAC 5-140-1061	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1062	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1070 through 9 VAC 5-140-1150	Added	23:14 VA.R. 2292-2295	4/18/07
9 VAC 5-140-1200 through 9 VAC 5-140-1240	Added	23:14 VA.R. 2295-2296	4/18/07
9 VAC 5-140-1400 through 9 VAC 5-140-1430	Added	23:14 VA.R. 2296-2302	4/18/07
9 VAC 5-140-1500 through 9 VAC 5-140-1570	Added	23:14 VA.R. 2302-2306	4/18/07
9 VAC 5-140-1600 through 9 VAC 5-140-1620	Added	23:14 VA.R. 2307	4/18/07
9 VAC 5-140-1700 through 9 VAC 5-140-1750	Added	23:14 VA.R. 2307-2312	4/18/07
9 VAC 5-140-1800 through 9 VAC 5-140-1880	Added	23:14 VA.R. 2312-2317	4/18/07
9 VAC 5-140-2060	Added	23:14 VA.R. 2329	4/18/07
9 VAC 5-140-2061	Added	23:14 VA.R. 2331	*
9 VAC 5-140-2062	Added	23:14 VA.R. 2332	*
9 VAC 5-140-2070	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2080	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2100 through 9 VAC 5-140-2150	Added	23:14 VA.R. 2333-2336	4/18/07
9 VAC 5-140-2200 through 9 VAC 5-140-2240	Added	23:14 VA.R. 2336-2337	4/18/07
9 VAC 5-140-2400 through 9 VAC 5-140-2430	Added	23:14 VA.R. 2337-2342	4/18/07
9 VAC 5-140-2500 through 9 VAC 5-140-2570	Added	23:14 VA.R. 2342-2347	4/18/07
9 VAC 5-140-2600 through 9 VAC 5-140-2620	Added	23:14 VA.R. 2347	4/18/07
9 VAC 5-140-2700 through 9 VAC 5-140-2750	Added	23:14 VA.R. 2347-2353	4/18/07
9 VAC 5-140-2800 through 9 VAC 5-140-2880	Added	23:14 VA.R. 2353-2359	4/18/07
9 VAC 5-140-3010 through 9 VAC 5-140-3060	Added	23:14 VA.R. 2359-2368	4/18/07
9 VAC 5-140-3061	Added	23:14 VA.R. 2370	*
9 VAC 5-140-3062	Added	23:14 VA.R. 2371	*
9 VAC 5-140-3070	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3080	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3100 through 9 VAC 5-140-3150	Added	23:14 VA.R. 2371-2374	4/18/07
9 VAC 5-140-3200 through 9 VAC 5-140-3240	Added	23:14 VA.R. 2374-2375	4/18/07
9 VAC 5-140-3400 through 9 VAC 5-140-3420	Added	23:14 VA.R. 2375	4/18/07
9 VAC 5-140-3500 through 9 VAC 5-140-3570	Added	23:14 VA.R. 2375-2380	4/18/07
9 VAC 5-140-3600 through 9 VAC 5-140-3620	Added	23:14 VA.R. 2380-2381	4/18/07
9 VAC 5-140-3700 through 9 VAC 5-140-3750	Added	23:14 VA.R. 2381-2386	4/18/07
9 VAC 5-140-3800 through 9 VAC 5-140-3880	Added	23:14 VA.R. 2386-2391	4/18/07
9 VAC 5-140-5010 through 9 VAC 5-140-5750	Added	23:13 VA.R. 2160-2186	4/4/07
9 VAC 5-140-1020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1061	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1130	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1420	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1700	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2030	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2040	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2060	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2740	Erratum	23:16 VA.R. 2673	--

* Effective Date Suspended 23:19

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-3062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3840	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-5020	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5060	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5100	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5150	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5420	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5510	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5540	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5560	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5600	Erratum	23:16 VA.R. 2672	--
9 VAC 5-151-10 through 9 VAC 5-151-70	Added	23:17 VA.R. 2755-2764	5/31/07
9 VAC 5-240-10 through 9 VAC 5-240-50	Added	23:16 VA.R. 2595-2596	5/16/07
9 VAC 20-110-90	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-110-110	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-200-10 through 9 VAC 20-200-70	Added	23:11 VA.R. 1666-1667	3/21/07
9 VAC 25-71-20	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-50	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-70	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-210-10	Amended	23:21 VA.R. 3464	7/25/07
9 VAC 25-210-50	Amended	23:21 VA.R. 3468	7/25/07
9 VAC 25-210-60	Amended	23:21 VA.R. 3469	7/25/07
9 VAC 25-210-75	Added	23:21 VA.R. 3473	7/25/07
9 VAC 25-210-80 through 9 VAC 25-210-115	Amended	23:21 VA.R. 3474-3484	7/25/07
9 VAC 25-210-116	Added	23:21 VA.R. 3484	7/25/07
9 VAC 25-210-130	Amended	23:21 VA.R. 3487	7/25/07
9 VAC 25-210-140	Amended	23:21 VA.R. 3488	7/25/07
9 VAC 25-210-170	Amended	23:21 VA.R. 3489	7/25/07
9 VAC 25-210-175	Added	23:21 VA.R. 3489	7/25/07
9 VAC 25-210-180	Amended	23:21 VA.R. 3490	7/25/07
9 VAC 25-210-185	Amended	23:21 VA.R. 3492	7/25/07
9 VAC 25-210-190	Repealed	23:21 VA.R. 3492	7/25/07
9 VAC 25-210-200	Repealed	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-210	Repealed	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-220	Amended	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-230	Amended	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-260	Amended	23:21 VA.R. 3494	7/25/07
9 VAC 25-720-50	Amended	23:11 VA.R. 1669	3/21/07
9 VAC 25-720-50	Amended	23:15 VA.R. 2486	5/2/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-60	Amended	23:12 VA.R. 1966	5/21/07
9 VAC 25-720-80	Amended	23:11 VA.R. 1670	3/21/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-100	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-130	Amended	23:15 VA.R. 2487	5/2/07
Title 10. Finance and Financial Institutions			
10 VAC 5-40-50	Added	23:18 VA.R. 2882	5/1/07
10 VAC 5-160-40	Amended	23:13 VA.R. 2187	2/10/07

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Title 11. Gaming			
11 VAC 10-20-310	Amended	23:18 VA.R. 2883	5/31/07
11 VAC 10-20-330	Amended	23:18 VA.R. 2884	5/31/07
11 VAC 10-20-340	Amended	23:18 VA.R. 2891	5/31/07
11 VAC 10-100-30	Amended	23:18 VA.R. 2892	5/31/07
11 VAC 10-110-30	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-110-90	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-120-80	Amended	23:18 VA.R. 2894	5/31/07
11 VAC 10-130-10	Amended	23:11 VA.R. 1672	1/10/07
11 VAC 10-130-10	Amended	23:18 VA.R. 2894	4/30/07
11 VAC 10-130-60	Amended	23:11 VA.R. 1673	1/10/07
11 VAC 10-140-12	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-15	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-210	Amended	23:18 VA.R. 2896	5/31/07
11 VAC 10-150-12	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-150-15	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-180-10	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-20	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-60	Amended	23:20 VA.R. 3166	5/18/07
11 VAC 10-180-80	Amended	23:20 VA.R. 3167	5/18/07
Title 12. Health			
12 VAC 5-70-10 through 12 VAC 5-70-50	Repealed	23:13 VA.R. 2187	4/4/07
12 VAC 5-71-10 through 12 VAC 5-71-190	Added	23:13 VA.R. 2188-2195	4/4/07
12 VAC 5-90 (Forms)	Erratum	23:15 VA.R. 2507-2509	--
12 VAC 5-90-10	Amended	23:15 VA.R. 2488	5/2/07
12 VAC 5-90-40	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-80	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-90	Amended	23:15 VA.R. 2497	5/2/07
12 VAC 5-90-100	Amended	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-103	Added	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-107	Added	23:15 VA.R. 2502	5/2/07
12 VAC 5-90-110	Amended	23:15 VA.R. 2503	5/2/07
12 VAC 5-90-130	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-225	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-250 through 12 VAC 5-90-280	Amended	23:15 VA.R. 2505-2506	5/2/07
12 VAC 5-90-330	Amended	23:15 VA.R. 2506	5/2/07
12 VAC 5-90-350	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-90-360	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-125-10	Added	23:23 VA.R. 3904	9/1/07
12 VAC 5-125-20	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-30	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-40	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-50	Added	23:23 VA.R. 3907	9/1/07
12 VAC 5-125-60	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-70	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-80	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-90	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-100	Added	23:23 VA.R. 3916	9/1/07
12 VAC 5-125-110	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-120	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-130	Added	23:23 VA.R. 3917	9/1/07

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12 VAC 5-125-140	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-150	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-160	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-170	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-180	Added	23:23 VA.R. 3919	9/1/07
12 VAC 5-190-10 through 12 VAC 5-190-690	Repealed	23:21 VA.R. 3498	7/25/07
12 VAC 5-191-10 through 12 VAC 5-191-320	Added	23:21 VA.R. 3498-3509	7/25/07
12 VAC 5-371-10	Amended	23:10 VA.R. 1544	3/1/07
12 VAC 5-371-20	Repealed	23:10 VA.R. 1546	3/1/07
12 VAC 5-371-30	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-40	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-50	Repealed	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-60	Amended	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-70 through 12 VAC 5-371-130	Amended	23:10 VA.R. 1548-1551	3/1/07
12 VAC 5-371-150	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-160	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-190	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-200	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-400	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-410	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-410-10	Amended	23:10 VA.R. 1554	3/1/07
12 VAC 5-410-30	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-70	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-80	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-100	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-110	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-130	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-140	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-150	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-180	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-210	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-220	Amended	23:10 VA.R. 1557	3/1/07
12 VAC 5-410-270	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-442	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-445	Amended	23:10 VA.R. 1559	3/1/07
12 VAC 5-410-650	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-720	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-760	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1150	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1170	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1350	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1380	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-140	Amended	23:16 VA.R. 2653	7/1/07
12 VAC 30-10-560	Amended	23:14 VA.R. 2396	9/1/07
12 VAC 30-20-140	Amended	23:14 VA.R. 2397	9/1/07
12 VAC 30-30-20 emer	Amended	23:20 VA.R. 3169	5/30/07-5/29/08
12 VAC 30-30-60	Added	23:11 VA.R. 1673	3/7/07
12 VAC 30-40-10	Amended	23:11 VA.R. 1674	3/7/07
12 VAC 30-40-20	Amended	23:18 VA.R. 2897	7/1/07
12 VAC 30-40-105 emer	Added	23:20 VA.R. 3170	5/30/07-5/29/08

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12 VAC 30-40-280 emer	Amended	23:20 VA.R. 3171	5/30/07-5/29/08
12 VAC 30-40-290	Amended	23:14 VA.R. 2398	9/1/07
12 VAC 30-40-290 emer	Amended	23:20 VA.R. 3172	5/30/07-5/29/08
12 VAC 30-50-20	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-35	Added	23:11 VA.R. 1675	3/7/07
12 VAC 30-50-60	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-75	Added	23:11 VA.R. 1676	3/7/07
12 VAC 30-50-130	Amended	23:21 VA.R. 3518	1/1/08
12 VAC 30-50-141 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-151 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-181 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-228 emer	Added	23:21 VA.R. 3511	7/1/07-6/30/08
12 VAC 30-50-320	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-321	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-325	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-328	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-461 emer	Added	23:21 VA.R. 3512	7/1/07-6/30/08
12 VAC 30-50-490	Amended	23:20 VA.R. 3175	7/11/07
12 VAC 30-50-530	Amended	23:11 VA.R. 1676	3/7/07
12 VAC 30-60-250 emer	Added	23:21 VA.R. 3513	7/1/07-6/30/08
12 VAC 30-60-255 emer	Added	23:21 VA.R. 3515	7/1/07-6/30/08
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-70-311	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-321	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-331	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-70-341	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-391	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-30	Amended	23:20 VA.R. 3232	7/11/07
12 VAC 30-80-32 emer	Added	23:21 VA.R. 3516	7/1/07-6/30/08
12 VAC 30-80-95	Added	23:21 VA.R. 3520	1/1/08
12 VAC 30-80-190	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3242	7/11/07
12 VAC 30-90-31	Amended	23:19 VA.R. 3005	7/1/07
12 VAC 30-90-41	Amended	23:20 VA.R. 3226	8/25/07
12 VAC 30-90-271	Amended	23:20 VA.R. 3229	8/25/07
12 VAC 30-90-290	Amended	23:20 VA.R. 3230	8/25/07
12 VAC 30-90-264	Amended	23:14 VA.R. 2400	4/18/07
12 VAC 30-110-950	Amended	23:18 VA.R. 2898	7/1/07
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-61	Amended	23:16 VA.R. 2655	7/1/07
12 VAC 30-120-62	Amended	23:16 VA.R. 2657	7/1/07
12 VAC 30-120-64	Amended	23:16 VA.R. 2659	7/1/07
12 VAC 30-120-65	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-66	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-68	Amended	23:16 VA.R. 2661	7/1/07
12 VAC 30-120-310 emer	Amended	23:21 VA.R. 3516	7/1/07-6/30/08
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:21 VA.R. 3517	7/1/07-6/30/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-700 through 12 VAC 30-120-750	Amended	23:20 VA.R. 3177-3192	7/11/07

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12 VAC 30-120-752	Amended	23:20 VA.R. 3192	7/11/07
12 VAC 30-120-753	Amended	23:20 VA.R. 3194	7/11/07
12 VAC 30-120-754	Amended	23:20 VA.R. 3195	7/11/07
12 VAC 30-120-756	Amended	23:20 VA.R. 3197	7/11/07
12 VAC 30-120-758	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-760	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-762	Amended	23:20 VA.R. 3199	7/11/07
12 VAC 30-120-764	Amended	23:20 VA.R. 3199	7/11/07
12 VAC 30-120-766	Amended	23:20 VA.R. 3201	7/11/07
12 VAC 30-120-768	Repealed	23:20 VA.R. 3204	7/11/07
12 VAC 30-120-770	Amended	23:20 VA.R. 3206	7/11/07
12 VAC 30-120-772	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-774	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-776	Amended	23:20 VA.R. 3213	7/11/07
12 VAC 30-120-780	Repealed	23:20 VA.R. 3215	7/11/07
12 VAC 30-120-790	Repealed	23:20 VA.R. 3216	7/11/07
12 VAC 30-120-1600 through 12 VAC 30-120-1660	Added	23:20 VA.R. 3244-3251	7/11/07
12 VAC 30-130-900	Amended	23:12 VA.R. 1967	3/21/07
12 VAC 30-130-910	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-130-930	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-135-10 through 12 VAC 30-135-40	Amended	23:21 VA.R. 3520-3522	11/1/07
12 VAC 30-135-80	Amended	23:21 VA.R. 3522	11/1/07
12 VAC 30-141-740	Amended	23:19 VA.R. 3006	7/1/07
12 VAC 35-45-10	Amended	23:10 VA.R. 1562	2/21/07
12 VAC 35-45-25	Added	23:10 VA.R. 1565	2/21/07
12 VAC 35-45-70	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-80	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-210	Added	23:10 VA.R. 1564	2/21/07
12 VAC 35-105-20	Amended	23:10 VA.R. 1567	2/21/07
12 VAC 35-105-30	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-115 emer	Added	23:10 VA.R. 1566	1/3/07-1/2/08
12 VAC 35-105-590	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-660	Amended	23:10 VA.R. 1576	2/21/07
12 VAC 35-105-925	Added	23:20 VA.R. 3252	7/11/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
12 VAC 35-210-10 through 12 VAC 35-210-120	Added	23:21 VA.R. 3525-3529	7/25/07
Title 13. Housing			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
13 VAC 5-111-10 through 13 VAC 5-111-400	Repealed	23:12 VA.R. 1971	3/21/07
13 VAC 5-112-10 through 13 VAC 5-112-560	Added	23:12 VA.R. 1971-1994	3/21/07
Title 14. Insurance			
14 VAC 5-200-20	Repealed	23:17 VA.R. 2766	9/1/07
14 VAC 5-200-30 through 14 VAC 5-200-60	Amended	23:17 VA.R. 2766-2770	9/1/07
14 VAC 5-200-70 through 14 VAC 5-200-90	Amended	23:17 VA.R. 2770-2774	9/1/07
14 VAC 5-200-110	Amended	23:17 VA.R. 2774	9/1/07
14 VAC 5-200-120	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-153	Amended	23:17 VA.R. 2777	9/1/07

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14 VAC 5-200-170	Amended	23:17 VA.R. 2780	9/1/07
14 VAC 5-200-175	Amended	23:17 VA.R. 2781	9/1/07
14 VAC 5-200-181	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-183	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-185	Amended	23:17 VA.R. 2783	9/1/07
14 VAC 5-200-187	Amended	23:17 VA.R. 2785	9/1/07
14 VAC 5-200-200	Amended	23:17 VA.R. 2786	9/1/07
14 VAC 5-200-201	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-200-205	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-321-10	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-20	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-30	Amended	23:10 VA.R. 1578	1/1/07
14 VAC 5-321-70	Added	23:10 VA.R. 1578	1/1/07
14 VAC 5-322-10 through 14 VAC 5-322-50	Added	23:10 VA.R. 1579-1581	1/1/07
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-55-10 and 16 VAC 25-55-20	Added	23:12 VA.R. 1995-1996	3/22/07
16 VAC 25-75-10	Added	23:21 VA.R. 3544	7/26/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.134	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.268 (b) (7)	Repealed	23:21 VA.R. 3545	7/26/07
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-90-1910.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1017	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1018	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1025	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1027	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1028	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1029	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1043	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1044	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1045	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1047	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1048	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1050	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1052	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-100-1915.5	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.505	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.507	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-100-1915.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.55	Added	23:12 VA.R. 1996	3/21/07

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16 VAC 25-175-1926.60	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.62	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1002, Appendix A of Subpart W	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-175-1926.1101	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1127	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-190-1928.52	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-190-1928.53, Appendix B to Subpart C	Amended	23:12 VA.R. 1999	3/21/07
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Amended	23:11 VA.R. 1678-1680	4/23/07
18 VAC 10-20-230	Amended	23:21 VA.R. 3548	9/10/07
18 VAC 10-20-420	Amended	23:21 VA.R. 3550	8/1/07
18 VAC 10-20-440	Amended	23:21 VA.R. 3551	8/1/07
18 VAC 10-20-450	Amended	23:21 VA.R. 3551	8/1/07
18 VAC 15-20 (Forms)	Added	23:15 VA.R. 2514	--
18 VAC 15-30 (Forms)	Amended	23:15 VA.R. 2514	--
18 VAC 25-21-80	Amended	23:21 VA.R. 3557	8/1/07
18 VAC 25-21-90	Amended	23:21 VA.R. 3558	8/1/07
18 VAC 25-21-180	Amended	23:21 VA.R. 3558	8/1/07
18 VAC 25-21-230 through 18 VAC 25-21-280	Added	23:21 VA.R. 3559-3560	8/1/07
18 VAC 30-10-10 through 18 VAC 30-10-80	Amended	23:20 VA.R. 3276-3277	8/25/07
18 VAC 30-10-100	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-110	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-120	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 41-60-10 through 18 VAC 41-60-220	Added	23:12 VA.R. 2000-2009	4/1/07
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 45-20-40	Amended	23:21 VA.R. 3562	9/10/07
18 VAC 47-20-10	Amended	23:21 VA.R. 3563	8/1/07
18 VAC 47-20-35	Added	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-210	Amended	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-240	Repealed	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-250	Added	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-260	Added	23:21 VA.R. 3565	8/1/07
18 VAC 47-20-270	Added	23:21 VA.R. 3565	8/1/07
18 VAC 50-30-10 through 18 VAC 50-30-50	Amended	23:12 VA.R. 2020-2025	4/1/07
18 VAC 50-30-60	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-70	Amended	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-80	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-90 through 18 VAC 50-30-150	Amended	23:12 VA.R. 2026-2028	4/1/07
18 VAC 50-30-180	Repealed	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-185	Added	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-190	Amended	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-200	Amended	23:12 VA.R. 2029	4/1/07
18 VAC 50-30-210 through 18 VAC 50-30-260	Added	23:12 VA.R. 2030-2031	4/1/07
18 VAC 60-10-10 through 18 VAC 60-10-80	Amended	23:20 VA.R. 3283-3284	8/25/07
18 VAC 60-10-100	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-110	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-120	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 60-20-180	Amended	23:15 VA.R. 2510	5/2/07
18 VAC 60-20-210	Amended	23:20 VA.R. 3286	8/25/07
18 VAC 65-40-10	Amended	23:12 VA.R. 2031	3/21/07

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18 VAC 65-40-40	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-90	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-110	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-130	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-160	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-220	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-250	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-300	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-320	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 65-40-340	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 75-10-10 through 18 VAC 75-10-80	Amended	23:20 VA.R. 3288-3290	8/25/07
18 VAC 75-10-100	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-110	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-120	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-20-60	Amended	23:21 VA.R. 3574	9/10/07
18 VAC 75-20-70	Amended	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-120	Added	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-130	Added	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-140	Added	23:21 VA.R. 3575	9/10/07
18 VAC 76-30-10 through 18 VAC 76-30-80	Amended	23:20 VA.R. 3292-3294	8/25/07
18 VAC 76-30-100	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-110	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-120	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 85-10 through 18 VAC 85-10-70	Amended	23:20 VA.R. 3296-3297	8/25/07
18 VAC 85-10-90	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-100	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-110	Amended	23:20 VA.R. 3298	8/25/07
18 VAC 85-20-30	Amended	23:20 VA.R. 3299	8/25/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:11 VA.R. 1692	4/21/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:13 VA.R. 2206	4/4/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-50	Amended	23:15 VA.R. 2511	5/2/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-130-10 through 18 VAC 85-130-170	Added	23:10 VA.R. 1582-1586	2/21/07
18 VAC 90-10-10 through 18 VAC 90-10-80	Amended	23:20 VA.R. 3307-3309	8/25/07
18 VAC 90-10-100	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-110	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-120	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-60	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07

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18 VAC 90-25-15 through 18 VAC 90-25-80	Amended	23:21 VA.R. 3576-3581	7/25/07
18 VAC 90-25-71	Added	23:21 VA.R. 3580	7/25/07
18 VAC 90-25-72	Added	23:21 VA.R. 3580	7/25/07
18 VAC 90-25-81	Added	23:21 VA.R. 3581	7/25/07
18 VAC 90-25-100 through 18 VAC 90-25-130	Amended	23:21 VA.R. 3581-3583	7/25/07
18 VAC 90-30-120	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 90-30-230	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-40-140	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-60-10 through 18 VAC 90-60-120	Added	23:19 VA.R. 3008-3012	7/1/07
18 VAC 90-60-120	Erratum	23:20 VA.R. 3378	--
18 VAC 105-10-10 through 18 VAC 105-10-80	Amended	23:20 VA.R. 3315-3316	8/25/07
18 VAC 105-10-100	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-110	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-120	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-10-10 through 18 VAC 110-10-80	Amended	23:20 VA.R. 3318-3320	8/25/07
18 VAC 110-10-100	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-110	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-120	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-20-285	Amended	23:17 VA.R. 2791	5/30/07
18 VAC 112-10-10 through 18 VAC 112-10-80	Amended	23:20 VA.R. 3327-3329	8/25/07
18 VAC 112-10-100	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 112-10-110	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 112-10-120	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 115-10-10 through 18 VAC 115-10-80	Amended	23:20 VA.R. 3331-3332	8/25/07
18 VAC 115-10-100	Amended	23:20 VA.R. 3332	8/25/07
18 VAC 115-10-110	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-10-120	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-20-20	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 115-20-130	Amended	23:21 VA.R. 3584	7/25/07
18 VAC 115-30-30	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-40-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-110	Amended	23:21 VA.R. 3585	7/25/07
18 VAC 115-60-20	Amended	23:14 VA.R. 2406	4/18/07
18 VAC 115-60-130	Amended	23:21 VA.R. 3587	7/25/07
18 VAC 120-30-10	Amended	23:21 VA.R. 3589	8/1/07
18 VAC 120-30-30	Amended	23:21 VA.R. 3590	8/1/07
18 VAC 120-30-40	Amended	23:21 VA.R. 3590	8/1/07
18 VAC 120-30-50	Amended	23:21 VA.R. 3591	8/1/07
18 VAC 120-30-55	Added	23:21 VA.R. 3591	8/1/07
18 VAC 120-30-90	Repealed	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-100	Amended	23:21 VA.R. 3588	8/1/07
18 VAC 120-30-100	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-130	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-150	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-160	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-180	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-190	Amended	23:21 VA.R. 3593	8/1/07
18 VAC 120-30-200	Amended	23:21 VA.R. 3593	8/1/07
18 VAC 120-30-220	Amended	23:21 VA.R. 3593	8/1/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 120-30-230	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-240	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-250	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-270	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-280	Amended	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-290	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-300	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-310	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-80 through 18VAC120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18VAC120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 125-10-10 through 18 VAC 125-10-80	Amended	23:20 VA.R. 3346-3348	8/25/07
18 VAC 125-10-100	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-110	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-120	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-20-30	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 125-30-20	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 140-10-10 through 18 VAC 140-10-80	Amended	23:20 VA.R. 3350-3351	8/25/07
18 VAC 140-10-100	Amended	23:20 VA.R. 3351	8/25/07
18 VAC 140-10-110	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 140-10-120	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 145-30-40	Amended	23:20 VA.R. 3352	7/12/07
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
Title 19. Public Safety			
19 VAC 30-20-80	Amended	23:10 VA.R. 1587	3/1/07
Title 21. Securities and Retail Franchising			
21 VAC 5-10	Erratum	23:18 VA.R. 2935	--
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20	Erratum	23:18 VA.R. 2935	--
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:18 VA.R. 2935	--
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
Title 22. Social Services			
22 VAC 15-10-40	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-10-50	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-30-10	Amended	23:20 VA.R. 3353	7/11/07
22 VAC 15-30-310	Amended	23:20 VA.R. 3356	7/11/07
22 VAC 15-30-580	Amended	23:20 VA.R. 3358	7/11/07
22 VAC 40-20-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-25-10 through 22 VAC 40-25-70	Amended	23:20 VA.R. 3360-3364	8/1/07
22 VAC 40-25-45	Added	23:20 VA.R. 3363	8/1/07
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-540-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-600-10 through 22 VAC 40-600-240	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-601-10 through 22 VAC 40-601-40	Added	23:20 VA.R. 3365-3366	8/1/07
22 VAC 40-740-10	Amended	23:10 VA.R. 1588	3/1/07
22 VAC 40-740-15	Added	23:10 VA.R. 1591	3/1/07
22 VAC 40-740-20	Repealed	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-21	Added	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-30	Repealed	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-31	Added	23:10 VA.R. 1593	3/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-740-40	Amended	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-50	Amended	23:10 VA.R. 1594	3/1/07
22 VAC 40-740-60	Amended	23:10 VA.R. 1595	3/1/07
22 VAC 40-740-70	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-740-80	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-880-200	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-250	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-270	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-350	Amended	23:20 VA.R. 3368	8/1/07
22 VAC 40-880-620	Amended	23:20 VA.R. 3369	8/1/07
Title 23. Taxation			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07
Title 24. Transportation and Motor Vehicles			
24 VAC 27-10-10 through 24VAC27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-155	Erratum	23:21 VA.R. 3619	--
24 VAC 30-155-10 through 24 VAC 30-155-100	Added	23:18 VA.R. 2915-2930	7/1/07
24 VAC 30-320	Repealed	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-10	Added	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-20	Added	23:16 VA.R. 2666	3/22/07
24 VAC 30-330	Repealed	23:16 VA.R. 2665	3/22/07

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

Statutory Authority: §54.1-2400 of the Code of Virginia.

Name of Petitioner: Debra Duke Tanner, RDH.

Nature of Petitioner's Request: To clarify that the acts of scaling, root planing or scaling and root planing of natural and restored teeth are services that may be delegated by the dentist to a dental hygienist but not to a dental assistant.

Agency Decision: Request granted.

Statement of Reasons for Decision: The board voted at its meeting on September 7, 2007, to clarify 18VAC60-20-220 by a fast-track action.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4475, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R07-282; Filed September 7, 2007, 4:44 p.m.

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §54.1-2400 and Chapters 33 (§54.1-3300 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Name of Petitioner: Ken Dandurand on behalf of MedNovations, Inc.

Nature of Petitioner's Request: Amend regulations to allow a nonresident pharmacy (licensed by Virginia) to remotely process a prescription for a Virginia patient in long-term care or a hospital by pharmacists not licensed in Virginia but licensed in the state where the nonresident pharmacy is located.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking until October 31, 2007, and will review the petition and any comment at its meeting on December 12, 2007, to make a decision on whether to initiate rulemaking.

Comments may be submitted until October 31, 2007.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R08-01; Filed August 30, 2007, 12:26 p.m.

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: **18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.**

Statutory Authority: §54.1-2400 of the Code of Virginia.

Name of Petitioner: Philip M. Campbell.

Nature of Petitioner's Request: To amend regulations to allow an applicant to be licensed as a marriage and family therapist by obtaining any additional academic courses necessary for clinical practice as determined by a licensed marriage and family therapist who is preferably affiliated with a COAMFTE-approved marriage and family therapy training program.

Agency's Plan for Disposition of Request: The board will consider public comment and make a determination about amending its regulations at its meeting on October 26, 2007.

Comments may be submitted until October 22, 2007.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4610, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R08-03; Filed September 10, 2007, 2:16 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending the following regulation: **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to reduce the number of hours of continuing education required for renewal of licensed social workers.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §54.1-2400 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on October 31, 2007.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Dr., Suite 300, Richmond, VA 23233-1463, telephone 804-367-4488, FAX 804-527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R08-846; Filed September 7, 2007, 10:22 a.m.



REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4002 A 13 of the Code of Virginia, which excludes the Board of Agriculture and Consumer Services when promulgating regulations pursuant to §3.1-398, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code.

Titles of Regulations: **2VAC5-580. Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores (repealing 2VAC5-580-10 through 2VAC5-580-310).**

2VAC5-585. Retail Food Establishment Regulations (adding 2VAC5-585-10 through 2VAC5-585-4070).

Statutory Authority: §3.1-398 of the Code of Virginia.

Effective Date: October 16, 2007.

Agency Contact: Richard D. Saunders, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, FAX (804) 371-7792, TTY (800) 828-1120, or email doug.saunders@vdacs.virginia.gov.

Summary:

2VAC5-585, Retail Food Establishment Regulations, is promulgated to replace existing regulation 2VAC5-580, Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores, to: (i) be consistent with regulations enforced by the Virginia Department of Health in restaurants and food service operations, by adopting appropriate portions of the 2001 edition and 2003 supplement of the U.S. Food and Drug Administration's Food Code; (ii) provide practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne disease; (iii) significantly expand the definitions section, providing much greater clarification; (iv) require the demonstration of knowledge by the food establishment operator for foodborne disease prevention, application of Hazard Analysis Critical Control Point principles, and the requirements of the regulation; (v) require minimal bare-

hand contact with ready-to-eat foods; (vi) allow greater flexibility with respect to properly cooling hot foods; (vii) require colder holding temperatures for refrigerated foods (41° F as opposed to 45° F) but allow a four year phase-in period for existing equipment that can't currently meet the 41° F requirement; (viii) allow a lesser temperature for foods required to be held hot (135° F as opposed to 140° F) (ix) permit the use of time as a public health control, as appropriate, in place of the typical time in conjunction with temperature; (x) require that food establishments obtain a variance from the agency if performing certain high-risk processing operations not typically performed at the retail level; (xi) require the use of a disclosure statement indicating that the consumption of raw or undercooked animal foods significantly increase the risk of foodborne disease to the consumer; (xii) identify requirements that are necessary to properly protect highly susceptible populations from foodborne disease; and (xiii) lessen the restrictions contained in the existing regulation by allowing all service animals controlled by disabled persons.

Due to the extensive amendments to the existing regulation, 2VAC5-580 Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Store) is being repealed and 2VAC5-585 Retail Food Establishment Regulations is being adopted concurrently.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 585

RETAIL FOOD ESTABLISHMENT REGULATIONS

Part I

Purpose and Definitions

Article 1

Title, Intent, Scope

2VAC5-585-10. Retail food establishment regulations.

These provisions shall be known as the Retail Food Establishment Regulations hereinafter referred to as "this regulation." This regulation shall not apply to farmers selling their own farm-produced products directly to consumers for their personal use, whether such sales occur on such farmer's farm or at a farmers' market.

2VAC5-585-15. Categories of requirements.

Requirements contained in this regulation are presented as being in one of three categories of importance: critical item (as defined in 2VAC5-585-40); "swing" (i.e., those that may or may not be critical depending on the circumstances); and noncritical. An asterisk (*) after a catchline (the language immediately following a section number that introduces the subject of the section) indicates that all of the provisions within that section are critical unless otherwise indicated, as follows:

1. Any provisions that are "swing" items are followed by the superscripted letter S and any provisions that are noncritical are followed by the superscripted letter N.
2. Any unmarked provisions within a section that has an asterisked catchline are critical. All provisions following a catchline that is not marked with an asterisk are noncritical.

2VAC5-585-20. Food safety, illness prevention, and honest presentation.

The purpose of this regulation is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

2VAC5-585-30. Statement.

This regulation establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for inspection and employee restriction.

Article 2

Definitions

2VAC5-585-40. Definitions.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline and grievance procedures; and test development and administration. "Accredited program" does not refer to training functions or educational programs.

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, 21 USC §321(s) and 21 CFR Part 170 or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, 21 USC §321(t) and 21 CFR Part 70.

"Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, 21 USC §342.

"Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"a_w" means water activity that is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"Beverage" means a liquid for drinking, including water.

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

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. "CIP" does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"CFR" means Code of Federal Regulations. Citations in this regulation to the CFR refer sequentially to the title, part, and section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

"Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government that:

1. Is published annually by the U.S. Government Printing Office; and
2. Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, [~~and~~] EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

"Commingle" means:

1. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
2. To combine shucked shellfish from containers with different container codes or different shucking dates.

Regulations

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, his duly designated officer or his agent.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism or chemical and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant materials" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of this regulation that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. "Critical item" is an item that is denoted in this regulation with an asterisk (*).

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Disclosure" means a written statement that clearly identifies the animal-derived foods that are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Drinking water" means water that meets the "water quality standards" requirements for bacteria and nitrates of the Virginia Waterworks Regulations (12VAC5-590). Drinking water is traditionally known as "potable water." Drinking water includes the term water except where the term used connotes that the water is not potable, such as "boiler water,"

"mop water," "rainwater," "wastewater," and "nondrinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a characteristic of a surface that:

1. Allows effective removal of soil by normal cleaning methods;
2. Is dependent on the material, design, construction, and installation of the surface; and
3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified above in this definition to different situations in which varying degrees of cleanability are required such as:

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

1. Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.

"Employee" means the person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of a food establishment. "Equipment" includes, but is not limited to, items such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer,

stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

"Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks and skids.

"Exclude" means to prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

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

"Fish" means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals; all mollusks, if such animal life is intended for human consumption; and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact, or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment," as used in this regulation, means an operation that stores, prepares, packages, serves, vends, or otherwise offers for retail sale food for human consumption (i) such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank and (ii) that relinquishes possession of a food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant take out orders, or delivery service that is provided by common carriers.

"Food establishment," as used in this regulation, includes (i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location and (ii) an operation that is conducted in a mobile, stationary, temporary, or permanent

facility or location, where consumption is on or off the premises.

"Food establishment," as used in this regulation, does not include:

1. An establishment that offers only prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A food processing plant;
4. A food warehouse;
5. A kitchen in a private home;
6. A private home that receives catered or home delivered food.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include a "food establishment" as previously defined in this section.

"Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Part 301, Definitions, as Poultry in 9 CFR Part 381, Poultry Products Inspection Regulations, or as fish as previously defined in this section. "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes. "Game animal" does not include ratites such as ostrich, emu, and rhea.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

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"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are (i) immunocompromised; preschool age children, or older adults; and (ii) obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Injected" means tenderizing a meat with deep penetration or injecting the meat such as with juices that may be referred to as "injecting," "pinning," or "stitch pumping." During injection infectious or toxigenic microorganisms may be introduced from its surface to its interior.

"Juice," when used in the context of food safety, means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. Juice includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage.

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments, including cloth gloves.

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 2VAC5-585-330 A 3 and 4.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Operator" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely packaged in a food establishment or a food processing plant. "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to

containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

1. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
2. Pesticides, which include substances such as insecticides and rodenticides;
3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, paints, and personal care items that may be deleterious to health; and
4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

1. The rapid and progressive growth of infectious or toxigenic microorganisms;
2. The growth and toxin production of Clostridium botulinum; or
3. In raw shell eggs, the growth of Salmonella enteritidis.

"Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified above in this definition.

"Potentially hazardous food" does not include:

1. An air-cooled hard-boiled egg with shell intact or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae;
2. A food with an aw value of 0.85 or less;
3. A food with a pH level of 4.6 or below when measured at 75°F (24°C);
4. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
5. A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of Salmonella enteritidis in eggs or Clostridium botulinum cannot occur, such as a food that has an aw and a pH that are above the levels specified in this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
6. A food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR Part 381, Poultry Products Inspection Regulations, and any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, or pigeon or squab, whether live or dead, as defined in 9 CFR Part 362, Voluntary Poultry Inspection Regulations. "Poultry" does not include ratites.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the operator or person in charge.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

"Public water system" has the meaning stated in 40 CFR Part 141, National Primary Drinking Water Regulations.

"Ready-to-eat food" means food that:

1. (i) Is in a form that is edible without additional preparation to achieve food safety, as specified under subsections A through C of 2VAC5-585-700 or 2VAC5-585-710 or 2VAC5-585-730; (ii) is a raw or partially cooked animal food and the consumer is advised as specified under subdivisions D 1 and D 2 of 2VAC5-585-700; or (iii) is prepared in accordance with a variance that is granted as specified under subdivisions D 1 and D 3 of 2VAC5-585-700; and
2. May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 2VAC5-585-700 or 2VAC5-585-710, or frozen as specified under 2VAC5-585-730;
2. Raw fruits and vegetables that are washed as specified under 2VAC5-585-510;
3. Fruits and vegetables that are cooked for hot holding, as specified under 2VAC5-585-720;
4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under Article 4 (2VAC5-585-700 et seq.) of Part III of this regulation and cooled as specified in 2VAC5-585-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;
7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

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9. Food manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

"Reduced oxygen packaging" means (i) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding, 21% oxygen atmosphere and (ii) a process as specified in clause (i) of this definition that involves a food for which Clostridium botulinum is identified as a microbiological hazard in the final packaged form.

"Reduced oxygen packaging" includes:

1. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide;

2. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen; and

3. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means local, state, or federal enforcement body or their authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without being processed to eliminate pathogens.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR Part 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175

(pesticides classified for restricted use) and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in §409 or 706 of the Federal Food, Drug, and Cosmetic Act (21 USC §§348 and 376); or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing Escherichia coli" means any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). This includes, but is not limited to, E. coli reported as serotype O157:H7, O157:NM, and O157:H-

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans that do not meet the materials, durability, strength and cleanability specifications under 2VAC5-585-960, 2VAC5-585-1080, and 2VAC5-585-1100 for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

"Smooth" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel; a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Table-mounted equipment" means equipment that is not easily movable and is designed to be mounted off the floor on a table, counter, or shelf.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single service, or single use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the department, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Part II

Management and Personnel

Article 1

Supervision

2VAC5-585-50. Assignment of responsibility.*

The operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

2VAC5-585-60. Demonstration.*

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the department knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this regulation. The person in charge shall demonstrate this knowledge by:

1. Complying with this regulation by having no violations during the current inspection;
2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or
3. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
 - a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
 - b. Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

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c. Describing the symptoms associated with the diseases that are transmissible through food;

d. Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;

e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

f. Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;

g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;

h. Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(1) Cross contamination;

(2) Hand contact with ready-to-eat foods;

(3) Handwashing; and

(4) Maintaining the food establishment in a clean condition and in good repair;

i. Explaining the relationship between food safety and providing equipment that is:

(1) Sufficient in number and capacity; and

(2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

j. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

k. Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

l. Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

m. Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this regulation;

n. Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is

required by the law, this regulation, or an agreement between the department and the establishment; and

o. Explaining the responsibilities, rights, and authorities assigned by this regulation to the:

(1) Food employee;

(2) Person in charge; and

(3) Department.

2VAC5-585-70. Person in charge.

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 2VAC5-585-2990;

2. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

3. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this regulation;

4. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

5. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

6. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under 2VAC5-585-1180 and 2VAC5-585-1730 B;

7. Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

8. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 2VAC5-585-930 that the food is not cooked sufficiently to ensure its safety;

9. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

10. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under 2VAC5-585-590;

11. Except when otherwise approved as specified in 2VAC5-585-450 B, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and

12. Employees are properly trained in food safety as it relates to their assigned duties.

Article 2

Employee Health

2VAC5-585-80. Responsibility of the person in charge to require reporting by food employees and applicants.*

The person in charge shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subdivision 3 of this section, if the food employee or applicant:

1. Is diagnosed with an illness due to:

- a. Salmonella typhi;
- b. Shigella spp.;
- c. Shiga toxin-producing Escherichia coli; or
- d. Hepatitis A virus;

2. Has a symptom caused by illness, infection, or other source that is:

- a. Associated with an acute gastrointestinal illness such as:
 - (1) Diarrhea;
 - (2) Fever;
 - (3) Vomiting;
 - (4) Jaundice; or
 - (5) Sore throat with fever; or

b. A lesion containing pus such as a boil or infected wound that is open or draining and is:

(1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

(2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

(3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

3. Had a past illness from:

a. S. typhi within the past three months;

b. Shigella spp. within the past month;

c. Shiga Toxin-Producing Escherichia coli, within the past month; or

d. Hepatitis A virus;

4. Meets one or more of the following high-risk conditions:

a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant:

(1) Prepared food implicated in the outbreak;

(2) Consumed food implicated in the outbreak; or

(3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent;

b. Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., Shiga Toxin-Producing Escherichia coli, or hepatitis A virus; or

c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli, or hepatitis A virus.

2VAC5-585-90. Exclusions and restrictions.*

A. The person in charge shall exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subdivision 1 of 2VAC5-585-80.

B. Except as specified under subsection C or D of this section, the person in charge shall restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles in a food establishment if the food employee is:

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1. Suffering from a symptom specified under subdivision 2 a (1), (2), (3) or (5) of 2VAC5-585-80; or

2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 2VAC5-585-80, but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or Shiga toxin-producing *Escherichia coli*.

C. If the population served is a highly susceptible population, the person in charge shall exclude a food employee who:

1. Is experiencing a symptom of acute gastrointestinal illness specified under subdivisions 2 a (1), (2), (3) or (5) of 2VAC5-585-80 and meets a high-risk condition specified in subdivision 4 of 2VAC5-585-80;

2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 2VAC5-585-80, but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or Shiga toxin-producing *Escherichia coli*;

3. Had a past illness from *S. typhi* within the last three months; or

4. Had a past illness from *Shigella* spp. or Shiga toxin-producing *Escherichia coli* within the last month.

D. For a food employee who is jaundiced:

1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment; or

2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:

a. Exclude the food employee from a food establishment that serves a highly susceptible population; or

b. Restrict the food employee from activities specified in subsection B of this section, if the food establishment does not serve a highly susceptible population.

2VAC5-585-100. Removal of exclusions and restrictions.

A. The person in charge may remove an exclusion specified under 2VAC5-585-90 A if:

1. The person in charge obtains approval from the department; and

2. The person excluded as specified under 2VAC5-585-90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of

the infectious agent of concern as specified in 2VAC5-585-4070.

B. The person in charge may remove a restriction specified under:

1. Subdivision B 1 of 2VAC5-585-90 if the restricted person:

a. Is free of the symptoms specified under subdivision 2 a (1), (2), (3), (5), or 2 b of 2VAC5-585-80 and no foodborne illness occurs that may have been caused by the restricted person;

b. Is suspected of causing foodborne illness but:

(1) Is free of the symptoms specified under subdivision 2 a (1), (2), (3), (5), or 2 b of 2VAC5-585-80; and

(2) Provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 2VAC5-585-4070; or

c. Provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

2. Subdivision B 2 of 2VAC5-585-90 if the restricted person provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by law, a nurse practitioner or physician assistant, according to the criteria specified in 2VAC5-585-4070 that indicates the stools are free of *Salmonella typhi*, *Shigella* spp., or Shiga toxin-producing *Escherichia coli*, whichever is the infectious agent of concern.

C. The person in charge may remove an exclusion specified under 2VAC5-585-90 C if the excluded person provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant:

1. That specifies that the person is free of the infectious agent of concern as specified in 2VAC5-585-4070; or

2. If the person is excluded under 2VAC5-585-90 C 1, that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

D. The person in charge may remove an exclusion specified under 2VAC5-585-90 D 1 and 2VAC5-585-90 D 2 a and a restriction specified under 2VAC5-585-90 D 2 b if:

1. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in subdivision 4 a of 2VAC5-585-4070; or

2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivisions 4 a and 4 b of 2VAC5-585-4070.

2VAC5-585-110. Responsibility of a food employee or an applicant to report to the person in charge.*

A food employee or a person who applies for a job as a food employee shall:

1. In a manner specified under 2VAC5-585-80, report to the person in charge the information specified under subdivisions 1 through 4 of 2VAC5-585-80; and

2. Comply with exclusions and restrictions that are specified under subsections A through D of 2VAC5-585-90.

2VAC5-585-120. Reporting by the person in charge.*

The person in charge shall notify the department that a food employee is diagnosed with an illness due to Salmonella typhi, Shigella spp., Shiga toxin-producing Escherichia coli, or hepatitis A virus.

Article 3

Personal Cleanliness

2VAC5-585-130. Clean condition of hands and arms.*

Food employees shall keep their hands and exposed portions of their arms clean.

2VAC5-585-140. Cleaning procedure of hands and arms.*

A. Except as specified in subsection B of this section, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds, using a cleaning compound in a lavatory that is equipped as specified under 2VAC5-585-2190.

B. Food employees shall use the following cleaning procedure:

1. Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands or arms) for at least 10 to 15 seconds, followed by;

2. Thorough rinsing under clean, running warm water; and

3. Immediately follow the cleaning procedure with thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 2VAC5-585-3030.

C. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.

D. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

2VAC5-585-150. (Reserved.)

2VAC5-585-160. When to wash.*

Food employees shall clean their hands and exposed portions of their arms as specified under 2VAC5-585-140 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

1. After touching bare human body parts or hair other than clean hands and clean, exposed portions of arms;

2. After using the toilet room;

3. After caring for or handling support animals as allowed under 2VAC5-585-250 B;

4. Except as specified in 2VAC5-585-220 B, after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

5. After handling soiled equipment or utensils;

6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

7. When switching between working with raw foods and working with ready-to-eat foods;

8. Before donning gloves for working with food;

9. Prior to donning single-use gloves if gloves are used; and

10. After engaging in other activities that contaminate the hands.

2VAC5-585-170. Where to wash.

Food employees shall clean their hands in a hand washing lavatory or approved automatic hand washing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

2VAC5-585-180. Hand sanitizers.

A. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

1. Comply with one of the following:

a. Be an approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic

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Equivalence Evaluations as an approved drug based on safety and effectiveness; or

b. Have active antimicrobial ingredients that are listed in the FDA monograph for OTC Health-Care Antiseptic Drug Products, 59 FR 31402 (June 17, 1994) as an antiseptic handwash; and

2. Consist of components that are:

a. Listed for such use in contact with food in 21 CFR Part 178, Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; or

b. Exempt from regulation as food additives under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food-Contact Articles; or

c. Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or

d. Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of the FFDCA and listed in FDA's Inventory of Effective Premarket Notifications for Food Contact Substances; and

3. Be applied only to hands that are cleaned as specified under 2VAC5-585-140.

B. If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subdivision A 2 of this section, use shall be:

1. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

2. Limited to situations that involve no direct contact with food by the bare hands.

C. A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to 100 ppm (mg/l) chlorine or above.

2VAC5-585-190. Maintenance of fingernails.

Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial nails when working with exposed food.

2VAC5-585-200. Prohibition of jewelry.

While preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band.

2VAC5-585-210. Clean condition of outer clothing.

Food employees shall wear clean outer clothing to prevent contamination of food equipment, utensils, linens, and single-service and single-use articles.

Article 4

Hygienic Practices

2VAC5-585-220. Eating, drinking, or using tobacco.*

A. Except as specified in subsection B of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

B. A food employee may drink from a closed beverage container with a straw if the container is handled to prevent contamination of:

1. The employee's hands;

2. The container; and

3. Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

2VAC5-585-230. Discharges from the eyes, nose, and mouth.*

Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

2VAC5-585-240. Effectiveness of hair restraints.

A. Except as provided in subsection B of this section, food employees shall wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

B. This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

2VAC5-585-250. Handling of animals prohibited.*

A. Except as specified in subsection B of this section, food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed in subdivisions B 2 through B 5 of 2VAC5-585-3310.

B. Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under 2VAC5-585-140 and subdivision 3 of 2VAC5-585-160.

Part III

Food

Article 1

Characteristics

2VAC5-585-260. Safe, unadulterated, and honestly presented.*

Food shall be safe, unadulterated, and, as specified under 2VAC5-585-890, honestly presented.

Article 2

Sources, Specifications, and Original Containers and Records

2VAC5-585-270. Compliance with food law.*

A. Food shall be obtained from sources that comply with law.

B. Food prepared in a private home may not be used or offered for human consumption in a food establishment unless the home kitchen is inspected by the responsible regulatory authority.

C. Packaged food shall be labeled as specified in law, including 21 CFR Part 101, Food Labeling; 9 CFR Part 317, Labeling, Marking Devices, and Containers; and 9 CFR Part 381, Subpart N, Labeling and Containers; and as specified under 2VAC5-585-400 and 2VAC5-585-410.

D. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in 2VAC5-585-700 D 1 may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 2VAC5-585-730, or frozen on the premises as specified under 2VAC5-585-730, and records are retained as specified under 2VAC5-585-740.

E. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 2VAC5-585-700 C shall be:

1. Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them to indicate that they meet the definition of whole-muscle, intact beef; or

2. Deemed acceptable by the department based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and

3. If individually cut in a food establishment:

a. Cut from whole-muscle, intact beef that is labeled by a food processing plant as specified in subdivision 1 or identified as specified in subdivision 2 of this subsection;

b. Prepared so they remain intact; and

c. If packaged for undercooking in a food establishment, labeled to indicate that they meet the definition of whole-muscle, intact beef.

F. Meat and poultry that are not a ready-to-eat food and are in a packaged form when offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

G. Shell eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

2VAC5-585-280. Food in a hermetically sealed container.*

Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

2VAC5-585-290. Fluid milk and milk products.*

Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law.

2VAC5-585-295. Juice treated.

Pre-packaged juice shall:

1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120;

2. Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR 120.24; or

3. Bear a warning label as specified in 21 CFR 101.17(g).

2VAC5-585-300. Fish.*

A. Fish that are received for sale or service shall be:

1. Commercially and legally caught or harvested; or

2. Approved for sale or service by a regulatory authority.

B. Molluscan shellfish that are recreationally caught may not be received for sale or service.

2VAC5-585-310. Molluscan shellfish.*

A. Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations, Part II, Sanitation

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of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision.

B. Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

2VAC5-585-320. Wild mushrooms.*

A. Except as specified in subsection B of this section, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert.

B. This section does not apply to:

1. Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or

2. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

2VAC5-585-330. Game animals.*

A. If game animals are received for sale or service they shall be:

1. Commercially raised for food and:

a. Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or

b. Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and

c. Raised, slaughtered, and processed according to:

(1) Laws governing meat and poultry as determined by the agency; and

(2) Requirements that are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;

2. Under a voluntary inspection program administered by the USDA for game animals such as exotic animals including animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR Part 352, Exotic Animals; Voluntary Inspection, or rabbits that are "inspected and certified" in accordance with 9 CFR Part 354, Voluntary Inspection of Rabbits and Edible Products Thereof;

3. As allowed by law, for wild game animals that are live-caught:

a. Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction;

b. Slaughtered and processed according to:

(1) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and

(2) Requirements that are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or

4. As allowed by law for field-dressed wild game animals under a routine inspection program that ensures the animals:

a. Receive a postmortem examination by an approved veterinarian or veterinarian's designee, or are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and

b. Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.

B. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR Part 17, Endangered and Threatened Wildlife and Plants.

2VAC5-585-340. Temperature.*

A. Except as specified in subsection B of this section, refrigerated, potentially hazardous food shall be at a temperature of 41°F (5°C) or below when received.

B. If a temperature other than 41°F (5°C) for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk, molluscan shellfish, and shell eggs, the food may be received at the specified temperature.

C. Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

D. Potentially hazardous food that is cooked to a temperature and for a time specified under 2VAC5-585-700 through 2VAC5-585-720 and received hot shall be at a temperature of 135°F (57°C) or above.

E. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

F. Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

2VAC5-585-350. Additives.*

Food may not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR Parts 170-180 relating to food additives; generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR Parts 181-186; substances that exceed amounts specified in 9 CFR, Subpart C, 424.21(b), Approval of Substances for Use in the Preparation of Products; or pesticide residues that exceed provisions specified in 40 CFR Part 185, Tolerances for Pesticides in Food.

2VAC5-585-360. Shell eggs.*

Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56, Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs, and 7 CFR Part 59, Regulations Governing the Inspection of Eggs and Egg Products.

2VAC5-585-370. Eggs and milk products, pasteurized.*

A. Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

B. Fluid and dry milk and milk products complying with Grade A standards as specified in law shall be obtained pasteurized.

C. Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with 21 CFR Part 135, Frozen Desserts.

D. Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are provided for in the Code of Federal Regulations, such as 21 CFR Part 133, Cheeses and Related Cheese Products, for curing certain cheese varieties.

2VAC5-585-380. Package integrity.*

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

2VAC5-585-390. Ice.*

Ice for use as a food or a cooling medium shall be made from drinking water.

2VAC5-585-400. Shucked shellfish, packaging and identification.

A. Raw shucked shellfish shall be obtained in nonreturnable packages that bear a legible label that identifies the:

1. Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and

2. The "sell by" date for packages with a capacity of less than one-half gallon (1.87 L) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

B. A package of raw shucked shellfish that does not bear a label or which bears a label that does not contain all the information as specified under subsection A of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d), Subpart D, Specific Administrative Decisions Regarding Interstate Shipments.

2VAC5-585-410. Shellstock identification.*

A. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that deparates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Manual of Operations, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision, and that list:

1. Except as specified under subsection C of this section, on the harvester's tag or label, the following information in the following order:

- a. The harvester's identification number that is assigned by the shellfish control authority;
- b. The date of harvesting;
- c. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;
- d. The type and quantity of shellfish; and
- e. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; and

2. Except as specified under subsection D of this section, on each dealer's tag or label, the following information in the following order:

- a. The dealer's name and address, and the certification number assigned by the shellfish control authority;
- b. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;
- c. The same information as specified for a harvester's tag under subdivisions 1 b through d of this subsection; and

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d. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

B. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subsection A of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d), Subpart D, Specific Administrative Decisions Regarding Interstate Shipments.

C. If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

D. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subdivisions A 2 a and b of this section, individual dealer tags or labels need not be provided.

2VAC5-585-420. Shellstock; condition.

When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

2VAC5-585-430. Molluscan shellfish; original container.

A. Except as specified in subsections B and C of this section, molluscan shellfish may not be removed from the container in which they were received other than immediately before sale or preparation for service.

B. For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

1. The source of the shellstock on display is identified as specified under 2VAC5-585-410 and recorded as specified under 2VAC5-585-440; and

2. The shellstock are protected from contamination.

C. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

1. The labeling information for the shellfish on display as specified under 2VAC5-585-400 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

2. The shellfish are protected from contamination.

2VAC5-585-440. Shellstock; maintaining identification.*

A. Except as specified under subdivision B 2 of this section, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

B. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and

2. If shellstock are removed from their tagged or labeled container:

a. Preserving source identification by using a recordkeeping system as specified under subdivision 1 of this subsection;

b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.

Article 3

Protection from Contamination after Receiving

2VAC5-585-450. Preventing contamination from hands.*

A. Food employees shall wash their hands as specified under 2VAC5-585-140.

B. Except when washing fruits and vegetables as specified under 2VAC5-585-510 or as specified in subsection C of this section, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

C. When otherwise approved, food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands.

D. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.^S

2VAC5-585-460. Preventing contamination when tasting.*

A food employee may not use a utensil more than once to taste food that is to be sold or served.

2VAC5-585-470. Packaged and unpackaged food - separation, packaging, and segregation.*

A. Food shall be protected from cross contamination by:

1. Separating raw animal foods during storage, preparation, holding, and display from:

a. Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables; and

b. Cooked ready-to-eat food;

2. Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

a. Using separate equipment for each type or arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

b. Preparing each type of food at different times or in separate areas;

3. Cleaning equipment and utensils as specified under 2VAC5-585-1780 A and sanitizing as specified under 2VAC5-585-1900;

4. Except as specified in subsection B of this section, storing the food in packages, covered containers, or wrappings;

5. Cleaning hermetically sealed containers of food of visible soil before opening;

6. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

7. Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 2VAC5-585-3150; and

8. Separating fruits and vegetables before they are washed as specified under 2VAC5-585-510 from ready-to-eat food.

B. Subdivision A 4 of this section does not apply to:

1. Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

2. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;

3. Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;

4. Food being cooled as specified under 2VAC5-585-810 B 2; or

5. Shellstock.

2VAC5-585-480. Food storage containers; identified with common name of food.

Working containers holding food or food ingredients that are removed from their original packages for use in the food

establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food (in English and the common language of the food workers) except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified.

2VAC5-585-490. Pasteurized eggs; substitute for raw shell eggs for certain recipes and populations.*

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, and egg-fortified beverages that are not:

1. Cooked as specified under subdivisions A 1 or 2 of 2VAC5-585-700; or

2. Included in 2VAC5-585-700 D.

2VAC5-585-500. Protection from unapproved additives.*

A. As specified in 2VAC5-585-350, food shall be protected from contamination that may result from the addition of:

1. Unsafe or unapproved food or color additives; and

2. Unsafe or unapproved levels of approved food and color additives.

B. A food employee may not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or

2. Serve or sell food specified in subdivision 1 of this subsection that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet the provisions of this subsection.

2VAC5-585-510. Washing fruits and vegetables.

A. Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except as specified in subsection B of this section and except that whole, raw fruits and vegetables that are intended for washing by the consumer before consumption need not be washed before they are sold.

B. Fruits and vegetables may be washed by using chemicals as specified under 2VAC5-585-3390.

2VAC5-585-520. Ice used as exterior coolant prohibited as ingredient.

After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.

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2VAC5-585-530. Storage or display of food in contact with water or ice.

A. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

B. Except as specified in subsections C and D of this section, unpackaged food may not be stored in direct contact with undrained ice.

C. Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

D. Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

2VAC5-585-540. Food contact with equipment and utensils.*

Food shall only contact surfaces of equipment and utensils that are cleaned as specified under 2VAC5-585-1770 through 2VAC5-585-1870 and sanitized as specified under 2VAC5-585-1880 through 2VAC5-585-1900.

2VAC5-585-550. In-use utensils, between-use storage.

During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

1. Except as specified under subdivision 2 of this section, in the food with their handles above the top of the food and the container;

2. In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under 2VAC5-585-1780 and 2VAC5-585-1890;

4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

6. In a container of water if the water is maintained at a temperature of at least 135°F (57°C) and the container is cleaned at a frequency specified under 2VAC5-585-1780 D 7.

2VAC5-585-560. Linens and napkins, use limitation.

Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new customer.

2VAC5-585-570. Wiping cloths, use limitation.

A. Cloths that are in use for wiping food spills shall be used for no other purpose.

B. Cloths used for wiping food spills shall be:

1. Dry and used for wiping food spills from tableware and carry-out containers; or

2. Wet and cleaned as specified under 2VAC5-585-1920 D, stored in a chemical sanitizer at a concentration specified in 2VAC5-585-1700, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

C. Dry or wet cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.

D. Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.

E. Working containers of sanitizing solutions for storage of in-use wiping cloths may be placed above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, single-service or single-use articles.

2VAC5-585-580. Gloves, use limitation.

A. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

B. Except as specified in subsection C of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under 2VAC5-585-700 through 2VAC5-585-765 such as frozen food or a primal cut of meat.

C. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

D. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under 2VAC5-585-700 through 2VAC5-585-765 such as frozen food or a primal cut of meat.

2VAC5-585-590. Using clean tableware for second portions and refills.

A. Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills.

B. Except as specified in subsection C of this section, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

C. Cups and glasses may be reused by self-service consumers or food employees if refilling is a contamination-free process as specified under subdivisions 1, 2 and 4 of 2VAC5-585-1230.

2VAC5-585-600. Refilling returnables.

A. A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

B. Except as specified in subsection C of this section, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under 2VAC5-585-1870 B.

C. Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under subdivisions 1, 2 and 4 of 2VAC5-585-1230.

2VAC5-585-610. Food storage.

A. Except as specified in subsections B and C of this section, food shall be protected from contamination by storing the food:

1. In a clean, dry location;
2. Where it is not exposed to splash, dust, or other contamination; and
3. At least six inches (15 cm) above the floor.

B. Food in packages and working containers may be stored less than six inches (15 cm) above the floor on case lot handling equipment as specified under 2VAC5-585-1420.

C. Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

2VAC5-585-620. Food storage; prohibited areas.

Food may not be stored:

1. In locker rooms;

2. In toilet rooms or their vestibules;

3. In dressing rooms;

4. In garbage rooms;

5. In mechanical rooms;

6. Under sewer lines that are not shielded to intercept potential drips;

7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

8. Under open stairwells; or

9. Under other sources of contamination.

2VAC5-585-630. Vended potentially hazardous food; original container.

Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

2VAC5-585-640. Food preparation.

During preparation, unpackaged food shall be protected from environmental sources of contamination.

2VAC5-585-650. Food display.

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.

2VAC5-585-660. Condiments; protection.

A. Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

B. Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at a location that is approved by the department, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

2VAC5-585-670. Consumer self-service operations.*

A. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This subsection does not apply to:

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1. Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;

2. Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or

3. Raw, frozen, shell-on shrimp or lobster.

B. Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

C. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.^N

2VAC5-585-680. Returned food and reservice of food.*

A. Except as specified under subsection B of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

B. A container of food that is not potentially hazardous may be transferred from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

2. The food, such as crackers, salt or pepper, is in an unopened original package and maintained in sound condition.

2VAC5-585-690. Miscellaneous sources of contamination.

Food shall be protected from contamination that may result from a factor or source not specified under 2VAC5-585-450 through 2VAC5-585-680.

Article 4

Destruction of Organisms of Public Health Concern

2VAC5-585-700. Raw animal foods.*

A. Except as specified in subsections B, C, and D of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

1. 145°F (63°C) or above for 15 seconds for:

a. Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

b. Except as specified under subdivisions A 2 and 3 and subsection B of this section, fish and meat including

game animals commercially raised for food as specified under 2VAC5-585-330 A 1 and game animals under a voluntary inspection program as specified under 2VAC5-585-330 A 2;

2. 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 2VAC5-585-330 A 1, and game animals under a voluntary inspection program as specified under 2VAC5-585-330 A 2; and raw eggs that are not prepared as specified under subdivision A 1 a of this section:

<u>Minimum</u>	
<u>Temperature °F (°C)</u>	<u>Time</u>
<u>145 (63)</u>	<u>3 minutes</u>
<u>150 (66)</u>	<u>1 minute</u>
<u>158 (70)</u>	<u><1 second (instantaneous)</u>

3. 165°F (74°C) or above for 15 seconds for poultry, wild game animals as specified under 2VAC5-585-330 A 3, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

B. Whole beef roasts and corned beef roasts, pork roasts, and cured pork roasts such as ham shall be cooked:

1. In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

<u>Oven Type</u>	<u>Oven Temperature Based on Roast Weight</u>	
	<u>Less than 10 lbs (4.5 kg)</u>	<u>10 lbs (4.5 kg) or more</u>
<u>Still Dry</u>	<u>350°F (177°C) or more</u>	<u>250°F (121°C) or more</u>
<u>Convection</u>	<u>325°F (163°C) or more</u>	<u>250°F (121°C) or more</u>
<u>High Humidity¹</u>	<u>250°F (121°C) or less</u>	<u>250°F (121°C) or less</u>

¹Relative humidity greater than 90% for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

2. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.

Temperature °F (°C)	Time ¹ in Minutes	Temperature °F (°C)	Time ¹ in Seconds
<u>130 (54.4)</u>	<u>112</u>	<u>147 (63.9)</u>	<u>134</u>
<u>131 (55.0)</u>	<u>89</u>	<u>149 (65.0)</u>	<u>85</u>
<u>133 (56.1)</u>	<u>56</u>	<u>151 (66.1)</u>	<u>54</u>
<u>135 (57.2)</u>	<u>36</u>	<u>153 (67.2)</u>	<u>34</u>
<u>136 (57.8)</u>	<u>28</u>	<u>155 (68.3)</u>	<u>22</u>
<u>138 (58.9)</u>	<u>18</u>	<u>157 (69.4)</u>	<u>14</u>
<u>140 (60.0)</u>	<u>12</u>	<u>158 (70.0)</u>	<u>0</u>
<u>142 (61.1)</u>	<u>8</u>		
<u>144 (62.2)</u>	<u>5</u>		
<u>145 (62.8)</u>	<u>4</u>		

¹Holding time may include postoven heat rise

C. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 2VAC5-585-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and
3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

D. A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare, or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection C of this section, may be served or offered for sale in a ready-to-eat form if:

1. As specified under subdivisions 3 a and 3 b of 2VAC5-585-950, the food establishment serves a population that is not a highly susceptible population; and
2. The consumer is informed as specified under 2VAC5-585-930 that to ensure its safety, the food should be cooked as specified under subsection A or B of this section; or
3. The department grants a variance from subsection A or B of this section as specified in 2VAC5-585-3540 based on a HACCP plan that:
 - a. Is submitted by the operator and approved as specified under 2VAC5-585-3541;

b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and

c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

2VAC5-585-710. Microwave cooking.*

Raw animal foods cooked in a microwave oven shall be:

1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
2. Covered to retain surface moisture;
3. Heated to a temperature of at least 165°F (74°C) in all parts of the food; and
4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

2VAC5-585-720. Plant food cooking for hot holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 135°F (57°C).

2VAC5-585-730. Parasite destruction.*

A. Except as specified in subsection B of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be:

1. Frozen and stored at a temperature of -4°F (-20°C) or below for 168 hours (seven days) in a freezer; or
2. Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) for 15 hours.

B. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under subsection A of this section.

2VAC5-585-740. Records; creation and retention.

A. Except as specified in 2VAC5-585-730 B and subsection B of this section, if raw, marinated, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 2VAC5-585-730 may substitute for the records specified under subsection A of this section.

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2VAC5-585-750. Reheating; preparation for immediate service.

Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

2VAC5-585-760. Reheating for hot holding.*

A. Except as specified under subsections B, C and E of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach at least 165°F (74°C) for 15 seconds.

B. Except as specified under subsection C of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered two minutes after reheating.

C. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 135°F (57°C) for hot holding.

D. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under 2VAC5-585-820 A 2 and 165°F (74°C) may not exceed two hours.

E. Remaining unsliced portions of roasts that are cooked as specified under 2VAC5-585-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 2VAC5-585-700 B.

2VAC5-585-765. Treating juice.

Juice packaged in a food establishment shall be:

1. Treated under a HACCP plan as specified in subdivisions 2 through 5 of 2VAC5-585-3610 to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

2. Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:

a. As specified under 2VAC5-585-900; and

b. As specified in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

Article 5

Limitation of Growth of Organisms of Public Health Concern

2VAC5-585-770. Frozen food.

Stored frozen foods shall be maintained frozen.

2VAC5-585-780. Potentially hazardous food, slacking.

Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less, or at 45°F (7°C) or less as specified under 2VAC5-585-820 A 2 b; or

2. At any temperature if the food remains frozen.

2VAC5-585-790. Thawing.

Except as specified in subdivision 4 of this section, potentially hazardous food shall be thawed:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less, or at 45°F (7°C) or less as specified under 2VAC5-585-820 A 2 b; or

2. Completely submerged under running water:

a. At a water temperature of 70°F (21°C) or below;

b. With sufficient water velocity to agitate and float off loose particles in an overflow; and

c. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C), or 45°F (7°C) as specified under 2VAC5-585-820 A 2 b; or

d. For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 2VAC5-585-700 A or B to be above 41°F (5°C), or 45°F (7°C) as specified under 2VAC5-585-820 A 2 b, for more than four hours including:

(1) The time the food is exposed to the running water and the time needed for preparation for cooking; or

(2) The time it takes under refrigeration to lower the food temperature to 41°F (5°C), or 45°F (7°C) as specified under 2VAC5-585-820 A 2 b;

3. As part of a cooking process if the food that is frozen is:

a. Cooked as specified under 2VAC5-585-700 A or B or 2VAC5-585-710; or

b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

2VAC5-585-800. Cooling.*

A. Cooked potentially hazardous food shall be cooled:

1. Within two hours, from 135°F (57°C) to 70°F (21°C); and
2. Within a total of six hours, from 135°F (57°C) to 41°F (5°C) or less, or to 45°F (7°C) or less as specified under 2VAC5-585-820 A 2 b.

B. Potentially hazardous food shall be cooled within four hours to 41°F (5°C) or less, or to 45°F (7°C) or less as specified under 2VAC5-585-820 A 2 b if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

C. Except as specified in subsection D of this section, a potentially hazardous food received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 2VAC5-585-340 B, shall be cooled within four hours to 41°F (5°C) or less, or 45°F (7°C) or less as specified under of 2VAC5-585-820 A 2 b.

D. Raw shell eggs shall be received as specified under 2VAC5-585-340 C and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

2VAC5-585-810. Cooling methods.

A. Cooling shall be accomplished in accordance with the time and temperature criteria specified under 2VAC5-585-800 by using one or more of the following methods based on the type of food being cooled:

1. Placing the food in shallow pans;
2. Separating the food into smaller or thinner portions;
3. Using rapid cooling equipment;
4. Stirring the food in a container placed in an ice water bath;
5. Using containers that facilitate heat transfer;
6. Adding ice as an ingredient; or
7. Other effective methods.

B. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

1. Arranged in the equipment to provide maximum heat transfer through the container walls; and
2. Loosely covered, or uncovered if protected from overhead contamination as specified under 2VAC5-585-610 A 2, during the cooling period to facilitate heat transfer from the surface of the food.

2VAC5-585-820. Potentially hazardous food; hot and cold holding.*

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 2VAC5-585-850, potentially hazardous food shall be maintained:

1. At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified in 2VAC5-585-700 B or reheated as specified in 2VAC5-585-760 E may be held at a temperature of 130°F (54°C) or above; or

2. At a temperature specified in the following:

a. 41°F (5°C) or less; or

b. 45°F (7°C) or between 45°F (7°C) and 41°F (5°C) in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:

(1) The equipment is in place and in use in the food establishment; and

(2) Before January 1, 2012, the equipment is upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less.

B. Shell eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

2VAC5-585-830. Ready to eat, potentially hazardous food; date marking.*

A. Except as specified in subsection D of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded based on the temperature and time combinations specified below. The day of preparation shall be counted as Day 1.

1. 41°F (5°C) or less for a maximum of seven days; or

2. 45°F (7°C) or between 41°F (5°C) and 45°F (7°C) for a maximum of four days in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:

a. The equipment is in place and in use in the food establishment; and

b. Before January 1, 2012, the equipment is upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less.

B. Except as specified in subsections D and E of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be

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consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection A of this section and:

1. The day the original container is opened in the food establishment shall be counted as Day 1; and

2. The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

C. A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection A or B of this section, or by an alternative method acceptable to the department.

D. Subsections A and B of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

E. Subsection B of this section does not apply to the following when the face has been cut, but the remaining portion is whole and intact:

1. Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and that retain the original casing on the product;

2. Shelf stable, dry, fermented sausages; and

3. Shelf stable salt-cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated."

F. A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

2VAC5-585-840. Ready-to-eat, potentially hazardous food; disposition.*

A. A food specified in 2VAC5-585-830 A or B shall be discarded if it:

1. Exceeds either of the temperature and time combinations specified in 2VAC5-585-830 A, except time that the product is frozen;

2. Is in a container or package that does not bear a date or day; or

3. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 2VAC5-585-830 A.

B. Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in 2VAC5-585-830 A.

2VAC5-585-850. Time as a public health control.*

A. Except as specified under subsection B of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

2. The food shall be cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control;

3. The food in unmarked containers or packages or marked to exceed a four-hour limit shall be discarded; and

4. Written procedures shall be maintained in the food establishment and made available to the department upon request, that ensure compliance with:

a. Subdivisions 1 through 4 of this subsection; and

b. 2VAC5-585-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

B. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

2VAC5-585-860. Variance requirement.*

A food establishment shall obtain a variance from the department as specified in 2VAC5-585-3540 and 2VAC5-585-3541 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;

2. Curing food;

3. Using food additives or adding components such as vinegar:

a. As a method of food preservation rather than as a method of flavor enhancement; or

b. To render a food so that it is not potentially hazardous;

4. Packaging food using a reduced oxygen packaging method except as specified under 2VAC5-585-870 where a barrier to Clostridium botulinum in addition to refrigeration exists;

5. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;

6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or

7. Preparing food by another method that is determined by the department to require a variance.

2VAC5-585-870. Reduced oxygen packaging; criteria.*

A. Except for a food establishment that obtains a variance as specified under 2VAC5-585-860, a food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of Clostridium botulinum.

B. A food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under subdivision 4 of 2VAC5-585-3630 and that:

1. Identifies the food to be packaged;
2. Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it complies with one of the following:
 - a. Has an a_w of 0.91 or less;
 - b. Has a pH of 4.6 or less;
 - c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of Food Ingredients and Sources of Radiation, and is received in an intact package; or
 - d. Is a food with a high level of competing organisms such as raw meat or raw poultry;
3. Specifies methods for maintaining food at 41°F (5°C) or below;
4. Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 - a. Maintain the food at 41°F (5°C) or below; and
 - b. For food held at refrigeration temperatures, discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
5. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original

manufacturer's "sell by" or "use by" date, whichever occurs first;

6. Includes operational procedures that:

- a. Prohibit contacting food with bare hands;
- b. Identify a designated area and the method by which:
 - (1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and
 - (2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
- c. Delineate cleaning and sanitization procedures for food-contact surfaces; and

7. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

- a. Concepts required for a safe operation;
- b. Equipment and facilities; and
- c. Procedures specified under subdivision 6 of this subsection and subdivision 4 of 2VAC5-585-3630.

C. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

Article 6

Food Identity, Presentation, and On-Premises Labeling

2VAC5-585-880. Standards of identity.

Packaged food shall comply with standard of identity requirements in 21 CFR Parts 131-169 and 9 CFR Part 319, Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR Part 130, Food Standards: General, and 9 CFR Part 319, Subpart A, General.

2VAC5-585-890. Honestly presented.

A. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

B. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

2VAC5-585-900. Food labels.

A. Food packaged in a food establishment shall be labeled as specified in law, including 21 CFR Part 101, Food Labeling, and 9 CFR Part 317, Labeling, Marking Devices, and Containers.

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B. Label information shall include:

1. The common name of the food, or absent a common name, an adequately descriptive identity statement;
2. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
3. An accurate declaration of the quantity of contents;
4. The name and place of business of the manufacturer, packer, or distributor; and
5. Except as exempted in the Federal Food, Drug, and Cosmetic Act 21 USC § 343(q) (3) through (5), nutrition labeling as specified in 21 CFR Part 101, Food Labeling, and 9 CFR Part 317, Subpart B, Nutrition Labeling.
6. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

C. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

1. The manufacturer's or processor's label that was provided with the food; or
2. A card, sign, or other method of notification that includes the information specified under subdivisions B 1, 2 and 5 of this section.

D. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

1. A health, nutrient content, or other claim is not made;
2. There are no state or local laws requiring labeling; and
3. The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

2VAC5-585-910. Other forms of information.

- A. If required by law, consumer warnings shall be provided.
- B. Food establishment or manufacturers' dating information on foods may not be concealed or altered.

2VAC5-585-920. (Reserved.)

2VAC5-585-930. Consumer advisory; consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.*

A. Except as specified in 2VAC5-585-700 C and 2VAC5-585-700 D 3 and under subdivision 3 of 2VAC5-585-950, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the person in charge shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections B and C of this section, using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

B. Disclosure shall include:

1. A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)"; or
2. Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

C. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

1. Regarding the safety of these items, written information is available upon request;
2. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
3. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

Article 7

Contaminated Food

2VAC5-585-940. Discarding or reconditioning unsafe, adulterated, or contaminated food.*

A. A food that is unsafe, adulterated, or not honestly presented as specified under 2VAC5-585-260 shall be reconditioned according to an approved procedure or discarded.

B. Food that is not from an approved source as specified under 2VAC5-585-270 through 2VAC5-585-330 shall be discarded.

C. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 2VAC5-585-90 shall be discarded.

D. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

Article 8

Special Requirements for Highly Susceptible Populations

2VAC5-585-950. Pasteurized foods and prohibited food.*

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:

a. For the purposes of subdivision 1 of this section only, children who are age 9 or less and receive food in a school, day care setting or similar facility that provides custodial care are included as highly susceptible populations;

b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g), Food Labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 2VAC5-585-765 may not be served or offered for sale; and

c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 2VAC5-585-3630 and as specified under 21 CFR Part 120, Hazard Analysis And Critical Control Point (HACCP) Systems, Subpart B, Pathogen Reduction, 120.24, Process Controls.

2. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

a. Foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, and egg-fortified beverages; and

b. Except as specified in subdivision 5 of this section, recipes in which more than one egg is broken and the eggs are combined.

3. The following foods may not be served or offered for sale in a ready-to-eat form:

a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;

b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and

c. Raw seed sprouts.

4. Food employees may not contact ready-to-eat food as specified in 2VAC5-585-450 B.

5. Subdivision 2 b of this section does not apply if:

a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 2VAC5-585-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;

b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

c. The preparation of the food is conducted under a HACCP plan that:

(1) Identifies the food to be prepared;

(2) Prohibits contacting ready-to-eat food with bare hands;

(3) Includes specifications and practices that ensure:

(a) Salmonella Enteritidis growth is controlled before and after cooking; and

(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 2VAC5-585-700 A 2;

(4) Contains the information specified under subdivision 4 of 2VAC5-585-3630 including procedures that:

(a) Control cross contamination of ready-to-eat food with raw eggs; and

(b) Delineate cleaning and sanitization procedures for food-contact surfaces; and

(5) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

Part IV

Equipment, Utensils, and Linens

Article 1

Materials for Construction and Repair

2VAC5-585-960. Multiuse, characteristics.*

Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

1. Safe;

2. Durable, corrosion-resistant, and nonabsorbent;^N

3. Sufficient in weight and thickness to withstand repeated warewashing;^N

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4. Finished to have a smooth, easily cleanable surface;^N and

5. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^N

2VAC5-585-970. Cast iron, use limitation.

A. Except as specified in subsections B and C of this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

B. Cast iron may be used as a surface for cooking.

C. Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

2VAC5-585-980. Lead in ceramic, china, and crystal utensils, use limitation.

Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

<u>Utensil Category</u>	<u>Description</u>	<u>Maximum Lead (mg/L)</u>
<u>Hot Beverage Mugs</u>	<u>Coffee Mugs</u>	<u>0.5</u>
<u>Large Hollowware</u>	<u>Bowls 1.1 L (1.16 qt)</u>	<u>1.0</u>
<u>Small Hollowware</u>	<u>Bowls <1.1 L (1.16 qt)</u>	<u>2.0</u>
<u>Flat Utensils</u>	<u>Plates, Saucers</u>	<u>3.0</u>

2VAC5-585-990. Copper, use limitation.*

A. Except as specified in subsections B and C of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

B. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

C. Copper and copper alloys may be used in contact with apple butter and molasses that have a pH below 6 during the typical processing times (i.e., mixing, cooking and cooling) for these products, as long as laboratory analysis does not reveal excessive levels of copper or other heavy metals in the finished product. Apple butter and molasses may not be held or stored in copper or copper alloys for time periods any longer than the typical processing times for these products.

2VAC5-585-1000. Galvanized metal, use limitation.*

Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

2VAC5-585-1010. Sponges, use limitation.

Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

2VAC5-585-1020. Lead in pewter alloys, use limitation.

Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.

2VAC5-585-1030. Lead in solder and flux, use limitation.

Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

2VAC5-585-1040. Wood, use limitation.

A. Except as specified in subsections B, C, and D of this section, wood and wood wicker may not be used as a food-contact surface.

B. Hard maple or an equivalently hard, close-grained wood may be used for:

1. Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
2. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

C. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

D. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

1. Untreated wood containers; or
2. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800.

2VAC5-585-1050. Nonstick coatings, use limitation.

Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

2VAC5-585-1060. Nonfood-contact surfaces.

Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent

cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

2VAC5-585-1070. Single-service and single-use, characteristics.*

Materials that are used to make single-service and single-use articles:

1. May not:
 - a. Allow the migration of deleterious substances; or
 - b. Impart colors, odors, or tastes to food.^N
2. Shall be:
 - a. Safe; and
 - b. Clean.^N

Article 2

Design and Construction

2VAC5-585-1080. Equipment and utensils.

Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

2VAC5-585-1090. Food temperature measuring devices.*

Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

2VAC5-585-1100. Food-contact surfaces; cleanability.*

A. Multiuse food-contact surfaces shall be:

1. Smooth;
2. Free of breaks, open seams, cracks, chips, pits, and similar imperfections;
3. Free of sharp internal angles, corners, and crevices;
4. Finished to have smooth welds and joints; and
5. Accessible for cleaning and inspection by one of the following methods:
 - a. Without being disassembled;
 - b. By disassembling without the use of tools; or
 - c. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

B. Subdivision A 5 of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils or beverage syrup lines or tubes.

2VAC5-585-1110. CIP equipment.

A. CIP equipment shall meet the characteristics specified under 2VAC5-585-1100 and shall be designed and constructed so that:

1. Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and
2. The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

B. CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

2VAC5-585-1120. "V" threads, use limitation.

"V" type threads may not be used on food-contact surfaces. This section does not apply to hot oil cooking or filtering equipment.

2VAC5-585-1130. Hot oil filtering equipment.

Hot oil filtering equipment shall meet the characteristics specified under 2VAC5-585-1100 or 2VAC5-585-1110 and shall be readily accessible for filter replacement and cleaning of the filter.

2VAC5-585-1140. Can openers.

Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

2VAC5-585-1150. Nonfood-contact surfaces.

Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

2VAC5-585-1160. Kick plates; removable.

Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

1. Removable by one of the methods specified under 2VAC5-585-1100 A 5 or capable of being rotated open; and
2. Removable or capable of being rotated open without unlocking equipment doors.

2VAC5-585-1170. Ventilation hood systems; filters.

Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

2VAC5-585-1180. Temperature measuring devices; food.

A. Food temperature measuring devices that are scaled only in Fahrenheit or dually scaled in Fahrenheit and Celsius shall

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be scaled in 2°F increments and accurate to ±2°F in the intended range of use.

B. Food temperature measuring devices that are scaled only in Celsius shall be scaled in 1°C increments accurate to ±1°C in the intended range of use.

2VAC5-585-1190. Temperature measuring devices; ambient air and water.

A. Ambient air and water temperature measuring devices that are scaled in Fahrenheit or dually scaled in Fahrenheit and Celsius and shall be designed to be easily readable and scaled in 3°F increments and accurate to ±3°F in the intended range of use.

B. Ambient air and water temperature measuring devices that are scaled only in Celsius shall be scaled in 1.5°C increments and accurate to ±1.5°C in the intended range of use.

2VAC5-585-1200. Pressure measuring devices, mechanical warewashing equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of one pound per square inch (seven kilopascals) or smaller and shall be accurate to ± two pounds per square inch (± 14 kilopascals) in the 15-25 pounds per square inch (100-170 kilopascals) range.

2VAC5-585-1210. Ventilation hood systems, drip prevention.

Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

2VAC5-585-1220. Equipment openings, closures and deflectors.

A. A cover or lid for equipment shall overlap the opening and be sloped to drain.

B. An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least two-tenths of an inch (five millimeters).

C. Except as specified under subsection D of this section, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

D. If a watertight joint is not provided:

1. The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect

condensation, drips, and dust from openings into the food; and

2. The opening shall be flanged as specified under subsection B of this section.

2VAC5-585-1230. Dispensing equipment, protection of equipment and food.

In equipment that dispenses or vends liquid food or ice in unpackaged form:

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

2. The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

3. The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

a. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

b. Available for self-service during hours when it is not under the full-time supervision of a food employee; and

4. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

2VAC5-585-1240. Vending machine, vending stage closure.

The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

1. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

2. Available for self-service during hours when it is not under the full-time supervision of a food employee.

2VAC5-585-1250. Bearings and gear boxes, leakproof.

Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

2VAC5-585-1260. Beverage tubing, separation.

Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

2VAC5-585-1270. Ice units, separation of drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

2VAC5-585-1280. Condenser unit, separation.

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

2VAC5-585-1290. Can openers on vending machines.

Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

2VAC5-585-1300. Molluscan shellfish tanks.

A. Except as specified under subsection B of this section, molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption.

B. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the department as specified in 2VAC5-585-3540 and a HACCP plan that:

1. Is submitted by the person in charge and approved as specified under 2VAC5-585-3541; and
2. Ensures that:
 - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank;
 - b. The safety and quality of the shellfish as they were received are not compromised by the use of the tank; and
 - c. The identity of the source of the shellstock is retained as specified under 2VAC5-585-440.

2VAC5-585-1310. Vending machines, automatic shutoff.*

A. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter; and

2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

B. When the automatic shutoff within a machine vending potentially hazardous food is activated:

1. In a refrigerated vending machine, the ambient temperature may not exceed 41°F (5°C) or 45°F (7°C) as specified under 2VAC5-585-820 A 2 for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

2. In a hot holding vending machine, the ambient temperature may not be less than 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

2VAC5-585-1320. Temperature measuring devices.

A. In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

B. Except as specified in subsection C of this section, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

C. Subsection B of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

D. Temperature measuring devices shall be designed to be easily readable.

E. Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use.

2VAC5-585-1330. Warewashing machine, data plate operating specifications.

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A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

1. Temperatures required for washing, rinsing, and sanitizing;
2. Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and
3. Conveyor speed for conveyor machines or cycle time for stationary rack machines.

2VAC5-585-1340. Warewashing machines, internal baffles.

Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

2VAC5-585-1350. Warewashing machines, temperature measuring devices.

A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

1. In each wash and rinse tank; and
2. As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

2VAC5-585-1360. Manual warewashing equipment, heaters and baskets.

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

1. Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C); and
2. Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

2VAC5-585-1370. Warewashing machines, automatic dispensing of detergents and sanitizers.

A. A warewashing machine that is installed after the adoption of this regulation by the board shall be equipped to:

1. Automatically dispense detergents and sanitizers; and
2. Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

B. Before January 1, 2012, existing warewashing equipment shall be upgraded or replaced to meet the requirements of subsection A of this section.

2VAC5-585-1380. Warewashing machines, flow pressure device.

A. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

B. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch or 6.4 millimeter Iron Pipe Size (IPS) valve.

C. Subsections A and B of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

2VAC5-585-1390. Warewashing sinks and drainboards, self-draining.

Sinks and drainboards of warewashing sinks and machines shall be self-draining.

2VAC5-585-1400. Equipment compartments, drainage.

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

2VAC5-585-1410. Vending machines, liquid waste products.

A. Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

B. Vending machines that dispense liquid food in bulk shall be:

1. Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
2. Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

C. Shutoff devices specified under subdivision B 2 of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

2VAC5-585-1420. Case lot handling equipment, movability.

Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall

be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

2VAC5-585-1430. Vending machine doors and openings.

A. Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch or 1.5 millimeters by:

1. Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch or 1.5 millimeters. Screening of 12 mesh to one inch (12 or more mesh to 2.5 centimeters) meets this requirement;
2. Being effectively gasketed;
3. Having interface surfaces that are at least one-half inch wide or 13 millimeters; or
4. Jambs or surfaces used to form an L-shaped entry path to the interface.

B. Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

2VAC5-585-1440. Food equipment, certification and classification.

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part.

Article 3

Numbers and Capacities

2VAC5-585-1450. Cooling, heating, and holding capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity and capable of providing food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter.

2VAC5-585-1460. Manual warewashing, sink compartment requirements.

A. Except as specified in subsection C of this section, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the

warewashing sink, a warewashing machine or alternative equipment as specified in subsection C of this section shall be used.

C. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

1. High-pressure detergent sprayers;
2. Low- or line-pressure spray detergent foamers;
3. Other task-specific cleaning equipment;
4. Brushes or other implements;
5. Two-compartment sinks as specified under subsections D and E of this section; or
6. Receptacles that substitute for the compartments of a multicompartment sink.

D. Before a two-compartment sink is used:

1. The operator shall have its use approved; and
2. The person in charge shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:
 - a. Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and
 - b. Use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified under 2VAC5-585-1710; or
 - c. Use a hot water sanitization immersion step as specified under subdivision 3 of 2VAC5-585-1860.

E. A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

2VAC5-585-1470. Drainboards.

Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

2VAC5-585-1480. Ventilation hood systems, adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

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2VAC5-585-1490. Clothes washers and dryers.

A. Except as specified in subsection B of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

B. If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under 2VAC5-585-1970, a mechanical clothes washer and dryer need not be provided.

2VAC5-585-1500. Utensils, consumer self-service.

A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.

2VAC5-585-1510. Food temperature measuring devices.

A. Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter.

B. A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish fillets.

2VAC5-585-1520. Temperature measuring devices, manual warewashing.

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

2VAC5-585-1530. Sanitizing solutions, testing devices.

A test kit or other device that accurately measures the concentration in mg/L (ppm) of sanitizing solutions shall be provided and readily accessible for use.

Article 4

Location and Installation

2VAC5-585-1540. Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.

A. Except as specified in subsection B of this section, equipment, cabinets used for the storage of food, or cabinets used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

1. In locker rooms;
2. In toilet rooms or vestibules;
3. In garbage rooms;
4. In mechanical rooms;

5. Under sewer lines that are not shielded to intercept potential drips;

6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

7. Under open stairwells; or

8. Under other sources of contamination.

B. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

C. If a mechanical clothes washer or dryer is provided, it shall be located only where there is no exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; and so that the washer or dryer is protected from contamination.

2VAC5-585-1550. Fixed equipment, spacing or sealing.

A. Equipment that is fixed because it is not easily movable shall be installed so that it is:

1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;
2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 inch or one millimeter; or
3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

B. Table-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

1. Sealed to the table; or
2. Elevated on legs as specified under 2VAC5-585-1560 D.

2VAC5-585-1560. Fixed equipment, elevation or sealing.

A. Except as specified in subsection B and C of this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six-inch (15-centimeter) clearance between the floor and the equipment.

B. If no part of the floor under the floor-mounted equipment is more than six inches (15 centimeters) from the point of cleaning access, the clearance space may be only four inches (10 centimeters).

C. This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

D. Except as specified in subsection E of this section, table-mounted equipment that is not easily movable shall be elevated on legs that provide at least a four-inch (10-centimeter) clearance between the table and the equipment.

E. The clearance space between the table and table-mounted equipment may be:

1. Three inches (7.5 centimeters) if the horizontal distance of the table top under the equipment is no more than 20 inches (50 centimeters) from the point of access for cleaning; or
2. Two inches (5 centimeters) if the horizontal distance of the table top under the equipment is no more than three inches (7.5 centimeters) from the point of access for cleaning.

Article 5

Maintenance and Operation

2VAC5-585-1570. Good repair and proper adjustment.

A. Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part. Unused or nonfunctioning equipment shall be removed from the premises.

B. Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

C. Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

2VAC5-585-1580. Cutting surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

2VAC5-585-1590. Microwave ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10.

2VAC5-585-1600. Warewashing equipment, cleaning frequency.

A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under 2VAC5-585-1470 shall be cleaned:

1. Before use;
2. Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
3. If used, at least every 24 hours.

2VAC5-585-1610. Warewashing machines, manufacturers' operating instructions.

A. A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

B. A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

2VAC5-585-1620. Warewashing sinks, use limitation.

A. A warewashing sink may not be used for handwashing as specified under 2VAC5-585-170.

B. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 2VAC5-585-1600 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Article 7 (2VAC5-585-1880 et seq.) of this part before and after using the sink to wash produce or thaw food.

2VAC5-585-1630. Warewashing equipment, cleaning agents.

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in 2VAC5-585-1460 C, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

2VAC5-585-1640. Warewashing equipment, clean solutions.

The wash, rinse, and sanitize solutions shall be maintained clean.

2VAC5-585-1650. Manual warewashing equipment, wash solution temperature.

The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.

2VAC5-585-1660. Mechanical warewashing equipment, wash solution temperature.

A. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

1. For a stationary rack, single temperature machine, 165°F (74°C);
2. For a stationary rack, dual temperature machine, 150°F (66°C);

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3. For a single tank, conveyor, dual temperature machine, 160°F (71°C); or

4. For a multitank, conveyor, multitemperature machine, 150°F (66°C).

B. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 120°F (49°C).

2VAC5-585-1670. Manual warewashing equipment, hot water sanitization temperatures.*

If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 171°F (77°C) or above.

2VAC5-585-1680. Mechanical warewashing equipment, hot water sanitization temperatures.

A. Except as specified in subsection B of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 194°F (90°C), or less than:

1. For a stationary rack, single temperature machine, 165°F (74°C); or

2. For all other machines, 180°F (82°C).

B. The maximum temperature specified under subsection A of this section does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

2VAC5-585-1690. Mechanical warewashing equipment, sanitization pressure.

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

2VAC5-585-1700. Manual and mechanical warewashing equipment, chemical sanitization - temperature, pH, concentration, and hardness.*

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified under subdivision 3 of 2VAC5-585-1900 shall be listed in [~~21 CFR 178.1010 Sanitizing solutions~~ 40 CFR 180.940, Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions)], shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

<u>Minimum Concentration</u>	<u>Minimum Temperature</u>	
	<u>pH 10 or less</u>	<u>pH 8 or less</u>
<u>mg/L (ppm)</u>	<u>°F (°C)</u>	<u>°F (°C)</u>
<u>25</u>	<u>120 (49)</u>	<u>120 (49)</u>
<u>50</u>	<u>100 (38)</u>	<u>75 (24)</u>
<u>100</u>	<u>55 (13)</u>	<u>55 (13)</u>

2. An iodine solution shall have a:

a. Minimum temperature of 75°F (24°C);

b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and

c. Concentration between 12.5 mg/L(ppm) and 25 mg/L (ppm);

3. A quaternary ammonium compound solution shall:

a. Have a minimum temperature of 75°F (24°C);

b. Have a concentration as specified under 2VAC5-585-3380 and as indicated by the manufacturer's use directions included in the labeling; and

c. Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

4. If another solution of a chemical specified under subdivisions 1 through 3 of this section is used, the person in charge shall demonstrate to the department that the solution achieves sanitization and the use of the solution shall be approved; or

5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

2VAC5-585-1710. Manual warewashing equipment, chemical sanitization using detergent-sanitizers.

If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

2VAC5-585-1720. Warewashing equipment, determining chemical sanitizer concentration.

Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

2VAC5-585-1730. Good repair and calibration.

A. Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part or shall be discarded.

B. Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

C. Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

2VAC5-585-1740. Single-service and single-use articles, required use.*

A food establishment without facilities specified under Articles 6 (2VAC5-585-1770 et seq.) and 7 (2VAC5-585-1880 et seq.) of this part for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

2VAC5-585-1750. Single-service and single-use articles, use limitation.

A. Single-service and single-use articles may not be reused.

B. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

2VAC5-585-1760. Shells, use limitation.

Mollusk and crustacea shells may not be used more than once as serving containers.

Article 6

Cleaning of Equipment and Utensils

2VAC5-585-1770. Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils.*

A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.

B. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.^N

C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.^N

2VAC5-585-1780. Equipment food-contact surfaces and utensils.*

A. Equipment food-contact surfaces and utensils shall be cleaned:

1. Except as specified in subsection B of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
2. Each time there is a change from working with raw foods to working with ready-to-eat foods;
3. Between uses with raw fruits and vegetables and with potentially hazardous food;
4. Before using or storing a food temperature measuring device; and
5. At any time during the operation when contamination may have occurred.

B. Subdivision A 1 of this section does not apply if the food contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under 2VAC5-585-700 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

C. Except as specified in subsection D of this section, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

D. Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

1. In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Part III (2VAC5-585-260 et seq.) of this chapter and the containers are cleaned when they are empty;
2. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

a. The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
41°F (5.0°C) or less	24 hours
>41°F - 45°F (>5.0°C - 7.2°C)	20 hours
>45°F - 50°F (>7.2°C - 10.0°C)	16 hours
>50°F - 55°F (>10.0°C - 12.8°C)	10 hours

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b. The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.

3. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Part III, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

4. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Part III;

5. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; or

6. The cleaning schedule is approved based on consideration of:

a. Characteristics of the equipment and its use;

b. The type of food involved;

c. The amount of food residue accumulation; and

d. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

7. In-use utensils are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

E. Except when dry cleaning methods are used as specified under 2VAC5-585-1810, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned.^N

1. At any time when contamination may have occurred;

2. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

3. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers;

4. Equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment;

a. At a frequency specified by the manufacturer; or

b. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

2VAC5-585-1790. Cooking and baking equipment.

A. The food-contact surfaces of in-use cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in 2VAC5-585-1780 D 6.

B. The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

2VAC5-585-1800. Nonfood-contact surfaces.

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

2VAC5-585-1810. Dry cleaning.

A. If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

B. Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

2VAC5-585-1820. Precleaning.

A. Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

B. If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

2VAC5-585-1830. Loading of soiled items, warewashing machines.

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

1. Exposes the items to the unobstructed spray from all cycles; and

2. Allows the items to drain.

2VAC5-585-1840. Wet cleaning.

A. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

B. The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

2VAC5-585-1850. Washing, procedures for alternative manual warewashing equipment.

If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in 2VAC5-585-1460 C in accordance with the following procedures:

1. Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
2. Equipment components and utensils shall be scraped or rough cleaned to remove food particle accumulation; and
3. Equipment and utensils shall be washed as specified under 2VAC5-585-1840 A.

2VAC5-585-1860. Rinsing procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

1. Use of a distinct, separate water rinse after washing and before sanitizing if using:
 - a. A three-compartment sink;
 - b. Alternative manual warewashing equipment equivalent to a three-compartment sink as specified in 2VAC5-585-1460 C; or
 - c. A three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;
2. Use of a detergent-sanitizer as specified under 2VAC5-585-1710 if using:
 - a. Alternative warewashing equipment as specified in 2VAC5-585-1460 C that is approved for use with a detergent-sanitizer; or
 - b. A warewashing system for CIP equipment;
3. Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;
4. If using a warewashing machine that does not recycle the sanitizing solution as specified under subdivision 5 of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:
 - a. Integrated in the application of the sanitizing solution; and
 - b. Wasted immediately after each application; or

5. If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

2VAC5-585-1870. Returnables, cleaning for refilling.*

A. Except as specified in subsections B and C of this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.

B. A food-specific container for beverages may be refilled at a food establishment if:

1. Only a beverage that is not a potentially hazardous food is used as specified under 2VAC5-585-600 A;
2. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
3. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
4. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
5. The container is refilled by:
 - a. An employee of the food establishment; or
 - b. The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.

C. Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.

Article 7

Sanitization of Equipment and Utensils

2VAC5-585-1880. Food-contact surfaces and utensils.

Equipment food-contact surfaces and utensils shall be sanitized.

2VAC5-585-1890. Before use after cleaning.*

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

2VAC5-585-1900. Hot water and chemical.*

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds as specified under 2VAC5-585-1670;
2. Hot water mechanical operations by being cycled through equipment that is set up as specified under

Regulations

2VAC5-585-1610, 2VAC5-585-1680, and 2VAC5-585-1690 and achieving a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or

3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 2VAC5-585-1700 by providing:

a. Except as specified under subdivision 3 b of this section, an exposure time of at least 10 seconds for a chlorine solution specified under subdivision 1 of 2VAC5-585-1700;

b. An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 100°F (38°C) or a pH of 8 or less and a temperature of at least 75°F (24°C);

c. An exposure time of at least 30 seconds for other chemical sanitizing solutions; or

d. An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 2VAC5-585-40.

Article 8

Laundrying

2VAC5-585-1910. Clean linens.

Clean linens shall be free from food residues and other soiling matter.

2VAC5-585-1920. Specifications.

A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

B. Cloth gloves used as specified in 2VAC5-585-580 D shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

C. Linens and napkins that are used as specified under 2VAC5-585-560 and cloth napkins shall be laundered between each use.

D. Wet wiping cloths shall be laundered daily.

E. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

2VAC5-585-1930. Storage of soiled linens.

Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

2VAC5-585-1940. Mechanical washing.

A. Except as specified in subsection B of this section, linens shall be mechanically washed.

B. In food establishments in which only wiping cloths are laundered as specified in 2VAC5-585-1490 B, the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under 2VAC5-585-1600.

2VAC5-585-1950. Use of laundry facilities.

A. Except as specified in subsection B of this section, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

B. Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

Article 9

Protection of Clean Items

2VAC5-585-1960. Equipment and utensils, air-drying required.

After cleaning and sanitizing, equipment and utensils:

1. Shall be air dried or used after adequate draining as specified in [~~24 CFR 178.1010(a)~~ 40 CFR 180.9401] before contact with food; and

2. May not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

2VAC5-585-1970. Wiping cloths, air-drying locations.

Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in 2VAC5-585-1490 B shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under 2VAC5-585-1700.

2VAC5-585-1980. Food-contact surfaces.

Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

2VAC5-585-1990. Equipment.

Equipment shall be reassembled so that food-contact surfaces are not contaminated.

2VAC5-585-2000. Equipment, utensils, linens, and single-service and single-use articles.

A. Except as specified in subsection D of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

1. In a clean, dry location;
2. Where they are not exposed to splash, dust, or other contamination; and
3. At least six inches (15 cm) above the floor.

B. Clean equipment and utensils shall be stored as specified under subsection A of this section and shall be stored:

1. In a self-draining position that allows air drying; and
2. Covered or inverted.

C. Single-service and single-use articles shall be stored as specified under subsection A of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

D. Items that are kept in closed packages may be stored less than six inches (15 cm) above the floor on dollies, pallets, racks, and skids that are designed as provided under 2VAC5-585-1420.

2VAC5-585-2010. Prohibitions.

A. Except as specified in subsection B of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

1. In locker rooms;
2. In toilet rooms or vestibules;
3. In garbage rooms;
4. In mechanical rooms;
5. Under sewer lines that are not shielded to intercept potential drips;
6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
7. Under open stairwells; or
8. Under other sources of contamination.

B. Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

2VAC5-585-2020. Kitchenware and tableware.

A. Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

B. Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

C. Except as specified under subsection B of this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

2VAC5-585-2030. Soiled and clean tableware.

Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

2VAC5-585-2040. Preset tableware.

If tableware is preset:

1. It shall be protected from contamination by being wrapped, covered, or inverted;
2. Exposed, unused settings shall be removed when a consumer is seated; or
3. Exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

Part V

Water, Plumbing, and Waste

Article 1

Water

2VAC5-585-2050. Approved system.*

Drinking water shall be obtained from an approved source that is:

1. A public water system; or
2. A nonpublic water system that is constructed, maintained, and operated according to law.

2VAC5-585-2060. System flushing and disinfection.*

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

2VAC5-585-2070. Bottled drinking water.*

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR Part 129, Processing and Bottling of Bottled Drinking Water.

2VAC5-585-2080. Quality standards.*

Except as specified under 2VAC5-585-2090:

Regulations

1. Water from a public water system shall meet the applicable standards found in the Virginia Waterworks Regulations (12VAC5-590).

2. Water from a nonpublic water system shall meet state drinking water quality standards.

2VAC5-585-2090. Nondrinking water.*

A. A nondrinking water supply shall be used only if its use is approved.

B. Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.

2VAC5-585-2100. Sampling.

Except when used as specified under 2VAC5-585-2090, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.

2VAC5-585-2110. Sample report.

The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

2VAC5-585-2120. Capacity.*

A. The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.

B. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.

2VAC5-585-2130. Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under subdivisions 1 and 2 of 2VAC5-585-2160 to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

2VAC5-585-2140. (Reserved)

2VAC5-585-2150. Distribution, delivery, and retention system.

Water shall be received from the source through the use of:

1. An approved public water main; or
2. One or more of the following that shall be constructed, maintained, and operated according to law:
 - a. Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;
 - b. Water transport vehicles; and

c. Water containers.

2VAC5-585-2160. Alternative water supply.

Water meeting the requirements specified under 2VAC5-585-2050 through 2VAC5-585-2130 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

1. A supply of containers of commercially bottled drinking water;
2. One or more closed portable water containers;
3. An enclosed vehicular water tank;
4. An on-premises water storage tank; or
5. Piping, tubing, or hoses connected to an adjacent approved source.

Article 2

Plumbing System

2VAC5-585-2170. Approved materials.*

A. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.

B. A water filter shall be made of safe materials.

2VAC5-585-2180. Approved system and cleanable fixtures.*

A. A plumbing system shall be designed, constructed, and installed according to law.

B. A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.^N

2VAC5-585-2190. Handwashing facility, installation.

A. A handwashing lavatory shall be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

B. A steam mixing valve may not be used at a handwashing lavatory.

C. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

2VAC5-585-2200. Backflow prevention, air gap.*

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one inch (25 mm).

2VAC5-585-2210. Backflow prevention device, design standard.

A backflow or backsiphonage prevention device installed on a water supply system shall comply with the Virginia Statewide Building Code (13VAC5-63) for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

2VAC5-585-2220. Conditioning device, design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

2VAC5-585-2230. Handwashing facilities.*

A. Except as specified in subsections B and C of this section, at least one handwashing lavatory, or the number of handwashing lavatories necessary for their convenient use by employees in areas specified under 2VAC5-585-2280, and not fewer than the number of handwashing lavatories required by law shall be provided.

B. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a food establishment that has at least one handwashing lavatory.

C. If approved, when food exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically-treated towelettes for handwashing.

2VAC5-585-2240. Toilets and urinals.*

At least one toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law.

2VAC5-585-2250. Service sink.

At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

2VAC5-585-2260. Backflow prevention device, when required.*

A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb (threaded faucet) if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law by:

1. Providing an air gap as specified under 2VAC5-585-2200; or

2. Installing an approved backflow prevention device as specified under 2VAC5-585-2210.

2VAC5-585-2270. Backflow prevention device, carbonator.*

A. If not provided with an air gap as specified under 2VAC5-585-2200, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to one inch (100 mesh to 25.4mm) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

B. A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under subsection A of this section.

2VAC5-585-2280. Handwashing facilities.*

A handwashing facility shall be located:

1. To be readily accessible for use by employees in food preparation, food dispensing, and warewashing areas; and

2. In, or immediately adjacent to, toilet rooms.

2VAC5-585-2290. Backflow prevention device, location.

A backflow prevention device shall be located so that it may be serviced and maintained.

2VAC5-585-2300. Conditioning device, location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

2VAC5-585-2310. Using a handwashing facility.

A. A handwashing facility shall be maintained so that it is accessible at all times for employee use.

B. A handwashing facility may not be used for purposes other than handwashing.

C. An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

2VAC5-585-2320. Prohibiting a cross connection.*

A. Except as specified in 9 CFR 308.3(d) for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

B. The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^N

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2VAC5-585-2330. Scheduling inspection and service for a water system device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

2VAC5-585-2340. Water reservoir of fogging devices, cleaning.*

A. A reservoir that is used to supply water to a device such as a produce fogger shall be:

1. Maintained in accordance with manufacturer's specifications; and
2. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection B of this section, whichever is more stringent.

B. Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

1. Draining and complete disassembly of the water and aerosol contact parts;
2. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
3. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
4. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L (ppm) hypochlorite solution.

2VAC5-585-2350. System maintained in good repair.*

A plumbing system shall be:

1. Repaired according to law; and
2. Maintained in good repair.^S

Article 3

Mobile Water Tank and Mobile Food Establishment Water Tank

2VAC5-585-2360. Approved materials.

Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

1. Safe;
2. Durable, corrosion resistant, and nonabsorbent; and
3. Finished to have a smooth, easily cleanable surface.

2VAC5-585-2370. Enclosed system, sloped to drain.

A mobile water tank shall be:

1. Enclosed from the filling inlet to the discharge outlet; and
2. Sloped to an outlet that allows complete drainage of the tank.

2VAC5-585-2380. Inspection and cleaning port, protected and secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

1. Flanged upward at least one-half inch (13 mm); and
2. Equipped with a port cover assembly that is:
 - a. Provided with a gasket and a device for securing the cover in place; and
 - b. Flanged to overlap the opening and sloped to drain.

2VAC5-585-2390. "V" type threads, use limitation.

A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

2VAC5-585-2400. Tank vent, protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

1. 16 mesh to one-inch (16 mesh to 25.4-mm) screen or equivalent when the vent is in a protected area; or
2. A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

2VAC5-585-2410. Inlet and outlet, sloped to drain.

A. A water tank and its inlet and outlet shall be sloped to drain.

B. A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

2VAC5-585-2420. Hose, construction and identification.

A hose used for conveying drinking water from a water tank shall be:

1. Safe;
2. Durable, corrosion resistant, and nonabsorbent;
3. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
4. Finished with a smooth interior surface; and
5. Clearly and durably identified as to its use if not permanently attached.

2VAC5-585-2430. Filter, compressed air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

2VAC5-585-2440. Protective cover or device.

A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

2VAC5-585-2450. Mobile food establishment tank inlet.

A mobile food establishment's water tank inlet shall be:

1. Three-fourths inch (19.1 mm) in inner diameter or less; and
2. Provided with a hose connection of a size or type that will prevent its use for any other service.

2VAC5-585-2460. System flushing and disinfection.*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

2VAC5-585-2470. Using a pump and hoses, backflow prevention.

A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

2VAC5-585-2480. Protecting inlet, outlet, and hose fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under 2VAC5-585-2440.

2VAC5-585-2490. Tank, pump, and hoses, dedication.

A. Except as specified in subsection B of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

B. Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

Article 4

Sewage, Other Liquid Waste, and Rainwater

2VAC5-585-2500. Mobile holding tank capacity and drainage.

A sewage holding tank in a mobile food establishment shall be:

1. Sized 15% larger in capacity than the water supply tank; and

2. Sloped to a drain that is one inch (25 mm) in inner diameter or greater, equipped with a shut-off valve.

2VAC5-585-2510. Establishment drainage system.

Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 2VAC5-585-2180 A.

2VAC5-585-2520. Backflow prevention.*

A. Except as specified in subsections B and C of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

B. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

C. If allowed by law, a warewashing or culinary sink may have a direct connection.

2VAC5-585-2530. Grease trap.

If used, a grease trap shall be located to be easily accessible for cleaning.

2VAC5-585-2540. Conveying sewage.*

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

2VAC5-585-2550. Removing mobile food establishment wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

2VAC5-585-2560. Flushing a waste retention tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

2VAC5-585-2570. Approved sewage disposal system.*

Sewage shall be disposed through an approved facility that is:

1. A public sewage treatment plant; or
2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

Regulations

2VAC5-585-2580. Other liquid wastes and rainwater.

Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

Article 5

Refuse, Recyclables, and Returnables

2VAC5-585-2590. Indoor storage area.

If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 2VAC5-585-2790, 2VAC5-585-2810 through 2VAC5-585-2880, 2VAC5-585-2930, and 2VAC5-585-2940.

2VAC5-585-2600. Outdoor storage surface.

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

2VAC5-585-2610. Outdoor enclosure.

If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

2VAC5-585-2620. Receptacles.

A. Except as specified in subsection B of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

B. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

2VAC5-585-2630. Receptacles in vending machines.

A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

2VAC5-585-2640. Outside receptacles.

A. Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

B. Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

2VAC5-585-2650. Storage areas, rooms, and receptacles, capacity and availability.

A. An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

B. A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

C. If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

2VAC5-585-2660. Toilet room receptacle, covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

2VAC5-585-2670. Cleaning implements and supplies.

A. Except as specified in subsection B of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

B. If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

2VAC5-585-2680. Storage areas, redeeming machines, receptacles and waste handling units, location.

A. An area designated for refuse, recyclables, returnables, and, except as specified in subsection B of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

B. A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

C. The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

2VAC5-585-2690. Storing refuse, recyclables, and returnables.

Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

2VAC5-585-2700. Areas, enclosures, and receptacles, good repair.

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

2VAC5-585-2710. Outside storage prohibitions.

A. Except as specified in subsection B of this section, refuse receptacles not meeting the requirements specified under 2VAC5-585-2620 A, such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

B. Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

2VAC5-585-2720. Covering receptacles.

Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

1. Inside the food establishment if the receptacles and units:
 - a. Contain food residue and are not in continuous use; or
 - b. After they are filled; and
2. With tight-fitting lids or doors if kept outside the food establishment.

2VAC5-585-2730. Using drain plugs.

Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

2VAC5-585-2740. Maintaining refuse areas and enclosures.

A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under 2VAC5-585-3300, and clean.

2VAC5-585-2750. Cleaning receptacles.

A. Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under 2VAC5-585-2550.

B. Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

2VAC5-585-2760. Removal frequency.

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

2VAC5-585-2770. Receptacles or vehicles.

Refuse, recyclables, and returnables shall be removed from the premises by way of:

1. Portable receptacles that are constructed and maintained according to law; or
2. A transport vehicle that is constructed, maintained, and operated according to law.

2VAC5-585-2780. Community or individual facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

Part VI

Physical Facilities

Article 1

Materials for Construction and Repair

2VAC5-585-2790. Indoor areas; surface characteristics.

A. Except as specified in subsection B of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

Regulations

2VAC5-585-2800. Outdoor areas; surface characteristics.

A. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

B. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

C. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under 2VAC5-585-2600 and 2VAC5-585-2610.

Article 2

Design, Construction, and Installation

2VAC5-585-2810. Floors, walls, and ceilings - cleanability.

Except as specified under 2VAC5-585-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

2VAC5-585-2820. Floors, walls, and ceilings, utility lines.

A. Utility service lines and pipes may not be unnecessarily exposed.

B. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

C. Exposed horizontal utility service lines and pipes may not be installed on the floor.

2VAC5-585-2830. Floor and wall junctures, coved, and enclosed or sealed.

A. In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1/32 inch (one mm).

B. The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

2VAC5-585-2840. Floor carpeting, restrictions and installation.

A. A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

B. If carpeting is installed as a floor covering in areas other than those specified under subsection A of this section, it shall be:

1. Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

2. Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

2VAC5-585-2850. Floor covering, mats and duckboards.

Mats and duckboards shall be designed to be removable and easily cleanable.

2VAC5-585-2860. Wall and ceiling coverings and coatings.

A. Wall and ceiling covering materials shall be attached so that they are easily cleanable.

B. Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

2VAC5-585-2870. Walls and ceilings, attachments.

A. Except as specified in subsection B of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

B. In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

2VAC5-585-2880. Walls and ceilings, studs, joists, and rafters.

Studs, joists, and rafters may not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

2VAC5-585-2890. Light bulbs, protective shielding.

A. Except as specified in subsection B of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

B. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

1. The integrity of the packages cannot be affected by broken glass falling onto them; and

2. The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

C. An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

2VAC5-585-2900. Heating, ventilating, air conditioning system vents.

Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

2VAC5-585-2910. Insect control devices, design and installation.

A. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

B. Insect control devices shall be installed so that:

1. The devices are not located over a food preparation area; and

2. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

2VAC5-585-2920. Toilet rooms, enclosed.

A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

2VAC5-585-2930. Outer openings, protected.

A. Except as specified in subsections B through E of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

1. Filling or closing holes and other gaps along floors, walls and ceilings;

2. Closed, tight-fitting windows; and

3. Solid self-closing, tight-fitting doors.

B. Subsection A of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

C. Exterior doors used as exits need not be self-closing if they are:

1. Solid and tight-fitting;

2. Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and

3. Restricted so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

D. Except as specified in subsections B and E of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes, the openings shall be protected against the entry of insects and rodents by:

1. 16 mesh to one-inch (16 mesh to 25.4-mm) screens;

2. Properly designed and installed air curtains to control flying insects; or

3. Other effective means.

E. Subsection D of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

2VAC5-585-2940. Exterior walls and roofs, protective barrier.

Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

2VAC5-585-2950. Outdoor food vending areas, overhead protection.

If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.

2VAC5-585-2960. Outdoor servicing areas, overhead protection.

Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

2VAC5-585-2970. Outdoor walking and driving surfaces, graded to drain.

Exterior walking and driving surfaces shall be graded to drain.

2VAC5-585-2980. Outdoor refuse areas, curbed and graded to drain.

Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

Regulations

2VAC5-585-2990. Private homes and living or sleeping quarters, use prohibition.

A room used as sleeping quarters may not be used for conducting food establishment operations.

2VAC5-585-3000. Living or sleeping quarters, separation.

Sleeping quarters located on the premises of a food establishment shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

Article 3

Numbers and Capacities

2VAC5-585-3010. Handwashing lavatories, minimum number.

Handwashing lavatories shall be provided as specified under 2VAC5-585-2230.

2VAC5-585-3020. Handwashing cleanser, availability.

Each handwashing lavatory or group of two adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

2VAC5-585-3030. Hand drying provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

1. Individual, disposable towels;
2. A continuous towel system that supplies the user with a clean towel; or
3. A heated-air hand drying device.

2VAC5-585-3040. Handwashing aids and devices, use restrictions.

A sink used for food preparation or utensil washing may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified under 2VAC5-585-3020 and 2VAC5-585-3030 and 2VAC5-585-2650 C.

2VAC5-585-3045. Handwashing signage.

A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing lavatories used by food employees and shall be clearly visible to food employees.

2VAC5-585-3050. Disposable towels, waste receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 2VAC5-585-2650 C.

2VAC5-585-3060. Toilets and urinals, minimum number.

Toilets and urinals shall be provided as specified under 2VAC5-585-2240.

2VAC5-585-3070. Toilet tissue, availability.

A supply of toilet tissue shall be available at each toilet.

2VAC5-585-3080. Lighting, intensity.

The light intensity shall be:

1. At least 10 foot candles (110 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

2. At least 20 foot candles (220 lux):

a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

b. Inside equipment such as reach-in and under-counter refrigerators;

c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

2VAC5-585-3090. Ventilation, mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

2VAC5-585-3100. Dressing areas and lockers, designation.

A. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

B. Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

2VAC5-585-3110. Service sinks, availability.

A service sink or curbed cleaning facility shall be provided as specified under 2VAC5-585-2250.

Article 4

Location and Placement

2VAC5-585-3120. Handwashing lavatories, conveniently located.

Handwashing lavatories shall be conveniently located as specified under 2VAC5-585-2280.

2VAC5-585-3130. Toilet rooms, convenience and accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation. Toilet rooms intended for use by customers shall not necessitate travel through food preparation or handling areas.

2VAC5-585-3140. Employee accommodations, designated areas.

A. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

B. Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

2VAC5-585-3150. Distressed merchandise, segregation and location.

Products that are held by the person in charge for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

2VAC5-585-3160. Refuse, recyclables, and returnables - receptacles, waste handling units, and designated storage areas.

Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 2VAC5-585-2680.

Article 5

Maintenance and Operation

2VAC5-585-3170. Repairing.

The physical facilities shall be maintained in good repair.

2VAC5-585-3180. Cleaning, frequency and restrictions.

A. The physical facilities shall be cleaned as often as necessary to keep them clean.

B. Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

2VAC5-585-3190. Cleaning floors, dustless methods.

A. Except as specified in subsection B of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

B. Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

1. Without the use of dust-arresting compounds; and

2. In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

2VAC5-585-3200. Cleaning ventilation systems, nuisance and discharge prohibition.

A. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

B. If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

2VAC5-585-3210. Cleaning maintenance tools, preventing contamination.*

Food preparation sinks, handwashing lavatories, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

2VAC5-585-3220. Drying mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

2VAC5-585-3230. Absorbent materials on floors, use limitation.

Except as specified in 2VAC5-585-3190 B, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

2VAC5-585-3240. Maintaining and using handwashing lavatories.

Handwashing lavatories shall be kept clean, and maintained and used as specified under 2VAC5-585-2310.

2VAC5-585-3250. Closing toilet room doors.

Toilet room doors as specified under 2VAC5-585-2920 shall be kept closed except during cleaning and maintenance operations unless otherwise required by other regulations or law.

2VAC5-585-3260. Using dressing rooms and lockers.

A. Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

B. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

Regulations

2VAC5-585-3270. Controlling pests.*

The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

1. Routinely inspecting incoming shipments of food and supplies;^N
2. Routinely inspecting the premises for evidence of pests;^N
3. Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 2VAC5-585-3360, 2VAC5-585-3440, and 2VAC5-585-3450; and
4. Eliminating harborage conditions.^N

2VAC5-585-3280. Removing dead or trapped birds, insects, rodents, and other pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

2VAC5-585-3290. Storing maintenance tools.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

1. Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and
2. Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

2VAC5-585-3300. Maintaining premises, unnecessary items and litter.

The premises shall be free of:

1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
2. Litter.

2VAC5-585-3310. Prohibiting animals.*

A. Except as specified in subsections B and C of this section, live animals may not be allowed on the premises of a food establishment.

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

- a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
- b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
- c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

Part VII

Poisonous or Toxic Materials

Article 1

Labeling and Identification

2VAC5-585-3320. Original containers - identifying information, prominence.*

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

2VAC5-585-3330. Working containers - common name.*

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

Article 2

Operational Supplies and Applications

2VAC5-585-3340. Storage, separation.*

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;^S and
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This subsection does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles; and
3. Detergents, sanitizers, related cleaning or drying agents and caustics, acids, polishes and other chemicals shall be stored separately from insecticides and rodenticides.

2VAC5-585-3350. Presence and use restriction.*

A. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.^S

B. Subsection A of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

2VAC5-585-3360. Conditions of use.*

A. Poisonous or toxic materials shall be:

1. Used according to:
 - a. Law and this chapter;
 - b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
 - c. The conditions of certification, if certification is required, for use of the pest control materials; and
 - d. Additional conditions that may be established by the department; and
2. Applied so that:
 - a. A hazard to employees or other persons is not constituted; and
 - b. Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:

(1) Removing the items;

(2) Covering the items with impermeable covers; or

(3) Taking other appropriate preventive actions; and

(4) Cleaning and sanitizing equipment and utensils after the application.

B. A restricted use pesticide shall be applied only by an applicator certified as defined in §§3.1-249.51, 3.1-249.52, and 3.1-249.53 E of the Code of Virginia (Virginia Pesticide Control Act) or a person under the direct supervision of a certified applicator.

2VAC5-585-3370. Poisonous or toxic material containers.*

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

2VAC5-585-3380. Sanitizers, criteria.*

Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in [~~21 CFR 178.1010~~ 40 CFR 180.940].

2VAC5-585-3390. Chemicals for washing fruits and vegetables, criteria.*

Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315.

2VAC5-585-3400. Boiler water additives, criteria.*

Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310.

2VAC5-585-3410. Drying agents, criteria.*

Drying agents used in conjunction with sanitization shall:

1. Contain only components that are listed as one of the following:
 - a. Generally recognized as safe for use in food as specified in 21 CFR Part 182, Substances Generally Recognized as Safe, or 21 CFR Part 184, Direct Food Substances Affirmed as Generally Recognized as Safe;
 - b. Generally recognized as safe for the intended use as specified in 21 CFR Part 186, Indirect Food Substances Affirmed as Generally Recognized as Safe;
 - c. Approved for use as a drying agent under a prior sanction specified in 21 CFR Part 181, Prior-Sanctioned Food Ingredients;
 - d. Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178; or

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e. Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39, Threshold of Regulation for Substances Used in Food-Contact Articles; and

2. When sanitization is with chemicals, the approval required under subdivisions 1 c or 1 e of this section or the regulation as an indirect food additive required under subdivision 1 d of this section, shall be specifically for use with chemical sanitizing solutions.

2VAC5-585-3420. Lubricants - incidental food contact, criteria.*

Lubricants shall meet the requirements specified in 21 CFR 178.3570 if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

2VAC5-585-3430. Restricted use pesticides, criteria.*

Restricted use pesticides specified under subsection B of 2VAC5-585-3360 shall meet the requirements specified in 40 CFR Part 152, Subpart I, Classification of Pesticides.

2VAC5-585-3440. Rodent bait stations.*

Rodent bait shall be contained in a covered, tamper-resistant bait station.

2VAC5-585-3450. Tracking powders, pest control and monitoring.*

A. A tracking powder pesticide may not be used in a food establishment.

B. If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.^N

2VAC5-585-3460. Medicines - restriction and storage.*

A. Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 2VAC5-585-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

2VAC5-585-3470. Refrigerated medicines, storage.*

Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

1. Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

2. Located so they are inaccessible to children.

2VAC5-585-3480. First aid supplies, storage.*

First aid supplies that are in a food establishment for the employees' use shall be:

1. Labeled as specified under 2VAC5-585-3320;^S and

2. Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.^S

2VAC5-585-3490. Other personal care items, storage.

Except as specified under 2VAC5-585-3470 and 2VAC5-585-3480, employees shall store their personal care items in facilities as specified under 2VAC5-585-3100 B.

Article 3

Stock and Retail Sale

2VAC5-585-3500. Storage and display, separation.*

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;^S and

2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

Part VIII

Compliance and Enforcement

Article 1

Applicability of Chapter

2VAC5-585-3510. Public health protection.

A. The department shall apply this regulation to promote its underlying purpose, as specified in 2VAC5-585-20, of safeguarding public health and ensuring that food is safe and unadulterated when offered to the consumer.

B. In enforcing the provisions of this regulation, the department shall assess existing facilities or equipment that were in use before the effective date of this regulation based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;

2. Whether food-contact surfaces comply with 2VAC5-585-960 through 2VAC5-585-1060;

3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 2VAC5-585-1450; and

4. The existence of a documented agreement with the establishment operator that the facilities or equipment will be replaced or upgraded as specified in the following:

a. Except as specified under subdivision B 4 b of this section, replace existing facilities and equipment specified in this section with facilities and equipment that comply with this regulation if:

(1) The department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

(2) The department directs the replacement of the facilities and equipment because of a change of ownership; or

(3) The facilities and equipment are replaced in the normal course of operation;

b. Upgrade or replace refrigeration equipment as specified under 2VAC5-585-820 A 2 b, if the circumstances specified under subdivision B 4 a of this section do not occur first.

2VAC5-585-3520. Preventing health hazards, provision for conditions not addressed.

A. If necessary to protect against public health hazards or nuisances, the department may impose specific requirements in addition to the requirements contained in this regulation that are authorized by law.

B. The department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the establishment operator or person in charge and a copy shall be maintained in the department's file for the food establishment.

2VAC5-585-3530. (Reserved)

2VAC5-585-3540. Variances, modifications and waivers.

The department may grant a variance by modifying or waiving the requirements of this regulation if in the opinion of the department a health hazard or nuisance will not result from the variance. If a variance is granted, the department shall retain the information specified under 2VAC5-585-3541 in its records for the food establishment.

2VAC5-585-3541. Documentation of proposed variance and justification.

Before a variance from a requirement of this regulation is approved, the information that shall be provided by the

person requesting the variance and retained in the department's file on the food establishment includes:

1. A statement of the proposed variance of the regulation requirement citing relevant regulation section numbers;

2. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant regulation sections will be alternatively addressed by the proposal; and

3. A HACCP plan if required as specified under 2VAC5-585-3620 A that includes the information specified under 2VAC5-585-3630 as it is relevant to the variance requested.

2VAC5-585-3542. Conformance with approved procedures.*

If the department grants a variance as specified in 2VAC5-585-3540, or a HACCP plan is otherwise required as specified under 2VAC5-585-3620, the operator shall:

1. Comply with the HACCP plans and procedures that are submitted as specified under 2VAC5-585-3630 and approved as a basis for the modification or waiver; and

2. Maintain and provide to the department, upon request, records specified under subdivisions 4 and 5 of 2VAC5-585-3630 that demonstrate that the following are routinely employed:

- a. Procedures for monitoring critical control points;
- b. Monitoring of the critical control points;
- c. Verification of the effectiveness of an operation or process; and
- d. Necessary corrective actions if there is failure at a critical control point.

2VAC5-585-3550. (Reserved)

2VAC5-585-3560. (Reserved)

2VAC5-585-3570. (Reserved)

2VAC5-585-3580. (Reserved)

2VAC5-585-3590. (Reserved)

Article 2

Plan Submission and Approval

2VAC5-585-3600. Facility and operating plans - when plans are required.

An operator shall submit to the department properly prepared plans and specifications for review and approval when appropriate or when requested by the department. Such instances shall include:

1. The construction of a food establishment;

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2. The conversion of an existing structure for use as a food establishment; or

3. The remodeling of a food establishment or a change of type of food establishment or food operation if the department determines that plans and specifications are necessary to ensure compliance with this regulation.

2VAC5-585-3610. Contents of the plans and specifications.

The plans and specifications for a food establishment, including a food establishment specified under 2VAC5-585-3620, shall include, as required by the department based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with the provisions of this chapter:

1. Intended menu;

2. Anticipated volume of food to be stored, prepared, and sold or served;

3. Proposed layout, mechanical schematics, construction materials, and finish schedules;

4. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

5. Evidence that standard procedures ensuring compliance with the requirements of this chapter are developed or are being developed; and

6. Other information that may be required by the department for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

2VAC5-585-3620. When a HACCP plan is required.

A. Before engaging in an activity that requires a HACCP plan, an operator shall submit to the department for approval a properly prepared HACCP plan as specified under 2VAC5-585-3630 and the relevant provisions of this chapter if:

1. Submission of a HACCP plan is required according to law;

2. A variance is required as specified under 2VAC5-585-860, 2VAC5-585-1300 B, or subdivision 2VAC5-585-700 D 3; or

3. The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under 2VAC5-585-3610, an inspectional finding, or a variance request.

B. An operator shall have a properly prepared HACCP plan as specified under 2VAC5-585-870.

2VAC5-585-3630. Contents of a HACCP plan.

For a food establishment that is required under 2VAC5-585-3620 to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;

2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:

a. Ingredients, materials, and equipment used in the preparation of that food; and

b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

3. Food employee and supervisory training plan that addresses the food safety issues of concern;

4. A statement of standard operating procedures for the plan under consideration including clearly identifying:

a. Each critical control point;

b. The critical limits for each critical control point;

c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;

e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and

f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

5. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

2VAC5-585-3640. Confidentiality - trade secrets.

The department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under 2VAC5-585-3610 and 2VAC5-585-3630.

2VAC5-585-3650. Preoperational inspections.

The department shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under subdivision 5 of 2VAC5-585-3610 and is in compliance with law and this chapter.

Article 3

(Reserved)

Article 4

Inspection and Correction of Violations

2VAC5-585-3800. Frequency, establishing inspection interval.

Food establishments shall be inspected by the designee of the commissioner. Inspections of food establishments shall be performed as often as necessary for the enforcement of this part in accordance with the following:

1. Except as specified in subdivisions 2 and 3 of this section, the department shall inspect a food establishment at least once every six months.
2. The department may increase the interval between inspections beyond six months if:
 - a. The food establishment is fully operating under an approved and validated HACCP plan as specified under 2VAC5-585-3630 and subdivisions 1 and 2 of 2VAC5-585-3542.
 - b. The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.
 - c. The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.
3. The department shall periodically inspect a temporary food establishment that prepares, sells, or serves unpackaged potentially hazardous food and that:
 - a. Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
 - b. Has inexperienced food employees.

2VAC5-585-3810. Performance- and risk-based inspections.

Within the parameters specified in 2VAC5-585-3800, the department shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

1. Past performance for nonconformance with this chapter or HACCP plan requirements that are critical;
2. Past performance for numerous or repeat violations of this chapter or HACCP plan requirements that are noncritical;
3. Past performance for complaints investigated and found to be valid;
4. The hazards associated with the particular foods that are prepared, stored, or served;
5. The type of operation including the methods and extent of food storage, preparation, and service;
6. The number of people served; and
7. Whether the population served is a highly susceptible population.

2VAC5-585-3815. Competency of personnel.

An authorized representative of the commissioner who inspects a food establishment or conducts plan review for compliance with this regulation shall have the knowledge, skills, and ability to adequately perform the required duties.

2VAC5-585-3820. Access allowed at reasonable times.

After the authorized representative of the commissioner presents official credentials and identifies the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the authorized representative to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the department is entitled according to law, during the food establishment's hours of operation and other reasonable times.

2VAC5-585-3830. Refusal, notification of right to access, and final request for access.

If a person denies access to the authorized representative of the commissioner, the authorized representative shall:

1. Inform the person that:
 - a. The person is required to allow access to the authorized representative as specified under 2VAC5-585-3820;

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b. If access is denied, the department will refer the matter to the Commonwealth's Attorney for handling in accordance with applicable sections of the Code of Virginia; and

2. Make a final request for access.

2VAC5-585-3840. Refusal, reporting.

If after the authorized representative of the commissioner presents credentials and identifies the purpose of and the intent to conduct an inspection as specified under 2VAC5-585-3820, explains the authority upon which access is requested, and makes a final request for access as specified in 2VAC5-585-3830, the person in charge continues to refuse access, the authorized representative shall provide details of the denial of access on an inspection report form.

2VAC5-585-3850. Inspection order to gain access.

If denied access to a food establishment for an authorized purpose and after complying with 2VAC5-585-3830, the department may apply for the issuance of an inspection order to gain access as provided in law.

2VAC5-585-3860. Documenting information and observations.

The authorized representative of the commissioner shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, and other information such as type of water supply and sewage disposal, and personnel certificates that may be required; and

2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the establishment operator including:

a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 2VAC5-585-60;

b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under 2VAC5-585-110 and 2VAC5-585-120;

c. Nonconformance with critical items of this chapter;

d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified under 2VAC5-585-60;

e. Failure of the person in charge to provide records required by the department for determining conformance

with a HACCP plan as specified under subdivision 4 f of 2VAC5-585-3630; and

f. Nonconformance with critical limits of a HACCP plan.

2VAC5-585-3870. Specifying time frame for corrections.

The authorized representative of the commissioner shall specify on the inspection report form the time frame for correction of the violations as specified under 2VAC5-585-3910, 2VAC5-585-3930, and 2VAC5-585-3950.

2VAC5-585-3880. Issuing report and obtaining acknowledgment of receipt.

At the conclusion of the inspection and according to law, the authorized representative of the commissioner shall provide a copy of the completed inspection report and the notice to correct violations to the person in charge, and request a signed acknowledgment of receipt.

2VAC5-585-3890. Refusal to sign acknowledgment.

The authorized representative of the commissioner shall:

1. Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in 2VAC5-585-3880 that:

a. An acknowledgment of receipt is not an agreement with findings;

b. Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames specified; and

c. A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the department's historical record for the food establishment; and

2. Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

2VAC5-585-3900. Public information.

Except as specified in 2VAC5-585-3640, the department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

2VAC5-585-3910. Imminent health hazard, ceasing operations and reporting.

A. Except as specified in subsection B of this section, an operator shall immediately discontinue operations and notify the department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or

condition, or other circumstance that may endanger public health.

B. An operator need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

2VAC5-585-3920. Resumption of operations.

If operations are discontinued as specified under 2VAC5-585-3910 or otherwise according to law, the operator shall obtain approval from the department before resuming operations.

2VAC5-585-3930. Critical violation, timely correction.

A. Except as specified in subsection B of this section, an operator or person in charge shall at the time of inspection correct a critical violation of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the department may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the operator or person in charge to correct critical violations or HACCP plan deviations.

2VAC5-585-3940. Verification and documentation of correction.

A. After observing at the time of inspection a correction of a critical violation or deviation, the authorized representative of the commissioner shall enter the violation and information about the corrective action on the inspection report.

B. As specified under 2VAC5-585-3930 B, the authorized representative shall verify correction of the critical violation or deviation during the next scheduled inspection of the establishment and shall document the information on an inspection report, and enter the report in the department's records.

2VAC5-585-3950. Noncritical violation, time frame for correction.

A. Except as specified in subsection B of this section, the operator or person in charge shall correct noncritical violations by a date and time agreed to or specified by the department but no later than 90 calendar days after the inspection.

B. The department may approve a compliance schedule that extends beyond the time limits specified under subsection A of this section if a written schedule of compliance is submitted by the operator and no health hazard exists or will result from allowing an extended schedule for compliance.

2VAC5-585-3960 through 2VAC5-585-4030. (Reserved)

Article 5

Prevention of Foodborne Disease Transmission by Employees

2VAC5-585-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.

The department shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

2VAC5-585-4050. Restriction or exclusion of food employee.

Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the department may request that the suspected food employee or operator institute one of the following control measures:

1. Restricting the food employee; or
2. Excluding the food employee.

2VAC5-585-4060. Restriction or exclusion request: information required.

Based on the findings of the investigation as specified in 2VAC5-585-4040 and to control disease transmission, the department may make a request to the suspected food employee or the operator regarding restriction or exclusion if the request:

1. States the reasons for the restriction or exclusion that is requested;
2. States the evidence that the food employee or operator shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated.

2VAC5-585-4070. Release of food employee from restriction or exclusion.

The department shall release a food employee from restriction or exclusion according to law and the following conditions:

1. A food employee who was infected with Salmonella typhi if the food employee's stools are negative for S. typhi

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based on testing of at least three consecutive stool specimen cultures that are taken:

- a. Not earlier than one month after onset;
- b. At least 48 hours after discontinuance of antibiotics; and
- c. At least 24 hours apart; and

2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.

3. A food employee who was infected with Shigella spp. or Shiga toxin-producing Escherichia coli if the employee's stools are negative for Shigella spp. or Shiga toxin-producing Escherichia coli based on testing of two consecutive stool specimen cultures that are taken:

- a. Not earlier than 48 hours after discontinuance of antibiotics; and
- b. At least 24 hours apart.

4. A food employee who was infected with hepatitis A virus if:

- a. Symptoms cease; or
- b. At least two blood tests show falling liver enzymes.

NOTICE: The forms used in administering 2VAC5-585, Retail Food Establishment Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Agriculture and Consumer Services, 102 Governor Street, Suite 349, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Food Safety and Security Program, Inspection Report, eff. 10/07.

Food Safety and Security Program, Record of Complaint, eff. 10/07.

Food Safety and Security Program, Record of Complaint, FBI, eff. 10/07.

Food Safety and Security Program, Sample Collection Report, eff. 10/07.

DOCUMENTS INCORPORATED BY REFERENCE

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, available from the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Office of Generic Drugs at <http://www.fda.gov/cder/ob/default.htm>.

7 CFR Parts 56 and 59, January 2006, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

9 CFR Parts 301, 308, 317, 319, 352, 354, 362, 381, 424, and 590, January 2006, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

21 CFR Parts [70,] 101, 113, 114, 120, 129 - 186, 21 CFR 1030.10, and 1240.60(d), April 2006, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

40 CFR Parts 141, 152 [and 40 CFR 180.940,] and 185 and 40 CFR, July 2005, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

50 CFR Part 17, October 2005, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

Federal Food, Drug and Cosmetic Act, as amended through December 31, 2004, 21 USC §§321, 342, 343, 348 and 376, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.

Grade "A" Pasteurized Milk Ordinance, 2003 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Grade "A" Condensed and Dry Milk Ordinance, 1995 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Interstate Certified Shellfish Shippers List, (updated monthly), published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

National Shellfish Sanitation Program Manual of Operations, 1995 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

Virginia Waterworks Regulations, 12VAC5-590, May 2006, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219.

Virginia Statewide Building Code, 13VAC5-63, November 2005, Virginia Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-755. Pertaining to Artificial Reefs (amending 4VAC20-755-10, 4VAC20-755-20, 4VAC20-755-30).

Statutory Authority: §28.2-201 of the Code of Virginia.

Effective Date: September 1, 2007.

Agency Contact: Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave. 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email brandy.battle@mrc.virginia.gov.

Summary:

The amendments (i) establish boundaries for gear restrictions for all new artificial reefs located in Virginia waters: Asphalt Pile Reef, Mobjack Bay Reef, Nandua-Pungoteague Reef, Poquoson Reef, Windmill Point Reef and York Spit Reef; and (ii) modify the boundaries for gear restrictions of several existing artificial reefs.

4VAC20-755-10. Purpose.

The purpose of this chapter is to reduce gear conflicts on ~~ertain~~ the commission's artificial fishing reefs.

4VAC20-755-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Anglers Reef" means that permitted artificial reef site ~~located in the Chesapeake Bay approximately 2.8 nautical miles west northwest of the mouth of Onancock Creek, Accomack County, delineated by the below listed eordinates;~~ with a boundary defined as beginning at a point in the Chesapeake Bay that is 2.31+/- nautical miles west - northwesterly of the mouth of Onancock Creek and 6.51+/- nautical miles southeasterly of the southern most point of Tangier Island, said point being the SE corner of Anglers Reef and having NAD 1983 geographic coordinates of 37°

43.700' N, 75° 52.900' W; thence in a west - northwesterly direction 3191.34 feet to the SW corner, located at 37° 43.800' N, 75° 53.550' W; thence in a north - northeasterly direction 5223.86 feet to the NW corner, located at 37° 44.600' N, 75° 53.15' W; thence in an east - southeasterly direction 2954.58 feet to the NE corner, located at 37° 44.500' N, 75° 52.55' W; thence in a south - southwesterly direction 5139.82 feet to the SE corner, said corner being the point of beginning.

~~NW corner 37° 44' 36" N 75° 53' 09" W
NE corner 37° 44' 30" N 75° 52' 33" W
SE corner 37° 43' 42" N 75° 52' 54" W
SW corner 37° 43' 48" N 75° 53' 33" W~~

"Asphalt Pile Reef" means that permitted artificial reef site with a boundary defined as beginning at a point in the Chesapeake Bay that is 3.72+/- nautical miles southeasterly of the Great Wicomico Light and 4.16+/- nautical miles east - northeasterly of Hughlett Point, the northern headland of Dividing Creek, said point being the NW corner of Asphalt Pile Reef and having NAD 1983 geographic coordinates of 37° 45.175' N, 76° 13.417' W; thence in a westerly direction 961.83 feet to the NE corner, located at 37° 45.175' N, 76° 13.217' W; thence in a southerly direction 4804.48 feet to the SE corner, located at 37° 44.383' N, 76° 13.217' W; thence in an easterly direction 963.91 feet to the SW corner, located at 37° 44.383' N, 76° 13.417' W; thence in a northerly direction 4804.48 feet to the NW corner, said corner being the point of beginning.

"Back River Reef" means that permitted artificial reef site ~~located in the Chesapeake Bay off the mouth of Back River, Hampton, circular in configuration with a radius of 2,000 feet, centered at 37°08' 12" N 76°13' 54" W with a~~ boundary defined as beginning at a point in the Chesapeake Bay that is 3.55 +/- nautical miles east - northeasterly of the mouth of Back River and 9.48 +/- nautical miles southeasterly of Tue Marshes Light, said point being the center radius point of Back River Reef and having NAD 1983 geographic coordinates of 37° 08.200' N, 76° 13.900' W; thence northerly a radius of 2000 feet to a point on an arc, located at 37° 08.530' N, 76° 13.900' W, said point being the point of beginning; thence a 360° arc (circle) extending 12566.37 feet clockwise about the radius point to the point of beginning.

"Cabbage Patch Reef" means that permitted artificial reef site ~~located in the Chesapeake Bay, 5.5 nautical miles south-southwest of the entrance to Cape Charles Harbor, Northampton County, delineated by the below listed eordinates;~~ with a boundary defined as beginning at a point in the Chesapeake Bay that is 2.55+/- nautical miles westerly of the former ferry dock at Kiptopeke and 4.49+/- nautical miles northwesterly of Wise Point, the northern headland of Fishermans Inlet, said point being the SE corner of Cabbage Patch Reef and having NAD 1983 geographic coordinates of 37° 09.900' N, 76° 02.500' W; thence in a westerly direction

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4613.60 feet to the SW corner, located at 37° 09.900' N, 76° 03.450' W; thence in an northerly direction 4247.76 feet to the NW corner, located at 37° 10.600' N, 76° 03.450' W; thence in a easterly direction 4612.88 feet to the NE corner, located at 37° 10.600' N, 76° 02.500' W; thence in a southerly direction 4247.77 feet to the SE corner, said corner being the point of beginning.

~~NW corner 37° 10' 36" N 76° 03' 27" W
NE corner 37° 10' 36" N 76° 02' 30" W
SE corner 37° 09' 54" N 76° 02' 30" W
SW corner 37° 09' 54" N 76° 03' 27" W~~

"Cell Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 3.6 nautical miles west of the mouth of Hungars Creek, Northampton County circular in configuration with a radius of 2,000 feet, centered at 37° 24' 06" N 76° 03' 25" W with a boundary defined as beginning at a point in the Chesapeake Bay that is 3.27+/- nautical miles westerly of Mattawoman Creek and 6.26+/- nautical miles west - southwesterly of the eastern most point of Nassawadox Point, said point being the SE corner of Cell Reef and having NAD 1983 geographic coordinates of 37° 23.800' N, 76° 03.000' W; thence in a westerly direction 3873.24 feet to the SW corner, located at 37° 23.800' N, 76° 03.800' W; thence in an northerly direction 3641.04 feet to the NW corner, located at 37° 24.400' N, 76° 03.800' W; thence in an easterly direction 3872.73 feet to the NE corner, located at 37° 24.400' N, 76° 03.000' W; thence in a southerly direction 3641.04 feet to the SE corner, said corner being the point of beginning.

"Cherrystone Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 2.2 nautical miles west of Savage Neck, Northampton County, circular in configuration with a radius of 2,000 feet, centered at 37° 24' 49" N 76° 02' 33" W with a boundary defined as beginning at a point in the Chesapeake Bay that is 5.56+/- nautical miles south - southwesterly of Mattawoman Creek and 2.75+/- nautical miles west - northerly of the western most point of Cape Charles Harbor jetty, said point being the SE corner of Cherrystone Reef and having NAD 1983 geographic coordinates of 37° 18.700' N, 76° 02.100' W; thence in a westerly direction 3877.62 feet to the SW corner, located at 37° 18.700' N, 76° 02.900' W; thence in an northerly direction 4247.82 feet to the NW corner, located at 37° 19.400' N, 76° 02.900' W; thence in an easterly direction 3877.01 feet to the NE corner, located at 37° 19.400' N, 76° 02.100' W; thence in a southerly direction 4247.82 feet to the SE corner, said corner being the point of beginning.

"East Ocean View Reef" means that permitted artificial reef site located in Chesapeake Bay off East Ocean View, Norfolk, circular in configuration with a radius of 250 yards, centered at 36° 56' 32.5" N 76° 12' 11.5" W with a boundary defined as beginning at a point in the Chesapeake Bay that is 2930 +/- feet north - northeasterly of Mean Low

Water at East Ocean View and 1.37 +/- nautical miles west - northwesterly of the mouth of Little Creek, said point being the center radius point of East Ocean View Reef and having NAD 1983 geographic coordinates of 36° 56.542' N, 76° 12.191' W; thence northerly a radius of 750 feet to a point on an arc, located at 36° 56.665' N, 76° 12.188' W, said point being the point of beginning; thence a 360° arc (circle) extending 4712.39 feet clockwise about the radius point to the point of beginning.

"Gwynn's Gwynn Island Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 1.2 nautical miles east of the southern end of Gwynn's Island, Mathews County, circular in configuration with a radius of 2,000 feet centered at 37° 28' 51" N 76° 14' 49" W with a boundary defined as beginning at a point in the Chesapeake Bay that is 7.99+/- nautical miles southerly of the eastern most point of Windmill Point and 4.97+/- nautical miles south - southeasterly of the eastern most point of Sting Ray Point, said point being the NW corner of Gwynn Island Reef and having NAD 1983 geographic coordinates of 37° 29.200' N, 76° 14.700' W; thence in an easterly direction 3867.63 feet to the NE corner, located at 37° 29.200' N, 76° 13.900' W; thence in a southerly direction 4247.96 feet to the SE corner, located at 37° 28.500' N, 76° 13.900' W; thence in a westerly direction 4247.96 feet to the SW corner, located at 37° 28.500' N, 76° 14.700' W; thence in a northerly direction 4247.96 feet to the NW corner, said corner being the point of beginning.

"Middle Ground Reef" means that permitted artificial reef site located in Hampton Roads, off Newport News, circular in configuration with a radius of 1,000 feet, centered at Middle Ground Light at 36° 56' 42" N 76° 23' 30" W with a boundary defined as beginning at a point in Hampton Roads that is 1.45 +/- nautical miles southeasterly of the mouth of Newport News Creek (Small Boat Harbor) and 3.36 +/- nautical miles east - southeasterly of Sewells Point, said point being the center radius point of Middle Ground Reef and having NAD 1983 geographic coordinates of 36° 56.700' N, 76° 23.500' W; thence northerly a radius of 1000 feet to a point on an arc, located at 36° 56.865' N, 76° 23.495' W, said point being the point of beginning; thence a 360° arc (circle) extending 6283.19 feet clockwise about the radius point to the point of beginning.

"Mobjack Bay Reef" means that permitted artificial reef site with a boundary defined as beginning at a point at the mouth of Mobjack Bay that is 1.98+/- nautical miles west - southwesterly of New Point Comfort Light and 4.69+/- nautical miles northeasterly of Tue Marshes Light, said point being the SE corner of Mobjack Reef and having NAD 1983 geographic coordinates of 37° 17.500' N, 76° 19.050' W; thence in a southwesterly direction 1611.50 feet to the SW corner, located at 37° 17.325' N, 76° 19.300' W; thence in an northwesterly direction 7648.97 feet to the NW corner, located at 37° 18.300' N, 76° 20.300' W; thence in a

northeasterly direction 1420.60 feet to the NE corner, located at 37° 18.450' N, 76° 20.075' W; thence in a southeasterly direction 7610.69 feet to the SE corner, said corner being the point of beginning.

"Nandua-Pungoteague Reef" means that permitted artificial reef site with a boundary defined as beginning at a point in the Chesapeake Bay that is 6.55+/- nautical miles west - southwesterly of the mouth of Onancock Creek and 7.77+/- nautical miles south - southeasterly of the southern most point of Tangier Island, said point being the NE corner of Nandua - Pungoteague Reef and having NAD 1983 geographic coordinates of 37° 40.500' N, 75° 57.600' W; thence in a southerly direction 4248.13 feet to the SE corner, located at 37° 39.800' N, 75° 57.600' W; thence in a westerly direction 4341.95 feet to the SW corner, located at 37° 39.800' N, 75° 58.500' W; thence in a northerly direction 4248.14 feet to the NW corner, located at 37° 40.500' N, 75° 58.500' W; thence in an easterly direction 4341.27 feet to the NE corner, said corner being the point of beginning.

"Nassawadox Reef" means that permitted artificial reef located in Chesapeake Bay 2.8 nautical miles NW of the mouth of Nassawadox Creek, Accomack County, delineated by the below listed coordinates: with a boundary defined as beginning at a point in the Chesapeake Bay that is 5.18+/- nautical miles southwesterly of Occohannock Creek and 2.32+/- nautical miles west - northwesterly of the eastern most point of Nassawadox Point, said point being the SE corner of Nassawadox Reef and having NAD 1983 geographic coordinates of 37° 29.200' N, 76° 00.500' W; thence in a westerly direction 4352.20 feet to the SW corner, located at 37° 29.200' N, 76° 01.400' W; thence in a northerly direction 4247.96 feet to the NW corner, located at 37° 29.900' N, 76° 01.400' W; thence in a easterly direction 4351.53 feet to the NE corner, located at 37° 29.900' N, 76° 00.500' W; thence in a southerly direction 4247.95 feet to the SE corner, said corner being the point of beginning.

NW corner 37° 29' 54" N 76° 01' 24" W
NE corner 37° 29' 54" N 76° 00' 30" W
SE corner 37° 29' 12" N 76° 00' 30" W
SW corner 37° 29' 12" N 76° 01' 24" W

"Northern Neck Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately seven nautical miles east of the Great Wicomico River Light, Northumberland County, delineated by the below listed coordinates: with a boundary defined as beginning at a point in the Chesapeake Bay that is 5.21+/- nautical miles south - southeasterly of Smith Point Light, 5.15 +/- nautical miles east - southeasterly of the Great Wicomico Light and 8.57+/- nautical miles west - southwesterly of the southern most point of Tangier Island, said point being the SW corner of Northern Neck Reef and having NAD 1983 geographic coordinates of 37° 47.700' N, 76° 09.600' W; thence in a north - northeasterly direction 5223.34 feet to the NE corner, located

at 37° 48.500' N, 76° 09.200' W; thence in an easterly direction 3188.14 feet to the NE corner, located at 37° 48.400' N, 76° 08.550' W; thence in a south - southwesterly direction 5041.27 feet to the SE corner, located at 37° 47.650' N, 76° 09.000' W; thence in a westerly direction 2905.48 feet to the SW corner, said corner being the point of beginning.

NW corner 37° 48' 30" N 76° 09' 12" W
NE corner 37° 48' 24" N 76° 08' 33" W
SE corner 37° 47' 39" N 76° 08' 58" W
SW corner 37° 47' 42" N 76° 09' 40" W

"Occohannock Reef" means that permitted artificial reef site located in the Chesapeake Bay five nautical miles west north-west of the mouth of Occohannock Creek, Accomack County, delineated by the below listed coordinates: with a boundary defined as beginning at a point in the Chesapeake Bay that is 3.40+/- nautical miles west - northwesterly of Occohannock Creek and 5.92+/- nautical miles north - northwesterly of the eastern most point of Nassawadox Point, said point being the SE corner of Occohannock Reef and having NAD 1983 geographic coordinates of 37° 34.033' N, 76° 00.300' W; thence in a west - northwesterly direction 5136.20 feet to the SW corner, located at 37° 34.167' N, 76° 01.350' W; thence in a north - northeasterly direction 3296.39 feet to the NW corner, located at 37° 34.667' N, 76° 01.083' W; thence in a east - southeasterly direction 4915.03 feet to the NE corner, located at 37° 34.517' N, 76° 00.083' W; thence in a south - southeasterly direction 3114.30 feet to the SE corner, said corner being the point of beginning.

NW corner 37° 34' 40" N 76° 01' 05" W
NE corner 37° 34' 31" N 76° 00' 05" W
SE corner 37° 34' 02" N 76° 00' 18" W
SW corner 37° 34' 10" N 76° 01' 21" W

"Poquoson Reef" means that permitted artificial reef site with a boundary defined as beginning at a point in the Chesapeake Bay that is 5.53+/- nautical miles west - southwesterly of New Point Comfort Light and 2.33+/- nautical miles east - southeasterly of Tue Marshes Light, said point being the NW corner of Poquoson Reef and having NAD 1983 geographic coordinates of 37° 13.383' N, 76° 20.383' W; thence in a southeasterly direction 2399.12 feet to the NE corner, located at 37° 13.133' N, 76° 20.000' W.; thence in a southwesterly direction 2900.83 feet to the SE corner, located at 37° 12.766' N, 76° 20.383' W; thence in a northwesterly direction 2277.42 feet to the SW corner, located at 37° 13.016' N, 76° 20.733' W; thence in a northeasterly direction 2800.85 feet to the NW corner, said corner being the point of beginning.

"Windmill Point Reef" means that permitted artificial reef site with a boundary defined as beginning at a point in the Chesapeake Bay that is 1.72+/- nautical miles easterly of the eastern most point of Windmill Point and 4.31+/- nautical miles northeasterly of the eastern most point of Stingray Point, said point being the SW corner of Windmill Point Reef

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and having NAD 1983 geographic coordinates of 37° 36.917' N, 76° 14.583' W; thence in a northerly direction 4248.02 feet to the NW corner, located at 37° 37.617' N, 76° 14.583' W; thence in an easterly direction 4223.42 feet to the NE corner, located at 37° 37.617' N, 76° 13.078' W; thence in a southerly direction 4248.02 feet to the SE corner, located at 37° 36.917' N, 76° 13.078' W; thence in a westerly direction 4224.09 feet to the SW corner, said corner being the point of beginning.

"York Spit Reef" means that permitted artificial reef site with a boundary defined as beginning at a point in the Chesapeake Bay that is 3.85+/- nautical miles south - southeasterly of New Point Comfort Light and 7.17+/- nautical miles easterly of Tue Marshes Light, said point being the NW corner of York Spit Reef and having NAD 1983 geographic coordinates of 37° 14.750' N, 76° 14.200' W; thence in an easterly direction 4366.11 feet to the NE corner, located at 37° 14.750' N, 76° 13.300' W; thence in a southerly direction 4247.81 feet to the SE corner, located at 37° 14.050' N, 76° 13.300' W; thence in a westerly direction 4366.78 feet to the SW corner, located at 37° 14.050' N, 76° 14.200' W; thence in a northerly direction 4247.80 feet to the NW corner, said corner being the point of beginning.

4VAC20-755-30. Gear restrictions.

A. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use on Angles Reef.~~

B. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Back River Reef.~~

C. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Cabbage Patch Reef.~~

D. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Cell Reef.~~

E. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Cherrystone Reef.~~

F. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Gwynn's Island Reef.~~

G. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on East Ocean View Reef.~~

H. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Middle Ground Reef.~~

I. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Nassawadox Reef.~~

J. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Northern Neck Reef.~~

K. ~~It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Occohannock Reef.~~

It shall be unlawful for any person to set, fish, or have any fishing gear in the water, other than rod-and-reel, hand line, spear or gig, and only when licensed for recreational use within the boundary of Anglers Reef, Asphalt Pile Reef, Back River Reef, Cabbage Patch Reef, Cell Reef, Cherrystone Reef, East Ocean View Reef, Gwynn Island Reef, Middle Ground Reef, Mobjack Bay Reef, Nandua-Pungoteague Reef, Nassawadox Reef, Northern Neck Reef, Occohannock Reef, Poquoson Reef, Windmill Point Reef, and York Spit Reef.

VA.R. Doc. No. R08-906; Filed August 31, 2007, 9:48 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Final Regulation

Title of Regulation: **6VAC35-190. Regulations Governing Juvenile Work and Educational Release Programs (adding 6VAC35-190-10 through 6VAC35-190-110).**

Statutory Authority: §§66-10 and 66-25.1:3 of the Code of Virginia.

Effective Date: October 31, 2007.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, PO Box 1110, Richmond, VA, 23218-1110, telephone 804-786-6407, FAX 804-371-0773, or email deron.phipps@djj.virginia.gov.

Summary:

The regulations provide the framework for assessing each juvenile committed to the Department of Juvenile Justice for participation in a work release program,

apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the juvenile correctional center (JCC) where the juvenile is placed. As required by the Code of Virginia, the juveniles participating in these offsite work and educational opportunities will be those who have made significant rehabilitative progress and have demonstrated their capacity to meet the challenges presented by these opportunities.

A juvenile who is proficient in a trade or occupation and who meets the work release criteria established by the director may be approved for employment outside of the JCC. A juvenile who the director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a JCC may attend such programs outside of the juvenile correctional facility.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 190

REGULATIONS GOVERNING JUVENILE WORK [AND EDUCATIONAL] RELEASE PROGRAMS

6VAC35-190-10. Definitions.

Unless the context clearly requires a different understanding, the following terms shall have the meanings indicated when used in this regulation.

["Department" means the Department of Juvenile Justice.]

"Educational release program" [or "~~rehabilitative release program~~"] means a program whereby [~~wards residents~~] of the [~~Department of Juvenile Justice department~~] who meet the minimum eligibility criteria [~~for a work release program~~,] and who the director determines may receive substantial benefit from the activity, may be approved to participate in educational or other community activity programs not available within a [~~juvenile correctional center facility~~] .

["Facility" means a juvenile residential facility or a secure facility defined in §16.1-228 of the Code of Virginia operated or contracted for by the department, an alternative placement for residents under the direct custody of the department, or a detention home operating a postdispositional detention program serving residents sentenced under subdivision A 16 of §16.1-278.8 and subdivision B of §16.1.284.1 of the Code of Virginia.]

"Furlough" means a temporary, short-term, authorized absence from a [~~secure custody~~] facility for a specific purpose. A furlough extends the physical limits of

confinement to include the place or places in the community that the [~~ward-resident~~] is given specific permission to visit.

["Rehabilitative release program" means a program whereby residents of the department who meet the minimum eligibility criteria and who the director determines may receive substantial benefit from the activity, may be approved to participate in rehabilitative release activities or other community activity programs not available within a facility.

"Resident" means an individual, both a juvenile or an adult, who is or was committed to the department pursuant to §16.1-285.1 or subdivision A 14, A 16, or A 17 of §16.1-278.8 of the Code of Virginia and is residing in a facility operated or contracted for by the department or placed in a detention home operating a postdispositional detention program pursuant to subdivision A 16 of §16.1-278.8 and subsection B of §16.1-284.1 of the Code of Virginia.]

"Work release program" means a program whereby [~~wards residents~~] of the [~~Department of Juvenile Justice department~~] who meet specified eligibility criteria may be approved for employment [~~for wages~~] by private individuals, corporations, or state [~~or local~~] agencies at places of business, as provided for in [~~§66-25.1:3 §§66-25.1:2 and 66-25.1:3~~] of the Code of Virginia [~~or by local agencies at places of business or to improve, repair, work on, or cultivate public or private property or buildings as provided for in §66-25.1:2 of the Code of Virginia~~] .

6VAC35-190-20. Policy and purpose.

A. It is the policy of the Commonwealth of Virginia to provide [~~juveniles-residents~~] committed to the [~~Department of Juvenile Justice department~~] with job training opportunities, consistent with [~~the~~] protection of [~~the~~] public safety, so as to facilitate [~~their-the residents'~~] reintegration into their communities as productive citizens upon release from commitment.

B. The purpose of the career-related programs, training, and services governed by this regulation is to assist [~~juveniles residents~~] in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs. [~~Work training opportunities may include but need not be limited to, business, industrial, agricultural, highway maintenance and construction, and other arrangements whereby juveniles may be employed to improve, repair, work on, or cultivate public or private property or buildings.~~]

6VAC35-190-30. Assessing a [~~ward's resident's~~] suitability for program participation.

A. Department case management procedures shall provide a process for assessing the suitability of individual [~~wards residents~~] for [~~work release, educational release, and other~~] programs authorized by [~~this regulation~~ §§65-25.1:2 and 66-

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25.1:3 of the Code of Virginia] , subject to eligibility criteria established by 6VAC35-190-40.

B. The assessment shall include:

1. A review of the [~~ward's~~ resident's] offense history and [~~his~~] behavior during commitment;
2. The completion of an objective risk assessment of the [~~juvenile's~~ resident's] likelihood to reoffend; [and]
3. An assessment of the [~~juvenile's~~ resident's] suitability for the particular [~~community release-authorized~~] program [in the community], including, if applicable, the [~~ward's~~ resident's] proficiency in a trade or occupation related to a work [or educational] release program.

6VAC35-190-40. Eligibility criteria.

A. In accordance with department case management procedures, [~~wards residents~~] may be approved to participate in [~~a work release, educational release, or other rehabilitative program-authorized programs~~] in the community when they meet the following eligibility criteria:

- ~~1. The ward must be at least 16 years of age.~~
- ~~2. 1.] The [ward resident] must have been in [the] direct care [of the department] for a minimum of 90 days.~~
- ~~3. 2.] The [ward resident] must not have committed a moderate institutional offense during the previous 30 days [, nor or] a major institutional offense within the previous 90 days.~~
- ~~4. 3.] A [ward resident] who previously escaped from a secure setting shall not be eligible for participation in a release program.~~
- ~~5. 4.] A [ward resident] who is determinately committed as a serious offender pursuant to [subdivision A 17 of §16.1-278.8 or] §16.1-285.1 of the Code of Virginia [;] may participate in a release program only with written authorization of the committing court.~~
- ~~6. 5.] A [ward resident] who is committed for a violent juvenile felony as defined pursuant to §16.1-228 of the Code of Virginia may be recommended to participate, but must be approved by the director of the department or his designee, in accordance with case management procedures.~~
- ~~7. 6.] A [ward resident] requiring the highest level of supervision according to the department's classification system, shall not be eligible to participate in a release program.~~
- ~~8. 7.] A [ward resident] whose scores on an objective risk assessment instrument [indicates indicate] a high risk of reoffending may participate in a release program only with the approval of the director.~~
- ~~9. 8.] A [ward resident] who is subject to compulsory education shall not be eligible except on a part-time basis~~

consistent with applicable child labor laws and with the concurrence of the school authority.

B. [~~Wards Residents~~] shall meet the established eligibility requirements prior to being released to participate in the program.

6VAC35-190-50. Written procedures for accountability of participants.

Written procedures shall ensure the accountability of participants and provide for supervision in the community. Such procedures shall include [,] at a minimum:

1. Provisions for a daily count of participating [~~wards residents~~];
2. Methods for determining and identifying [~~wards residents~~] who are authorized to leave the facility;
3. Provisions for a controlled sign-out and sign-in process;
4. Methods for verifying the [~~ward's~~ resident's] location within the community, which may include telephone contact, random field visits, or global positioning systems technology; and
5. Written procedure, approved by the facility's health authority, that either permits or prohibits self-medication by [~~wards residents~~] when they are away from the facility.

6VAC35-190-60. Conditions for offender participation in a work release program.

[~~Ward Resident~~] participation in a work release program shall conform to the following specific conditions.

1. Participation by the [~~ward resident~~] shall be on a voluntary basis.
2. [~~Wards Residents~~] may be required to apply and interview for a position with a participating entity, and to be accepted by the entity [;] as a condition of placement.

6VAC35-190-70. Conditions for employing, supervising, or training entity.

[~~A public or private entity providing employment, supervision, or training as part of a work release program shall be responsible for ensuring that:~~

- ~~1. Rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.~~
- ~~2. Designated staff at the ward's facility will be promptly notified if the work release participant is subject to employee discipline; fails to report to work as scheduled; leaves the work area without permission; receives or places nonbusiness telephone calls; or uses or appears to be under the influence of alcohol or other drugs.~~

A. If the department enters into an agreement with a public or private entity for the purposes of a work program pursuant to §§66-25.1:2 and 66-25.1:3 of the Code of Virginia, the agreement shall comply with all applicable federal and state laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC §201 et seq.), child labor laws, workers' compensation insurance laws, and the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10) relating to work and employment.

B. The department shall develop procedures to address how residents will be hired and supervised, including:

1. The application and selection process;
2. The qualifications required of residents hired;
3. Evaluation of each resident's job-related behaviors and attitudes, attendance and quality of work; and
4. Whether and how either party may terminate a resident's participation.

C. The department shall develop procedures to address resident's compensation including:

1. Provisions for the disbursement of earnings in accordance with subsection C of §66-25.1:3 of the Code of Virginia; and
2. If applicable, how deductions shall be made from the resident's compensation for subsistence payments, fines, restitution, or court costs in accordance with subsection C of §66-25.1:3 of the Code of Virginia.]

6VAC35-190-80. Conditions for [ward resident] participation in educational release or rehabilitative release program.

[Ward Resident] participation in an educational release or rehabilitative release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court.

1. Participation by an indeterminately committed [ward resident] shall be voluntary and may be subject to an application, interview, and approval process by the entity conducting the program.
2. Participation of a determinately committed [ward resident] must be approved in writing by the committing court. The department may recommend that the [ward resident] be approved for participation.
3. Classes, meetings, or training sessions shall be on a regularly scheduled basis.
4. Other conditions shall not be more restrictive on the [ward resident] than those required by other participants, unless specifically authorized by this regulation.

6VAC35-190-90. Furlough.

Participants in the work release, educational release, or rehabilitative release programs may be considered for furlough. Written procedures shall govern the granting of furloughs in accordance with the provisions of §66-25.1:4 of the Code of Virginia.

6VAC35-190-100. Earnings.

All earnings shall be received [] and disbursed in accordance with subsection C of §66-25.1:3 of the Code of Virginia.

6VAC35-190-110. Removing participants from program.

Written procedures shall establish the criteria and process for removing a participant from the program.

1. Procedures shall include provisions for an impartial hearing for the participant.
2. Procedures shall include provisions for the appeal of the removal.
3. Documentation shall reflect that this information was explained to all participants when they were assigned to the program.

VA.R. Doc. No. R06-139; Filed August 30, 2007, 2:21 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: 9VAC25-260. Water Quality Standards (amending 9VAC25-260-30).

Statutory Authority: §62.1-44.15 of the Code of Virginia.

Effective Date: September 11, 2007.

On June 1, 2006 the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-30. These revisions relate to water quality standards to designate three tributaries to Simpson Creek within George Washington National Forest as Exceptional State Waters. The amendments were published as final on September 18, 2006, Volume 23, Issue 1 of the Virginia Register with an effective date upon filing the notice of EPA approval with the Registrar of Regulations. The State Water Control Board hereby notices EPA approval of these revisions to the water quality standards via a letter dated July 27, 2007, from Jon M. Capacasa, Director of the Water Protection Division, EPA Region 3 to David K. Paylor, Director of the Virginia Department of Environmental Quality. The effective date of these amendments is September 11, 2007. Copies are available online at <http://www.deq.state.va.us/wqs> or call toll

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free at 1-800-592-5482 ext. 4113, local 698-4113, written request to Jean Gregory at P.O. Box 1105, Richmond, VA 23218 or email request to jwgregory@deq.virginia.gov.

Agency Contact: Jean Gregory, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, email request to jwgregory@deq.virginia.gov.

VA.R. Doc. No. R05-26; Filed September 10, 2007, 2:06 p.m.

Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-30).**

Statutory Authority: §62.1-44.15 of the Code of Virginia.

Effective Date: September 11, 2007.

On June 1, 2006 the State Water Control Board adopted revisions to the Water Quality Standards in 9 VAC 25-260-30. These revisions relate to water quality standards to designate six waters in the George Washington National Forest within Amherst County as Exceptional State Waters. The amendments were published as final on September 4, 2006, Volume 22, Issue 26 of the Virginia Register with an effective date upon filing the notice of EPA approval with the Registrar of Regulations. The State Water Control Board hereby notices EPA approval of these revisions to the water quality standards via a letter dated July 27, 2007, from Jon M. Capacasa, Director of the Water Protection Division, EPA Region 3 to David K. Paylor, Director of the Virginia Department of Environmental Quality. The effective date of these amendments is September 11, 2007. Copies are available online at <http://www.deq.state.va.us/wqs> or call toll free at 1-800-592-5482 ext. 4113, local 698-4113, written request to Jean Gregory at P.O. Box 1105, Richmond, VA 23218 or email request to jwgregory@deq.virginia.gov.

Agency Contact: Jean Gregory, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, email jwgregory@deq.virginia.gov.

VA.R. Doc. No. R05-103; Filed September 10, 2007, 2:06 p.m.

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-90).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; 33 USC §1313(e) of the Clean Water Act.

Effective Date: November 15, 2007.

Agency Contact: Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone 804-698-4462, FAX 804-698-4136, TTY 804-698-4021, or email chmartin@deq.virginia.gov.

Summary:

The amendments include two new total maximum daily load (TMDL) wasteload allocations and a modification of an existing TMDL wasteload allocation. The amendments are to the Potomac-Shenandoah River Basin (9VAC25-720-50 A) and the Tennessee - Big Sandy River Basin (9VAC25-720-90 A).

The TMDLs were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The TMDLs were subject to the TMDL public participation process and the waste load allocations are adopted as part of 9VAC25-720 in accordance with Virginia's "Public Participation Procedures for Water Quality Management Planning."

Regulations

3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/ Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR

Regulations

18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR
22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR

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28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR
30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR
31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR
33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR
34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR
<u>36.</u>	<u>Bull Run</u>	<u>Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)</u>	<u>Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park</u>	<u>A23R-01</u>	<u>Sediment</u>	<u>5,986.8</u>	<u>T/TR</u>
<u>37.</u>	<u>Popes Head Creek</u>	<u>Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)</u>	<u>Fairfax County and Fairfax City</u>	<u>A23R-02</u>	<u>Sediment</u>	<u>1,594.2</u>	<u>T/YR</u>

Regulations

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	CBOD ₅	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD ₅ , JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				CBOD ₅ , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD ₅	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD ₅ , JAN-MAY	1030	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				CBOD ₅ , JUN-DEC	606	KG/D
						TKN, JUN-DEC	303	KG/D
						TKN, JAN-MAY	545	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont - Waynesboro	001	South River	25.3	BOD ₅	272	KG/D
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	CBOD ₅	227	KG/D
						CBOD ₅ , JUN-OCT	113.6	KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD ₅	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅	1570	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅	1570	KG/D
						AMMONIA, AS N	645.9	KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD ₅ , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD ₅	20.8	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD ₅	42.6	KG/D

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101)	VA0002178	14,619	1,096
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457
B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522

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A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF	VA0065552	102,336	7,675
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		5,156,169	246,635

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914 lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	347.52 317.92	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	40,008	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR

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10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	CBOD ₅ , JUN-NOV	28	KG/D
						CBOD ₅ , DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD ₅	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	CBOD ₅	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	CBOD ₅ , JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD ₅ , JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD ₅	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	CBOD ₅ , JUN-NOV	303	KG/D
						CBOD ₅ , DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD ₅	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	CBOD ₅ , JUN-NOV	110	KG/D

VA.R. Doc. No. R08-741; Filed September 4, 2007, 4:32 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4002 A 23 of the Code of Virginia, which excludes the State Board of Health in adopting, amending or repealing regulations pursuant to subsection C of §35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

Title of Regulation: 12VAC5-421. Food Regulations (amending 12VAC5-421-10, 12VAC5-421-90, 12VAC5-421-100, 12VAC5-421-120, 12VAC5-421-140, 12VAC5-421-160, 12VAC5-421-170, 12VAC5-421-180, 12VAC5-421-190, 12VAC5-421-200, 12VAC5-421-230, 12VAC5-421-250, 12VAC5-421-270, 12VAC5-421-300, 12VAC5-421-330, 12VAC5-421-340, 12VAC5-421-350, 12VAC5-421-360, 12VAC5-421-430, 12VAC5-421-440, 12VAC5-421-450, 12VAC5-421-500, 12VAC5-421-520, 12VAC5-421-530, 12VAC5-421-550, 12VAC5-421-560, 12VAC5-421-570, 12VAC5-421-580, 12VAC5-421-590, 12VAC5-421-600, 12VAC5-421-620, 12VAC5-421-670, 12VAC5-421-680, 12VAC5-421-700, 12VAC5-421-720, 12VAC5-421-760, 12VAC5-421-780, 12VAC5-421-790, 12VAC5-421-800, 12VAC5-421-820, 12VAC5-421-830, 12VAC5-421-840, 12VAC5-421-850, 12VAC5-421-860, 12VAC5-421-870, 12VAC5-421-940, 12VAC5-421-950, 12VAC5-421-960, 12VAC5-421-970, 12VAC5-421-990, 12VAC5-421-1000, 12VAC5-421-1010, 12VAC5-421-1020, 12VAC5-421-1030, 12VAC5-421-1040, 12VAC5-421-1070, 12VAC5-421-1090, 12VAC5-421-1120, 12VAC5-421-1200, 12VAC5-421-1260, 12VAC5-421-1270, 12VAC5-421-1300, 12VAC5-421-1310, 12VAC5-421-1320, 12VAC5-421-1330, 12VAC5-421-1340, 12VAC5-421-1350, 12VAC5-421-1360, 12VAC5-421-1370, 12VAC5-421-1460, 12VAC5-421-1510, 12VAC5-421-1520, 12VAC5-421-1530, 12VAC5-421-1540, 12VAC5-421-1620, 12VAC5-421-1640, 12VAC5-421-1660, 12VAC5-421-1670, 12VAC5-421-1680, 12VAC5-421-1690, 12VAC5-421-1700, 12VAC5-421-1710, 12VAC5-421-1720, 12VAC5-421-1730, 12VAC5-421-1750, 12VAC5-421-1760, 12VAC5-421-1780, 12VAC5-421-1810, 12VAC5-421-1820, 12VAC5-421-1880, 12VAC5-421-1890, 12VAC5-421-1900, 12VAC5-421-1960, 12VAC5-421-2010, 12VAC5-421-2080, 12VAC5-421-2190, 12VAC5-421-2200, 12VAC5-421-2210, 12VAC5-421-2270, 12VAC5-421-2310, 12VAC5-421-2320, 12VAC5-421-2520, 12VAC5-421-2630, 12VAC5-421-2680, 12VAC5-421-2710, 12VAC5-421-2790, 12VAC5-421-2810, 12VAC5-421-2820, 12VAC5-421-2840, 12VAC5-421-2850, 12VAC5-421-2870, 12VAC5-421-2880, 12VAC5-421-2930, 12VAC5-421-2990, 12VAC5-421-3040, 12VAC5-421-3120, 12VAC5-421-3200, 12VAC5-421-3210, 12VAC5-421-3230, 12VAC5-421-3310, 12VAC5-421-3370, 12VAC5-421-3380,

12VAC5-421-3450, 12VAC5-421-3510, 12VAC5-421-3560, 12VAC5-421-3580, 12VAC5-421-3590, 12VAC5-421-3620, 12VAC5-421-3660, 12VAC5-421-3700, 12VAC5-421-3750, 12VAC5-421-3760, 12VAC5-421-3800, 12VAC5-421-3860, 12VAC5-421-3900, 12VAC5-421-3960, 12VAC5-421-3970, 12VAC5-421-4000, 12VAC5-421-4050, 12VAC5-421-4070; adding 12VAC5-421-295, 12VAC5-421-460, 12VAC5-421-765, 12VAC5-421-880, 12VAC5-421-890, 12VAC5-421-900, 12VAC5-421-910, 12VAC5-421-920, 12VAC5-421-930, 12VAC5-421-3815, 12VAC5-421-4035).

Statutory Authority: §§35.1-11 and 35.1-14 of the Code of Virginia.

Effective Date: October 16, 2007.

Agency Contact: Gary L. Hagy, Director of Food and General Environmental Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

Summary:

The amendments conform the regulation with the 2003 supplement to the 2001 federal Food and Drug Administration's Food Code. The amendments (i) require restaurants to advise customers of the risks involved in eating raw or partially cooked foods of animal origin; (ii) reduce the required hot holding temperature for potentially hazardous foods from 140°F to 135°F; (iii) require a temperature measuring device suitable for measuring temperature of thin masses for measuring temperatures in thin foods; (iv) revise the table of cooking temperature and holding time for some raw animal foods to provide more alternative cooking temperatures; and (v) incorporate provisions that have been in practice for many years.

Amendments since publication of the proposed regulation (i) correct cross references within the regulation and references to the Code of Federal Regulations, (ii) add or amend language for consistency with the Code of Virginia or the Rules of the Virginia Supreme Court, and (iii) remove outdated language that is no longer applicable. No additional requirements on restaurant operators were added.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC5-421-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings [;] unless the context clearly indicates otherwise.

"Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards that certify individuals. "Accredited program" refers to the

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certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline and grievance procedures; and test development and administration. "Accredited program" does not refer to training functions or educational programs.

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, §201(s) and 21 CFR Part 170 or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, §201(t) and 21 CFR Part [~~470~~ 70].

"Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, §402.

"Agent" means a legally authorized representative of the owner.

"Agent of the commissioner" means the district or local health director, unless otherwise stipulated.

"Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Approved water supply" means a waterworks which has a valid waterworks operation permit from the department or a nonpublic water supply which is evaluated, tested and if found in reasonable compliance with the construction standards of the Private Well Regulations (12VAC5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12VAC5-590), accepted and approved by the director or the director's designee.

" a_w " means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w .

"Bed and breakfast" means a tourist home that serves meals.

"Beverage" means a liquid for drinking, including water.

"Board" means the State Board of Health.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption.

"Building official" means a representative of the Department of Housing and Community Development.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"CFR" means Code of Federal Regulations. Citations in these regulations to the CFR refer sequentially to the title, part, and section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

"Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:

1. Is published annually by the U.S. Government Printing Office; and
2. Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, [~~and~~] EPA rules in 40 CFR [, and Wildlife and Fisheries Rules in 50 CFR].

"Commingle" means:

1. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or
2. To combine shucked shellfish from containers with different container codes or different shucking dates.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

"Commissary" means a catering establishment, restaurant, or any other place in which food, food containers or supplies are kept, handled, prepared, packaged or stored for distribution to satellite operations.

"Commissioner" means the State Health Commissioner, his duly designated officer or his agent.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism or chemical and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant materials" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of these regulations that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Delicatessen" means a store where ready to eat products such as cooked meats, prepared salads, etc. are sold for off-premises consumption.

"Department" means the State Health Department.

"Director" means the district or local health director.

"Disclosure" means a written statement that clearly identifies the [~~animal derived animal~~] foods that are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or otherwise being processed to eliminate pathogens.

"Drinking water" means water that meets the ~~requirements water quality standards for bacteria [and nitrates]~~ of the Virginia Waterworks Regulations (12VAC5-590). Drinking water is traditionally known as "potable water." Drinking water includes the term water except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a characteristic of a surface that:

1. Allows effective removal of soil by normal cleaning methods;
2. Is dependent on the material, design, construction, and installation of the surface; and
3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified above to different situations in which varying degrees of cleanability are required such as:

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

1. Portable (weighing 30 pounds or less); mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.

"Employee" means the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of a food establishment. "Equipment" includes, but is not limited to, items such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

"Exclude" means to prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.

"°F" means degrees Fahrenheit.

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

"Fish" means: fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals; all mollusks, if such animal life is intended for human consumption; and, includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

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"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact, or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption (i) such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and (ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

"Food establishment" includes (a) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; (b) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food; and (c) a ~~bed and breakfast operation~~ [food] facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a ~~bed and breakfast operation~~ [food] facility that meets the exemption requirements but chooses to be regulated under these regulations.

"Food establishment" does not include:

1. An establishment that offers only prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A food processing plant;
4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not

subject to regulation and inspection by the regulatory authority;

5. An area where food that is prepared as specified in subdivision 4 above is sold or offered for human consumption;

6. A kitchen in a private home, such as, but not limited to, a family day-care provider or a home for adults, serving 12 or fewer recipients; or a bed-and-breakfast operation that prepares and offers food only to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is, by these regulations, exempt from this chapter; or

7. A private home that receives catered or home-delivered food.

For the purpose of implementing this chapter, the following are also exempt from the definition of a "Food Establishment" in this chapter, as defined in §§35.1-25 and 35.1-26 of the Code of Virginia:

1. Boarding houses that do not accommodate transients;

2. Cafeterias operated by industrial plants for employees only;

3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;

4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods; and

5. Churches that serve meals for their members as a regular part of their religious observance.

[6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585 or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.]

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human

consumption and does not provide food directly to a consumer.

"Game animal" means an animal, the products of which are food, that is not classified as: cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR ~~Subchapter A Mandatory Meat Inspection~~, Part 301; Definitions, as poultry in 9 CFR ~~Subchapter C Mandatory Poultry Products Inspection~~, Part 381; Poultry Products Inspection Regulations, or as Fish as defined in this section.

"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.

"Game animal" does not include ratites such as ostrich, emu, and rhea.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

"Grade A standards" means the requirements of the USPHS/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.

~~"Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals. Group residence includes a domicile for unrelated persons such as a retirement home or a long term health care facility.~~

"HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means ~~a group of persons who are more likely than other populations~~ people in the general population to experience foodborne disease because they are ~~immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center;~~

1. Immunocompromised [$\frac{1}{2}$] preschool age children, or older adults; and

2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Hot water" means water at a temperature of ~~110°F~~ 100°F or higher unless otherwise stated.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Injected" means tenderizing a meat with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping." During injection infectious or toxigenic microorganisms may be introduced from its surface to its interior.

"Juice," when used in the context of food safety, means the aqueous liquid expressed or extracted from one or more fruits or vegetables, puries of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or ~~purie~~ purée. ~~This definition does not apply to standards of identity. Juice includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage.~~

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 3 and 4.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Organization" means any one of the following:

1. A volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with §15.2-955 of the Code of Virginia by an ordinance or

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resolution of the political subdivision where the volunteer fire department or rescue squad is located as being a part of the safety program of such political subdivision;

2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States;
4. A fraternal association or corporation operating under the lodge system;
5. A local chamber of commerce; or
6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

"Permit" means a license issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person, and possesses a valid permit to operate a food establishment.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste

materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

1. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
2. Pesticides which include substances such as insecticides and rodenticides;
3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, paints, and personal care items that may be deleterious to health; and
4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

1. The rapid and progressive growth of infectious or toxigenic microorganisms;
2. The growth and toxin production of *Clostridium botulinum*; or
3. In raw shell eggs, the growth of *Salmonella enteritidis*.

"Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified above in this definition.

Potentially hazardous food does not include:

1. An air-cooled hard-boiled egg with shell intact or a shell egg that is not hard boiled, but has been treated to destroy all viable Salmonellae;
2. A food with an a_w value of 0.85 or less;
3. A food with a pH level of 4.6 or below when measured at 24°C (75°F);
4. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain

commercial sterility under conditions of nonrefrigerated storage and distribution;

5. A food for which a laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, such as a food that has an a_w and a pH that are above the levels specified in this definition and that may contain a preservative, other barrier to the growth of microorganism, or a combination of barriers that inhibit the growth of microorganisms; and

6. A food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR Part 381, Poultry Products Inspection Regulations, and any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, ~~or~~ guineas, or pigeon or squab whether live or dead, as defined in 9 CFR Part 362, Voluntary Poultry Inspection ~~Program~~ Regulations. ["Poultry" does not include ratites.]

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

"Public water system" has the meaning stated in 40 CFR Part 141, National Primary Drinking Water Regulations.

~~"Ready to eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. Ready to eat food includes:~~

- ~~1. Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food under 12VAC5-421-700;~~
- ~~2. Raw, washed, cut fruits and vegetables;~~
- ~~3. Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and~~

~~4. Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.~~

"Ready-to-eat food" means food that:

1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A through C, 12VAC5-421-710, or 12VAC5-421-730;

2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421-700 D 1 and 2; or

3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 1 and 2.

Ready-to-eat food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or frozen as specified under 12VAC5-421-730;

2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;

3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;

4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under 12VAC5-421-700 and cooled as specified in 12VAC5-421-800;

5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

6. Substances derived from plants such as spices, seasonings, and sugar;

7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogen: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto [~~ham~~], country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

9. Food manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

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"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere, and a process as specified in this definition that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without being processed to eliminate pathogens.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR Part 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 (pesticides classified for restricted use) and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means an article manufactured from or composed of materials that ~~may~~ shall not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in §409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce such as the Virginia Department of Health [~~Bureau~~ Division] of Shellfish Sanitation.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia coli*" means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). This includes, but is not limited to, *E. coli* reported as serotype O157:H7, O157:NM, and O157:H-

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

"Smooth" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel; a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Substantial compliance" shall mean that details of equipment or structure design or construction and/or food

preparation, handling, storage, transportation and/or cleaning procedures will not substantially affect health consideration or performance of the facility or its employees.

"Table-mounted equipment" means equipment that is not easily movable and is designed to be mounted off the floor on a table, counter, or shelf.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single service, or single use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

12VAC5-421-90. Exclusions and restrictions.

A. The person in charge shall exclude a food employee from a food establishment if the food employee is diagnosed with

an infectious agent specified in subdivision 1 of 12VAC5-421-80;

B. Except as specified under subsection C or D of this section, the person in charge shall restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles in a food establishment if the food employee is:

1. Suffering from a symptom specified in ~~subdivision 2 of 12VAC5-421-80~~ subdivision 2 a (1), (2), (3) or (5) or subdivision 2 b, or
2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or E. coli O157:H7;

C. If the population served is a highly susceptible population, the person in charge shall exclude a food employee who:

1. Is experiencing a symptom of acute gastrointestinal illness specified in ~~subdivision 2 a of 12VAC5-421-80~~ subdivision 2 a (1), (2), (3) or (5) and meets a high-risk condition specified in subdivision 4 of 12VAC5-421-80,
2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or E. coli O157:H7,
3. Had a past illness from S. typhi within the last three months, or
4. Had a past illness from Shigella spp. or E. coli O157:H7 within the last month; and

D. For a food employee who is jaundiced:

1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment, or
2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:
 - a. Exclude the food employee from a food establishment that serves a highly susceptible population, or
 - b. Restrict the food employee from activities specified in subdivision 2 of 12VAC5-421-90, if the food establishment does not serve a highly susceptible population.

12VAC5-421-100. Removal of exclusions and restrictions.

A. The person in charge may remove an exclusion specified under 12VAC5-421-90 A if:

1. The person in charge obtains approval from the regulatory authority; and

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2. The person excluded as specified under 12VAC5-421-90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.

B. The person in charge may remove a restriction specified under:

1. 12VAC5-421-90 B 1 if the restricted person:

a. Is free of the symptoms specified under ~~subdivision 2 of 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5)~~ and no foodborne illness occurs that may have been caused by the restricted person;

b. Is suspected of causing foodborne illness but (i) is free of the symptoms specified under ~~subdivision 2 of 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5)~~ and (ii) provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 12VAC5-421-4070; or

c. Provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or

2. 12VAC5-421-90 B 2 if the restricted person provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by law, a nurse practitioner or physician assistant, according to the criteria specified in 12VAC5-421-4070 that indicates the stools are free of Salmonella typhi, Shigella spp., or E. coli O157:H7, whichever is the infectious agent of concern.

C. The person in charge may remove an exclusion specified under 12VAC5-421-90 C if the excluded person provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant:

1. That specifies that the person is free of: ~~a. The~~ the infectious agent of concern as specified in 12VAC5-421-4070, ~~or,~~

~~b. Jaundice as specified under 12 VAC 5 421 100 D if hepatitis A virus is the infectious agent of concern; or~~

2. If the person is excluded under 12VAC5-421-90 C 1, that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

D. The person in charge may remove an exclusion specified under 12VAC5-421-90 D 1 and 12VAC5-421-90 D 2 a and a restriction specified in 12VAC5-421-90 D 2 b if:

1. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that specifies that the person is free of hepatitis A virus as specified in subdivision 4 a of 12VAC5-421-4070; or

2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision 4 a and 4 b of 12VAC5-421-4070.

12VAC5-421-120. Reporting by the person in charge.

The person in charge shall notify the regulatory authority that a food employee is diagnosed with, an illness due to Salmonella typhi, Shigella spp., Shiga toxin-producing Escherichia coli O157:H7, or hepatitis A virus.

Article 3

Personal Cleanliness

12VAC5-421-140. Cleaning procedure of hands and arms.

A. Except as specified in subsection B of this section, food employees shall clean their hands and exposed portions of their arms ~~with a cleaning compound in a lavatory that is equipped as specified under 12VAC5 421 2190 A by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean, running water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers (or surrogate prosthetic devices for hands or arms) for at least 20 seconds, using a cleaning compound in a lavatory that is equipped as specified under 12VAC5-421-2190 A.~~

B. Food employees shall use the following cleaning procedure:

1. Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands or arms) for at least 10 to 15 seconds, followed by thorough rinsing under clean, running warm water; and

2. Immediately follow the cleaning procedure, thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 12VAC5-421-3030.

C. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.

~~B. D.~~ If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

12VAC5-421-160. When to wash.

Food employees shall clean their hands and exposed portions of their arms as specified under 12VAC5-421-140 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

1. After touching bare human body parts or hair other than clean hands and clean, exposed portions of arms;
2. After using the toilet room;
3. After caring for or handling support animals as allowed under 12VAC5-421-250 B;
4. Except as specified in 12VAC5-421-220 B, after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
5. After handling soiled equipment or utensils;
6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
7. When switching between working with raw foods and working with ready-to-eat foods;
8. ~~Prior to~~ Before donning ~~single use~~ gloves ~~if gloves are used for working with foods~~; and
9. After engaging in other activities that contaminate the hands.

12VAC5-421-170. Where to wash.

Food employees shall clean their hands in a handwashing lavatory or approved automatic handwashing facility and ~~may shall~~ not clean their hands in a sink used for food preparation or utensil washing.

12VAC5-421-180. Hand sanitizers

A. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

1. Comply with one of the following:
 - a. Be an FDA approved drug based on safety and effectiveness; or
 - b. Have active antimicrobial ingredients that are approved by FDA as an OTC (over-the-counter) health-care antiseptic drug product that is safe and effective for application to human skin as an antiseptic handwash; and
2. ~~Comply with one of the following:~~ Consist of components that are:

a. Listed for such use in contact with food in 21 CFR Part 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizer;

~~a. Have components that are exempted from the requirement of being listed in federal Food Additive regulations as specified in~~

b. Exempt from regulation as food additives under 21 CFR 170.39-Threshold of regulation for substances used in food-contact articles; ~~or~~

~~b. Comply with and be listed in:~~

~~(1) 21 CFR Part 178 Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with condition of safe use, or~~

~~(2) 21 CFR Part 182 Substances Generally Recognized as Safe, 21 CFR Part 184 Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR Part 186 Indirect Food Substances Affirmed as Generally Recognized as Safe for Use in Contact with Food; and~~

c. Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or

d. Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of the FFDCA and listed in the FDA's Inventory of Effective Premarket Notifications for Food Contact Substances; and

3. Be applied only to hands that are cleaned as specified under 12VAC5-421-140.

B. If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subdivision A 2 of this section, use shall be:

1. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
2. Limited to situations that involve no direct contact with food by the bare hands.

C. A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to 100 ppm(mg/l) chlorine or above.

12VAC5-421-190. Maintenance of fingernails.

Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough. ~~While preparing food, food employees may not wear artificial fingernails or fingernail decorations other than nail polish. Unless wearing intact gloves in good repair, a food employee shall not wear fingernail polish or artificial nails when working with exposed food.~~

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12VAC5-421-200. Prohibition of jewelry.

While preparing food, food employees ~~may~~ shall not wear jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band.

12VAC5-421-230. Discharges from the eyes, nose, and mouth.

Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth ~~may~~ shall not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

12VAC5-421-250. Handling of animals prohibited.

A. Except as specified in subsection B of this section, food employees ~~may~~ shall not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under 12VAC5-421-3310 B 2 through 4.

B. Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under [~~12VAC5-421-130-B~~ 12VAC5-421-140] and [subdivision 3 of] 12VAC5-421-160 [~~€~~].

Part III

Food

Article 1

Characteristics

12VAC5-421-270. Compliance with food law.

A. Food shall be obtained from sources that comply with law.

B. Food prepared in a private home ~~may~~ shall not be used or offered for human consumption in a food establishment unless the home kitchen is inspected and approved by the Virginia Department of Agriculture and Consumer Services.

C. Packaged food shall be labeled as specified in law, including 21 CFR Part 101, Food Labeling; 9 CFR Part 317, Labeling, Marking Devices, and Containers; and 9 CFR Part 381, Subpart N-Labeling and Containers; and as specified under 12VAC5-421-400 and 12VAC5-421-410.

D. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under 12VAC5-421-700 D 1 may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 12VAC5-421-730, or frozen on the premises as specified under 12VAC5-421-730, and records are retained as specified under 12VAC5-421-740.

E. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 12VAC5-421-700 C shall be:

1. Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them to indicate that they meet the definition of whole-muscle, intact beef; or

2. Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and

~~3.~~ 3. If individually cut in a food establishment:

a. Cut from whole-muscle intact beef that is labeled by a food processing plant ~~to indicate that the beef meets the definition of whole muscle, intact beef as specified in subdivision 1 of this subsection or identified as specified in subdivision 2 of this subsection;~~

b. Prepared so they remain intact; and

c. If packaged for undercooking in a food establishment, labeled to indicate that they meet the definition of whole-muscle, intact beef.

F. Meat and poultry that are not a ready-to-eat food and are in a packaged form when offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(i) and 9 CFR 381.125(b).

G. Shell eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

12VAC5-421-295. Juice treated.

Prepackaged juice shall:

1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120;

2. Be obtained pasteurized or otherwise treated to attain a five-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR 120.24; or

3. Bear a warning label as specified in [12VAC5-421-765 and] 21 CFR 101.17(g).

12VAC5-421-300. Fish.

A. Fish that are received for sale or service shall be:

1. Commercially and legally caught or harvested; or

2. Approved for sale or service by a regulatory authority.

B. Molluscan shellfish that are recreationally caught ~~may~~ shall not be received for sale or service.

12VAC5-421-330. Game animals.

A. If game animals are received for sale or service they shall be:

1. Commercially raised for food and:

a. Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, or

b. Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, and

c. Raised, slaughtered, and processed according to:

(1) Laws governing meat and poultry as determined by the agency, and

(2) Requirements that are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;

2. Under a voluntary inspection program administered by the USDA for game animals such as exotic animals including animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR Part 352, Exotic Animals; Voluntary Exotic Animal Program Inspection, or rabbits that are "inspected and certified" in accordance with 9 CFR Part 354, Rabbit Inspection Program Voluntary Inspection of Rabbits and Edible Products Thereof;

3. As allowed by law, wild game animals that are live-caught are:

a. Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction,

b. Slaughtered and processed according to:

(1) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(2) Requirements that are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or

4. As allowed by law for field-dressed wild game animals under a routine inspection program that ensures the animals:

a. Receive a postmortem examination by an approved veterinarian or veterinarian's designee, or are field-

dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

b. Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.

B. A game animal ~~may~~ shall not be received for sale or service if it is a species of wildlife that is listed in 50 CFR Part 17, Endangered and Threatened Wildlife and Plants.

12VAC5-421-340. Temperature.

A. Except as specified in subsection B of this section, refrigerated, potentially hazardous food shall be at a temperature of 41°F (5°C) or below when received.

B. If a temperature other than 41°F (5°C) for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk, molluscan shellfish, and shell eggs, the food may be received at the specified temperature.

C. Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

~~C. D.~~ D. Potentially hazardous food that is cooked to a temperature and for a time specified under 12VAC5-421-700 through 12VAC5-421-720 and received hot shall be at a temperature of ~~140°F (60°C)~~ 135° (57°C) or above.

~~D. E.~~ E. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.

~~E. F.~~ F. Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.

12VAC5-421-350. Additives.

Food ~~may~~ shall not contain unapproved food additives or additives that exceed amounts allowed in 21 CFR Parts 170-180 relating to food additives; generally recognized as safe or prior sanctioned substances that exceed amounts allowed in 21 CFR Parts 181-186; substances that exceed amounts specified in 9 CFR ~~348.7~~ 424.21(b), Subpart C, Approval of Substances for Use in the Preparation of Products; or pesticide residues that exceed provisions specified in 40 CFR Part 185, Tolerances for Pesticides in Food.

12VAC5-421-360. Shell eggs.

Shell eggs shall be received clean and sound and ~~may~~ shall not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR Part 56 - Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

Regulations

12VAC5-421-430. Molluscan shellfish; original container.

A. Except as specified in subsections B and C of this section, molluscan shellfish ~~may~~ shall not be removed from the container in which they were received other than immediately before sale or preparation for service.

B. ~~Shellstock~~ For display purposes, shellstock may be removed from the container in which they ~~were~~ are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

1. The source of the shellstock on display is identified as specified under 12VAC5-421-410 and recorded as specified under 12VAC5-421-440; and
2. The shellstock are protected from contamination.

C. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

1. The labeling information for the shellfish on display as specified under 12VAC5-421-400 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
2. The shellfish are protected from contamination.

12VAC5-421-440. Shellstock; maintaining identification.

A. Except as specified under subdivision B 2 of this section, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.

B. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:

1. Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
2. If shellstock are removed from their tagged or labeled container:
 - ~~a. Using only one tagged or labeled container at a time, or~~
 - ~~b. Using more than one tagged or labeled container at a time and obtaining a variance from the regulatory authority as specified in 12VAC5 421 3570 based on a HACCP plan that:~~

~~(1) Is submitted by the permit holder and approved by the regulatory authority as specified under 12VAC5 421-3580;~~

~~(2) Preserves source identification by using a record keeping system as specified under this subsection, and~~

~~(3) Ensures that shellstock from one tagged or labeled container are not commingled with shellstock from another container before being ordered by the consumer.~~

a. Preserving source identification by using a recordkeeping system as specified under subdivision 1 of this subsection.

b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.

Article 3

Protection from Contamination after Receiving

12VAC5-421-450. Preventing contamination.

A. Food employees shall wash their hands as specified under ~~12VAC5 421 130 B~~ 12VAC5-421-140.

B. Except when washing fruits and vegetables as specified under 12VAC5-421-510 or ~~when otherwise approved as specified in subsection C of this section~~, food employees ~~should~~ shall not contact exposed, ready-to-eat food with their bare hands and ~~should~~ shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

C. When otherwise approved, food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands.

~~C. D.~~ Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

~~D. A food employee may not use a utensil more than once to taste food that is to be sold or served.~~

12VAC5-421-460. ~~[Reserved]~~ Preventing contamination when tasting.

A food employee shall not use a utensil more than once to taste food that is to be sold or served.

12VAC5-421-500. Protection from unapproved additives.

A. As specified in 12VAC5-421-350, food shall be protected from contamination that may result from the addition of:

1. Unsafe or unapproved food or color additives; and
2. Unsafe or unapproved levels of approved food and color additives.

B. A food employee ~~may~~ shall not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁; or

2. Serve or sell food specified in subdivision 1 of this subsection that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet the provisions of this subsection.

[12VAC5-421-520. Ice used as exterior coolant, prohibited as ingredient.

After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice ~~may~~ shall not be used as food.]

12VAC5-421-530. Storage or display of food in contact with water or ice.

A. Packaged food ~~may~~ shall not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

B. Except as specified in subsections C and D of this section, unpackaged food ~~may~~ shall not be stored in direct contact with undrained ice.

C. Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

D. Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

12VAC5-421-550. In-use utensils, between-use storage.

During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

1. Except as specified under subdivision 2 of this section, in the food with their handles above the top of the food and the container;
2. In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under 12VAC5-421-1780 and 12VAC5-421-1890;
4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

6. In a container of water if the water is maintained at a temperature of at least ~~140°F (60°C)~~ 135°F (57°C) and the container is cleaned at a frequency specified under 12VAC5-421-1780 D 7.

12VAC5-421-560. Linens and napkins, use limitation.

Linens and napkins ~~may~~ shall not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new customer.

12VAC5-421-570. Wiping cloths; used for one purpose.

A. Cloths that are in use for wiping food spills shall be used for no other purpose.

B. Cloths used for wiping food spills shall be:

1. Dry and used for wiping food spills from tableware and carry-out containers; or
2. Wet and cleaned as specified under 12VAC5-421-1920 D, stored in a chemical sanitizer at a concentration specified in 12VAC5-421-3380, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

C. Dry or wet cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.

D. Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.

E. Working containers of sanitizing solutions for storage of in-use wiping cloths [~~may~~ shall] be placed above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, single-service or single-use articles.

12VAC5-421-580. Gloves; use limitation.

A. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

B. Except as specified in subsection C of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under 12VAC5-421-700 through 12VAC5-421-760 such as frozen food or a primal cut of meat.

C. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.

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D. Cloth gloves ~~may~~ shall not be used in direct contact with food unless the food is subsequently cooked as required under 12VAC5-421-700 through 12VAC5-421-760 such as frozen food or a primal cut of meat.

12VAC5-421-590. Using clean tableware for second portions and refills.

A. Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip contact area of the drinking cup or container, food employees ~~may~~ shall not use tableware, including single-service articles, soiled by the consumer to provide second portions or refills.

B. Except as specified in subsection C of this section, self-service consumers ~~may~~ shall not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

C. Cups and glasses may be reused by self-service consumers or food employees if refilling is a contamination-free process as specified under [subdivisions 1, 2 and 4 of] 12VAC5-421-1230 [~~A, B, and D~~].

12VAC5-421-600. Refilling returnables.

A. A take-home food container returned to a food establishment ~~may~~ shall not be refilled at a food establishment with a potentially hazardous food.

B. Except as specified in subsection C of this section, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under 12VAC5-421-1870.

C. Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under subdivisions 1, 2, and 4 of 12VAC5-421-1230.

12VAC5-421-620. Food storage; prohibited areas.

Food ~~may~~ shall not be stored:

1. In locker rooms;
2. In toilet rooms or their vestibules;
3. In dressing rooms;
4. In garbage rooms;
5. In mechanical rooms;
6. Under sewer lines that are not shielded to intercept potential drips;
7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

8. Under open stairwells; or

9. Under other sources of contamination.

12VAC5-421-670. Consumer self-service operations.

A. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish ~~may~~ shall not be offered for consumer self-service. This subsection does not apply to:

~~consumer~~ 1. Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, ~~or to:~~

~~ready-to-cook~~ 2. Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; ~~or~~

3. Raw, frozen, shell-on shrimp or lobster.

B. Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

C. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

12VAC5-421-680. Returned food and reservice of food.

A. Except as specified under subsection B of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer ~~may~~ shall not be offered as food for human consumption.

B. [~~Except as specified under 12VAC5 421 950 D, a A~~] container of food that is not potentially hazardous may be transferred from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

2. The food, such as crackers, salt or pepper, is in an unopened original package and maintained in sound condition.

12VAC5-421-700. Raw animal foods.

A. Except as specified in subsections B, C, and D of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

1. 145°F (63°C) or above for 15 seconds for:

a. Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service, and

b. Except as specified under subdivisions A 2 and 3 and subsection B of this section, fish, meat, and pork including game animals commercially raised for food as specified under 12VAC5-421-330 A 1 and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2;

2. 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 12VAC5-421-330 A 1, and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2; and raw eggs that are not prepared as specified under subdivision 1 a of this subsection:

Minimum	
Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
158 (70)	<1 second (instantaneous)

3. 165°F (74°C) or above for 15 seconds for poultry, wild game animals as specified under 12VAC5-421-330 A 3, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

B. Whole beef roasts and corned beef roasts, pork roasts, and cured pork roasts such as ham shall be cooked:

1. In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs (4.5 kg)	10 lbs (4.5 kg) or more
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity ¹	250°F (121°C) or less	250°F (121°C) or less

¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

2. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.

Temperature °F (°C)	Time [†] in minutes
130 (54)	121
132 (56)	77
134 (57)	47
136 (58)	32
138 (59)	19
140 (60)	12
142 (61)	8
144 (62)	5
145 (63)	3

[†] Holding time may include postoven heat rise.

Temperature °F (°C)	Time ¹ in Minutes	Temperature °F (°C)	Time ¹ in Seconds
<u>130 (54.4)</u>	<u>112</u>	<u>147 (63.9)</u>	<u>134</u>
<u>131 (55.0)</u>	<u>89</u>	<u>149 (65.0)</u>	<u>85</u>
<u>133 (56.1)</u>	<u>56</u>	<u>151 (66.1)</u>	<u>54</u>
<u>135 (57.2)</u>	<u>36</u>	<u>153 (67.2)</u>	<u>34</u>
<u>136 (57.8)</u>	<u>28</u>	<u>155 (68.3)</u>	<u>22</u>
<u>138 (58.9)</u>	<u>18</u>	<u>157 (69.4)</u>	<u>14</u>
<u>140 (60.0)</u>	<u>12</u>	<u>158 (70.0)</u>	<u>0</u>
<u>142 (61.1)</u>	<u>8</u>		
<u>144 (62.2)</u>	<u>5</u>		
<u>145 (62.8)</u>	<u>4</u>		

¹ Holding time may include postoven heat rise

C. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 12VAC5-421-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and

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3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

D. A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare, or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection C of this section, may be served or offered for sale in a ready-to-eat form if:

1. ~~The~~ (i) As specified under [subdivisions 3 a and b of] 12VAC5-421-950 [~~C-1 and 2~~] the food establishment serves a population that is not a highly susceptible population; and (ii) the consumer is informed as specified under 12VAC5-421-930 that to ensure its safety, the food should be cooked as specified under subsections A or B of this section; or

2. The regulatory authority grants a variance from subsection A or B of this section as specified in 12VAC5-421-3570 based on a HACCP plan that:

- a. Is submitted by the permit holder and approved as specified under [~~12VAC5-421-3580~~ 12VAC5-421-3570],
- b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food, and
- c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions [~~of the variance~~].

12VAC5-421-720. Plant food cooking for hot holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of ~~140°F (60°C)~~ 135°F (57°C).

12VAC5-421-760. Reheating for hot holding.

A. Except as specified under subsections B, C and E of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach at least 165°F (74°C) for 15 seconds.

B. Except as specified under subsection C of this section, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered two minutes after reheating.

C. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least ~~140°F (60°C)~~ 135°F (57°C) for hot holding.

D. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under subdivision 2 of 12VAC5-421-820 and 165°F (74°C) ~~may~~ shall not exceed two hours.

E. Remaining unsliced portions of roasts ~~of beef~~ that are cooked as specified under 12VAC5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12VAC5-421-700 B.

Article 5

Limitation of Growth of Organisms of Public Health Concern

12VAC5-421-765. Treating juice.

Juice packaged in a food establishment shall be:

1. Treated under a HACCP plan as specified in subdivisions 2 through 5 of [~~12VAC5-421-3610~~ 12VAC5-421-3630] to attain a five-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

2. Labeled, if not treated to yield a five-log reduction of the most resistant microorganism of public health significance:

a. As specified under 12VAC5-421-900, and

b. As specified in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

12VAC5-421-780. Potentially hazardous food, slacking.

Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less [~~, or at 45°F (7°C) or less as specified under~~] ~~subdivision 3 of [12VAC5-421-820~~ A 2 b] ; or

2. At any temperature if the food remains frozen.

12VAC5-421-790. Thawing.

Except as specified in subdivision 4 of this section, potentially hazardous food shall be thawed:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less [~~, or at 45°F (7°C) or less as specified under~~] ~~subdivision 3 of [12VAC5-421-820~~ A 2 b] ; or

2. Completely submerged under running water:

a. At a water temperature of 70°F (21°C) or below,

~~with~~ b. With sufficient water velocity to agitate and float off loose particles in an overflow, and

~~for c.~~ For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C) [; or 45°F (7°C) as specified under] subdivision 3 of [~~12VAC5-421-820 A-2-b~~] ; or

~~b. d.~~ For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 12VAC5-421-700 A or B to be above 41°F (5°C) [; or 45°F (7°C) as specified under] ~~subdivision 3 of [12VAC5-421-820 A-2-b,]~~ for more than four hours including:

(1) The time the food is exposed to the running water and the time needed for preparation for cooking, or

(2) The time it takes under refrigeration to lower the food temperature to 41°F (5°C) [; or 45°F (7°C) as specified under] subdivision 3 of [~~12VAC5-421-820 A-2-b~~] ;

3. As part of a cooking process if the food that is frozen is:

a. Cooked as specified under 12VAC5-421-700 A or B or 12VAC5-421-710, or

b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

12VAC5-421-800. Cooling.

A. Cooked potentially hazardous food shall be cooled:

1. Within two hours, from ~~140°F (60°C)~~ 135°F (57°C) to 70°F (21°C); and

2. Within an additional four hours, from 70°F (21°C) to 41°F (5°C) or less [; or to 45°F (7°C) as specified under] ~~subdivision 3 of [12VAC5-421-820 A-2-b]~~.

B. Potentially hazardous food shall be cooled within four hours to 41°F (5°C) or less [; or to 45°F (7°C) as specified under] ~~subdivision 3 of [12VAC5-421-820 A-2-b]~~ if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

C. Except as specified in subsection D of this section, a potentially hazardous food received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 12VAC5-421-340 B, shall be cooled within four hours [~~to~~ to 41°F (5°C)] or less [as specified under] ~~subdivision 3 of [12VAC5-421-820 A-2-b]~~.

D. ~~Shell eggs need not comply with subsection C of this section if the eggs are placed immediately upon their receipt in refrigerated equipment that is capable of maintaining food at 41°F (5°C) or less or 45°F (7°C) or less as specified under subdivision 3 of 12VAC5-421-820. Raw shell eggs shall be received as specified under 12VAC5-421-340 C and~~

immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

12VAC5-421-820. Potentially hazardous food; hot and cold holding.

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 12VAC5-421-850, potentially hazardous food shall be maintained:

1. At ~~140°F (60°C)~~ 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under 12VAC5-421-700 B or reheated as specified in 12VAC5-421-760 E may be held at a temperature of 130°F (54°C) or above; or

2. At [a temperature specified in the following: 41°F (5°C) or less.]

~~At [a. 41°F (5°C) or less,] except as specified under subdivision 3 of this section and 12VAC5-421-830, 12VAC5-421-840, and 12VAC5-421-1310; [or]~~

~~3. At [b. 45°F (7°C) or between 45°F (7°C) and 41°F (5°C) in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:]~~

~~a. [(1) The equipment is in place and in use in the food establishment; and]~~

~~b. Within five years of the regulatory authority's adoption of these regulations, [(2) By March 1, 2007, the equipment is upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less.]~~

B. Shell eggs that have not been treated to destroy all viable *Salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

12VAC5-421-830. Ready-to-eat, potentially hazardous food, date marking.

A. Except as specified in subsection ~~E~~ D of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and held ~~refrigerated for more than 24 hours~~ in a food establishment for more than 24 hours shall be clearly marked at the time of preparation to indicate [~~the date or day by which~~] the food shall be consumed ~~which is, including the day of preparation: on the premises, sold, or discarded [based on the temperature and time combinations specified below within seven calendar days or less from the day the food is prepared.]~~ The day of preparation shall be counted as day 1.

~~[1.] Seven calendar days or less from the day that the food is prepared, if the food is maintained at [41°F (5°C) or less for a maximum of seven days; or]~~

~~[2.] Four calendar days or less from the day the food is prepared, if the food is maintained at [45°F (7°C) or] less as specified under subdivision 3 of 12VAC5-421-820 [between 41°F (5°C) and 45°F (7°C) for a maximum of~~

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~~four days in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:~~

~~a. The equipment is in place and in use in the food establishment, and~~

~~b. The equipment is upgraded or replaced by March 1, 2007, to maintain food at a temperature of 41°F (5°C) or less;]~~

B. Except as specified in ~~subsection~~ subsections D and E of this section, a refrigerated ready-to-eat, potentially hazardous food prepared in a food establishment and subsequently frozen shall be clearly marked and packaged by a food processing plant shall be clearly marked at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection A of this section and:

~~1. When the food is thawed, to indicate that the food shall be consumed within 24 hours; or The day the original container is opened in the food establishment shall be counted as day 1; and~~

~~2. When the food is placed into the freezer, to indicate the length of time before freezing that the food is held refrigerated and which is, including the day of preparation: The day or date marked by the food establishment shall not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.~~

~~a. Seven calendar days or less from the day of preparation, if the food is maintained at 41°F (5°C) or less, or~~

~~b. Four calendar days or less from the day of preparation, if the food is maintained at 45°C (7°C) or less as specified under subdivision 3 of 12VAC5 421 820; and~~

~~3. When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:~~

~~a. Seven calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 41°F (5°C) or less before and after freezing, or~~

~~b. Four calendar days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated if the food is maintained at 45°C (7°C) or less as specified under subdivision 3 of 12VAC5 421 820 before and after freezing.~~

C. Except as specified in ~~subsections E and F~~ of this section, a container of refrigerated, ready-to-eat potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked at the time the original container is opened in a food establishment to indicate the date by which the food shall be consumed, which is, including the day the original

container is opened: A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection A or B of this section, or by an alternative method acceptable to the regulatory authority.

~~1. Seven calendar days or less after the original container is opened, if the food is maintained at 41°F (5°C) or less; or~~

~~2. Four calendar days or less from the day the original container is opened, if the food is maintained at 45°F (7°C) or less as specified under subdivision 3 of 12VAC5 421 820.~~

D. Except as specified in ~~subsections E and F~~ of this section, a container of refrigerated, ready to eat, potentially hazardous food prepared and packaged by a food processing plant and subsequently opened and frozen in a food establishment shall be clearly marked: Subsections A and B of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

~~1. When the food is thawed, to indicate that the food shall be consumed within 24 hours; or~~

~~2. To indicate the time between the opening of the original container and freezing that the food is held refrigerated and which is, including the day of opening the original container:~~

~~a. Seven calendar days or less, after opening the original container if the food is maintained at 41°F (5°C) or less, or~~

~~b. Four calendar days or less after opening the original container if the food is maintained at 45°F (7°C) or less as specified under subdivision 3 of 12VAC5 421 820; and~~

~~3. When the food is removed from the freezer, to indicate the date by which the food shall be consumed which is:~~

~~a. Seven calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 41°F (5°C) or less before and after freezing, or~~

~~b. Four calendar days, minus the time before freezing, that the food is held refrigerated if the food is maintained at 45°F (7°C) or less as specified under subdivision 3 of 12VAC5 421 820 before and after freezing.~~

E. ~~Subsections A through D~~ Subsection B of this section ~~do~~ does not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request the following when the face has been cut, but the remaining portion is whole and intact.

1. Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep

Refrigerated" and that retain the original casing on the product;

2. Shelf stable, dry, fermented sausages; and

3. Shelf stable salt-cured products such as prosciutto and Parma [] ham [] produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated."

~~F. Subsections C and D of this section do not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing. A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.~~

12VAC5-421-840. Ready-to-eat, potentially hazardous food; disposition.

A. A food specified under 12VAC5-421-830 A or B shall be discarded if not consumed within it:

1. Seven calendar days from the date of preparation if the food is maintained at 41°F (5°C) or less; or

2. Four calendar days from the date of preparation if the food is maintained at 45°F (7°C) or less as specified under subdivision 3 of 12VAC5 421 820.

1. Exceeds either of the temperature and time combinations specified in 12VAC5-421-830 A, except time that the product is frozen;

2. Is in a container or package that does not bear a date or day; or

3. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 12VAC5-421-830 A.

~~B. A food specified under 12VAC5 421 830 B 1 or D 1 shall be discarded if not consumed within 24 hours after thawing.~~

~~C. A food specified under 12VAC5 421 830 B 2 and 3 or D 2 and 3 shall be discarded on or before the most recent date marked on the food container or package if the food is not consumed by that date.~~

~~D. A food specified under 12VAC5 421 830 C shall be discarded if not consumed within, including the day of opening the original container:~~

1. 7 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 41°F (5°C) or less; or

2. 4 calendar days after the date that the original package is opened in a food establishment if the food is maintained at 45°F (7°C) or less as specified under subdivision 3 of 12VAC5 421 820.

~~E. A food specified under 12VAC5 421 830 A, B, C, or D shall be discarded if the food is:~~

1. Marked with the date specified under 12VAC5 421 830 A, B, C, or D and the food is not consumed before the most recent date expires;

2. In a container or package which does not bear a date or time; or

3. Inappropriately marked with a date or time that exceeds the date or time specified under 12VAC5 421 830 A, B, C, or D.

~~F. Refrigerated, ready to eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut off control that is activated at a temperature of:~~

1. 41°F (5°C) shall be discarded if not sold within seven days; or

2. 45°F (7°C) shall be discarded if not sold within four days.

~~G. A refrigerated, potentially hazardous, ready to eat food ingredient or a portion of a refrigerated, potentially hazardous, ready to eat food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest or first prepared ingredient or portion and shall be discarded as specified under subsections A through F of this section.~~

12VAC5-421-850. Time as a public health control.

A. Except as specified under subsection B of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

2. The food shall be cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control;

3. The food in unmarked containers or packages or marked to exceed a four-hour limit shall be discarded; and

4. Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, that ensure compliance with:

a. Subdivisions 1, 2 and 3 of this section, and

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b. 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

B. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may shall not be used as the public health control for raw eggs.

12VAC5-421-860. Variance requirement.

~~A food establishment shall obtain a variance from the regulatory authority as specified in 12VAC5-421-3570 and 12VAC5-421-3580 before (i) smoking food as a method of food preservation rather than as a method of flavor enhancement; (ii) curing food, brewing alcoholic beverages, using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; (iii) using a reduced oxygen method of packaging food except as specified under 12VAC5-421-870 where a barrier to Clostridium botulinum in addition to refrigeration exists; (iv) custom processing animals that are for personal use as food and not for sale or service in a food establishment; or (v) preparing food by another method that is determined by the regulatory authority to require a variance.;~~

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;

2. Curing food;

3. Using food additives or adding components such as vinegar:

a. As a method of food preservation rather than as a method of flavor enhancement, or

b. To render a food so that it is not potentially hazardous;

4. Packaging food using a reduced oxygen packaging method except as specified under 12VAC5-421-870 where a barrier to Clostridium botulinum in addition to refrigeration exists;

5. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;

6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or

7. Preparing food by another method that is determined by the regulatory authority to require a variance.

12VAC5-421-870. Reduced oxygen packaging; criteria.

A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860, a food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged form shall ensure that there are at

least two barriers in place to control the growth and toxin formation of Clostridium botulinum.

B. A food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under [subdivision 4 of] 12VAC5-421-3630 [~~D~~] and that:

1. Identifies the food to be packaged;

2. Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it complies with one of the following:

a. Has an a_w of 0.91 or less,

b. Has a pH of 4.6 or less,

c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 318.7 Approval of substances for use in the preparation of products and 9 CFR 381.147 Restrictions on the use of substances in poultry products 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, or

d. Is a food with a high level of competing organisms such as raw meat or raw poultry;

3. Specifies methods for maintaining food at 41°F (5°C) or below;

4. Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

a. Maintain the food at 41°F (5°C) or below, and

b. Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

5. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

6. Includes operational procedures that:

a. Prohibit contacting food with bare hands,

b. Identify a designated area and the method by which:

(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

(2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and

c. Delineate cleaning and sanitization procedures for food-contact surfaces; and

7. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

- a. Concepts required for a safe operation,
- b. Equipment and facilities, and
- c. Procedures specified under subdivision 6 of this subsection and [subdivision 4 of] 12VAC5-421-3630 [D] .

C. Except for fish that is frozen before, during, and after packaging, a food establishment ~~may~~ shall not package fish using a reduced oxygen packaging method.

Article 6

Food Identity, Presentation, and On-Premises Labeling
[Reserved]

~~12VAC5-421-880 to 12VAC5-421-930. [Reserved]~~

12VAC5-421-880. Standards of identity.

Packaged food shall comply with standard of identity requirements in 21 CFR Parts 131-169 and 9 CFR Part 319 - Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR Part 130 - Food Standards: General and 9 CFR Part 319 Subpart A - General.

[Article 7

~~Contaminated Food]~~

12VAC5-421-890. Honestly presented.

A. Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

B. Food or color additives, colored overwraps, or lights shall not be used to misrepresent the true appearance, color, or quality of a food.

12VAC5-421-900. Food labels.

A. Food packaged in a food establishment, shall be labeled as specified in [~~law~~, accordance with all applicable laws and regulations,] including 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 - Labeling, Marking Devices, and Containers.

B. Label information shall include:

- 1. The common name of the food, or absent a common name, an adequately descriptive identity statement;
- 2. If made from two or more ingredients, a list of ingredients in descending order of predominance by

weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

3. An accurate declaration of the quantity of contents;

4. The name and place of business of the manufacturer, packer, or distributor; and

5. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling.

6. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

C. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

1. The manufacturer's or processor's label that was provided with the food; or

2. A card, sign, or other method of notification that includes the information specified under subdivisions B 1, 2 and 5 of this section.

D. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

- 1. A health, nutrient content, or other claim is not made;
- 2. There are no state or local laws requiring labeling; and
- 3. The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

12VAC5-421-910. Other forms of information.

A. If required by law, consumer warnings shall be provided.

B. Food establishment or manufacturers' dating information on foods shall not be concealed or altered.

12VAC5-421-920. (Reserved.)

12VAC5-421-930. Consumption of animal [~~foods~~ products] that are raw, undercooked, or not otherwise processed to eliminate pathogens.

A. Except as specified in 12VAC5-421-700 C and D and under 12VAC5-421-950 C, if an animal food such as beef, eggs, fish, lamb, [~~milk~~,] pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased

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risk of consuming such foods by way of a disclosure and reminder, as specified in subsections B and C of this section, using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

B. Disclosure shall include:

1. A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)," or
2. Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

C. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

1. ["] Regarding the safety of these items, written information is available upon request [: " ;]
2. ["] Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness ; or
3. ["] Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

[Article 7

Contaminated Food]

[12VAC5-421-940. Discarding unsafe, adulterated, or contaminated food.

A. A food that is unsafe, adulterated, or not from an approved source as specified under 12VAC5-421-270 through 12VAC5-421-330 shall be ~~discarded and~~ rendered unusable and discarded.

B. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 12VAC5-421-90 shall be ~~discarded and~~ rendered unusable and discarded.

C. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be ~~discarded and~~ rendered unusable and discarded.]

Article 8

Special Requirements for Highly Susceptible Populations

12VAC5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.

~~A. A In a food establishment that serves a highly susceptible population must comply with the requirements specified in this section:~~

~~B. Prepackaged juice or a prepackaged beverage containing juice that bears a warning label as specified in 21 CFR 101.17(g), Food Labeling, may not be served or offered for sale.~~

1. The following criteria apply to juice:

a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g) Food Labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 12VAC5-421-765 shall not be served or offered for sale; and

c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 12VAC5-421-3630 and as specified under 21 CFR 120.24, Process controls.

~~C. 2. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:~~

~~1- a. Foods such as Caesar salad, hollandaise or biarnaise sauce, mayonnaise, and egg-fortified beverages; and~~

~~2- b. Except as specified in ~~subsection E~~ subdivision [3 5] of this section, recipes in which more than one egg is broken and the eggs are combined.~~

~~D. Food in an unopened original package may not be re-served.~~

~~E. 3. The following foods may shall not be served or offered for sale in a ready-to-eat form:~~

~~1- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;~~

~~2- b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and~~

~~3- c. Raw seed sprouts.~~

4. Food employees shall not contact ready-to-eat food as specified in 12VAC5-421-450 B.

~~F.~~ 5. Subdivision 2 b of this ~~subsection~~ section does not apply if:

~~1.~~ a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;

~~2.~~ b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

~~3.~~ c. The preparation of the food is conducted under a HACCP plan that:

~~a.~~ (1) Identifies the food to be prepared,

~~b.~~ (2) Prohibits contacting ready-to-eat food with bare hands,

~~c.~~ (3) Includes specifications and practices that ensure:

~~(1)~~ (a) Salmonella Enteritidis growth is controlled before and after cooking, and

~~(2)~~ (b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;

~~4.~~ d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 including procedures that:

~~a.~~ (1) Control cross contamination of ready-to-eat food with raw eggs, and

~~b.~~ (2) Delineate cleaning and sanitization procedures for food-contact surfaces; and

~~5.~~ e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

Part IV

Equipment, Utensils, and Linens

Article 1

Materials for Construction and Repair

[**12VAC5-421-960. Multiuse, characteristics.**

Materials that are used in the construction of utensils and food-contact surfaces of equipment may shall not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

1. Safe;
2. Durable, corrosion-resistant, and nonabsorbent;

3. Sufficient in weight and thickness to withstand repeated warewashing;

4. Finished to have a smooth, easily cleanable surface; and

5. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.]

12VAC5-421-970. Cast iron, use limitation.

A. Except as specified in subsections B and C of this section, cast iron may shall not be used for utensils or food-contact surfaces of equipment.

B. Cast iron may be used as a surface for cooking.

C. Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

12VAC5-421-990. Copper, use limitation.

A. Except as specified in ~~subsection~~ subsections B and C of this section, copper and copper alloys such as brass may shall not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

B. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

C. Copper and copper alloys may be used in contact with apple butter and molasses ingredients that have a pH below 6 in the preparation of these items provided the contact time is less than 24 hours.

12VAC5-421-1000. Galvanized metal, use limitation.

Galvanized metal may shall not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

12VAC5-421-1010. Sponges, use limitation.

Sponges may shall not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

12VAC5-421-1020. Lead in pewter alloys, use limitation.

Pewter alloys containing lead in excess of 0.05% may shall not be used as a food-contact surface.

12VAC5-421-1030. Lead in solder and flux, use limitation.

Solder and flux containing lead in excess of 0.2% may shall not be used as a food-contact surface.

12VAC5-421-1040. Wood, use limitation.

A. Except as specified in subsections B, C, and D of this section, wood and wood wicker may shall not be used as a food-contact surface.

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B. Hard maple or an equivalently hard, close-grained wood may be used for:

1. Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
2. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

C. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

D. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

1. Untreated wood containers; or
2. Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800.

[12VAC5-421-1070. Single-service and single-use, characteristics.

A. Materials that are used to make single-service and single-use articles ~~may~~ shall not:

1. Allow the migration of deleterious substances, or
2. Impart colors, odors, or tastes to food.

B. Materials that are used to make single-service and single-use articles shall be safe and clean.]

Article 2

Design and Construction

12VAC5-421-1090. Food temperature measuring devices.

Food temperature measuring devices ~~may~~ shall not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

12VAC5-421-1120. "V" threads; use limitation.

"V" type threads ~~may~~ shall not be used on food-contact surfaces. This section does not apply to hot oil cooking or filtering equipment.

12VAC5-421-1200. Pressure measuring devices, mechanical warewashing equipment.

~~A.~~ Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pounds per square inch (7 kilopascals) or smaller and shall be accurate to ± 2 pounds per

square inch (± 14 kilopascals) in the 1525 pounds per square inch (100170 kilopascals) range.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1260. Beverage tubing, separation.

Beverage tubing and cold-plate beverage cooling devices ~~may~~ shall not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

12VAC5-421-1270. Ice units, separation of drains.

Liquid waste drain lines ~~may~~ shall not pass through an ice machine or ice storage bin.

12VAC5-421-1300. Molluscan shellfish tanks.

A. Except as specified under subsection B of this section, molluscan shellfish life support system display tanks ~~may~~ shall not be used to display shellfish that are offered for human consumption.

B. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the regulatory authority as specified in 12VAC5-421-3570 and a HACCP plan that:

1. Is submitted by the permit holder and approved as specified under 12VAC5-421-3580; and
2. Ensures that:
 - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank,
 - b. The safety and quality of the shellfish as they were received are not compromised by the use of the tank, and
 - c. The identity of the source of the shellstock is retained as specified under 12VAC5-421-440.

12VAC5-421-1310. Vending machines, automatic shutoff.

A. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Part III (12VAC5-421-260 et seq.) of this chapter; and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

B. When the automatic shutoff within a machine vending potentially hazardous food is activated:

1. In a refrigerated vending machine, the ambient temperature ~~may shall~~ not exceed 41°F (5°C) [~~or 45°F (7°C) as specified under 12VAC5-421-820~~] for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or
2. In a hot holding vending machine, the ambient temperature ~~may shall~~ not be less than ~~140°F (60°C)~~ 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

12VAC5-421-1320. Temperature measuring devices.

A. In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

B. Except as specified in subsection C of this section, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

C. Subsection B of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

D. Temperature measuring devices shall be designed to be easily readable.

E. Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use. ~~However, this subsection shall not apply to home model dishwashers used in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1330. Warewashing machine, data plate operating specifications.

~~A.~~ A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

1. Temperatures required for washing, rinsing, and sanitizing;

2. Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and
3. Conveyor speed for conveyor machines or cycle time for stationary rack machines.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1340. Warewashing machines, internal baffles.

~~A.~~ Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1350. Warewashing machines, temperature measuring devices.

~~A.~~ A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

1. In each wash and rinse tank; and
2. As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1360. Manual warewashing equipment, heaters and baskets.

~~A.~~ If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

1. Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C); and
2. Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

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12VAC5-421-1370. Warewashing machines, sanitizer level indicator automatic dispensing of detergents and sanitizers.

~~A. A warewashing machine that uses a chemical for sanitization and that is installed after adoption of this chapter by the regulatory authority, shall be equipped with a device that indicates audibly or visually when more chemical sanitizer needs to be added installed after March 1, 2002, shall be equipped to:~~

1. Automatically dispense detergents and sanitizers; and
2. Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

~~B. Within five years of the regulatory authority's adoption of these regulations, existing Existing warewashing equipment shall be upgraded or replaced to meet the requirements of subsection A of this section.~~

~~C. In lieu of subsections A and B of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1460. Manual warewashing, sink compartment requirements.

A. Except as specified in subsection C of this section, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection C of this section shall be used.

C. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

1. High-pressure detergent sprayers;
2. Low- or line-pressure spray detergent foamers;
3. Other task-specific cleaning equipment;
4. Brushes or other implements;
5. 2-compartment sinks as specified under subsections D and E of this section; or
6. Receptacles that substitute for the compartments of a multicompartment sink.

D. Before a 2-compartment sink is used:

1. The permit holder shall have its use approved; and
2. The nature of warewashing shall be limited permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

a. (i) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use, and (ii) use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and a. A limited number of items shall be cleaned, the cleaning and sanitizing solutions shall be made up immediately before use and drained immediately after use, and a detergent-sanitizer shall be used to sanitize and shall be applied as specified under 12VAC5-421-1710; or

b. A hot water sanitization immersion step shall be used as specified under [subdivision 3 of] 12VAC5-421-1860 [€].

E. A 2-compartment sink ~~may~~ shall not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

~~F. In lieu of subsections A through E of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1510. Food temperature measuring devices.

A. Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Part III (12VAC5-421-260 et seq.) of this chapter.

B. A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish fillets.

12VAC5-421-1520. Temperature measuring devices, manual warewashing.

~~A.~~ In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1530. Sanitizing solutions, testing devices.

~~A. A test kit or other device that accurately measures the concentration in mg/L (ppm) of sanitizing solutions shall be provided and readily accessible for use.~~

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

Article 4

Location and Installation

12VAC5-421-1540. Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.

A. Except as specified in subsection B of this section, equipment, cabinets used for the storage of food, or cabinets used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may shall not be located:

1. In locker rooms;
2. In toilet rooms or vestibules;
3. In garbage rooms;
4. In mechanical rooms;
5. Under sewer lines that are not shielded to intercept potential drips;
6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
7. Under open stairwells; or
8. Under other sources of contamination.

B. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

C. If a mechanical clothes washer or dryer is provided, it shall be located only where there is no exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; and so that the washer or dryer is protected from contamination.

12VAC5-421-1620. Warewashing sinks, use limitation.

A. A warewashing sink may shall not be used for handwashing. [However, a warewashing sink may be used for handwashing in a bed and breakfast facility serving 18 or fewer customers provided approved dispensers, soap, and single use paper towels are provided.]

B. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 12VAC5-421-1600 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Article 7 (12VAC5-421-1880 et seq.) of this part before and after using the sink to wash produce or thaw food.

12VAC5-421-1640. Warewashing equipment, clean solutions.

~~A. The wash, rinse, and sanitize solutions shall be maintained clean.~~

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1660. Mechanical warewashing equipment, wash solution temperature.

A. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may shall not be less than:

1. For a stationary rack, single temperature machine, 165°F (74°C);
2. For a stationary rack, dual temperature machine, 150°F (66°C);
3. For a single tank, conveyor, dual temperature machine, 160°F (71°C); or
4. For a multitank, conveyor, multitemperature machine, 150°F (66°C).

B. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may shall not be less than 120°F (49°C).

~~C. In lieu of subsection B of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

Regulations

12VAC5-421-1670. Manual warewashing equipment, hot water sanitization temperatures.

~~A. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 171°F (77°C) or above.~~

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1680. Mechanical warewashing equipment, hot water sanitization temperatures.

A. Except as specified in subsection B of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold ~~may~~ shall not be more than 194°F (90°C), or less than:

1. For a stationary rack, single temperature machine, 165°F (74°C); or
2. For all other machines, 180°F (82°C).

B. The maximum temperature specified under subsection A of this section does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

~~C. In lieu of subsection B of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1690. Mechanical warewashing equipment, sanitization pressure.

~~A. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may shall not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.~~

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1700. Manual and mechanical warewashing equipment, chemical sanitization—temperature, pH, concentration, and hardness.

~~A. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified under 12VAC5-421-1900 [€ A 3] shall be listed in [21-CFR 178.1010 40 CFR 180.940] Sanitizing solutions, shall be~~

used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;

Minimum Concentration	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 or less °F (°C)
25	120 (49)	120 (49)
50	100 (38)	75 (24)
100	55 (13)	55 (13)

2. An iodine solution shall have a:
 - a. Minimum temperature of 75°F (24°C),
 - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and
 - c. Concentration between 12.5 mg/L (ppm) and 25 mg/L (ppm);
3. A quaternary ammonium compound solution shall:
 - a. Have a minimum temperature of 75°F (24°C),
 - b. Have a concentration as specified under [42VAC5-421-3380 40 CFR 180.940] and as indicated by the manufacturer's use directions included in the labeling, and
 - c. Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;
4. If another solution of a chemical specified under subdivisions 1, 2 and 3 of this section is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or
5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

~~C. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap~~

~~or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1710. Manual warewashing equipment, chemical sanitization using detergent-sanitizers.

A. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

~~B. In lieu of subsection A of this section, the manual cleaning and drying of equipment and utensils in bed and breakfast facilities serving 18 or fewer customers shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage and use. Drying may be by clean towels used for no other purpose.~~

12VAC5-421-1720. Warewashing equipment, determining chemical sanitizer concentration.

A. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1730. Good repair and calibration.

A. Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Articles 1 (12VAC5-421-960 et seq.) and 2 (12VAC5-421-1080 et seq.) of this part or shall be discarded.

B. Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

C. Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use. ~~However, this subsection does not apply to home model dishwashers used in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1750. Single-service and single-use articles, use limitation.

A. Single-service and single-use articles ~~may~~ shall not be reused.

B. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

12VAC5-421-1760. Shells, use limitation.

Mollusk and crustacea shells ~~may~~ shall not be used more than once as serving containers.

Article 6

Cleaning of Equipment and Utensils

12VAC5-421-1780. Equipment food-contact surfaces and utensils.

A. Equipment food-contact surfaces and utensils shall be cleaned:

1. Except as specified in subsection B of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
2. Each time there is a change from working with raw foods to working with ready-to-eat foods;
3. Between uses with raw fruits and vegetables and with potentially hazardous food;
4. Before using or storing a food temperature measuring device; and
5. At any time during the operation when contamination may have occurred.

B. Subdivision A 1 of this section does not apply if the food contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under 12VAC5-421-700 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

C. Except as specified in subsection D of this section, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

D. Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

1. In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Part III (12VAC5-421-260 et seq.) of this chapter and the containers are cleaned when they are empty;
2. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and (i) the utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and (ii) the cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment:

Regulations

Temperature	Cleaning Frequency
41°F (5.0°C) or less	24 hours
>41°F - 45°F (>5.0°C - 7.2°C)	20 hours
>45°F - 50°F (>7.2°C - 10.0°C)	16 hours
>50°F - 55°F (>10.0°C - 12.8°C)	10 hours

3. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Part III, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

4. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Part III;

5. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; ~~or~~

6. The cleaning schedule is approved based on consideration of:

- a. Characteristics of the equipment and its use,
- b. The type of food involved,
- c. The amount of food residue accumulation, and
- d. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

7. In-use utensils are intermittently stored in a container of water in which the water is maintained at ~~140°F (60°C)~~ 135°F (57°C) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

E. Except when dry cleaning methods are used as specified under 12VAC5-421-1810, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

1. At any time when contamination may have occurred;
2. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;

3. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers;

4. Equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment:

- a. At a frequency specified by the manufacturer, or
- b. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

12VAC5-421-1810. Dry cleaning.

A. If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

B. Cleaning equipment used in dry cleaning food-contact surfaces ~~may~~ shall not be used for any other purpose.

12VAC5-421-1820. Precleaning.

A. Food debris on equipment and utensils shall be scrapped over a waste disposal unit, ~~sewer,~~ or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

B. If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

12VAC5-421-1880. Food-contact surfaces and utensils.

~~A.~~ Equipment food-contact surfaces and utensils shall be sanitized.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

12VAC5-421-1890. Before use after cleaning.

~~A.~~ Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

~~B. In lieu of subsection A of this section, home model dishwashers may be used in lieu of manual cleaning and drying of utensils in bed and breakfast facilities serving 18 or fewer customers.~~

[12VAC5-421-1900. Hot water and chemical.

~~A.~~ After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds as specified under 12VAC5-421-1670;
2. Hot water mechanical operations by being cycled through equipment that is set up as specified under 12VAC5-421-1610, ~~and~~ 12VAC5-421-1680, and

12VAC5-421-1690 and achieving a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or

3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 12VAC5-421-1700 by providing:

- a. Except as specified under subdivision 3 b of this section, an exposure time of at least 10 seconds for a chlorine solution specified under 12VAC5-421-1700 A,
- b. An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 100°F (38°C) or a pH of 8 or less and a temperature of at least 75°F (24°C),
- c. An exposure time of at least 30 seconds for other chemical sanitizing solutions, or
- d. An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 12VAC5-421-10.

~~B. Subsection A of this section does not apply to bed and breakfast facilities serving 18 or fewer customers.]~~

Article 8

Laundering

12VAC5-421-1960. Equipment and utensils, air-drying required.

After cleaning and sanitizing, equipment and utensils:

- 1. Shall be air dried or used after adequate draining as specified in [~~21 CFR 178.1010 (a)~~ 40 CFR 180.940] before contact with food; and
- 2. ~~May~~ Shall not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

12VAC5-421-2010. Prohibitions.

A. Except as specified in subsection B of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles ~~may~~ shall not be stored:

- 1. In locker rooms;
- 2. In toilet rooms or vestibules;
- 3. In garbage rooms;
- 4. In mechanical rooms;
- 5. Under sewer lines that are not shielded to intercept potential drips;

- 6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- 7. Under open stairwells; or
- 8. Under other sources of contamination.

B. Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

12VAC5-421-2080. Quality standards.

Except as specified under 12VAC5-421-2090:

- 1. Water from a public water system shall meet the applicable standards found in the Virginia Waterworks Regulations (12VAC5-590); and
- 2. Water from a nonpublic water system shall meet ~~state drinking water quality standards~~ the bacteriological [and nitrate] standards found in the Virginia Waterworks Regulations (12VAC5-590).

12VAC5-421-2190. Handwashing lavatory, water temperature, and flow.

A. A handwashing lavatory shall be equipped to provide water at a temperature of at least ~~110°F (43°C)~~ 100°F (38°C) through a mixing valve or combination faucet.

B. A steam mixing valve ~~may~~ shall not be used at a handwashing lavatory.

C. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

12VAC5-421-2200. Backflow prevention, air gap.

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and ~~may~~ shall not be less than 1 inch (25 mm).

[12VAC5-421-2210. Backflow prevention device, design standard.

A backflow or backsiphonage prevention device installed on a water supply system shall comply with the Virginia ~~Uniform~~ Statewide Building Code (~~13VAC5-61~~) (13VAC5-63) for construction, installation, maintenance, inspection, and testing for that specific application and type of device.]

12VAC5-421-2270. ~~(Reserved.)~~ Backflow prevention device, carbonator.

A. If not provided with an air gap as specified under 12VAC5-421-2200, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 1 inch (100 mesh to 25.4mm) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

Regulations

B. A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under subsection A of this section.

12VAC5-421-2310. Using a handwashing lavatory.

A. A handwashing lavatory shall be maintained so that it is accessible at all times for employee use.

B. A handwashing lavatory ~~may~~ shall not be used for purposes other than handwashing.

12VAC5-421-2320. Prohibiting a cross connection.

A. Except as specified in 9 CFR 308.3(d) for firefighting, a person ~~may~~ shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

B. The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

12VAC5-421-2520. Backflow prevention.

A. Except as specified in subsections B and C of this section, a direct connection ~~may~~ shall not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

B. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

C. If allowed by law, a warewashing or culinary sink may have a direct connection.

12VAC5-421-2630. Receptacles in vending machines.

A refuse receptacle ~~may~~ shall not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

12VAC5-421-2680. Storage areas, redeeming machines, receptacles and waste handling units, location.

A. An area designated for refuse, recyclables, returnables, and, except as specified in subsection B of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

B. A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

C. The location of receptacles and waste handling units for refuse, recyclables, and returnables ~~may~~ shall not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

12VAC5-421-2710. Outside storage prohibitions.

A. Except as specified in subsection B of this section, refuse receptacles not meeting the requirements specified under 12VAC5-421-2620 A such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue ~~may~~ shall not be stored outside.

B. Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

12VAC5-421-2790. Indoor areas; surface characteristics.

A. Except as specified in subsection B of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

~~C. In lieu of subsection A of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2810. Floors, walls, and ceilings—cleanability.

~~A.~~ Except as specified under 12VAC5-421-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

~~B. In lieu of subsection A of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2820. Floors, walls, and ceilings, utility lines.

A. Utility service lines and pipes ~~may~~ shall not be unnecessarily exposed.

B. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

C. Exposed horizontal utility service lines and pipes ~~may~~ shall not be installed on the floor.

~~D. In lieu of subsections A, B and C of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2840. Floor carpeting, restrictions and installation.

A. A floor covering such as carpeting or similar material ~~may~~ shall not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

B. If carpeting is installed as a floor covering in areas other than those specified under subsection A of this section, it shall be:

1. Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
2. Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

~~C. In lieu of subsections A and B of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2850. Floor covering, mats and duckboards.

~~A.~~ Mats and duckboards shall be designed to be removable and easily cleanable.

~~B. In lieu of subsection A of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2870. Walls and ceilings, attachments.

A. Except as specified in subsection B of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

B. In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

~~C. In lieu of subsections A and B of this section, floors, walls, and ceilings in bed and breakfast facilities serving 18 or fewer customers shall be in good repair and kept clean.~~

12VAC5-421-2880. Walls and ceilings, studs, joists, and rafters.

Studs, joists, and rafters ~~may~~ shall not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

12VAC5-421-2930. Outer openings, protected.

A. Except as specified in subsections B through E of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

1. Filling or closing holes and other gaps along floors, walls and ceilings;
2. Closed, tight-fitting windows; and
3. Solid self-closing, tight-fitting doors.

B. Subsection A of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

C. Exterior doors used as exits need not be self-closing if they are:

1. Solid and tight-fitting;
2. Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
3. Restricted so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

D. Except as specified in subsections B and E of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes ~~or a temporary food establishment is not provided with windows and doors as specified under subsection A of this section,~~ the openings shall be protected against the entry of insects and rodents by:

1. 16 mesh to 1-inch (16 mesh to 25.4 mm) screens;
2. Properly designed and installed air curtains to control flying insects; or
3. Other effective means.

Regulations

E. Subsection D of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

12VAC5-421-2990. Private homes and living or sleeping quarters, use prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters ~~may~~ shall not be used for conducting food establishment operations.

12VAC5-421-3040. Handwashing aids and devices, use restrictions.

A sink used for food preparation or utensil washing ~~may~~ shall not be provided with the handwashing aids and devices required for a handwashing lavatory as specified under 12VAC5-421-3020 and 12VAC5-421-3030 and 12VAC5-421-2650 C.

12VAC5-421-3120. Handwashing lavatories, conveniently located.

~~A.~~ Handwashing lavatories shall be conveniently located as specified under 12VAC5-421-2280.

~~B. In lieu of subsection A of this section, approved dispensers, soap and single use paper towels may be made available to accommodate hand washing in bed and breakfast kitchens serving 18 or less customers.~~

12VAC5-421-3200. Cleaning ventilation systems, nuisance and discharge prohibition.

A. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

B. If vented to the outside, ventilation systems ~~may~~ shall not create a public health hazard or nuisance or unlawful discharge.

12VAC5-421-3210. Cleaning maintenance tools, preventing contamination.

Food preparation sinks, handwashing lavatories, and warewashing equipment ~~may~~ shall not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

12VAC5-421-3230. Absorbent materials on floors, use limitation.

Except as specified in 12VAC5-421-3190 B, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials ~~may~~ shall not be used on floors.

12VAC5-421-3310. Prohibiting animals.

A. Except as specified in subsections B and C of this section, live animals ~~may~~ shall not be allowed on the premises of a food establishment.

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles ~~can not~~ cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;
4. Pets in the common dining areas of ~~group residences~~ institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:
 - a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas,
 - b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and
 - c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and
5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result.

D. In bed and breakfast facilities serving 18 or fewer customers, live animals shall be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

Part VII

Poisonous or Toxic Materials

Article 1

Labeling and Identification

12VAC5-421-3370. Poisonous or toxic material containers.

A container previously used to store poisonous or toxic materials ~~may~~ shall not be used to store, transport, or dispense food.

[12VAC5-421-3380. Sanitizers, criteria.

Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in ~~21 CFR 178.1010~~ 40 CFR 180.940].

12VAC5-421-3450. Tracking powders, pest control and monitoring.

A. A tracking powder pesticide ~~may~~ shall not be used in a food establishment.

B. If used, a nontoxic tracking powder such as talcum or flour ~~may~~ shall not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

12VAC5-421-3510. Public health protection.

A. The regulatory authority shall apply this regulation to promote its underlying purpose, as specified in 12VAC5-421-30, of safeguarding public health and ensuring that food is safe and unadulterated when offered to the consumer.

B. In enforcing the provisions of this regulation, the regulatory authority shall assess existing facilities or equipment that were in use before March 1, 2002, based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
2. Whether food-contact surfaces comply with 12VAC5-421-960 through 12VAC5-421-1060;
3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 12VAC5-421-1450 [~~; and~~]

[~~4. The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under subdivision 7 of 12VAC5-421-3750 G or upgraded or replaced as specified under subdivision 8 of 12VAC5-421-3750 H~~].

[12VAC5-421-3560. Exemptions to regulations.

A. The following are exempt from this chapter as defined in §§35.1-25 and 35.1-26 of the Code of Virginia.

1. Boarding houses that do not accommodate transients;

2. Cafeterias operated by industrial plants for employees only;

3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads which hold dinners and bazaars of not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;

4. Grocery stores, including the delicatessen which is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods; ~~and~~

5. Churches which serve meals for their members as a regular part of their religious observance; ~~and~~

6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

B. The governing body of any county, city or town may provide by ordinance that this chapter shall not apply to food booths at fairs and youth athletic activities, if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof. The ordinance shall provide that the director of the county, city, or town in which the fair and youth athletic activities are held, or a qualified person designated by the director, shall exercise such supervision of the sale of food as the ordinance may prescribe.

12VAC5-421-3580. Evaluation of a variance application.

A. The commissioner shall act on any variance request submitted pursuant to 12VAC5-421-3570 B within 60 days of receipt of the request.

B. In evaluating a variance application, the commissioner shall consider such factors as the following:

1. The effect that such a variance would have on the operation of the food establishment.
2. The cost and other economic considerations imposed by this requirement;
3. The effect that such a variance would have on protection of the public health, safety, welfare and the environment;
4. Such other factors as the commissioner, deputy commissioner, or director of the office of environmental health services may deem appropriate.

Regulations

12VAC5-421-3590. Disposition of a variance request.

A. The commissioner may grant the variance request and if the commissioner proposes to deny the variance he shall provide the owner an opportunity to an informal hearing as provided in §2.2-4019 of the Code of Virginia. Following this opportunity for an informal hearing the commissioner may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

B. If the commissioner proposes to grant a variance request submitted pursuant to this part, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, the food establishment involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the food establishment comes into compliance with the applicable regulation and may be terminated upon a finding by the commissioner that the food establishment has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be as noted in the variance letter.

C. All variances granted to any food establishment ~~maybe~~ may be transferable unless otherwise stated. Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.

D. No owner or permit holder may challenge the terms or conditions of a variance after 30 calendar days have elapsed from the receipt of the variance.

E. Each variance shall be posted prominently in a conspicuous place for public view and in close proximity to the permit to which it relates. Each variance is revoked when the permit to which it is attached is revoked, or if the permit is not revalidated or renewed.]

Article 2

Plan Submission and Approval

12VAC5-421-3620. When a HACCP plan is required.

A. Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under 12VAC5-421-3630 and the relevant provisions of this chapter if:

1. Submission of a HACCP plan is required according to law;
2. A variance is required as specified under 12VAC5-421-860, 12VAC5-421-1300 B, ~~or 12VAC5-421-440 B-2-b~~ or 12VAC5-421-700 D 2; or

3. The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under 12VAC5-421-3610, an inspectional finding, or a variance request.

B. A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under 12VAC5-421-870.

12VAC5-421-3660. Permits.

A. No person shall own, establish, conduct, maintain, manage, or operate any food establishment in this Commonwealth unless the food establishment is permitted as provided in this section. All permits shall be in the name of the owner or lessee. Permits shall not be issued to newly constructed or extensively remodeled food establishments until a certificate of occupancy has been issued by the Building Official. Only a person who complies with the requirements of this part shall be entitled to receive or retain such a permit.

B. Permits issued shall not be transferable from one person to another or from one location to another. A new owner shall be required to make a written application for a permit. The application forms are obtainable at all local health departments.

C. Any person operating a food establishment with a valid permit who desires to expand or modify the establishment, shall notify the director in the jurisdiction where the food establishment is located, and the director shall determine whether such expansion, modification, or reclassification is in compliance with the applicable sections of this chapter.

D. The permit shall be posted in every food establishment in a place where it is readily observable by the public transacting business with the establishment.

E. Permits shall expire annually.

[12VAC5-421-3700. Contents of the application.

The application shall include:

1. The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
3. A statement specifying whether the food establishment:
 - a. Is mobile or stationary and temporary or permanent, and
 - b. Is an operation that includes one or more of the following:
 - (1) Prepares, offers for sale, or serves potentially hazardous food:

- (a) Only to order upon a consumer's request,
- (b) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or
- (c) Using time as the public health control as specified under 12VAC5-421-850,
- (2) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,
- (3) Prepares food as specified under subdivision 3 b (2) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,
- (4) Prepares food as specified under subdivision 3 b (2) of this section for service to a highly susceptible population,
- (5) Prepares only food that is not potentially hazardous, or
- (6) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;
- 4. The name, title, address, and telephone number of the person directly responsible for the food establishment;
- 5. The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under subdivision 4 of this section such as the zone, district, or regional supervisor;
- 6. The names, titles, and addresses of:
 - a. The persons comprising the legal ownership as specified under ~~subsection B~~ subdivision 2 of this section including the owners and officers, and
 - b. The local resident agent if one is required based on the type of legal ownership;
- 7. A statement signed by the applicant that:
 - a. Attests to the accuracy of the information provided in the application, and
 - b. Affirms that the applicant will:
 - (1) Comply with this chapter, and
 - (2) Allow the regulatory authority access to the establishment as specified under 12VAC5-421-3820 and to the records specified under 12VAC5-421-440 and 12VAC5-421-2330 and subdivision 4 of 12VAC5-421-3630; and
- 8. Other information required by the regulatory authority.]

12VAC5-421-3750. Responsibilities of the permit holder.

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

- 1. Post the permit in a location in the food establishment that is conspicuous to consumers;
- 2. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 12VAC5-421-3590, and approved plans as specified under 12VAC5-421-3610;
- 3. If a food establishment is required under 12VAC5-421-3620 to operate under a HACCP plan, comply with the plan as specified under 12VAC5-421-3590;
- 4. Immediately contact the regulatory authority to report an illness of ~~an applicant or a food~~ employee as specified under 12VAC5-421-120;
- 5. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 12VAC5-421-3910;
- 6. Allow representatives of the regulatory authority access to the food establishment as specified under 12VAC5-421-3820;
- 7. ~~[Except as specified under subdivision 8 of this section, replace~~ Replace] existing facilities and equipment specified in 12VAC5-421-3510 with facilities and equipment that comply with this chapter if:
 - a. The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
 - b. The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership, or
 - c. The facilities and equipment are replaced in the normal course of operation;
- ~~[8. Upgrade or replace refrigeration equipment as specified under subdivision 3 of 12VAC5-421-820 A 2 b, if the circumstances specified under subdivision 7 of this section do not occur first, and five years pass after the regulatory authority adopts this chapter;]~~
- ~~[9. 8.]~~ Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
- ~~[10. 9.]~~ Accept notices issued and served by the regulatory authority according to law; and

Regulations

[~~11.~~ 10.] Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

12VAC5-421-3760. Permits not transferable.

A permit ~~may~~ shall not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under 12VAC5-421-3700 and the change in operation is not approved.

[12VAC5-421-3800. Periodic inspection.

Food establishments shall be inspected by the designee of the director. Inspections of the food establishments shall be performed as often as necessary for the enforcement of this part in accordance with the following:

1. Except as specified in ~~subsections B and C~~ subdivisions 2 and 3 of this section, the regulatory authority shall inspect a food establishment at least once every six months.

2. The regulatory authority may increase the interval between inspections beyond six months if:

a. The food establishment is fully operating under an approved and validated HACCP plan as specified under 12VAC5-421-3630 ~~and 12VAC5-421-3570 A and B~~;

b. The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every six months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of the food operation are not changed; or,

c. The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

3. The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged potentially hazardous food and that:

a. Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

b. Has inexperienced food employees.]

12VAC5-421-3815. Competency of environmental health specialists.

An authorized representative of the commissioner who inspects a food establishment or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

[12VAC5-421-3860. Documenting information and observations.

The regulatory authority shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 12VAC5-421-3700 ~~C~~, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:

a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 12VAC5-421-60,

b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under 12VAC5-421-110 and 12VAC5-421-120,

c. Nonconformance with critical items of this chapter,

d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 12VAC5-421-60,

e. Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under subdivision 4 f of 12VAC5-421-3630, and

f. Nonconformance with critical limits of a HACCP plan.

12VAC5-421-3900. Public information records.

Except as specified in 12VAC5-421-3640, the regulatory authority shall treat the inspection report as a public document record and shall make it available for disclosure to a person who requests it as provided in law.

12VAC5-421-3960. Examination for condemnation of food.

Food may be examined or sampled by the department as often as necessary for enforcement of this ~~part~~ chapter. Also, the department may, upon written notice to the owner or permit holder or person in charge impound any food which it believes is in violation of Part III or any other section of this chapter. The department shall tag, label, or otherwise identify any food subject to impoundment. No food under conditions specified in the impoundment shall be used, served or moved from the establishment. The department shall permit storage of the food under conditions specified in the impoundment unless storage is not possible without risk to the public health in which case immediate destruction shall be ordered and accomplished. The impoundment shall state that a request for a hearing may be filed within 10 days and that if no hearing is requested, the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at the hearing, the impoundment may be vacated, or the owner or permit holder or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this ~~part~~ chapter.

12VAC5-421-3970. Enforcement of regulation.

A. This chapter shall be enforced by the State Board of Health and the State Health Commissioner, as executive officer of the board.

B. The directors are appointed by the board and commissioner as duly designated officers and are responsible for the implementation and enforcement of this chapter.

C. All ~~restaurants~~ food establishments shall operate in compliance with the requirements set forth in this chapter and shall not operate without a valid permit.

D. The commissioner shall be vested with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.

E. Pursuant to the authority granted in §§32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require any owner or permit holder or other person to comply with the provisions of these regulations. The order may require the following:

1. The immediate cessation and correction of the violation;
2. Appropriate remedial action to ensure that the violation does not continue or recur;
3. The submission of a plan to prevent future violations;
4. The submission of an application for a variance; and
5. Any other corrective action deemed necessary for proper compliance with the regulations.

F. Before the issuance of an order, the commissioner must comply with the requirements of ~~§32.1-6~~ §35.1-6 of the Code of Virginia.

G. All orders issued pursuant to 12VAC5-421-3970 C shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or permit holder or person violating these regulations. Violation of an order is a Class 3 misdemeanor. See ~~§32.1-7~~ §35.1-7 of the Code of Virginia.

H. The commissioner may act as the agent of the board to enforce all effective orders and these regulations. Should any owner or permit holder fail to comply with any effective order or these regulations, the commissioner may:

1. Institute a proceeding to revoke the owner's or permit holder's permit in accordance with 12VAC5-421-3780;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

I. Not exclusive means of enforcement. Nothing contained in 12VAC5-421-3970 shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

J. Hearings before the commissioner or his designee shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

1. Informal hearings. An informal hearing is a meeting with a district or local health department with the district or local health director presiding and held in conformance with §2.2-4019 of the Code of Virginia.
2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before the commissioner, or his designated hearing officer, and held in conformance with §2.2-4020 of the Code of Virginia.

12VAC5-421-4000. Appeals.

Any appeal from a denial of a permit to operate a food establishment must be made in writing and received by the department within ~~30 days of the date the denial letter was received~~ 30 days after service of the final order in the case decision. In the event that service of a case decision upon a party is accomplished by mail, three days shall be added to the 30-day period. Notice shall be consistent with Part 2A of the Rules of the Supreme Court of Virginia.

1. Any request for hearing on the denial of an application for a variance pursuant to 12VAC5-421-3590 A must be made in writing and received within sixty days of receipt of the denial notice.

Regulations

2. Any request for a variance must be made in writing and received by the department prior to the denial of the food establishment permit, or within 60 days after such denial.

3. In the event a person applies for a variance within the 60-day period provided by subdivision 2 of this section, the date for appealing the denial of the permit, pursuant to subdivision 1 of this section, shall commence from the date on which the department acts on the request for a variance.

4. Pursuant to the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) an aggrieved owner or permit holder may appeal a final case decision of the commissioner to an appropriate circuit court.]

12VAC5-421-4035. Exempt facilities that choose to be regulated.

Exempt facilities, as defined in subdivision 6 of 12VAC5-421-10 of the definition of a "food establishment," that choose to be regulated by this chapter, shall be exempt from the following requirements:

1. In lieu of 12VAC5-421-1200 A, home model dishwashers may be used in lieu of manual cleaning and drying of utensils;

2. 12VAC5-421-1340, the requirement for internal baffles in warewashing machines does not apply to home model dishwashers;

3. 12VAC5-421-1350, the requirement for temperature measuring devices does not apply to home model dishwashers;

4. 12VAC5-421-1360, manual warewashing equipment, heaters and baskets are not required but manual warewashing shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

5. 12VAC5-421-1370, the requirement for a sanitizer level indicator does not apply to home model dishwashers;

6. 12VAC5-421-1380, the requirement for flow pressures device does not apply to home model dishwashers;

7. 12VAC5-421-1460, the requirement for sink compartments does not apply to exempt facilities. It shall include thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

8. 12VAC5-421-1520, temperature measuring devices for manual warewashing are not required;

9. 12VAC5-421-1530, sanitizing solutions testing devices are not required;

10. 12VAC5-421-1620, warewashing sinks in exempt facilities may be used for handwashing, however, approved dispensers, soap, and single-use paper towels are provided;

11. 12VAC5-421-1640, clean solutions in warewashing equipment is not required for exempt facilities. It shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;

12. 12VAC5-421-1660, minimum wash solution temperature for mechanical warewashing equipment shall not be required for home model dishwashers;

13. 12VAC5-421-1670, minimum hot water sanitization temperatures for manual warewashing equipment shall not be required;

14. 12VAC5-421-1680, minimum hot water sanitization temperatures for mechanical warewashing equipment shall not be required for home model dishwashers;

15. 12VAC5-421-1690, sanitization pressure for mechanical warewashing equipment shall not be required;

16. 12VAC5-421-1700, minimum and maximum pressure, pH, sanitizer concentration, and hardness levels shall not be required for home model dishwashers;

17. 12VAC5-421-1710, chemical sanitization for manual warewashing using detergent sanitizers shall not be required;

18. 12VAC5-421-1720, determination of chemical sanitizer concentration shall not be required;

19. 12VAC5-421-1880, food-contact surfaces and utensils shall not be required to be sanitized;

20. 12VAC5-421-1890, before use after cleaning, utensils and food-contact surfaces shall not be required to be sanitized;

21. 12VAC5-421-1900, hot water and chemical sanitizing shall not be required;

22. 12VAC5-421-2790, floors, walls, and ceilings shall be in good repair and kept clean;

23. 12VAC5-421-2810, floors, walls, and ceilings in exempt facilities shall not be required to meet the cleanability requirements but shall be in good repair and kept clean;

24. 12VAC5-421-2820, the prohibition of exposed utility service lines and pipes shall not apply;

25. 12VAC5-421-2840, floor carpeting in exempt facilities may be installed in food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, refuse storage rooms or other areas, however they shall be kept in good repair and kept clean;

26. 12VAC5-421-2850, floor covering, mats and duckboards may be used in exempt facilities, however, they shall be kept clean and in good repair.

27. 12VAC5-421-2870, attachments to walls and ceilings in exempt facilities shall be kept in good repair and kept clean;

28. 12VAC5-421-3120, approved dispensers, soap and single-use paper towels shall be made available to accommodate hand washing;

29. 12VAC5-421-3310, live animals may be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

12VAC5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.

Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:

1. Restricting the food ~~employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease~~ employee;
2. Excluding the food employee ~~from a food establishment;~~ or
3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

12VAC5-421-4070. Release of food employee from restriction or exclusion.

The regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:

1. A food employee who was infected with Salmonella typhi if the food employee's stools are negative for S. typhi based on testing of at least three consecutive stool specimen cultures that are taken:
 - a. Not earlier than one month after onset,
 - b. At least 48 hours after discontinuance of antibiotics, and
 - c. At least 24 hours apart; and
2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.
3. A food employee who was infected with Shigella spp. or Shiga toxin-producing Escherichia coli O157:H7 if the employee's stools are negative for Shigella spp. or ~~E. coli O157:H7~~ Shiga toxin-producing Escherichia coli based on

testing of two consecutive stool specimen cultures that are taken:

- a. Not earlier than 48 hours after discontinuance of antibiotics; and
 - b. At least 24 hours apart.
4. A food employee who was infected with hepatitis A virus if:
- a. Symptoms cease; or
 - b. At least two blood tests show falling liver enzymes.

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DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (adding 12VAC30-10-820).

Statutory Authority: §32.1-325 of the Code of Virginia.

Effective Date: October 31, 2007.

Agency Contact: Louis Elie, Director, Program Integrity, Department of Medical Assistance Services, 600 E. Broad Street, Richmond, VA 23219, telephone (804) 786-5590, FAX (804)786-1680, or email louis.elie@dmas.virginia.gov.

Summary:

This amendment adds a new section to the federally mandated preprinted pages of the State Plan for Medical Assistance, §4.42 regarding employee education about false claims recovery. This regulatory action is intended to implement §6032 of the Deficit Reduction Act of 2005. This section of the DRA is based upon §1902(a)(68) of the Social Security Act and relates to employee education about false claims recovery.

12VAC30-10-820. Employee education about false claims recoveries.

A. Definitions. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

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"Contractor" or "agent" includes any contractor, subcontractor, agent, or other person that or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

"Employee" means any officer or employee of the entity.

"Entity" means a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a state plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually. A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental health facility or school district providing school-based health services). A government agency that merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

B. The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by §1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

C. Provider requirements.

1. If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of §1902(a)(68) of the Act apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

2. An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of §1902(a)(68) of the Act will be made by January 1 of each subsequent year based upon the amount of payments an entity either received or made under the state plan during the preceding federal fiscal year.

3. The entity must establish and disseminate written policies that must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook if none already exists.

4. An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in §1902(a)(68)(A) of the Act, including the Virginia Fraud Against Taxpayers Act (§8.01-216.1 et seq. of the Code of Virginia). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

D. 12VAC30-20-279 describes, in accordance with §1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the Commonwealth will reassess compliance on an ongoing basis.

VA.R. Doc. No. R07-874; Filed August 28, 2007, 3:24 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-135. Demonstration Waiver Services (adding 12VAC30-135-100 through 12VAC30-135-360).

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until November 15, 2007.

Effective Date: December 1, 2007.

Agency Contact: Vivian Horn, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8851, FAX (804) 786-1680, or email vivian.horn@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by §1902 (a) of the Social Security Act (42 USC §1396a) provides governing authority for payments for services.

Section 6063 of the Deficit Reduction Act of 2005 established a demonstration grant program, the Community-Based Alternatives to Psychiatric Residential Treatment Facilities (PRTFs). DMAS was awarded a federal demonstration grant that supports the principles of the New

Freedom Initiative, a new federal program that seeks to expand community integration for individuals currently residing in mental health institutional settings. The New Freedom Commission on Mental Health was created on April 29, 2002, and was charged with making recommendations that would enable adults with serious mental illnesses and youth with serious emotional disturbances to live, work, learn, and participate fully in their communities.

Purpose: The purpose of this regulatory action is to remove barriers to community living for people with serious emotional disturbances. Goals of the demonstration grant program include shortened stays in the PRTFs, development of an enhanced array of community-based services, and improved outcomes for children and their families. The services are intended to be the critical factors in making community care possible.

In Virginia, children who have primary mental health issues currently do not have access to in-home and community supports, such as companion services and respite care, that could provide families with the support needed to allow the children to remain in the home. These children do not qualify for current home and community-based services waivers and do not meet criteria for the current alternate institutional placements now available in other waivers. Without these supports, families may not be able to keep their children at home. This new waiver program is needed in order to create a system of services to maintain individuals in their communities.

The waiver services were chosen to complement the existing continuum of care in the State Plan. Services to be included are respite services, in-home residential supports, companion services, family/caregiver training, environmental modifications, and therapeutic consultation.

In order to implement this demonstration grant program, DMAS must promulgate these regulations.

This regulatory action will help protect the health, safety and welfare of children having primary mental health issues, by providing these new services to enhance their ability to live, work, learn and participate fully in their communities.

Rationale for Using Fast-Track Process: The agency is using the fast-track process in order to complete the needed regulatory changes as soon as possible to implement the waiver currently being drafted according to CMS requirements. An advisory group was involved in the grant application process as well as in the development of the program details, and objections are not anticipated. The organizations represented in this stakeholder advisory group are representatives from:

1. The Office of Comprehensive Services Act;
2. Department of Social Services;

3. Department of Mental Health, Mental Retardation and Substance Abuse Services, as well as the local community services boards (Virginia Association of Community Services Boards);

4. Department of Juvenile Justice;

5. Provider representatives (People Places, For Children's Sake, Virginia Home Care Association);

6. Client advocates (Virginia Office for Protection and Advocacy, ENDependence Center of Northern Virginia, Voices for Virginia's Children); and

7. DMAS.

In addition, the goal of promoting community-based care is one that is common across Virginia's child-serving agencies.

This regulatory action will give DMAS the authority to operate the Children's Mental Health Waiver that provides children who reside in a PRTF and their parents/caregivers the option to receive services in the community instead of these children remaining in institutions.

Substance: This action establishes regulations for DMAS to operate the Children's Mental Health Waiver that is a new waiver program that will provide home and community-based services to children in lieu of continued treatment in a PRTF. DMAS will provide community-based services to individuals under 21 years of age who:

1. Are found to require a PRTF level of institutional care;
2. Have resided in a PRTF for 90 or more days;
3. Continue to meet criteria for institutional care;
4. Meet applicable Medicaid financial eligibility criteria;
5. Require one or more demonstration waiver services in order to function in the community; and
6. Choose to enter the demonstration program in lieu of receiving care in a PRTF.

The following services were chosen to be included in this demonstration to complement the existing continuum of care available through the State Plan. The services are intended to be the critical factors in making community care possible. Services selected to be a part of the demonstration were identified as those most likely to ensure the child's success in a community placement. Services include:

1. Respite services;
2. In-home residential supports;
3. Companion services;
4. Family/caregiver training;
5. Environmental modifications; and
6. Therapeutic consultation.

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The 90-day provision is necessary to ensure that children have a chance to be stabilized in the residential treatment program before discharge.

When an individual is identified as meeting the targeted criteria for this waiver, the individual or his legal representative will be informed of any feasible alternatives under the waiver and given the choice of either continued institutional or home and community-based services. During the initial assessment and the development of the Individual Service Plan (ISP), an individual or his legal representative will receive training in how to exercise and maintain decision-making authority. They will also be informed of their rights to self-direct certain services if desired.

Issues: The primary advantage for the Commonwealth's citizens will be that children with serious emotional disturbance will be able to live as independently as possible in their communities. It will allow these children to live with their families instead of remaining in PRTFs. To the extent of their abilities, they will be able to function in their communities and attend school. One possible disadvantage to the PRTFs could be the reduction of individuals residing in these facilities. To the extent that it affects their reimbursement for Medicaid individuals, this new waiver could receive a negative response from PRTFs. DMAS has included a PRTF provider on the Demonstration Workgroup and will encourage these providers to develop community-based services as part of their continuum of care. The agency projects no negative issues involved in implementing this regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will allow Medicaid to provide funding for intensive community-based services for eligible children and youth who have been in a Psychiatric Residential Treatment Facility for ninety or more days.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Virginia is one of the 10 states awarded a Psychiatric Residential Treatment Facility (PRTF) Demonstration Grant from the Centers for Medicare and Medicaid Services. The proposed regulations will establish the same programmatic rules that apply to existing community-based programs for the new Children's Mental Health Waiver program.

The new program will provide intensive community-based services for eligible children and youth. Eligible population includes individuals under 21 years of age who: 1) are found to require PRTF level of institutional care, 2) have been in PRTFs for 90 or more days, 3) continue to meet criteria for institutional care, 4) meet applicable financial eligibility criteria, 5) require one or more waiver services in order to

function in the community, and 6) exercise freedom of choice by choosing to enter the waiver program in lieu of receiving institutional care.

In addition to all of the usual community services, the new program will provide respite services, in-home residential supports, companion services, training and counseling services for unpaid care givers, environmental modifications, consultative clinical and therapeutic services, and service facilitation to provide sufficient supports to keep the child in the community.

One of the primary effects of the proposed program is enhancing the chances of children with serious mental disturbances to live in their community. Living in the community is expected to promote independence, functioning in the community, school attendance, which are likely to contribute to a better overall mental health status. Also, the proposed program is voluntary. The voluntary nature of the program helps ensure that the program results in net benefits as individuals would be taking advantage of this option only if it is beneficial to them.

Another significant economic effect is the expected fiscal savings. According to Department of Medical Assistance Services (DMAS), the average cost of providing care in an institution for these individuals is about \$47,000 per child¹. On the other hand, the estimated average cost of providing care to the same individuals in their community under the proposed program is about \$30,000 per child. Thus, on average, for a recipient participating in the program, we can expect to save approximately \$17,000 in terms of avoided costs of institutional care. DMAS anticipates, once fully functional, the program will serve approximately 300 recipients per year. At this level of participation, the annual fiscal savings would be about \$5.1 million. Since approximately one half of the Medicaid funds are provided by federal government, the Commonwealth's fiscal savings would be about \$2.55 million.

The proposed program is also expected to have significant distributional economic effects among the Medicaid providers. As individuals move from PRTFs to living in their communities the mix of services provided will change. PRTFs are expected to experience a reduction in their Medicaid reimbursements. On the other hand, providers of usual community services such as intensive in-home services, therapeutic day treatment services, crisis intervention and stabilization services, etc and community support services such as respite services, companion services, environmental modifications, etc are likely to experience an increase in their revenues from Medicaid. However, the adverse effect on revenues of PRTFs' could be somewhat mitigated if they choose to start providing the newly covered services under the proposed program.

In addition, the proposed program is expected introduce approximately \$247,000 in administrative costs associated

with two full time equivalent positions, additional programming costs of the agency's information systems, travel expenses, and office supplies.

Moreover, localities are expected to see some savings as a result of the program. Under the proposed program, localities would not have to provide local matching funds for foster care children for their care in their communities.

Finally, it should be noted that the expected savings from the proposed program will result in approximately \$2.55 million in federal funds not coming into the Commonwealth which could have a contractionary economic effect on the overall economic activity, all things being equal.

Businesses and Entities Affected. The proposed regulations are estimated to primarily affect approximately 300 eligible children with mental disorders and their families. Approximately 25 existing PRTFs are likely to experience a reduction in their reimbursements while the providers of usual community services and community support services are likely to enjoy an increase in their revenues.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Expected reduction in the revenues of existing PRTFs' will likely reduce their demand for labor while the expected increase in usual community services and community support services as well as needed additional administrative positions will likely increase demand for labor.

Effects on the Use and Value of Private Property. Expected reduction in the revenues of existing PRTFs' will likely reduce their asset values while the expected increase in usual community services and community support services will likely increase their asset values.

Small Businesses: Costs and Other Effects. All of the affected providers of PRTF services, usual community services, and community support services are believed to be small businesses. Thus, all of the economic effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that would have less adverse effect on PRTFs while achieving the goals of the proposed regulations.

Real Estate Development Costs. The proposed regulations are not expected to have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected

number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ This estimate is based on 166 days of average length of stay.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the Fast-Track regulations, Children's Mental Health Waiver (12VAC30-135-100 through 12VAC30-135-360).

Summary:

The Department of Medical Assistance Services (DMAS) was awarded a Psychiatric Residential Treatment Facility (PRTF) Demonstration Grant from the Centers for Medicare and Medicaid Services (CMS). The program, Children's Mental Health Waiver (CMH), is a new Medicaid home and community-based program. This grant will permit Medicaid to fund additional intensive community-based services for Medicaid eligible children and youth who have been in a PRTF for 90 or more days. Children and adolescents under 21 years of age who have been in a PRTF for 90 or more days are the target population for this waiver program. The Children's Mental Health Waiver will offer home and community-based services to individuals who (i) are found to require a PRTF level of institutional care under the State Plan; (ii) have been in PRTFs for 90 or more days; (iii) continue to meet criteria for institutional care even though they are being served in the community; (iv) meet applicable Medicaid financial eligibility criteria; (v) require one or more waiver services in order to function in the community; and (vi) exercise freedom of choice by choosing to enter the waiver program in lieu of receiving institutional care.

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Part II

Children's Mental Health Waiver

12VAC30-135-100. Definitions.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. A client's degree of independence in performing these activities is a part of determining appropriate level-of-care and services.

"Agency-directed model" means services provided by a participating provider and where the provider is responsible for hiring, training, supervising, and firing of the staff.

"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Approve" means the Department of Medical Assistance Services (DMAS) or a DMAS-contracted entity authorizes a participating provider's request for services, on behalf of a client, as medically necessary and meeting DMAS criteria for reimbursement.

"Assessment" means a face-to-face meeting conducted to identify a client's physical, emotional, behavioral, and social strengths, preferences, and needs. Assessments are performed by a DMAS-authorized provider prior to the development of the individualized service plan (ISP) and comprehensive service plan (CSP).

"Barrier crime" means those crimes as defined at §32.1-162.9:1 or 37.2-416 of the Code of Virginia.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or combination of counties or cities or cities and counties under Chapter 1 (§37.2-100 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality or localities that it serves.

"Case management" means the assessing and planning of services; linking the client to services and supports identified in the comprehensive service plan (CSP); assisting the client directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the client; enhancing community integration; making collateral contacts to promote the implementation of the CSP and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the client and develops a supportive relationship that promotes the CSP.

"Case manager" means the individual on behalf of a DMAS participating provider possessing a combination of work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities, at the entry level to provide the services described, at 12VAC30-50-420 through 12VAC30-50-430 or 12VAC30-50-480 or 12VAC30-50-130 B 5 a for case management services. The case manager may be the provider of Intensive In-Home Services or the Treatment Foster Care Case Manager or other provider as designated by DMAS.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Child" means, for the purpose of this regulation, an individual under the age of 21 years.

"Client" means the person receiving the services.

"CMH waiver" means the Children's Mental Health §1915(c) home and community-based services demonstration waiver.

"Community services board" or "CSB" means the local agency established by a city or county or combination of cities and/or counties under Chapter 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Community transition services" means services that are provided to individuals who are leaving the PRTF and have chosen to receive services in the community. Community transition services include assessment of the child and family; assistance with meeting the requirements of waiver enrollment; referral for Medicaid eligibility; developing a community plan of care in coordination with the family, CSA (if involved), and other involved parties; identifying community service providers; and monitoring the initial transition to the community.

"Companion" means, for the purpose of these regulations, an individual who provides companion services.

"Companion services" means assistance with skill development and with understanding family interaction, behavioral interventions for support and safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. This service is available through both a consumer-directed (CD) and agency-directed delivery approach and shall not exceed eight hours in one day.

"Comprehensive Services Act" or "CSA" means a collaborative system of services and funding that is child-centered, family-focused, and community-based when addressing the strengths and needs of troubled and at-risk youth and their families.

"Comprehensive service plan" or "CSP" means the overall service plan that addresses the total needs of the client in all life areas. The CSP incorporates the ISPs developed for each individual service. The CSP defines and describes the goals, objectives and expected outcomes of service(s). The client or family/caregiver, as appropriate, will be involved to the maximum extent possible in the development and revision of the CSP. The CSP includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need; (iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

"Consumer-directed model" or "CD" means services for which the client or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed services facilitator" means the DMAS-enrolled provider who is responsible for supporting the client by ensuring the development and monitoring of the CD services individualized service plan (ISP), and completing ongoing review activities as required by DMAS for CD companion services and CD respite services.

"Deny" means DMAS or a DMAS-contracted entity denies a participating provider's request for services, on behalf of a client, as not medically necessary or not meeting DMAS criteria for reimbursement.

"DMAS" means the Department of Medical Assistance Services or its contractors.

"DMAS staff" means individuals employed by DMAS.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DSM-IV" means the Diagnostic and Statistical Manual of Mental Disorders that is the standard classification of mental disorders used by mental health professionals.

"DSM-IV-TR" means the text revision of the DSM-IV, published in July 2000, which corrected errors identified in the DSM-IV and included numerous changes to the classification (i.e., disorders were added, deleted, and reorganized), to the diagnostic criteria sets, and to the descriptive text.

"DSS" means the Department of Social Services.

"Enroll" means that a client has been added to the CMH waiver after it has been determined that the client meets all of the eligibility requirements for the waiver.

"Environmental modifications" means physical adaptations to a client's home or primary place of residence or primary

vehicle, which provide direct medical or remedial benefit to the client. These adaptations are necessary to ensure the health, welfare, and safety of the client, or enable the client to function with greater independence in the home. Without these adaptations, the client would require institutionalization in a psychiatric residential treatment facility (PRTF).

"EPSDT" means the "Early Periodic Screening, Diagnosis and Treatment" program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Family/caregiver" means the family, legal guardian, neighbor, friend, companion or co-worker, or any person who provides uncompensated care, training, guidance, companionship or support to a person served under this waiver.

"Family/caregiver training" means training and counseling services provided to families or caregivers of clients receiving services in the CMH waiver. Training includes instruction about treatment regimens and behavioral plans specified in the ISP, and shall include updates as necessary to safely maintain the client at home. Counseling may be provided to the family/caregiver to improve and develop the family's/caregiver's skills in dealing with life circumstances of parenting a child with special needs and help the client remain at home. All training/counseling will be provided on a face-to-face basis.

"Fiscal management service" or "FMS" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of clients who are receiving CD respite and companion services.

"Health, welfare, and safety standard" means that a client's right to receive a waiver service is dependent on a finding that the client needs the service, based on appropriate assessment criteria and a written CSP, and that services can be provided safely in the community.

"Home and community-based waiver services" or "waiver services" means a variety of home and community-based services reimbursed by DMAS as authorized pursuant to §1915(c) of the Social Security Act designed to offer clients an alternative to institutionalization. Clients may be pre-authorized to receive one or more of these services either solely or in combination, based on the documented need for the service in order to discharge the client from a PRTF.

"Individualized service plan" or "ISP" means the specific service plan developed by the service provider related solely to the specific tasks required of that service provider. The client will be involved to the maximum extent possible in the development and revision of the ISP. The ISP helps to comprise the overall CSP. The ISP includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need;

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(iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

"In-home residential supports" means agency-directed services that increase or maintain personal self sufficiency, and facilitate the client's achievement of community inclusion and remaining in the home. The supports may be provided in the client's residence or in community settings. Community living supports provides assistance to the family in the care of their child, while facilitating the client's independence and integration into the community. The service also includes communication and relationship-building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the client enabling the client to attain or maintain his maximum potential. These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Legal guardian" means a person who has been legally authorized to take care of and make decisions for the client in order to protect the interests of a minor client or an adult who has been declared by the circuit court to be incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the client has been determined to be incapacitated.

"Level-of-care" means the psychiatric residential treatment facility (PRTF) criteria. Review of a client's level-of-care requires the case manager to assure that the client continues to meet the PRTF criteria.

"Licensed mental health professional" or "LMHP" means a clinician in the human services field as defined at 12VAC30-50-226.

"Participating provider" means a person, institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of a provider's request, on behalf of a client, for services until all required information is received by the preauthorization entity.

"Person-centered planning" means a process, directed by the client or family/caregiver, as appropriate, with assistance as needed from others involved in the care of the child. Person-centered planning shall be intended to identify the strengths,

capacities, preferences, needs and desired outcomes of the client.

"Personal care agency" means a participating provider that renders services designed to prevent or reduce institutional care by providing eligible clients with companions and assistants who provide companion or respite services.

"Preauthorization" means the process to approve specific services for a client by a Medicaid-enrolled provider prior to service delivery and reimbursement.

"Preauthorized" means that an individual's comprehensive service plan has been approved by DMAS or a DMAS-approved entity prior to commencement of the service by the service provider for provision and reimbursement of services.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the client to live successfully in the community without compensation for providing such care.

"Psychiatric residential treatment facility" or "PRTF" means a facility that provides 24-hour-per-day specialized, highly organized, intensive, and planned therapeutic interventions to children that are utilized to treat severe mental, emotional, and behavioral disorders.

"Qualified mental health professional" or "QMHP" means a clinician in the human services field as defined at 12VAC30-50-226.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite services to eligible clients for their caregivers.

"Respite services" means services provided to clients and their families to offer relief to unpaid caregivers. Respite services will be provided in the client's home or place of residence, in the community, or a licensed respite facility, such as a group home. This service is available through both a CD and agency-directed delivery approach.

"Screening" means the process to evaluate the medical, emotional, psychiatric, and social needs of clients referred for screening to determine client's eligibility to be discharged from a PRTF, and to authorize Medicaid-funded community-based care for those clients who meet the CMH waiver eligibility criteria.

"Screener" means the entity or entities identified by DMAS that is responsible for performing screening for the CMH waiver.

"Serious emotional disturbance" or "SED" means a serious mental health problem in children ages birth through 21 that can be diagnosed under the DSM-IV-TR, or exhibited by all of the following: (i) problems in personality development and social functioning that have been exhibited over at least one year's time; and (ii) problems that are significantly disabling

based upon the social functioning of most children that age; and (iii) problems that have become more disabling over time; and (iv) service needs that require significant intervention by more than one agency.

"Service provider" means the entity providing direct services to the client.

"Services facilitator" means the participating provider who is responsible for supporting the client by ensuring the development and monitoring of the CD Services ISP, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a CD model. These services include companion and respite services.

"State Plan for Medical Assistance" or "the Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Therapeutic consultation" means services that provide expertise, training, and technical assistance by licensed professionals to assist family members, caregivers, and other service providers in supporting the client. This service includes the assessment of the client and family strengths, observation, and developing, with the family, a culturally sensitive ISP.

"Uniform Assessment Instrument" means the uniform assessment instrument, as designated by DMAS, used to measure functional outcomes for children. This tool is used by the screener as one component of its assessment and is used to inform but not dictate a level-of-care. The completion of this tool is required for children who participate in the CMH waiver. This tool is separate from the UAI used for long-term care services in other home and community-based services waivers.

12VAC30-135-110. (Reserved.)

12VAC30-135-120. General coverage and requirements for Children's Mental Health Waiver services.

A. Waiver service populations. Home and community-based waiver services shall be available through a §1915(c) of the Social Security Act waiver for clients under the age of 21 who have resided in a PRTF for at least 90 days and have been determined to continue to meet PRTF level-of-care, but with additional supports could reside in the community.

B. Required documentation, as identified by DMAS, for admission to the CMH waiver must be submitted to DMAS in order for the client to be enrolled. Upon determination by DMAS or a DMAS-contracted entity that the client is appropriate for admission to the waiver, the case manager or screener will work with the client family/caregiver, the facility currently housing the client, and

client/family/caregiver-selected providers of community-based services to determine an appropriate transfer date.

C. Covered services.

1. Covered services shall include respite services (both CD and agency-directed), in-home residential supports, companion services (both CD and agency-directed), family/caregiver training, environmental modifications, community transition services and therapeutic consultation.

2. These services shall be medically appropriate and necessary to maintain the client in the community. Federal waiver requirements provide that the overall costs of community care shall be no more than the overall costs that would have been incurred at the same level of service in the PRTF.

3. Waiver services shall not be furnished to clients who are inpatients of a hospital, nursing facility, intermediate care facility for persons with mental retardation, inpatient rehabilitation facility, or a PRTF consistent with federal waiver limitations.

4. Under this §1915(c) waiver, DMAS waives §1902(a)(10)(B) of the Social Security Act related to comparability.

D. Requests for services. All requests for waiver services by CMH waiver clients will be reviewed under the health, welfare, and safety standard. This standard assures that a client's right to receive a waiver service is dependent on a finding that the client needs the service, based on appropriate assessment criteria and a written CSP and that services can safely be provided in the community. If the determination is made that these services cannot be safely provided to a client, then such clients shall not be approved for this waiver.

E. Medicaid reimbursement is available only for services provided when the client is present and when a qualified provider is providing the services. If the client is absent, such as in a hospitalization, no reimbursement will be provided for these waiver services.

F. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

G. Reevaluation of service need and utilization review. Reviews and updates of the CSP and level-of-care must meet the requirements as specified by DMAS. Providers shall meet the documentation requirements as specified by DMAS and DMAS will conduct quality management reviews for services rendered. Services failing to meet DMAS' quality management standards shall not be reimbursed or shall be subject to payment recoveries.

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12VAC30-135-130. (Reserved.)

12VAC30-135-140. Client eligibility requirements and intake process.

A. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy. Under this waiver, clients must meet the financial and nonfinancial Medicaid eligibility criteria and meet the PRTF institutional level-of-care criteria. DMAS shall be the single state agency authority responsible for the supervision and administration of the CMH waiver.

B. The following three criteria shall apply to all CMH waiver services:

1. Clients qualifying for CMH waiver services must have a demonstrated need for the service resulting in significant functional limitations. The need for the service must arise from the client having a SED and meeting the level-of-care for admission to a PRTF;

2. The services described in the ISP, and services as delivered, must be consistent with the Medicaid definition of each service; and

3. Services must be recommended based on a current assessment using a DMAS-approved assessment instrument and a client's demonstrated need for each specific service.

C. Assessment, screening, authorization and enrollment in home and community-based care services.

1. To ensure that Virginia's CMH waiver serves only clients who would otherwise remain in a PRTF, home and community-based care services shall be considered only for clients who have resided in a PRTF for at least 90 days to ensure that the client's condition has been stabilized. Home and community-based care services shall be the critical service that enables the client to be discharged home rather than remaining in a PRTF. Clients must receive at least one CMH waiver service to remain in the waiver.

2. CMH waiver services must be determined by DMAS or a DMAS-contracted entity to be an appropriate service alternative as defined in these regulations to remaining in a PRTF.

3. The client shall be recommended for CMH waiver services after completion of a comprehensive assessment of the client's needs and available supports. The completion of an assessment is mandatory before the client can be enrolled in the CMH waiver and Medicaid assumes payment responsibility for the waiver services.

4. The CMH waiver screener shall gather relevant medical, social, and psychological data and identify services to meet the client's needs in the community.

5. The client or family/caregiver, as appropriate, must be offered the choice of CMH waiver services or to remain in the PRTF. If the client chooses CMH waiver services, the client must also be offered the choice of waiver providers.

6. The screener shall explore alternative settings and services to provide the care needed by the client.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS or a DMAS-contracted entity. Any CSP for home and community-based care services must be preapproved by DMAS prior to Medicaid reimbursement for waiver services.

D. Screening for the CMH waiver.

1. Clients requesting CMH waiver services will be screened and will receive services on a first-come, first-served basis based on the availability of services in the community to support the client.

2. To be eligible for CMH waiver services, the client must:

a. Have been a resident of a PRTF for at least 90 days prior to applying for the CMH waiver;

b. Continue to meet the PRTF criteria described in 12VAC30-50-130;

c. Have services identified in the community to meet the client's needs;

d. Have a case manager assigned; and

e. Continue to meet Medicaid eligibility criteria.

E. Waiver approval process: authorizing and accessing services.

1. The screener is the entity responsible for assessing the client to determine if the client meets the criteria for admission to the CMH waiver.

2. If a client is a CSA client, the screener shall be the CSA representative. If the client is not a CSA client, the screener shall be the mental health or treatment foster care case manager.

3. Once the screener has determined that a client meets the eligibility criteria for CMH waiver services and the client or family/caregiver, as appropriate, has chosen this program, the client or family/caregiver will be provided with a list of available service providers. The client or family/caregiver, as appropriate, must be given a choice of providers if there is more than one provider available that can meet the client's needs. The client or family/caregiver, as appropriate, must also be given a choice of CD or agency-directed respite and companion services, if the client is eligible for these services.

4. When all required information has been submitted to DMAS or its contractor for preauthorization, DMAS or the

contractor will have 10 business days to review preauthorization requests. If the request is approved, the client will be sent written notification of enrollment in the CMH waiver and services may begin.

5. Only CMH waiver services authorized on the CSP by the screening entity according to DMAS policies may be reimbursed by DMAS.

6. All CSPs are subject to approval by DMAS.

F. Reevaluation of service need.

1. The comprehensive service plan (CSP).

a. The CSP shall be reviewed at intervals as determined by DMAS with the case manager, client, family/caregiver, service providers, consultants, and others involved in the care of the client based on relevant, current assessment data.

b. The case manager is responsible for continuous monitoring of the appropriateness of the client's services and revisions to the CSP as indicated by the changing needs of the client. The case manager must review the CSP at least every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be approved by the client or family/caregiver, as appropriate, and be pre-authorized by DMAS.

2. Review of level-of-care.

a. The case manager shall complete a reassessment annually, in coordination with the client, family/caregiver, service providers, consultants, and others involved in the care of the client, to ensure that the client continues to meet the PRTF criteria. The reassessment shall include the completion of the assessment instrument and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a mental health assessment for the client. The CSP shall be revised as appropriate.

b. A new mental health assessment shall be required whenever the current mental health assessment is no longer reflective of the client's current condition.

3. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the client.

4. Case managers will be required to conduct a minimum of quarterly face-to-face visits for all CMH waiver clients.

12VAC30-135-150. (Reserved.)

12VAC30-135-160. Participation standards for home and community-based waiver services participating providers.

A. Requests for participation. Requests for participation from providers will be evaluated to determine whether the provider applicant meets the basic requirements for participation.

B. Providers approved for participation shall, at a minimum, perform the following activities:

1. For services that require licensure and/or certification, the provider must meet all licensure and/or certification requirements pursuant to 42 CFR 440.50 and 42 CFR 440.60 and any other applicable state or federal requirements;

2. The ability to document and maintain client case records in accordance with state and federal requirements;

3. Immediately notify DMAS in writing of any change in the information that the provider previously submitted to DMAS;

4. Assure freedom of choice to the client or family/caregiver, as appropriate, in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services are performed;

5. Assure the freedom of the client or family/caregiver, as appropriate, to refuse medical care, treatment and services;

6. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

7. Provide services and supplies to clients in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC §2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§51.5-1 et seq. of the Code of Virginia); §504 of the Rehabilitation Act of 1973, as amended (29 USC §794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC §12101 et seq.), which provides comprehensive civil rights protections to clients with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

8. Provide services and supplies to clients of the same quality and in the same mode of delivery as are provided to the general public;

9. Submit charges to DMAS for the provision of services and supplies to clients in amounts not to exceed the provider's usual and customary charges to the general

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public and accept as payment in full the amount established by DMAS' payment methodology beginning with the onset of the client's authorization date for the waiver services;

10. Use program-designated billing forms for submission of charges;

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location and agent, or trustee shall be within the Commonwealth of Virginia.

c. Documentation must be maintained that indicates the date, type of services rendered, and the number of hours/units provided, including the specific time frames.

12. Agree to furnish information on request and in the form requested by DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

14. Pursuant to 42 CFR Part 431, Subpart F, 12VAC30-20-90, and any other applicable state or federal law, hold confidential and use for authorized DMAS' purposes only all medical assistance information regarding clients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS in conjunction with the cited laws. DMAS shall not disclose medical information to the public;

15. Notify DMAS of change of ownership, as defined in 42 CFR 489.18. When ownership of the provider changes,

DMAS shall be notified at least 15 calendar days before the date of change;

16. For all facilities covered by §1616(e) of the Social Security Act in which home and community-based waiver services will be provided, be in compliance with applicable standards that meet the requirements for board and care facilities;

17. Suspected abuse or neglect. Pursuant to §§63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service client is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS protective services worker, to DMAS, and to DMHMRSAS Offices of Licensing and Human Rights as applicable;

18. Adhere to the provider participation agreement and the DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

D. Recipient choice of providers. The case manager must inform the client and family/caregiver of all available waiver providers in the community in which he desires services. The client and family/caregiver shall have the option of selecting the provider of his choice from among those providers who are able to meet his needs. A client's case manager shall not be the direct staff person or immediate supervisor of a staff person who provides CMH waiver services for the client.

E. Review of provider participation standards and renewal of contracts. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community-based waiver services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited.

F. Termination of provider participation. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may terminate at-will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement in the event of

a breach of the contract by the provider as specified in the DMAS participation agreement and also if the provider is no longer eligible to participate in the program. Such action precludes further payment by DMAS for services provided to clients subsequent to the date of termination.

G. Reconsideration of adverse actions. A provider shall have the right to appeal adverse action taken by DMAS to the extent such action is appealable under the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia). Unless otherwise provided by law, adverse action includes, but shall not be limited to, termination of the provider participation agreement by DMAS and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia, unless otherwise provided by law. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia), the State Plan for Medical Assistance provided for in §32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

H. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

I. It is the responsibility of the case management provider to notify DMAS, in writing, when any of the following circumstances or events occurs:

1. Home and community-based waiver services are implemented;
2. A client dies;
3. A client is discharged from all waiver services;
4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days; or
5. A selection by the client of a different provider of case management services.

J. Changes or termination of services. The case manager shall authorize changes to a client's CSP based on the recommendations of the service provider and approval by the client or family/caregiver, as appropriate. Providers of direct service are responsible for modifying their ISP with the involvement of the client and family/caregiver and submitting ISPs to the case manager any time there is a change in the client's condition or circumstances that may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a

change to the CSP and submit this change to the DMAS-contracted preauthorization entity. The preauthorization entity will review and approve, deny, or pend for additional information the requested change to the client's CSP, and communicate this to the case manager.

K. In the case of reduction, termination, suspension or denial of home and community-based waiver services by the preauthorization contractor or DMAS staff, clients shall be notified in writing of their appeal rights by the case manager pursuant to 12VAC30-110. The case manager shall have the responsibility to identify those clients who no longer meet the level-of-care criteria or for whom home and community-based waiver services are no longer an appropriate alternative to residential placement. All CSPs are subject to approval by the Medicaid agency.

L. Termination of a provider participation agreement upon conviction of a felony. Section 32.1-325 of the Code of Virginia mandates that "any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider participation agreement. Reinstatement will be contingent upon provisions of state law. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

M. Changes or termination of care. It is the DMAS staff's responsibility to authorize any changes to a client's CSP based on the recommendations of the case manager. Participating providers providing direct service are responsible for modifying the ISP if the client/family/caregiver agrees. The provider must submit the ISP to the case manager any time there is a change in the client's condition or circumstances that may warrant a change in the amount or type of service rendered. The case manager must review the need for a change and will sign the ISP if he agrees to the changes. The case manager must submit the revised CSP to the DMAS staff to receive approval for that change. DMAS staff has the final authority to approve or deny the requested change.

1. Nonemergency termination of home and community-based care services by the participating provider. The participating provider must give the client and case manager 10 business days' written notification of the intent to terminate services. The letter must provide the reasons for and the effective date of the termination. The effective date of services termination must be at least 10 days from the date of the termination notification letter. The client is not eligible for appeal rights in this situation and may pursue services from another provider.

2. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the

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client or provider agency personnel is endangered, the case manager, DMAS and the DMHMRSAS Offices of Licensing and Human Rights must be notified prior to termination of services. The 10-business day written notification period shall not be required. If appropriate, the local DSS protective services unit must be notified immediately.

3. DMAS termination of eligibility to receive home and community-based care services. DMAS has the ultimate responsibility for assuring appropriate placement of the client in home and community-based care services and the authority to terminate such services to the client for the following reasons:

- a. The client no longer meets the institutional level-of-care criteria;
- b. The client's environment does not provide for his health, safety, and welfare; or
- c. An appropriate and cost-effective CSP cannot be developed.

N. Documentation requirements.

1. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. The case manager must retain the following documentation for quality management review by DMAS for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws, whichever period is longer.

- a. The comprehensive assessment and all CSPs completed for the client;
- b. All ISPs from every provider rendering waiver services to the client;
- c. All supporting documentation related to any change in the ISP;
- d. All related communication with the client, family/caregiver, consultants, providers, the screening entity, DMAS, DMHMRSAS, CSA, DSS and others involved in the care of the client; and
- e. An ongoing log that documents all contacts made by the case manager related to the client.

2. Quality management review of client-specific documentation must be conducted by DMAS staff. This documentation must contain, up to and including the last date of service, all of the following:

- a. All assessments and reassessments;
- b. All ISP's developed for that client and the written reviews;
- c. Documentation of the date services were rendered and the amount and type of services rendered;

d. Appropriate data, contact notes or progress notes reflecting a client's status and, as appropriate, progress or lack of progress toward the goals on the ISP; and

e. Any documentation to support that services provided are appropriate and necessary to maintain the client in the home and in the community.

12VAC30-135-170. (Reserved.)

12VAC30-135-180. Agency-directed companion services.

A. Service description. Companion services provide assistance with skill development and with understanding family interaction, behavioral interventions for support and safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. These include, but are not limited to, nonmedical care, socialization, or support to a client. Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but companions do not perform these activities as discrete services. This service is provided in accordance with a therapeutic goal in the ISP and is not purely diversional in nature.

B. Criteria. In order to qualify for companion services, the client shall have demonstrated a need for assistance with IADLs, light housekeeping, community access, reminders for medication self-administration, or support to assure safety.

1. The inclusion of companion services in the ISP is appropriate only when the client cannot be left alone at any time due to the SED. The provision of companion services does not entail hands-on care.

2. Companion services shall not be covered if required only because the client does not have a telephone in the home or because the client does not speak English.

3. There must be a clear and present danger to the client as a result of being left unsupervised. Companion services cannot be authorized for clients whose only need for such services is for assistance exiting the home in the event of an emergency.

C. Service units and service limitations.

1. The amount of companion services time included in the ISP must be no more than is necessary to prevent the deterioration or injury to the client. In no event may the amount of time relegated solely to companion care on the ISP exceed eight hours per day, either separately or in any combination of CD and agency-directed companion services.

2. The hours authorized are based on individual need. No more than three unrelated clients who are receiving waiver services and live in the same home are permitted to share the authorized work hours of the same companion.

3. Companion care will be authorized for family members/caregivers to sleep either during the day or during the night when the client cannot be left alone at any time due to his condition. Companion services must be necessary to ensure the client's safety if he cannot be left unsupervised due to health and safety concerns.

4. Companion services can be authorized when no one else is in the home who is competent to monitor the client for safety.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, companion service providers must meet the following qualifications:

1. Providers must either be licensed by DMHMRSAS as (i) a residential service provider, (ii) supportive in-home residential service provider; (iii) day support service provider; or (iv) respite service provider; or meet the DMAS criteria to be a personal care/respite services provider.

2. Companions will be employees of providers that have provider participation agreements with DMAS to provide companion services. Providers are required to have a companion services supervisor to monitor companion services. The supervisor must be at least a QMHP.

3. The supervisor must conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of services and to establish an ISP for the client. The supervisor must provide follow-up home visits to monitor the provision of services at a minimum of every three months or as often as needed. The client must be reassessed for services annually.

4. Required documentation in the client's record. The provider must maintain a record of each client receiving companion services. At a minimum these records must contain:

a. An initial assessment completed prior to the date services are initiated and subsequent reassessments and changes to the ISP;

b. An ISP containing the following elements:

(1) The client's strengths, desired outcomes, required or desired supports, or both;

(2) The services to be rendered and the schedule of services to accomplish the desired outcomes;

c. Documentation that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases

where the ISP is modified, the ISP must be reviewed with the client and family/caregiver.

d. All correspondence to the client, family/caregiver, case manager, DMAS, and DMHMRSAS;

e. Contacts made with family/caregiver, physicians, formal and informal service providers, and others involved in the care of the child;

f. The companion services supervisor must document in the client's record in a summary note following significant contacts with the companion and home visits with the client that occur at least quarterly:

(1) Whether companion services continue to be appropriate;

(2) Whether the plan is adequate to meet the client's needs or changes are indicated in the plan;

(3) The client and family/caregiver's satisfaction with the service;

(4) The presence or absence of the companion during the supervisor's visit;

(5) Any suspected abuse, neglect, or exploitation and to whom it was reported; and

(6) Any hospitalization or change in medical condition, functioning, or cognitive status.

g. In addition to the above requirements, the companion record must contain:

(1) The specific services delivered to the client by the companion, dated the day of service delivery, and the client's responses;

(2) The companion's arrival and departure times;

(3) The companion's weekly comments or observations about the client to include observations of the client's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The weekly signature of the companion, or parent/caregiver, as appropriate, recorded and dated on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

12VAC30-135-190. (Reserved.)

12VAC30-135-200. Agency-directed respite services.

A. Service description.

1. Respite services means services specifically designed to provide a temporary but periodic or routine relief to the primary unpaid caregiver of a client who is in need of specialized supervision due to a SED. Respite services include assistance with or monitoring of personal hygiene,

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nutritional support, safety, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

2. Respite services do not include either practical or professional nursing services or those practices regulated in Chapters 30 (§54.1-3000 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

B. Criteria.

1. Respite services may only be offered to clients who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the client. Respite services are designed to focus on the need of the caregiver for temporary relief.

2. Respite services are supports for the family or other unpaid primary caregiver of a client. These services are furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the clients.

C. Service units and service limitations.

1. Respite services shall be limited to a maximum of 720 hours per calendar year. Clients who are receiving services through both the agency-directed and CD models shall not exceed 720 hours per calendar year combined.

2. The unit of service is one hour.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, respite services providers must meet additional provider requirements:

1. Services shall be provided by:

a. A DMAS respite services provider; a DMHMRSAS-licensed residential services provider; or by a DMHMRSAS-licensed respite services provider or a DSS-approved foster care home-for-children provider.

b. For DMAS-enrolled respite services providers, the provider must employ or subcontract with a QMHP or LMHP to supervise all assistants. The supervisor must meet DMAS qualifications.

2. The QMHP/LMHP supervisor must make a home visit to conduct an initial assessment prior to the start of services for all clients requesting respite services. The supervisor must also perform any subsequent reassessments or changes to the ISP.

3. The QMHP/LMHP supervisor must make supervisory home visits as often as needed to ensure both quality and

appropriateness of services. The minimum frequency of these visits is every 30 to 90 days.

a. When respite services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days, depending on the needs of the client.

b. When respite services are not received on a routine basis, but are episodic in nature, the supervisor is not required to conduct a supervisory visit every 30 to 90 days. Instead, the QMHP/LMHP supervisor must conduct the initial home visit with the respite care assistant immediately preceding the start of services and make a second home visit within the respite services period.

4. Based on continuing evaluations of the assistant's performance and client's needs, the QMHP/LMHP supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

5. The QMHP/LMHP supervisor must document in a summary note:

a. Whether respite services continue to be appropriate;

b. Whether the ISP is adequate to meet the client's needs or if changes need to be made;

c. The client's and family/caregiver's satisfaction with the service;

d. Any hospitalization or change in medical condition or functioning status;

e. Other services received and the amount; and

f. The presence or absence of the assistant in the home during the visit.

6. Qualification of assistants. The assistant must complete a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to a client, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS' requirements. DMAS requirements may be met in one of two ways:

a. Registration as a certified nurse aide; or

b. Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, home health aide, or meeting the paraprofessional criteria as established by 12VAC30-50-226.

E. Required documentation for the client's records. The provider must maintain all records of each client receiving services. These records must be separated from those of other nonwaiver services, such as home health services. These

records will be reviewed periodically by DMAS staff. At a minimum these records must contain:

1. An initial assessment completed by the QMHP/LMHP supervisor prior to or on the date services are initiated;
2. Reassessments and any changes to the ISP made during the provision of services by the supervisor.
3. The most recent ISP and supporting documentaion that contains, at a minimum, the following elements:
 - a. The client's strengths, desired outcomes, and required or desired supports;
 - b. The client's and family's/caregiver's goals and objectives to meet the identified outcomes;
 - c. Services to be rendered and the frequency of services to accomplish the goals and objectives; and
 - d. The provider staff responsible for the overall coordination and integration of the services specified in the ISP.
4. The ISP goals, objectives, and activities must be reviewed by the supervisor quarterly, annually, and more often as needed and modified as appropriate. The results of these reviews must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the client and family/caregiver.
5. The QMHP/LMHP supervisor's notes recorded and dated during significant contacts with the respite services assistant and during supervisory visits to the client's home. The written summary of the supervision visits must include:
 - a. Whether services continue to be appropriate and whether the ISP is adequate to meet the needs or if changes are indicated in the ISP;
 - b. Any suspected abuse, neglect, or exploitation and to whom it was reported;
 - c. Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;
 - d. The client's and family/caregiver's satisfaction with the service;
 - e. Any hospitalization or change in medical condition or functioning status;
 - f. Other services received and their amount; and
 - g. The presence or absence of the assistant in the home during the supervisor's visit.
6. All correspondence to the client, family/caregiver, case manager, DMAS, DMHMRSAS, and CSA;

7. Significant contacts made with the client, family/caregivers, physicians, DMAS and others involved in the care of the client;

8. The assistant record must contain:

- a. The specific services delivered to the client by the assistant, dated the day of service delivery, and the client's responses;
- b. The assistant's arrival and departure times;
- c. The assistant's weekly comments or observations about the client to include observations of the client's physical and emotional condition, daily activities, and responses to services rendered; and
- d. The assistant's, client's and family/caregiver's weekly signatures with dates recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.
- e. Signatures, times, and dates shall not be placed on the assistant record prior to the last date of the week that the services are delivered.

9. All DMAS quality management review forms.

12VAC30-135-210. (Reserved.)

12VAC30-135-220. Consumer-directed companion and respite services.

A. Companion services.

1. Service description. Companion services provide assistance with skill development and with understanding family interaction, behavioral interventions for support and safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. This service is available through both a consumer-directed (CD) and agency-directed delivery approach and shall not exceed eight hours in one day. These services include, but are not limited to, nonmedical care, socialization, or support to a client as well as supervision or monitoring to those clients who require the physical presence of an aide to ensure their safety during times when no other supportive individuals are available. This service is provided in accordance with a therapeutic goal in the ISP and is not purely diversional in nature.

2. Criteria.

- a. The inclusion of companion services in the ISP is appropriate only when the client cannot be left alone at any time due to the SED. The provision of companion services does not entail hands-on care.
- b. Companion services shall not be covered if required only because the client does not have a telephone in the home or because the client does not speak English.

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c. There must be a clear and present danger to the client as a result of being left unsupervised. Companion services cannot be authorized for clients whose only need for companion services is for assistance exiting the home in the event of an emergency.

3. Service units and service limitations.

a. The amount of companion service time included in the ISP must be no more than eight hours per day, either separately or in any combination of CD or agency-directed companion services.

b. The hours authorized are based on individual need. No more than three unrelated individuals who are receiving waiver services and live in the same home are permitted to share the authorized work hours of the same companion.

c. Companion services may be authorized for family/caregivers to sleep either during the day or during the night when the client cannot be left alone at any time due to the client's condition. Companion aide services must be necessary to ensure the client's safety if the client cannot be left unsupervised due to health and safety concerns.

d. Companion services can be authorized when no one else is in the home who is competent to monitor the client for safety.

4. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, companion service providers must meet the following qualifications:

a. General companion qualifications. Companions must meet the following requirements:

(1) Be at least 18 years of age;

(2) Have the required skills to perform CD services as specified in the client's ISP;

(3) Possess basic reading, writing, and math skills;

(4) Be capable of following a care plan with minimal supervision;

(5) Submit to a criminal history record check within 15 days from the date of employment and, if the client is a minor, the Child Protective Services Central Registry. The companion will not be compensated for services provided to the client if the records check verifies the companion has been convicted of crimes described in §32.1-162.9:1 or 37.2-416 of the Code of Virginia; or if the companion has a complaint confirmed by the DSS Child Protective Services Central Registry;

(6) Possess a valid social security number;

(7) Be willing to attend training at the client's and family/caregiver's request;

(8) Receive an annual tuberculosis (TB) screening; and

(9) Understand and agree to comply with the DMAS CMH waiver requirements as described in DMAS guidance documents.

b. Companions shall not be spouses, parents or caregivers. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care. Medicaid-reimbursed companion services shall not be provided by adult foster care providers or any other paid (regardless of the payment source) caregivers for a client residing in that home.

c. Family/caregivers who are reimbursed to provide companion services must meet the companion qualifications stated above.

d. Retention, hiring, and substitution of companions. Upon the client's request, the CD services facilitator shall provide the client or family/caregiver with a list of persons on the assistant registry who can provide temporary assistance until the assistant returns or the client is able to select and hire a new assistant. If a client or family/legal guardian is consistently unable to hire and retain the employment of an assistant to provide CD companion services, the services facilitator must contact the case manager and DMAS to transfer the client, at the client's choice, to a provider that provides Medicaid-funded agency-directed companion services. The CD services facilitator will make arrangements with the case manager to have the client transferred.

B. Respite services.

1. Service description. Respite services include assistance with or monitoring of personal hygiene, nutritional support, safety, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver. For the purposes of this section, an assistant refers to the individual providing CD respite.

2. Criteria.

a. CD respite services may only be offered to clients who have a primary unpaid caregiver living in the home who requires temporary relief to avoid institutionalization of the client, and it is designed to focus on the need of the caregiver for temporary relief.

b. The inclusion of respite services in the ISP is appropriate only when the client cannot be left unsupervised due to the mental health condition at any time.

3. Service units and service limitations.

a. CD respite services are limited to a maximum of 720 hours per calendar year. Clients who are receiving services through both the agency-directed and CD models shall not exceed 720 hours per calendar year combined.

b. Clients can receive CD respite services and in-home residential support services in their CSPs but cannot receive these services simultaneously.

c. For CD respite services, clients and family/legal guardian, as appropriate, will hire their own assistants and manage and supervise the assistant's performance.

4. Provider requirements.

a. The assistant must meet the following requirements:

(1) Be at least 18 years of age;

(2) Have the required skills to perform CD services as specified in the client's ISP;

(3) Possess basic reading, writing and math skills;

(4) Be capable of following a care plan with minimal supervision;

(5) Submit to a criminal history record check within 15 days from the date of employment, and if the client is a minor, the Child Protective Services Central Registry. The assistant will not be compensated for services provided to the client if the records check verifies the assistant has been convicted of crimes described in §32.1-162.9:1 or 37.2-416 of the Code of Virginia or if the assistant has a complaint confirmed by the DSS Child Protective Services Central Registry;

(6) Possess a valid social security number;

(7) Be willing to attend training at the client's and family/caregiver's request;

(8) Receive periodic TB screening; and

(9) Understand and agree to comply with the DMAS CMH waiver requirements;

b. Assistants cannot be spouses, parents of minor children, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.

c. Family/caregivers who are reimbursed to provide respite services must meet the assistant qualifications.

d. Retention, hiring, and substitution of assistants. Upon the client's request, the CD services facilitation provider shall provide the client or family/legal guardian with a list of persons on the assistant registry who can provide

temporary assistance until the assistant returns or the client is able to select and hire a new assistant. If a client is consistently unable to hire and retain the employment of an assistant to provide CD respite services, the CD services facilitator must contact the case manager and DMAS to transfer the client, at the client's choice, to a provider that provides Medicaid-funded agency-directed respite services. The CD services facilitator will make arrangements with the case manager to have the client transferred.

C. Service facilitation.

1. Clients choosing the CD option must receive support from a CD services facilitator and meet requirements for consumer direction as described in these regulations.

2. DMAS shall contract for the services of a Fiscal Management Service agent for CD companion and respite services. The FMS agent will be reimbursed by DMAS to perform certain tasks as an agent for the client/family/caregiver/employer who is receiving CD services. The FMS agent will handle the responsibilities for the client/family/caregiver/employer for employment taxes. The FMS agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

3. If a client is unable to direct his own care or is under 18 years of age, a family/legal guardian may serve as the employer on behalf of the client. Specific employer duties include checking of references of assistants/companions, determining that assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the FMS agent on a consistent and timely basis. There must be a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice. This is the responsibility of the client or family/legal guardian to establish.

4. Clients or family/legal guardians, as appropriate, choosing the CD model of service delivery must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with CD respite and companion services. The CD services facilitator is responsible for assessing the client's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the family/legal guardian on his responsibilities as an employer, and providing ongoing support of the CD model of services. The CD services facilitator cannot be the client, the client's case manager, direct service provider, spouse, parent or legally responsible party of the client who is a minor child, or a family/legal guardian employing the assistant/companion. If a client enrolled in CD services has a lapse in services for more than 90 consecutive days,

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DMAS must be notified and the CD services will be discontinued.

5. Either DMAS or its contractor shall provide the FMS for CD companion and respite services. The FMS agent will be reimbursed by DMAS to perform certain tasks as an agent for the client/employer who is receiving CD services. The FMS agent will handle the responsibilities of employment taxes for the client. The FMS agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

6. CD services facilitator qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, the CD services facilitator must meet the following qualifications:

a. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator must operate from a physical business office and employ sufficient qualified staff to perform the needed ISP development and monitoring, reassessments, service coordination, and support activities as required. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

b. It is preferred that employees of the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a QMHP. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in the human services field working with persons with SED. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in clients with SED, or clients with other disabilities, as well as strategies to reduce limitations and health problems;

(b) Equipment and environmental modifications that may be required by clients with SED that reduce the need for human help and improve safety;

(c) Community-based and other services, including PRTF placement criteria, Medicaid waiver services, and

other federal, state, and local resources that provide respite and companion services;

(d) CMH Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(e) CMH Waiver requirements, as well as the administrative duties for which the client and family/caregiver will be responsible;

(f) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;

(g) Interviewing techniques;

(h) The client's and family/legal guardian's right to make decisions about, direct the provisions of, and control his CD respite and companion services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with clients, family/caregivers and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to clients with SED; and

(d) Identifying services within the established services system to meet the client's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format for clients who have visual impairments;

(b) Demonstrate a positive regard for clients and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with persons from diverse cultural backgrounds.

c. If the CD services facilitator is not a QMHP, the CD services facilitator must have QMHP consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The QMHP

consultant is to be available as needed to consult with clients and CD services facilitators on issues related to the needs of the client.

7. Initiation of services and service monitoring.

a. The CD services facilitator must make an initial comprehensive home visit to collaborate with the client and family/caregiver to identify needs, assist in the development of the ISP with the client and provide employee management training. The initial comprehensive home visit is done only once upon the client's entry into the CD model of service regardless of the number or type of CD services that a client chooses to receive. If a client changes CD services facilitators, the new CD services facilitator must complete and bill for a reassessment visit in lieu of an initial comprehensive visit.

b. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months or, for respite services, either every six months or upon the use of 300 respite service hours, whichever comes first.

c. A reassessment of the client's level-of-care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the client's home, the CD services facilitator must observe, evaluate, and consult with the client and family/caregiver and document the adequacy and appropriateness of CD services with regard to the client's current functioning and cognitive status, medical, and social needs. The CD services facilitator's summary must include, but not necessarily be limited to:

(1) Whether CD respite services continue to be appropriate and medically necessary to prevent institutionalization;

(2) Whether the service is adequate to meet the client's needs;

(3) Any special tasks performed by the assistant/companion and the assistant's/companion's qualifications to perform these tasks;

(4) Client's or family/caregiver's satisfaction with the service;

(5) Hospitalization or change in medical condition, functioning, or cognitive status;

(6) Other services received and their amount; and

(7) The presence or absence of the companion/assistant in the home during the CD services facilitator's visit.

d. A face-to-face meeting with the client must be conducted at least every six months to reassess the

client's needs and to ensure appropriateness of any CD services received by the client.

e. The CD services facilitator must be available to the client and family/caregiver by telephone.

f. The CD services facilitator must submit a criminal record check pertaining to the assistant/companion on behalf of the client and report findings of the criminal record check to the client and the program's FMS agent. If the client is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the client effective the date that the criminal record check confirms an assistant/companion was convicted of a barrier crime or if the assistant/companion has a founded complaint on record in the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the CD services facilitator within 15 calendar days of employment. The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review.

g. The CD services facilitator shall review and verify bi-weekly timesheets signed by the family/caregiver and the assistant/companion during the face-to-face visits or more often as needed to ensure that the number of ISP-approved hours is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the client to resolve discrepancies and must notify the FMS agent. If the client is consistently identified as having discrepancies in his timesheets, the CD services facilitator must contact the case manager to resolve the situation. The CD services facilitator cannot verify timesheets for assistants/companions who have been convicted of a barrier crime or who have a founded complaint on record in the DSS Child Protective Services Registry and must notify the FMS agent.

h. The CD services facilitator must maintain records of each client as described in 12VAC30-135-120 and 12VAC30-135-160.

i. If a client/family/legal guardian is consistently unable to hire and retain the employment of an assistant/companion to provide CD respite or companion services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the client/family/caregiver other service options.

j. The family/legal guardian or client, as appropriate, must hire and train the assistants or companions and

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supervise the assistant's or companion's performance. The hours authorized are based on individual need.

8. Responsibilities as employer. The client or family/legal guardian, as appropriate, shall be the employer in this service and responsible for hiring, training, supervising, and firing assistants and companions. Specific duties include checking references of assistants/companions, determining that assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the CD services facilitator and FMS agent on a consistent and timely basis. The client must have an emergency back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.

9. Required documentation in client's records. The CD services facilitator must maintain all records of each client. At a minimum these records must contain:

- a. All copies of the ISP and all supporting documentation.
- b. All DMAS quality management review forms.
- c. CD services facilitator's notes contemporaneously recorded and dated during any contacts with the client and family/caregiver and during visits to the client's home.
- d. All correspondence to the client, family/caregiver and to DMAS.
- e. Reassessments made during the provision of services.
- f. Records of contacts made with family/caregivers, physicians, DMAS, formal and informal service providers, and others involved in the care of the child.
- g. All training provided to the assistant/companion or assistants/companions on behalf of the client.
- h. All management training provided to the client or family/caregiver including the client's or family/caregiver's responsibility for the accuracy of the timesheets.
- i. All documents signed by the client or family/caregiver that acknowledge the responsibilities of the services.

12VAC30-135-230. (Reserved.)

12VAC30-135-240. Community transition services.

A. Service description.

Community transition services are provided to individuals who are leaving the PRTF and have chosen to receive services in the community. Community transition services include assessment of the child and family; assistance with meeting the requirements of waiver enrollment; referral for Medicaid eligibility; developing a community plan of care in

coordination with the family, CSA (if involved), and other involved parties; identifying community service providers; and monitoring the initial transition to the community. Community transition services do not include monthly rental or mortgage expense; food, regular utility charges; and/or household appliances or items that are intended for purely diversional/recreational purposes.

Community transition services ensure the development, coordination, implementation, monitoring, and modification of comprehensive service plans; link recipients with appropriate community resources and supports; coordinate service providers; and monitor quality of care.

Community transition services may be provided in the PRTF, in the home, school or other community locations.

Community transition services may be provided up to three months prior to discharge from the PRTF and one month after discharge. The cost of community transition services is considered to be incurred and billable when the client leaves the PRTF and enters the Children's Mental Health Waiver.

B. Criteria. In order to qualify for these services, the client must be a resident of the PRTF and also have been identified as a possible participant in the Children's Mental Health Waiver.

C. Service units and service limitations. The unit of service shall be 15 minutes with a maximum of 80 units for each admission to the Children's Mental Health Waiver.

Services provided must be documented in records maintained by the community transition services provider. Documentation may be required to be submitted to DMAS.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, professionals rendering community transition services must be DMAS-enrolled providers of treatment foster care case management, DMAS-enrolled providers of mental health case management services or be local CSA coordinators or FAPT members who meet the knowledge, skills, and abilities established for mental health case managers.

E. The following documentation is required:

1. A comprehensive services plan that contains at a minimum, the following elements:

a. Identifying information: client's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;

b. Identified services, provider names and individual service plans;

c. Targeted objectives, time frames, and expected outcomes.

2. Ongoing documentation of all contacts. All notes must include:

a. Specific details of the activities conducted;

b. Dates, locations, and times of service delivery;

c. CSP objectives addressed;

d. Services delivered as planned or modified;

e. Effectiveness of the strategies and client's and family/caregiver's satisfaction with service;

f. Client status; and

g. Outcomes and effectiveness of the comprehensive services plan.

F. When transition coordination services are completed, a final CSP must be discussed and forwarded to the ongoing case manager before the end of transition coordination. The transition services coordination provider must include:

1. Strategies utilized;

2. Objectives met;

3. Unresolved issues; and

4. Consultant recommendations.

12VAC30-135-250. (Reserved.)

12VAC30-135-260. Environmental modifications.

A. Service description. Environmental modifications shall be defined as those physical adaptations to the home or to a vehicle, included in the client's ISP, that are necessary to ensure the health, welfare, and safety of the client, or that enable the client to function with greater independence in the home and without which the client would require continued institutionalization. Such adaptations include items to ensure the safety of the client, family/caregiver and the community. Modifications can be made to an automotive vehicle only if it is the primary vehicle being used by the client.

B. Service units and service limitations. Environmental modifications shall be available to clients who are receiving at least one other waiver service. A maximum limit of \$5,000 may be reimbursed per ISP year. Costs for environmental modifications shall not be carried over from ISP year to ISP year and must be pre-authorized by DMAS or the contracted preauthorization entity for each ISP year. Excluded from this service shall be those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the client, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home are also excluded from this benefit. Modifications may not be used to bring a substandard dwelling up to minimum habitation standards.

Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. All services shall be provided in accordance with applicable state or local building codes.

C. Criteria. In order to qualify for these services, the client must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered primarily in a client's primary home, primary vehicle used by the client or for the client by the family/caregiver, to specifically improve the client's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, environmental modifications must be provided in accordance with all applicable federal, state or local building codes and laws by providers who have a provider participation agreement with DMAS. The provider must submit information regarding environmental modifications to the case manager. The following are provider documentation requirements that must be included in the client's record:

1. Supporting documentation that documents the need for the service, the process to obtain the service, and the time frame during which the services are to be provided;

2. Documentation of the time frame involved to complete the modification and the amount of services and supplies;

3. Any other relevant information regarding the modification;

4. Documentation of notification by the client and family/caregiver of satisfactory completion of the service; and

5. Instructions regarding any warranty, repairs, complaints, and servicing that may be needed.

12VAC30-135-270. (Reserved.)

12VAC30-135-280. Family/caregiver training.

A. Service description. Family or caregiver training is the provision of identified training and education related to SED, community integration, family dynamics, stress management, behavioral interventions, and mental health to the family/caregiver. For purposes of this service, "family" is defined as the persons who live with, provide care to or support a waiver client, and may include a spouse, children, relatives, a legal guardian, foster family, or in-laws. "Family" does not include individuals who are employed to care for the client. All family/caregiver training must be included in the client's ISP.

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B. Criteria. The need for the training and the content of the training in order to assist the family or caregivers with maintaining the client at home must be documented in the client's ISP. The training must be necessary in order to improve the family or caregiver's ability to provide care and support.

C. Service units and service limitations. Services are billed hourly and must be pre- authorized. Clients may receive up to 80 hours of family/caregiver training per ISP treatment year.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, providers must meet the following qualifications:

1. Family/caregiver training must be provided on an individual basis, in small groups or through seminars and conferences provided by Medicaid-approved or enrolled family and caregiver training providers;

2. Family/caregiver training must be provided by individuals with expertise who work for an agency with experience in or demonstrated knowledge of the training topic and who work for an agency or organization that has a provider participation agreement with DMAS to provide these services. Individuals must also have the appropriate licensure or certification as required for the specific professional field associated with the training area. Licensed professional counselors, licensed clinical social workers, licensed psychologists, licensed marriage and family therapists, and psychiatric clinical nurse specialists may enroll as individual practitioners with DMAS to provide family/caregiver training;

3. The family/caregiver training provider must submit documentation of all training to the case manager quarterly. This documentation must include:

- a. All assessments and reassessments;
- b. All supporting documentation developed for the client and the written reviews;
- c. Documentation of the date services were rendered and the amount and type of services rendered; and
- d. Any documentation to support that services provided are appropriate and necessary to maintain the client in the home and in the community.

12VAC30-135-290. (Reserved.)

12VAC30-135-300. In-home residential support services.

A. Service description.

1. The service shall be designed to enable clients qualifying for the CMH Waiver to live in their homes and shall include (i) training and assistance in or reinforcement of functional skills and appropriate behavior related to a

client's health and safety, personal care, ADLs, and use of community resources; (ii) assistance with medication management and monitoring the client's health, nutrition, and physical condition; (iii) life skills training; and (iv) cognitive rehabilitation.

2. This service provides assistance or specialized supervision provided primarily in a client's home or foster home to enable a client to acquire, retain, or improve the self-help, socialization, behaviors and adaptive skills necessary to reside successfully in home and community-based settings.

3. This service must be provided on a client-specific basis according to the ISP, supporting documentation, and service setting requirements.

4. Room and board and general supervision shall not be components of this service.

5. This service shall not be used solely to provide routine or emergency respite care for the family or caregivers with whom the client lives.

6. Medicaid reimbursement is available only for in-home residential support services provided when the client is present and when a qualified provider is providing the services.

B. Criteria.

1. All clients must meet the CMH Waiver criteria in order for Medicaid to reimburse for in-home residential support services. The client shall have a demonstrated need for supports to be provided by staff who are paid by the in-home residential support provider.

2. A functional assessment must be conducted to evaluate each client in his home environment and community settings.

3. The supporting documentation must indicate the necessary amount and type of activities required by the client, the schedule of residential support services, and the total number of projected hours per week of waiver reimbursed residential support.

4. Routine supervision/oversight of direct care staff. To provide additional assurance for the protection or preservation of a client's health and safety, there are specific requirements for the supervision and oversight of direct care staff providing residential support as outlined below. All in-home residential support services must be provided under a DMHMRSAS license and include the following requirements:

- a. An employee of the agency, typically by position, must be formally designated as the supervisor of each direct care staff person who is providing in-home residential support services.

b. The supervisor must have and document at least one supervisory contact per month with each staff person regarding service delivery and staff performance.

c. The supervisor must observe each staff person delivering services at least semi-annually. Staff performance and service delivery according to the ISP should be documented, along with evaluation and evidence of the client's and family/caregiver's satisfaction with service delivery by staff.

d. Providers of in-home residential supports must also have and document at least one monthly contact with the client and family/caregiver regarding satisfaction with services delivered by each staff person.

C. Service units and service limitations. In-home residential supports shall be reimbursed on an hourly basis for time the in-home residential support staff is working directly with the client. Total monthly billing cannot exceed the authorized amount in the ISP. The provider must maintain documentation of the date and times that services are provided, the specific services provided, and specific circumstances that prevented provision of all of the scheduled services, if applicable.

Service providers shall be reimbursed only for the amount and type of in-home residential support services included in the client's approved ISP. Services will not be reimbursed for a continuous 24-hour period.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, each in-home residential support service provider must be licensed by DMHMRSAS as a provider of supportive residential services. The provider must also have training in mental health and appropriate interventions, strategies, and support methods for persons with SED.

1. The ISP and ongoing documentation must be consistent with licensing regulations.

2. Documentation must confirm attendance and the amount of time services were provided and provide specific information regarding the client's response to various settings and supports as agreed to in the ISP objectives. Assessment results must be available in at least a daily note or a weekly summary. Data must be collected as described in the ISP, analyzed, summarized, and then clearly addressed in the CSP.

3. In addition to licensing requirements, persons providing residential support services are required to participate in training specified by DMAS in the characteristics of SED. The training shall include appropriate interventions, training strategies, and support methods for individuals with SED.

4. The ISP must be reviewed by the provider with the client or family/caregiver, as appropriate, and this review submitted to the case manager, at least semi-annually, with goals, objectives, and activities modified as appropriate.

5. Documentation must be maintained for supervision and oversight of all in-home residential support staff. All significant contacts must be documented.

6. Required documentation in the client's record. The provider agency must maintain records of each client receiving residential support services. Documentation must be completed and signed by the staff person designated to perform the supervision and oversight. At a minimum, these records must contain the following:

a. Date of contact or observation and the amount of time spent;

b. Person or persons contacted or observed;

c. A note regarding staff performance and ISP service delivery for monthly contact and semi-annual home visits;

d. Semi-annual observation documentation must also address client's and family/caregiver's satisfaction with service provision;

e. Any action planned or taken to correct problems identified during supervision and oversight;

f. A functional assessment conducted by the provider to evaluate each client in the residential environment and community settings; and

g. An ISP that must contain the following elements:

(1) The client's strengths, desired outcomes, required or desired supports, or both, and training needs;

(2) The client's or family/caregiver's goals and measurable objectives to meet the identified outcomes;

(3) The services to be rendered and the schedule of services to accomplish the goals, objectives, and desired outcomes;

(4) A timetable for the accomplishment of the client's goals and objectives;

(5) The estimated duration of the client's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

h. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the

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ISP must be reviewed with and approved by the client and family/caregiver.

12VAC30-135-310. (Reserved.)

12VAC30-135-320. Therapeutic consultation.

A. Service description.

1. Therapeutic consultation is available through the CMH Waiver for Virginia-licensed or certified practitioners in psychology, social work, occupational therapy, therapeutic recreation, rehabilitation, speech/language therapy, professional counseling, marriage and family therapy, medicine, psychiatric clinical nurse specialists, and psychiatric nurse practitioners. Behavioral consultation performed by these individuals may also be a covered waiver service. These services may be provided, based on the client's ISP, for those clients for whom specialized consultation is clinically necessary to enable their utilization of waiver services.

2. Therapeutic consultation provides expertise, training and technical assistance for any of the specialty providers listed above to assist family members, caregivers, and other service providers in supporting the client. The specialty areas are (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, and (v) occupational therapy. The need for any of these services is based on the client's ISP and provided to those clients for whom specialized consultation is clinically necessary and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in the client's home, and in appropriate community settings and are intended to facilitate implementation of the individual's and family/caregiver's desired outcomes as identified in his ISP.

3. Therapeutic consultation services may be provided in in-home residential or treatment support settings or in office settings in conjunction with another service. Behavioral consultation may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Therapeutic consultation service providers are reimbursed according to the amount and type of service authorized in the ISP based on an hourly fee-for-service rate.

B. Criteria. In order to qualify for these services, the client shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the ISP cannot be implemented effectively and efficiently without such consultation from this service.

1. The client's therapeutic consultation supporting documentation must clearly reflect the client's needs, as documented in the assessment, for specialized consultation

provided to family/caregivers and providers in order to implement the ISP effectively.

2. Therapeutic consultation services may not include direct therapy provided to waiver clients or monitoring activities, and may not duplicate the activities of other services that are available to the client through the State Plan for Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the ISP or supporting documentation. Travel time, written preparation, and telephone communication are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, professionals rendering therapeutic consultation services, including behavioral consultation services, shall meet all applicable state or national licensure, endorsement or certification requirements. Behavioral consultation may be performed by professionals based on the professionals' work experience, education, and demonstrated knowledge, skills, and abilities.

The following documentation is required for therapeutic consultation:

1. ISP, that contains at a minimum, the following elements:

a. Identifying information: client's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;

b. Targeted objectives, time frames, and expected outcomes;

c. Specific consultation activities; and

d. The expected outcomes.

2. A written support plan detailing the recommended interventions or support strategies for providers and family/caregivers to use to better support the client in the service.

3. Ongoing documentation of consultative services rendered in the form of contact-by-contact or monthly notes that identify each contact. All monthly, quarterly, semi-annual and annual notes must include:

a. Specific details of the activities conducted;

b. Dates, locations, and times of service delivery;

c. Supporting documentation objectives addressed;

d. Services delivered as planned or modified;

e. Effectiveness of the strategies and client's and family/caregiver's satisfaction with service;

f. Client status; and

g. Consultation outcomes and effectiveness of support plan.

4. If consultation services extend less than three months, the provider must forward monthly contact notes or a summary of them to the case manager.

5. If the consultation services extend three months or longer, written quarterly reviews must be completed by the service provider and are to be forwarded to the case manager. Any changes to the ISP must be reviewed with the client and family/caregiver.

6. Semi-annual reviews are required by the service provider if consultation extends three months or longer and are to be forwarded to the case manager.

7. If the consultation service extends beyond one year, the ISP must be reviewed by the provider with the client and family/caregiver and the case manager. The written review must be submitted to the case manager, at least annually, or more often as needed.

8. A written support plan, detailing the interventions and strategies for staff, family, or caregivers to use to better support the client in the service.

9. A final disposition summary must be forwarded to the case manager within 30 days following the end of this service and must include:

a. Strategies utilized;

b. Objectives met;

c. Unresolved issues; and

d. Consultant recommendations.

12VAC30-135-330. (Reserved.)

12VAC30-135-340. Reevaluation of service need and quality management review.

A. The comprehensive service plan (CSP).

1. The CSP shall be developed by the case manager in coordination with others involved in the care of the client based on relevant, current assessment data. The CSP process determines the services to be rendered to clients, the frequency of services, the type of service provider, and a description of the services to be offered. All CSPs developed by the case manager are subject to approval by DMAS.

2. The case manager shall be responsible for continuous monitoring of the appropriateness of the client's CSP and revisions to the CSP as indicated by the changing needs of the client. At a minimum, the case manager must review

the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The DMAS staff will review the CSP every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by DMAS.

B. Review of level-of-care.

1. The case manager must complete an annual comprehensive reassessment, in coordination with the individual, family/caregivers and service providers. If warranted, the case manager will coordinate a medical examination and a mental health evaluation for each waiver client. The reassessment must include an update of the assessment instrument and any other appropriate assessment data.

2. Medical examinations must be completed according to the recommended frequency and periodicity of the EPSDT program.

3. The mental health assessment for clients must reflect the current psychological status (diagnosis) and adaptive level of functioning. A new mental health assessment shall be required whenever the current mental health assessment is no longer reflective of the child's current condition.

C. Documentation required.

The case management agency must maintain the following documentation for review by the DMAS staff for each waiver client:

1. All CSPs, assessment summaries, and supporting documentation completed for the client and retained for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws; whichever period is longer. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years;

2. All individual providers' ISPs from any provider rendering waiver services to the client and all supporting documentation related to any change in the ISPs;

3. All supporting documentation related to any change in the CSP;

4. All related communication with the providers, client, consultants, DMHMRSAS, CSA, DMAS, DSS, DRS; and others involved in the care of the child; and

5. An ongoing log that documents all contacts made by the case manager related to the waiver client.

6. All supporting documentation developed for the client and retained for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws, whichever period is longer.

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Records of minors shall be kept for at least six years after such minor has reached the age of 18 years;

7. An attendance log that documents the date services were rendered and the amount and type of services rendered; and

8. Appropriate progress notes reflecting client's status and, as appropriate, progress toward the goals on the CSP.

12VAC30-135-350. (Reserved.)

12VAC30-135-360. Sunset provision.

Consistent with federal requirements applicable to this §1915(c) demonstration waiver, these regulations shall expire effective with the termination of the federally approved waiver.

DOCUMENTS INCORPORATED BY REFERENCE

Child Adolescent Functional Assessment Scale (Uniform Assessment Instrument), Functional Assessment Systems, 2000.

VA.R. Doc. No. R08-720; Filed September 11, 2007, 4:23 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-420. Rules Governing Military Sales Practices (adding 14VAC5-420-10 through 14VAC5-420-60).**

Statutory Authority: §§12.1-13 and 38.2-223 of the Code of Virginia; Public Law 109-290 (Military Personnel Financial Services Protection Act).

Public Hearing Information: A public hearing will be held upon request. The Bureau of Insurance staff will hold a meeting during the comment period to address questions about the proposed regulation on October 4, 2007, at 9 a.m. in the 5th Floor Conference Room (1300 E. Main Street, Richmond 23219).

Public Comments: Public comments may be submitted until October 15, 2007.

Agency Contact: James Young, Senior Market Examiner, State Corporation Commission, 1300 E. Main Street, 3rd

Floor, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9532 or email james.young@scc.virginia.gov.

Summary:

In September 2006, Congress passed the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that were "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums...., making them entirely inappropriate for most military personnel." To address these concerns, Congress required that the states collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory sales practices while on a military installation. To that end, the National Association of Insurance Commissioners worked with the Department of Defense to develop the Military Sales Practices Model Regulation to address these Congressional mandates. The rules proposed by the Bureau of Insurance closely follow the Model Regulation.

AT RICHMOND, AUGUST 29, 2007

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2007-00268

Ex Parte: In the matter of Adopting New Rules Governing Military Sales Practices

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to adopt new "Rules Governing Military Sales Practices" which are recommended to be set out at 14 VAC 5-420-10 through 14 VAC 5-420-60.

The proposed new Rules closely follow the National Association of Insurance Commissioners (NAIC) Model Regulation on the same subject. The Military Sales Practices

Model Regulation was developed as a result of federal legislation passed in September 2006, the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). Congress found it imperative that members of the United States Armed Forces be shielded from abusive and misleading sales practices. To address these concerns, Congress required that the States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation. The Model Regulation was developed with the assistance of the Department of Defense to meet these Congressional mandates.

The Commission is of the opinion that the proposed new Rules submitted by the Bureau and set out at 14 VAC 5-420-10 through 14 VAC 5-420-60 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed new Rules entitled "Rules Governing Military Sales Practices," which are recommended to be set out at 14 VAC 5-420-10 through 14 VAC 5-420-60 be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed new Rules shall file such comments or hearing request on or before October 15, 2007, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2007-00268.

(3) The Bureau shall hold a meeting during the comment period, in order for interested parties to address questions about the Rules to the Bureau. The meeting shall be held on Thursday, October 4, 2007, at 9:00 am in the Conference Room located on the 5th Floor of the State Corporation Commission, 1300 East Main Street, Richmond, Virginia.

(4) If no written request for a hearing on the adoption of the proposed new Rules is filed on or before October 15, 2007, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new Rules, may adopt the Rules as proposed by the Bureau of Insurance.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed new Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the adoption of the proposed new Rules by mailing a copy of this Order, together with the proposed new Rules, to all carriers licensed by the Commission to sell life or variable life insurance or annuities or variable annuities in Virginia, as well as all interested parties.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed new Rules on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(8) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

CHAPTER 420

RULES GOVERNING MILITARY SALES PRACTICES

14VAC5-420-10. Purpose and scope.

A. The purpose of this chapter is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by prohibiting certain false, misleading, deceptive or unfair acts and practices.

B. This chapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance agent to an active duty service member of the United States Armed Forces.

C. Nothing in this chapter shall be construed to create or imply a private cause of action for a violation of any provision of this chapter.

14VAC5-420-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty, full-time training or in a drill status in the National Guard or United States Armed Forces Reserve.

"Commission" means the State Corporation Commission.

"Department of Defense (DoD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees of the Department of Defense.

"DoD" means the Department of Defense.

"Door to door" means a solicitation or sales method whereby an insurance agent proceeds randomly or selectively from household to household without prior specific appointment.

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"General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance agent.

"Insurer" means an insurance company required to be licensed in the Commonwealth of Virginia to provide life insurance products, including annuities.

"Insurance agent" means a person required to be licensed in the Commonwealth of Virginia to sell, solicit or negotiate life insurance, including annuities.

"Known" or "knowingly" means, depending on its use herein, the insurance agent or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited is a service member.

"Life insurance" means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income, and unless otherwise specifically excluded, includes individually issued annuities.

"Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" is a Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service member" means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

"SGLI" means Servicemembers Group Life Insurance, as authorized by 38 USC §1965 et seq.

"Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism that accumulates premium or deposits with interest or by other means. The term does not include:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
3. A premium deposit fund that:
 - a. Contains only premiums paid in advance that accumulate at interest;
 - b. Imposes no penalty for withdrawal;

c. Does not permit funding beyond future required premiums;

d. Is not marketed or intended as an investment; and

e. Does not carry a commission, either paid or calculated.

"Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

"United States Armed Forces" or "Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"VGLI" means Veterans' Group Life Insurance, as authorized by 38 USC §1965 et seq.

14VAC5-420-30. Exemptions.

A. This chapter shall not apply to solicitations or sales involving:

1. Credit insurance;

2. Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance agent or where the contract or certificate does not include a side fund;

3. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commission; or, when a term conversion privilege is exercised among corporate affiliates;

4. Individual standalone health policies, including disability income policies;

5. Contracts offered by SGLI or VGLI;

6. Life insurance contracts offered through or by a nonprofit military association, qualifying under §501(c)(23) of the Internal Revenue Code (26 USC §501(c)(23)) and that are not underwritten by an insurer; or

7. Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) (29 USC §1001 et seq.);

b. A plan described by §§401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer;

c. A government or church plan defined in §414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under §457 of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. Prearranged funeral contracts.

B. Nothing herein shall be construed to abrogate the ability of nonprofit organizations or other organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07, Personal Commercial Solicitation on DoD Installations, March 30, 2006.

C. For purposes of this chapter, general advertisements, direct mail and Internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Nothing in this subsection shall be construed to exempt an insurer or insurance agent from this chapter in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

14VAC5-420-40. Prohibited practices on a military installation.

A. The following acts or practices when committed on a military installation by an insurer or insurance agent with respect to the in-person, face-to-face solicitation of life insurance are prohibited:

1. Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

2. Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

3. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

4. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

5. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

6. Posting unauthorized bulletins, notices or advertisements.

7. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited, or encouraging service members solicited not to complete or submit a DD Form 2885.

8. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

B. The following acts or practices when committed on a military installation by an insurer or insurance agent are prohibited:

1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

2. Using an insurance agent to participate in any United States Armed Forces sponsored education or orientation program.

14VAC5-420-50. Prohibited practices regardless of location.

A. The following acts or practices by an insurer or insurance agent are considered to be corrupt practices, improper influences or inducements that are prohibited regardless of location:

1. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes. This subdivision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

2. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act (12 USC §4301 et seq.) and the regulations promulgated thereunder; and

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b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

3. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship as defined in subdivision A 2 of this section.

4. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

5. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members, or to the family members of such personnel.

6. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

7. Knowingly offering or giving anything of value to a service member for his attendance to any event where an application for life insurance is solicited.

8. Advising a service member to change his income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

B. The following acts or practices by an insurer or insurance agent lead to confusion regarding source, sponsorship, approval or affiliation and are prohibited:

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance agent or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance agent titles include, but are not limited to "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the

business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

2. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance agent or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government or the United States Armed Forces.

C. The following acts or practices by an insurer or insurance agent lead to confusion regarding premiums, costs or investment returns and are prohibited:

1. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

2. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product costs nothing or is free.

D. The following acts or practices by an insurer or insurance agent regarding SGLI or VGLI are prohibited:

1. Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, that is false, misleading or deceptive.

2. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers that is false, misleading or deceptive.

3. Suggesting, recommending or encouraging a service member to cancel or terminate his SGLI policy or issuing a life insurance policy that replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

E. The following acts or practices by an insurer or insurance agent regarding disclosure are prohibited:

1. Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance agent, if that is the case, for the purpose of soliciting the purchase of life insurance.

2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by §10 of the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290).

5. Excluding individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

a. An explanation of any free look period with instructions on how to cancel if a policy is issued; and

b. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost.

F. The following acts or practices by an insurer or insurance agent with respect to the sale of certain life insurance products are prohibited:

1. Excluding individually issued annuities, recommending the purchase of any life insurance product that includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

2. Offering for sale or selling a life insurance product that includes a side fund to a service member who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For the purposes of this subdivision:

a. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors or dependents.

b. "Other military survivor benefits" include, but are not limited to: the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

3. Excluding individually issued annuities, offering for sale or selling any life insurance contract that includes a side fund:

a. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

b. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

c. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

4. Excluding individually issued annuities, offering for sale or selling any life insurance contract that after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

14VAC5-420-60. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

DOCUMENTS INCORPORATED BY REFERENCE

Department of Defense Instruction, Number 1344.07, Personal Commercial Solicitation on DoD Installations, March 30, 2006.

NOTICE: The forms used in administering 14VAC5-420, Rules Governing Military Sales Practices, are listed below and published following the listing.

FORMS

Personal Commercial Solicitation Evaluation, DD Form 2885 (eff. 4/06).

PERSONAL COMMERCIAL SOLICITATION EVALUATION		
PRIVACY ACT STATEMENT		
<p>AUTHORITY: Section 301 of Title 5 U.S.C.</p> <p>PRINCIPAL PURPOSE(S): Information on this form will be used to document the experience with the sales representative who provides the Service member with this evaluation. This information will be maintained at the installation level. It may be forwarded to officials within the Department of Defense responsible for oversight of personal commercial solicitation practices if further action is required. These officials may need to make contact concerning the solicitation described in questions 2, 3, and 4. Service member response will help ensure sales representatives conduct themselves fairly and in accordance with DoD Instruction 1344.07. This information will be maintained as part of a case file in the event proceedings are considered necessary to deny or withdraw permission for the sales representative and/or the company to solicit on one or more installations.</p> <p>ROUTINE USE(S): None.</p> <p>DISCLOSURE: Voluntary. There is no consequence to the Service member for not completing this evaluation.</p> <p>Please take a moment to respond to the following questions concerning your experience with the sales representative who provided you this evaluation. Your response will help ensure sales representatives conduct themselves fairly and according to the policies outlined in DoD Instruction 1344.07. When you have completed this evaluation, please send it to the Installation Commander or his/her designated representative. Please do not give the completed evaluation back to the sales representative to mail for you.</p>		
1. SALES REPRESENTATIVE WHO CONTACTED YOU AND HIS OR HER COMPANY		
a. NAME OF SALES REPRESENTATIVE	b. COMPANY NAME	
2. MAKING THE APPOINTMENT <i>(Mark (X) "Yes" if any of the following are true)</i>		
a. The sales representative <u>failed</u> to make an appointment in advance to see me.	YES	NO
b. The <u>initial</u> contact to schedule an appointment occurred <u>while I was on duty</u> (during normal duty hours).		
c. My <u>initial</u> contact with the sales representative was in response to a notice in an official installation bulletin, marquee, announcement or newsletter that said he or she would be on the installation during a specific time or at a specific place.		
d. A superior in my chain of command advised or required me to meet with the sales representative.		
e. The sales representative made <u>initial</u> contact with me via a government phone, fax, or computer.		
3. TIME AND PLACE OF THE APPOINTMENT <i>(Mark (X) "Yes" if any of the following are true)</i>		
a. The sales presentation took place on the installation <u>while I was on duty</u> (during normal duty hours).	YES	NO
b. The sales presentation took place during a mandatory group meeting with other DoD personnel or as part of a military service sponsored financial education program.		
c. The sales presentation took place in an unauthorized or restricted area.		
d. The sales representative used an on-base facility as a showroom to display his or her product or services. (This does not include displays conducted by military family members in their on-base residence.)		
4. CONDUCT DURING THE APPOINTMENT <i>(Mark (X) "Yes" if any of the following are true)</i>		
a. I was unduly pressured to buy the product or service.		
b. I was not given the adequate facts, or was induced to purchase based on factors other than the merits of the product or service.		
c. I was offered an incentive to meet with the sales representative, purchase the product or service, or drop a competing offer.		
d. The sales representative is a DoD employee of senior rank.		
e. The sales representative implied that he or she is sponsored or endorsed by the military, the installation or my unit. (For example, the representative used an official or unofficial title such as "unit advisor" or "installation consultant.")		
f. The sales representative had a military pay allotment or direct deposit form in his/her possession, or requested "MyPay" account access or PIN number.		
5. YOUR CONTACT INFORMATION		
a. NAME <i>(Last, First, Middle Initial)</i>	b. HOME TELEPHONE NUMBER <i>(Include area code)</i>	c. WORK TELEPHONE NUMBER <i>(Include area code)</i>
d. E-MAIL ADDRESS	e. UNIT ADDRESS	

DD FORM 2885, APR 2006

Adobe Professional 7.0

VA.R. Doc. No. R08-841; Filed August 31, 2007, 1:54 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Fast-Track Regulation

Title of Regulation: 18VAC65-10. **Public Participation Guidelines (amending 18VAC65-10-10 through 18VAC65-10-80, 18VAC65-10-100, 18VAC65-10-110 and 18VAC65-10-120).**

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on October 31, 2007.

Effective Date: November 15, 2007.

Agency Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4479, FAX (804) 527-4592, or email elizabeth.young@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Funeral Directors and Embalmers the authority to promulgate regulations to administer the regulatory system.

The specific statutory mandate for guidelines for public participation in the regulatory process is found in the §2.2-4007.02 of the Code of Virginia.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as it is reflected by the fact that there was no public comment on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have

recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: There are no disadvantages to the public of these amendments. Clarification of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Funeral Directors and Embalmers (Board) proposes to amend its Public Participation Guidelines. The Board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the Board's website before the 30 day adoption period begins. The Board also proposes to extend the time limit under which ad hoc committees function and eliminate language that requires the Board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the Board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30 day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rule making documents are silent on this matter). The Board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the Board's website. The Board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rule-making process. Individuals who are following Board regulations through the process may be slightly inconvenienced by having to go to the Board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the Board review all of its regulations every two years "unless otherwise directed by executive order". The proposed regulation will require the

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Board to conduct “periodic review of its regulations consistent with an executive order of the Governor and with §2.2-4007.1 of the Code of Virginia”. Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the Board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed changes will affect funeral directors, embalmers and other persons or entities interested in the board’s regulations.

Localities Particularly Affected. All Virginia localities may have individuals and organizations that have interest in regulatory changes pertaining to the board.

Projected Impact on Employment. The proposed changes are not projected to affect employment.

Effects on the Use and Value of Private Property. The proposed amendments will likely have no significant effect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed changes are unlikely to produce adverse impact on small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to produce adverse impact on small businesses in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting,

recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-10 related to its periodic review recommendations.

Summary:

The amendments update and clarify guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment, clarification of certain terms used in the regulation and an extension of the time limitation on ad hoc committees.

18VAC65-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Funeral Directors and Embalmers. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (~~§9-6-14:4.1~~ §2.2-4000 et seq. of the Code of Virginia). These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18VAC65-10-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter ~~4-1-1~~ 40 (~~§9-6-14:1~~ §2.2-4000 et seq.) of Title 9 2.2 of the Code of Virginia.

"Board" means the Board of Funeral Directors and Embalmers.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

Part II
Mailing List

18VAC65-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18VAC65-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18VAC65-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
- ~~4-3.~~ A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

Part III
Public Participation Procedures

18VAC65-10-50. Petition for rulemaking.

A. As provided in ~~§9-6-14:7.1~~ §2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

18VAC65-10-60. Notice of Intended Regulatory Action.

A. Except as provided in §2.2-4012.1 of the Code of Virginia, the board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. The ~~notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall so state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

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18VAC65-10-70. Notice of Comment Period.

A. ~~The board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation. The notice of comment period (NOCP) NOCP~~ shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18VAC65-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Town Hall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under ~~§9-6.14:4.1~~ §2.2-4002 or 2.2-4011 of the Code of Virginia, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18VAC65-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent with an executive order issued by the Governor and with §2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18VAC65-10-30.

Part IV

~~Advisory~~ Ad Hoc Committees

18VAC65-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18VAC65-10-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; ~~2~~ or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (~~§9-6.14:4.1 of the Code of Virginia~~).

B. An ~~advisory ad hoc~~ committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment unless ~~1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.~~

- ~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R08-634; Filed September 11, 2007, 11:06 a.m.

BOARD OF MEDICINE

Final Regulation

Title of Regulation: **18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-130).**

Statutory Authority: §§54.1-2957.4 and 54.1-2400 of the Code of Virginia.

Effective Date: October 31, 2007.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The amendments specify that supervision of a person holding a provisional license should be daily and on site, rather than just periodic.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC85-120-130. Supervisory responsibilities.

A. The athletic trainer supervising the practice of persons holding a provisional license issued by the board shall develop a written protocol with the provisional licensee to include but not be limited to the following:

1. Provisions for ~~periodic~~ daily, on-site review and evaluation of services being provided, including a review of outcomes for individuals being treated; and
2. Guidelines for availability and ongoing communications proportionate to such factors as practice setting, acuity of population being served, and experience of the provisional licensee.

B. The athletic trainer supervising the practice of student athletic trainers shall:

1. Provide daily, on-site supervision and shall plan, direct, advise and evaluate the performance and experience of the student trainer.
2. Delegate only nondiscretionary tasks that are appropriate to the level of competency and experience of the student athletic trainer, practice setting and acuity of population being served.

VA.R. Doc. No. R06-197; Filed September 12, 2007, 9:30 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Fast-Track Regulation

Title of Regulation: 18VAC95-10. Public Participation Guidelines (amending 18VAC95-10-10 through 18VAC95-10-80, 18VAC95-10-100, 18VAC95-10-110 and 18VAC95-10-120).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until 5 p.m. on October 31, 2007.

Effective Date: November 15, 2007.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23230-1712, telephone

(804) 367-4424, FAX (804) 527-4413, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Long-Term Care Administrators the authority to promulgate regulations to administer the regulatory system.

The specific statutory mandate for guidelines for public participation in the regulatory process is found in §2.2-4007.02 of the Code of Virginia.

Purpose: The board has updated and clarified its guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment. Changes are recommended by a committee of board and/or department staff, which reviewed each regulation for effectiveness, consistency and clarity. The intent is for amendments to be clarifying rather than substantive. Full participation by the public and regulated entities in the regulatory process is necessary to ensure that regulations fulfill the purpose of protecting the health and safety of the public in a manner that is not overly burdensome to those being regulated.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as it is reflected by the fact that there was no public comment on a Notice of Intended Regulatory Action filed by other boards within the Department of Health Professions. Both the Department of Planning and Budget and the Governor's office have recommended that these amendments be promulgated by a fast-track action.

Substance: The regulation has been reviewed for consistency with law, clarity and ease of compliance. There are no substantive amendments.

Issues: There are no disadvantages to the public of these amendments. Clarification of regulation, additional opportunity for comment, and an extension of service for an ad hoc committee appointed to advise the board on the development of a regulation are all intended to give interested parties more access to the process.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Board of Long-Term Care Administrators (Board) proposes to amend its Public Participation Guidelines. The Board proposes to require that notification of all final regulatory actions, as well as the text of the regulations being changed, be posted to the Board's website before the 30 day adoption period begins. The Board also proposes to extend the time limit under which

Regulations

ad hoc committees function and eliminate language that requires the Board review its regulations at least every two years.

Result of Analysis. The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact. Current regulation requires the Board to notify individuals on its notification lists, either by regular mail or email, whenever a final-stage regulation is about to enter its 30 day adoption period. This current regulatory notification requirement is more stringent than what is required by either the Administrative Process Act or Executive Order 36 (both of these rule making documents are silent on this matter). The Board proposes to delete this portion of its public participation guidelines and, instead, will post notices of adoption of final regulation, as well as the text of the regulation being changed, on the Board's website. The Board believes that the changed notification requirements in the proposed regulation will allow staff time to be used more efficiently while still protecting the public's ability to be involved in the final stage of the rule-making process. Individuals who are following Board regulations through the process may be slightly inconvenienced by having to go to the Board's website to get information rather than having that information mailed to them. These individuals, and the public generally, will likely benefit slightly from having staff time spent on more important tasks.

Current regulation requires that the Board review all of its regulations every two years "unless otherwise directed by executive order". The proposed regulation will require the Board to conduct "periodic review of its regulations consistent with an executive order of the Governor and with §2.2-4007.1 of the Code of Virginia". Currently it takes, on average, approximately 18 months for all regulatory requirements for a new or amended regulation to be met. Given this, the public will likely benefit (slightly) from the removal of language that likely sets an unrealistic timeline for the periodic review of regulations.

Current regulation limits ad hoc committees to 12 months existence before they must be dissolved. The proposed regulation will extend this term limit to 18 months and allow the Board to authorize continuance of ad hoc committees past their regulatory time limit if their set task has not been completed. This proposal will likely have no economic impact on the citizens of the Commonwealth.

Businesses and Entities Affected. The proposed changes will affect long-term care administrators and other persons or entities interested in the board's regulations.

Localities Particularly Affected. All Virginia localities may have individuals and organizations that have interest in regulatory changes pertaining to the board.

Projected Impact on Employment. The proposed changes are not projected to affect employment.

Effects on the Use and Value of Private Property. The proposed amendments will likely have no significant effect on the use or value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed changes are unlikely to produce adverse impact on small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to produce adverse impact on small businesses in the Commonwealth.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's economic impact analysis: The Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC95-10 related to its periodic review recommendations.

Summary:

The amendments update and clarify guidelines for public participation in the development and promulgation of initial, amended or repealed regulations, such as inclusion of electronic notification and the Virginia Regulatory Townhall as an option for comment, clarification of certain

terms used in the regulation, and an extension of the time limitation on ad hoc committees.

18VAC95-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the ~~development and promulgation~~ initial formation and development, amendment or repeal of regulations of the Board of Long-Term Care Administrators. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia). These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18VAC95-10-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Board" means the Board of Long-Term Care Administrators.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic ~~mailing~~ lists maintained through ~~a state website~~ the Virginia Regulatory Town Hall or ~~regular mailing~~ lists maintained by the board.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.

Part II

Notification Lists

18VAC95-10-30. Composition of notification lists.

A. The board shall maintain lists of persons who have requested to be notified of the initial formation and promulgation, development, amendment or repeal of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18VAC95-10-40. Documents to be sent to persons on the notification lists.

A. Persons on the notification lists, as described in 18VAC95-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
- ~~3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.~~
4. 3. A notice soliciting comment on a final regulation when the regulatory process has been extended.

B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.

C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

Part III

Public Participation Procedures

18VAC95-10-50. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition;
2. The number and title of the regulation to be addressed;
3. A description of the regulatory problem or need to be addressed;

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4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days, and shall have the sole authority to dispose of the petition.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

18VAC95-10-60. Notice of Intended Regulatory Action.

A. The board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of a regulation. ~~The notice of intended regulatory action (NOIRA)~~ NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.

18VAC95-10-70. Notice of Comment Period.

A. Prior to the 60-day comment period, the board shall issue a notice of comment period (NOCP) whenever it proposes to initiate, amend or repeal a regulation or amend an existing regulation under a fast-track process. ~~The notice of comment period (NOCP)~~ NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, ~~Internet~~, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment ~~may~~ shall not be accepted.

18VAC95-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the ~~Internet~~ Virginia Regulatory Townhall and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under §2.2-4002 or §2.2-4011 of the Code of Virginia, the notice of meeting shall indicate that a copy of the proposed regulation ~~is available on a state website or upon request to~~ may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18VAC95-10-100. Periodic review of regulations.

A. ~~Unless otherwise directed by executive order, the~~ The board shall conduct ~~an informational proceeding at least every two years~~ a periodic review of its regulations consistent with an executive order issued by the Governor and with §2.2-4007.1 of the Code of Virginia to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such ~~proceeding~~ review may be conducted separately or in conjunction with other ~~informational proceedings~~ meetings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the ~~mailing list~~ notification lists identified in 18VAC95-10-30.

Part IV

Advisory Ad Hoc Committees

18VAC95-10-110. Appointment of committees.

A. The board may appoint an ad hoc ~~advisory~~ committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc ~~advisory~~ committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18VAC95-10-120. Limitation of service.

A. An ~~advisory ad hoc~~ committee that has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An ~~advisory ad hoc~~ committee shall remain in existence no longer than ~~12~~ 18 months from its initial appointment ~~unless, if~~ the board determines that the specific regulatory need continues to exist beyond that time, ~~it shall set a specific term for the committee of not more than six additional months.~~ The board may authorize the ad hoc committee to

continue for an additional specified period of time to complete the task for which it was appointed.

~~2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.~~

VA.R. Doc. No. R08-667; Filed September 11, 2007, 11:06 a.m.



TITLE 19. PUBLIC SAFETY
DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the requirements of the Administrative Process Act in accordance with §9.1-915 of the Code of Virginia, which provides that regulations and forms promulgated to implement and enforce Chapter 9 (§9.1-900 et seq.) of Title 9.1 of the Code of Virginia shall not be subject to the Administrative Process Act.

Title of Regulation: 19VAC30-170. Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry (amending 19VAC30-170-15, 19VAC30-170-50).

Statutory Authority: §9.1-915 of the Code of Virginia.

Effective Date: October 1, 2007.

Agency Contact: LTC Robert Kemmler, Director, Bureau of Administration and Support Services, Department of State Police, Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The amendments substitute the term "information" for the term "address" to reflect the statutory requirement that any change in registry information requires the offender to update his information with the registry. The requirement to submit a palm print card with the initial registration is added to comply with the 2007 statutory changes. Requirements for photograph submission are updated. The term "promptly" is removed because the term is no longer included in the statutory language.

The language "any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §15.2-1713.1" is added to conform with those entities entitled to free criminal history information pursuant to §18.2-389 of the Code of Virginia.

19VAC30-170-15. Registration, reregistration, change of address information, forms and procedures.

A. Submission of registration, reregistration, and change of address information materials mandated by Chapter 9 (§9.1-900 et seq.) of Title 9.1 of the Code of Virginia shall be as follows:

1. Initial registrations. Completed form SP-236, one clear 10-print fingerprint card, one clear palm print card, and one photograph.
2. Reregistration. Completed form SP-236A and clear thumb prints (both thumbs) on bottom of form. If the person does not have a thumb or thumbs, the index finger on the same hand will be used and noted on the form.
3. Change of address in registry information. Completed form SP-236 and one clear 10-print fingerprint card.

B. Photographs required to be submitted must be in color, be taken or submitted with the registrant facing the camera and clearly showing only the registrant's face and shoulders. No other person may appear in the photograph submitted. The photograph must ~~have been taken within 30 days of submission and~~ indicate on the back the registrant's full name, date of birth and the date of the photograph. ~~A new photograph meeting these requirements must be submitted every two years commencing on the date of the initial submission.~~

C. Completed forms, photographs, palm print cards, and fingerprint cards shall be provided to the Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P.O. Box 27472, Richmond, Virginia 23261-7472. Forms may be obtained at any office of the Department of State Police, sheriff's office, county or local police department or by writing to the address listed above.

~~D. For purposes of Chapter 9 of Title 9.1 of the Code of Virginia, the term "promptly" shall mean within 48 hours.~~

19VAC30-170-50. Fee for responding to requests for information.

A. Any person requesting Sex Offender and Crimes against Minors Registry information shall pay a fee of \$15 for each Sex Offender and Crimes against Minors Registry record requested. If the request is made in conjunction with a request for a criminal history "name search" record for the same individual, the person making the request shall pay a fee of \$20 to cover both requests.

B. Consistent with §19.2-389 (11) of the Code of Virginia, the fee for a criminal history record search will not be assessed if that person has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, (iv) with the Volunteer Emergency Families for Children, ~~or~~ (v) any Virginia affiliate

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or Compeer, or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §15.2-1713.1.

NOTICE: The forms used in administering 19VAC30-170, Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of State Police, 7700 Midlothian Turnpike, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Name Search Request Form, SP-266 (rev. ~~7/03~~ 7/06).

Name Search Request Form for Criminal History Record and/or Sex Offender and Crimes against Minors Registry Search, SP-230 (rev. ~~7/03~~ 7/07).

Sex Offender and Crimes against Minors Reregistration and Address Verification Form, SP-236A (rev. ~~7/03~~ 7/07).

Sex Offender and Crimes against Minors Registration Form, SP-236 (rev. ~~7/03~~ 7/07).

VA.R. Doc. No. R08-911; Filed September 5, 2007, 12:54 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Titles of Regulations: **22VAC40-770. Standards and Regulations for Agency Approved Providers (repealing 22VAC40-770-10 through 22VAC40-770-160).**

22VAC40-771. Adult Services Approved Providers (adding 22VAC40-771-10 through 22VAC40-771-160).

Statutory Authority: §§63.2-217, 63.2-1600, 63.2-1601.1 and 63.2-1601.1 of the Code of Virginia.

Effective Date: November 1, 2007.

Agency Contact: Gail Shea Nardi, Adult Services/APS Program Manager, Department of Social Services, Division of Family Services, 7 North 8th Street, Richmond, VA 23219, telephone 804-726-7537, FAX 804-726-7895, TTY 800-828-1120, or email gail.nardi@dss.virginia.gov.

Summary:

This action repeals 22 VAC 40-770, Standards and Regulations for Agency Approved Providers, and establishes a new regulation, 22 VAC 40-771, Adult

Services Approved Providers. 22 VAC 40-770 includes dated, generic provisions that address approval and regulation of service providers including adult service providers, child care providers and adoptive and foster care providers. Because of the uniqueness of each type of provider, it is no longer appropriate to generically address them in a single regulation. New regulations are being promulgated to address each type of provider separately. 22 VAC 40-771 addresses standards and procedures for providers of services to adults contracted through local departments of social services. The new regulation updates definitions, addresses standards for service providers and their homes, sets recordkeeping requirements, and establishes the rights and responsibilities of adults in care.

As the result of recent General Assembly action, requirements to check an applicant's criminal history through the Central Criminal Records Exchange have been added since publication of the proposed regulation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 771

ADULT SERVICES APPROVED PROVIDERS

22VAC40-771-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Adult" means any individual 18 years of age or over.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. Adult

foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision and special services in his own home for up to three adults who are unable to remain in their own home because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three adults requires licensure by the Virginia Department of Social Services.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.

"Assistant" means any individual who is responsible to assist an adult services approved provider in caring for adult clients. Assistants must meet the same requirements as the provider.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for adult clients unable to perform such tasks for themselves. Chore services include minor repair work on furniture and appliances in the adult's home; carrying coal, wood and water; chopping wood; removing snow; yard maintenance; and painting.

"Client" means any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services.

"Companion provider" means a provider who assists adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management and activities of daily living (ADLs).

"Department" means the Virginia Department of Social Services.

"Home-based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.

"Homemaker services" means a provider who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, nutrition, consumer or hygiene education.

"In-home provider" means an individual who provides care in the home of the adult client needing supervision and/or

services. In-home providers include companion, chore, and homemaker providers.

"Instrumental activities of daily living" means meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. An adult client's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local department-approved provider" means a provider that is not subject to licensure and is approved by a local department of social services to provide services to Department of Social Services' clients.

"Out-of-home provider" means an individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.

"Personal care services" means the provision of nonskilled services including assistance in the activities of daily living, and may include instrumental activities of daily living related to the needs of the adult client, to maintain the adult client's health and safety in their home.

"Responsible person" means an individual designated by or for an adult client who is authorized to make decisions concerning the adult client and/or to receive information about the adult client.

22VAC40-771-20. Local department-approved providers.

A. This regulation applies to providers approved by a local department and does not apply to facilities or organizations licensed by a licensing or regulatory agency. A local department shall not approve a provider that does not meet the standards set out in this regulation.

B. This regulation is applicable to the following providers:

1. Out-of-home providers including:

a. Adult day services providers;

b. Adult foster care providers;

2. In-home providers including:

a. Chore providers;

b. Companion providers;

c. Homemaker providers.

C. The local department is not required to accept provider applications for any type of service when the local department has a sufficient number of providers for that service to meet

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the client population needs or does not offer the type of service.

D. Prior to approving an out-of-home provider located in another jurisdiction, the local department shall seek written permission from the local department where the provider will provide services.

E. Local departments may use an approved provider from another jurisdiction without performing another approval study when the local department obtains written permission and a copy of the approval documents from the local department that conducted the approval study.

22VAC40-771-30. Standards for providers and other persons.

A. Age requirements include:

1. All local department-approved adult services homemaker providers shall be at least 18 years of age.

2. All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service.

3. Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.

B. [Criminal record background checks and additional requirements include:

1. The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search. A new criminal record background check shall be required at the time of renewal.

2. Convictions of crimes listed in §63.2-1719 of the Code of Virginia shall prohibit a provider, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider. In addition, if the provider or, for adult foster care and adult day services, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.

3. Conviction of a crime listed in §63.2-1719 of the Code of Virginia will result in the revocation of the provider's approval unless an allowable variance is granted by the local department.

4. When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of a felony or misdemeanor not listed in §63.2-1719 of the Code of Virginia, the local department may approve the provider if the local department determines that the conviction does not jeopardize the safety or proper care of the adult.

C.] Interview, references, and employment history requirements include:

1. The provider shall participate in interviews with the local department.

2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.

3. The provider shall provide information on the provider's employment history.

4. The local department shall use the interviews, references, and employment history to assess that the provider is:

a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;

b. Able to sustain positive and constructive relationships with adults in care, and to relate to adults with respect, courtesy, and understanding;

c. Capable of handling emergencies with dependability and good judgment; and

d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.

5. For adult foster care and adult day services, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.

6. For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:

a. Home management and household maintenance;

b. The types of personal care of the elderly or adults with a disability permitted by regulation;

c. Nutrition education and meal planning and preparation, including special diets; and

d. Personal hygiene and consumer education.

7. For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:

a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.

b. Housekeeping services based on the needs of the adult in care.

c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.

d. Provision of clean bed linens and towels at least once a week and as needed by the adult.

e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.

f. Provision of generic personal toiletries including soap and toilet paper.

g. Assistance with the following: care of personal possessions, care of personal funds if requested by the adult and adult foster care home's policy permits it, use of telephone, arranging transportation, obtaining necessary personal items and clothing, making and keeping appointments, and correspondence.

h. Securing health care and transportation when needed for medical treatment.

i. Providing social and recreational activities as required by the local department and consistent with licensing regulations.

j. General supervision for safety.

[~~C. D.~~] Training requirements include:

1. The local department shall provide basic orientation to any approved provider.

2. The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

[~~D. E.~~] Medical requirements include:

1. The provider [~~and~~ ;] for out-of-home care, the assistant; the provider's spouse; and all other adult household members who come in contact with adults in care shall submit a statement from the local health

department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

[~~E. F.~~] All local department-approved providers shall keep the local department informed of changes in the household that may affect approval of the provider.

[~~F. G.~~] The provider shall have the capability to fully perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

[~~G. H.~~] Any provider who causes the local department to make an improper payment by withholding information or providing false information may be required to repay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

22VAC40-771-40. Standards for care for adult services providers.

A. The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability or impairment.

B. Supervision requirements include:

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.

2. A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.

3. If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

4. The provider shall ensure that adequate care and supervision are provided to adults in care and that the adult's health, safety, and well-being are protected.

C. The following standards apply to food provided to adult clients by adult day services and adult foster care providers:

1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.

2. Adults in care shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

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D. Requirements for transportation of adults include:

1. If the provider and, for out-of home services, the assistant; spouse of the provider; volunteer; or any other agent involved in the day-to-day operation of the adult day services or adult foster care transports adults in care, the provider or the person providing the transportation shall have a valid driver's license and automobile liability insurance.
2. The vehicle used to transport adults shall have a valid license and inspection sticker.
3. Providers or the person who transports adults in care must ensure that all passengers use safety belts in accordance with requirements of Virginia law.

E. Requirements for medical care include:

1. The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.
2. The provider shall be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.
3. The adult foster care and adult day services provider shall:
 - a. Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;
 - b. Document all medications taken by adults in care, including over-the-counter medications;
 - c. Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;
 - d. Keep medications separate from food except those items that must be refrigerated;
 - e. Report all major injuries and accidents to the adult's responsible person immediately;
 - f. Have authorization for emergency medical care for each adult in care; and
 - g. Have first aid supplies easily accessible in case of accidents.
4. Admission or retention of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of the adult services worker or by the adult's physician.

F. The adult day services and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.

G. All providers of adult services shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

H. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

22VAC40-771-50. Standards for the home of the adult foster care or adult day services provider.

A. Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:
 - a. Space to keep clothing and other personal belongings;
 - b. Accessible and adequate basin and toilet facilities;
 - c. Comfortable sleeping or napping furnishings;
 - d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;
 - e. Adequate space for recreational activities; and
 - f. Sufficient space and equipment for food preparation, service, and proper storage.
2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.
3. All doors and windows used for ventilation shall be appropriately screened.
4. Rooms used by adults in care shall have adequate lighting for activities and the comfort of adults.
5. The provider and any adult in care shall have access to a working telephone in the home.
6. The home shall be in compliance with all local ordinances.
7. Additional standards for adult foster care include:
 - a. No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.
 - b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.

B. Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.

2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.

4. Attics or basements used by adults in care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window.

5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.

6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in care who are mentally incapacitated.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in care.

D. Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the department.

3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the department.

22VAC40-771-60. Record requirements for adult foster care and adult day services providers.

A. The provider shall maintain written legible information on each adult in care.

B. Information on the adult in care shall include:

1. Identifying information on the adult in care;

2. Name, address, and home and work telephone numbers of responsible persons;

3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;

5. Name of persons not authorized to call or visit the adult in care;

6. Date of admission and discharge of the adult in care;

7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;

8. Medical information pertinent to the health care of the adult in care;

9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and

10. Placement agreement between the provider and the adult and his responsible person, where applicable.

C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.

D. The local department and its representatives shall have access to all records.

E. The department and its representative shall have access to all records.

22VAC40-771-70. Approval period.

The approval period for a provider may be up to 24 months when the provider meets the standards. In the case of adult day services and adult foster care, the home shall also meet the standards.

22VAC40-771-80. Allowable variance.

A. The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and

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proper care of the adult or violate federal, state, or local law and the local department approves the request.

B. The local department shall consult with the state adult services consultant prior to granting an allowable variance.

C. The allowable variance shall be in writing with a copy maintained by the local department and the provider.

D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.

E. The allowable variance shall be requested and granted by the local department prior to the approval of the provider or at the time of the provider's renewal.

22VAC40-771-90. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or his responsible person requests placement or service in an emergency.

B. A representative of the local department shall visit the provider's home to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services.

C. For an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. Emergency approval shall not exceed 30 days.

E. The provider must meet all applicable standards if services shall be provided beyond the 30-day emergency approval or if the emergency approval is extended beyond 30 days.

22VAC40-771-100. Provider monitoring.

A. For adult day services or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. For home-based care providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult in care or his responsible person shall have access to all provider monitoring reports completed by the local department upon request.

22VAC40-771-110. Renewal process.

The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

22VAC40-771-120. Inability to meet standards.

A. If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

C. The local department may suspend approval if noncompliance may jeopardize the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

D. If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.

E. The local department shall immediately revoke its approval if noncompliance jeopardizes the health, safety and proper care of the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision.

F. The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

22VAC40-771-130. Relocation of out-of-home provider.

A. If the out-of-home provider moves, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 days after relocation to avoid disruption of services to the adult in care.

B. If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself.

22VAC40-771-140. Right to review.

A. The provider shall have the right to request that the decision of the local department be reviewed by the local director of social services.

B. The provider must request the review within 10 calendar days from the effective date of the notice of action.

22VAC40-771-150. Rights of adults in care.

A. Adults in the care of local department-approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

1. To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record;

2. To be fully informed, prior to the beginning of the provision of services, of services available and of related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record;

3. Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf;

4. To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting;

5. When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the local department that made the placement shall be given advance notice of at least 30 days for any transfer or discharge;

6. An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge must be to a setting that will ensure the protection of the adult's health, safety and welfare; the local department that made the placement must be notified of the emergency discharge as soon as practicable but no later than 24 hours after the emergency discharge;

7. In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment;

8. When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

9. To be free to select health care services from reasonably available resources;

10. To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider;

11. To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;

13. When receiving care from an out-of-home local department-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;

14. To be encouraged to function at his highest mental, emotional, physical, and social potential;

15. To receive and send uncensored, unopened mail;

16. To refuse medication unless there has been a court finding of incapacity;

17. To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults; and

18. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:

a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;

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19. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

20. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations that the adult may have at the home;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff shall not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services; and

f. When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and

21. Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

C. The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline of the Department of Social Services as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.

D. The out-of-home provider shall make its policies and procedures for implementing this section available and

accessible to adults, relatives, agencies, and the general public.

E. Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

H. When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

I. When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

22VAC40-771-160. Responsibilities of adults in adult foster care or adult day services.

A. Adults in care shall follow the rules of the provider unless these rules are in violation of adults' rights.

B. Adults in care, or the local department when appropriate, shall give a two-week written notice of intent to leave the placement.

C. Adults in care shall notify providers if there are changes in the adult's health status.

VA.R. Doc. No. R05-227; Filed September 10, 2007, 2:32 p.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with the fourth enactment of Chapter 875 of the 2007 Act of Assembly, which states that the Department of Transportation shall promulgate the Schedule of Reimbursement described in §25.1-417.1 of the Code of Virginia by October 1, 2007, to become effective that day.

Title of Regulation: 24VAC30-45. **Appraisal Fee Regulations (adding 24VAC30-45-10, 24VAC30-45-20, 24VAC30-45-30).**

Statutory Authority: Chapter 895 of the 2007 Acts of Assembly.

Effective Date: October 1, 2007.

Agency Contact: Michael McCall, Chief Appraiser, Department of Transportation, Right of Way and Utilities Division, 5th Floor Annex, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3029, FAX (804) 786-1706, or email michael.mccall@vdot.virginia.gov.

Summary:

This regulation addresses partial reimbursements of costs to a landowner who obtains a written appraisal report in cases where the landowner and the Virginia Department of Transportation (VDOT) cannot reach an agreement as to the price of property needed for public purposes pursuant to §25.1-417.1 of the Code of Virginia. In addition to the schedule of allowable fees, it describes the requirements landowners must follow to receive payments, how payments will be made, as well as VDOT's role in explaining the entitlement.

CHAPTER 45

APPRAISAL FEE REGULATIONS

24VAC30-45-10. Purpose.

This chapter addresses reimbursements of costs to a landowner who obtains a written appraisal report in cases where the landowner and the Virginia Department of Transportation (VDOT) cannot reach an agreement as to the price of property needed for public purposes.

24VAC30-45-20. General provisions.

A. Notwithstanding any other provision of Title 25.1 of the Code of Virginia to the contrary, whenever VDOT and the landowner do not reach an agreement for the acquisition of private property and VDOT lawfully files a certificate of deposit/certificate of take pursuant to Article 7 (§33.1-94) of Chapter 1 of Title 33.1 of the Code of Virginia, if authorized to do so, or files a petition in condemnation pursuant to §25.1-205 of the Code of Virginia, the landowner shall be entitled to partial payment pursuant to §25.1-417.1 of the Code of Virginia for the cost of preparation of one written self-contained or summary appraisal report, subject to the following conditions:

1. The offer by VDOT exceeds \$250,000 or the landowner files a responsive pleading or other written form contending that just compensation for the land and interests described in the certificate or petition in condemnation exceeds \$250,000. Any written form other than a responsive pleading shall be submitted to the district right

of way and utilities manager in the VDOT construction district where the property is located or to the attorney appointed to represent VDOT for that acquisition;

2. The report submitted is written, complete and accurate, and of the same type (written self-contained or summary appraisal report) furnished to the landowner by VDOT when the offer to acquire was made;

3. The report relates to the type of acquisition sought by VDOT;

4. Pursuant to §25.1-417.1 of the Code of Virginia, the report complies with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) when the offer is extended by VDOT; the USPAP is available at www.AppraisalFoundation.org or by contacting the Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005;

5. To receive the payment or partial payment for the appraisal, the report as described above (two copies are requested) is furnished to VDOT or to the attorney appointed to represent VDOT for that acquisition at least 60 days prior to date of trial, and is accompanied by a bill for the appraisal services, or a receipt of payment made by the landowner or on his behalf.

B. When the offer is \$250,000 or more, or the landowner's demand is for \$250,000 or more, and it is evident that a certificate of deposit/certificate of take will be required to be filed, VDOT's negotiating agent is responsible for explaining in clear and understandable language the landowner's entitlement under §25.1-417.1 of the Code of Virginia. When offers are made by mail and no personal contact is made, the negotiating agent shall send a letter explaining this entitlement in detail, along with a copy of §25.1-417.1 of the Code of Virginia.

C. Any written form other than a responsive pleading shall be submitted to the district right of way and utilities manager in the VDOT construction district where the property is located or to counsel appointed to represent VDOT for that acquisition.

If, after review, the appraisal conforms to the requirements of §25.1-417.1 of the Code of Virginia, VDOT will provide payment according to the manner in which the landowner made the request. If the request for reimbursement is in the form of a receipt from the landowner, payment shall be made directly to the landowner. If the request for reimbursement is in the form of a bill from the appraiser, payment shall be made jointly to the appraiser and the landowner.

D. The amount of payment shall depend on the type of appraisal provided and shall not exceed actual costs or the amount allocated under VDOT's schedule of payment listed in 24VAC30-45-30, whichever is lower. Payment will be

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provided within 90 days of the receipt of the written appraisal report by VDOT according to the schedule of payment.

E. Disputes about the amount of payment made by VDOT shall be resolved by the court if the landowner and VDOT are unable to reach agreement.

24VAC30-45-30. Schedule of Payment.

The following schedule shall be used for determining reimbursements under this chapter:

<u>LAND</u>			
<u>Vacant land or with minor improvements</u>	—	<u>\$3,000</u>	<u>\$5,000</u>

¹Appraisals involving valuation of major improvements

² This is the Northern Virginia District and includes the Counties of Arlington, Fairfax, Loudoun and Prince William and the Cities and Towns of Alexandria, Dumfries, Fairfax, Falls Church, Herndon, Leesburg, Manassas, Manassas Park, and Vienna

VA.R. Doc. No. R08-949; Filed September 11, 2007, 1:50 p.m.



<u>SCHEDULE OF PAYMENT</u>			
<u>IMPROVED PROPERTY</u> ¹	<u>SIZE</u>	<u>STATE FEE</u>	<u>NOVA FEE</u> ²
<u>Retail large</u>	<u>Greater than 50,000 square feet</u>	<u>\$8,000</u>	<u>\$10,000</u>
<u>Retail mid size</u>	<u>7,001 to 50,000 square feet</u>	<u>\$6,000</u>	<u>\$10,000</u>
<u>Retail</u>	<u>Less than 7,000 square feet</u>	<u>\$5,000</u>	<u>\$8,000</u>
<u>Industrial large</u>	<u>10,000 square feet or greater</u>	<u>\$8,000</u>	<u>\$10,000</u>
<u>Industrial small</u>	<u>Less than 10,000 square feet</u>	<u>\$5,000</u>	<u>\$ 8,000</u>
<u>Special use (church, lodge, etc.)</u>	—	<u>\$5,000</u>	<u>\$ 8,000</u>
<u>Office large</u>	<u>10,000 square feet or greater</u>	<u>\$6,000</u>	<u>\$10,000</u>
<u>Office small</u>	<u>Less than 10,000 square feet</u>	<u>\$ 5,000</u>	<u>\$8,000</u>
<u>Apartments large</u>	<u>Over 50 units</u>	<u>\$ 6,000</u>	<u>\$10,000</u>
<u>Apartments small</u>	<u>5-50 Units</u>	<u>\$ 5,000</u>	<u>\$8,000</u>
<u>Single family or residential apartment (2-4 units)</u>	—	<u>\$ 2,500</u>	<u>\$5,000</u>

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

2006 Annual Report, Agricultural Stewardship Act

"The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act entitled "Virginia Agricultural Stewardship Act Annual Report, April 1, 2006 – March 31, 2007: A Positive Approach." Copies of this report can be obtained by contacting Joyce Knight at (804) 786-3538 or email joyce.knight@vdacs.virginia.gov. A written request may be sent to the address below. Copies of the annual report are available without charge.

Agency contact for questions or additional information: Joyce Knight, Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning, and Research, 102 Governor Street, Suite 219, P.O. Box 1163, Richmond, VA 23218.

Civil Penalties Matrix

The Board of Agriculture and Consumer Services at its regular meeting on August 16, 2007, adopted a revision to the matrix used to assess civil penalties to animal pounds and shelters for violations under state law. Copies of the revised matrix can be obtained by contacting Jane Martin at (804) 786-2483 or email jane.martin@vdacs.virginia.gov. A written request for a copy of the revised matrix may be sent to Jane Martin, Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, P.O. Box 1163, Richmond, VA 23218.

Program Contact: Colleen Calderwood, DVM, Program Manager, Office of Veterinary Services, telephone (804) 786-2483, or email colleen.calderwood@vdacs.virginia.gov.

Notice of Periodic Review of Regulations

The Virginia Department of Agriculture and Consumer Services invites comment from the public on 2VAC5-140, Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia, as part of a periodic review being conducted under Executive Order 36 (06), Development and Review of Regulations Proposed by State Agencies.

Comments on the regulations will be accepted until the close of the comment period on October 22, 2007. Comments should be addressed to Colleen Calderwood, Program Manager, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, or email colleen.calderwood@vdacs.virginia.gov.

BOARD OF DENTISTRY

Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Board of Dentistry within the Department of Health Professions is conducting a periodic review of 18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene.

The board is receiving comment on whether there is a need for amendments for consistency with changes in dental practice and patient care. Regulations for the practice of dentistry and dental hygiene may be viewed online at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

Comment begins on October 1, 2007, and ends on October 31, 2007. If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, email elaine.yeatts@dhp.virginia.gov or FAX (804) 527-4475.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Notice Regarding Air Quality Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone and very fine particulate matter (PM_{2.5}). If adopted, the Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan, and on the issue of whether the plan demonstrates the Commonwealth's compliance with certain federal Clean Air Act requirements related to interstate pollution transport.

Public comment period: September 13, 2007, to October 17, 2007.

Public hearing: Virginia Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia, at 9 a.m. on October 17, 2007.

Description of proposal: The proposed revision consists of a certification that the Commonwealth is meeting the requirements of §110(a)(2)(D)(i) of the federal Clean Air Act, which requires that states prevent air pollution that could (i) impede the ability of other states to meet the national

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standards, (ii) interfere with prevention of significant deterioration, and (iii) have a negative effect on visibility.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by the U.S. Environmental Protection Agency.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations:

DEQ Main Street Office 629 E. Main Street, 8th Floor Richmond, Virginia (804) 698-4070	DEQ Southwest Regional Office 355 Deadmore Street Abingdon, Virginia (540) 676-4800
DEQ West Central Regional Office 3019 Peters Creek Road Roanoke, Virginia (540) 562-6700	DEQ South Central Regional Office 7705 Timberlake Road Lynchburg, Virginia (804) 582-5120
DEQ Valley Regional Office 4411 Early Road Harrisonburg, Virginia (540) 574-7800	DEQ Fredericksburg Satellite Office 806 Westwood Office Park Fredericksburg, Virginia (540) 899-4600
DEQ Piedmont Regional Office 4949-A Cox Road Glen Allen, Virginia (804) 527-5020	DEQ Northern Regional Office 13901 Crown Court Woodbridge, Virginia (703) 583-3800

DEQ Tidewater Regional Office 5636 Southern Boulevard Virginia Beach, Virginia (757) 518-2000	
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Contact for public comments, document requests and additional information: Doris A. McLeod, Air Quality Planner, Air Planning Programs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email damcleod@deq.virginia.gov.

Water Quality Improvement Study - Dan River Watershed

Purpose of notice: To announce a local steering committee meeting on a water quality improvement study by the Department of Environmental Quality for the Dan River watershed in Halifax and Pittsylvania counties in Virginia.

Steering committee meeting: Danville Science Center, 677 Craghead Street, Danville, Virginia, on Tuesday, October 2, 2007, from 10:30 a.m. to 12:00 p.m.

Meeting description: This is the second steering committee meeting regarding a study to restore water quality in various streams within the Dan River watershed. We will be discussing the study and the basic characteristics of the Dan River watershed.

Description of study: Virginia agencies are working to identify sources of bacteria contamination in stream segments from the Dan River watershed in Central Virginia. This contamination exceeds water quality standards, which prohibits swimming. The contamination impairs or decreases the quality of the water.

The following is a list of the "impaired" waters, the length of the impaired segment, their location, and the reason for the impairment:

Dan River (42.8 miles), Pittsylvania County, total fecal coliform; Sandy River (7.21 miles), Pittsylvania County, total fecal coliform; Sandy Creek (9.17 miles), Pittsylvania County, total fecal coliform; Fall Creek (2.3 miles), City of Danville, total fecal coliform; Byrds Branch (2.98 miles), Halifax County, total fecal coliform; Double Creek (8.28 miles), Halifax and Pittsylvania Counties, total fecal coliform.

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

For additional information please contact: Amanda Gray, Virginia Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434)

582-6227, FAX (434) 582-5125, or email abgray@deq.virginia.gov.

Restore Water Quality - Hoskins Creek

Public meeting: Essex Public Library, 117 North Church Lane, Tappahannock, Virginia on October 15, 2007, from 7 p.m. to 9 p.m. A Technical Advisory Meeting will be held on October 11, 2007, at the Essex Public Library, 117 North Church Lane, Tappahannock, Virginia, from 10:30 a.m. until 12:30 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the start of a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Second technical advisory committee and public meetings on a study to restore water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of Hoskins Creek and its tributaries in Essex County. This stream is impaired for failure to meet the primary contact (recreational) designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, October 15, 2007, to November 15, 2007. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mark Alling, Watershed Programs, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, Fax (804)-527-5106, or email msalling@deq.virginia.gov.

DEPARTMENT OF FORENSIC SCIENCE

Updated List of Approved Field Tests for Detection of Drugs

In accordance with 6VAC40-30, the Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

O D V INCORPORATED
13386 INTERNATIONAL PARKWAY
JACKSONVILLE, FLORIDA 32218-2383

ODV NarcoPouch

Drug or Drug Type:

Heroin
Amphetamine
Methamphetamine
3,4-Methylenedioxymethamphetamine (MDMA)
Cocaine Hydrochloride
Cocaine Base
Barbiturates
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish Oil
Marijuana
Hashish Oil
Phencyclidine (PCP)
Heroin
Methamphetamine
3,4-Methylenedioxymethamphetamine (MDMA)
Heroin

Manufacturer's Field Test:

902 – Marquis Reagent
902 – Marquis Reagent
902 – Marquis Reagent
902 – Marquis Reagent
904 or 904B – Cocaine HCl and Base Reagent
904 or 904B – Cocaine HCl and Base Reagent
905 – Dille-Koppanyi Reagent
907 – Ehrlich's (Modified) Reagent
908 – Duquenois – Levine Reagent
908 – Duquenois – Levine Reagent
909 – K N Reagent
909 – K N Reagent
914 – PCP Methaqualone Reagent
922 – Opiates Reagent
923 – Methamphetamine/Ecstasy Reagent
923 – Methamphetamine/Ecstasy Reagent
924 – Mecke's (Modified) Reagent

Morphine
 Amphetamine
 Methamphetamine
 Lysergic Acid Diethylamide (LSD)
 Marijuana
 Hashish
 Hashish Oil
 Tetrahydrocannabinol (THC)
 Marijuana
 Hashish
 Hashish Oil
 Tetrahydrocannabinol (THC)
 Cocaine Base

6 – Mandelin Reagent
 6 – Mandelin Reagent
 6 – Mandelin Reagent
 7 – Ehrlich’s Reagent
 8 – Duquenois Reagent
 8 – Duquenois Reagent
 8 – Duquenois Reagent
 8 – Duquenois Reagent
 9 – NDB (Fast Blue B Salt) Reagent
 13 – Cobalt Thiocyanate/Crack Test

NARK II

Drug or Drug Type:

Narcotic Alkaloids
 Heroin
 Morphine
 Amphetamine
 Methamphetamine
 3,4–Methylenedioxymethamphetamine (MDMA)
 Morphine
 Heroin
 Barbiturates
 Lysergic Acid Diethylamide (LSD)
 Marijuana
 Hashish
 Hashish Oil
 Tetrahydrocannabinol (THC)
 Cocaine Hydrochloride
 Cocaine Base
 Phencyclidine (PCP)
 Opiates
 Heroin
 Morphine
 Heroin
 3,4–Methylenedioxymethamphetamine (MDMA)
 Pentazocine
 Ephedrine
 Diazepam
 Methamphetamine
 Narcotic Alkaloids
 Heroin
 Morphine
 Amphetamine
 Methamphetamine

Manufacturer’s Field Test:

01 – Marquis Reagent
 02 – Nitric Acid
 02 – Nitric Acid
 03 – Dille-Koppanyi Reagent
 04 – Ehrlich’s Reagent
 05 – Duquenois – Levine Reagent
 07 – Scott’s (Modified) Reagent
 07 – Scott’s (Modified) Reagent
 09 – Phencyclidine Reagent
 10 – Opiates Reagent
 10 – Opiates Reagent
 10 – Opiates Reagent
 11 – Mecke’s Reagent
 11 – Mecke’s Reagent
 12 – Talwin/ Pentazocine Reagent
 13 – Ephedrine Reagent
 14 – Valium Reagent
 15 – Methamphetamine (Secondary Amines Reagent)
 19 – Mayer’s Reagent
 19 – Mayer’s Reagent
 19 – Mayer’s Reagent
 19 – Mayer’s Reagent
 19 – Mayer’s Reagent

ARMOR HOLDINGS, INCORPORATED
 13386 INTERNATIONAL PARKWAY
 JACKSONVILLE, FLORIDA 32218-2383

NIK

Drug or Drug Type:

Heroin

Manufacturer’s Field Test:

Test A 6071 – Marquis Reagent

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Amphetamine
Methamphetamine
3,4-Methylenedioxymethamphetamine (MDMA)
Morphine
Barbiturates
Lysergic Acid Diethylamide (LSD)
Marijuana
Hashish Oil
Tetrahydrocannabinol
Cocaine Hydrochloride
Cocaine Base
Cocaine Hydrochloride
Cocaine Base
Phencyclidine (PCP)
Heroin
Heroin
gamma – Hydroxybutyrate (GHB)
Ephedrine
Pseudoephedrine
Diazepam
Methamphetamine
3,4-Methylenedioxymethamphetamine (MDMA)
Methadone

Test A 6071 – Marquis Reagent
Test A 6071 – Marquis Reagent
Test A 6071 – Marquis Reagent
Test B 6072 – Nitric Acid Reagent
Test C 6073 – Dille-Koppanyi Reagent
Test D 6074 – LSD Reagent System
Test E 6075 – Duquenois – Levine Reagent
Test E 6075 – Duquenois – Levine Reagent
Test E 6075 – Duquenois – Levine Reagent
Test G 6077 – Scott (Modified) Reagent
Test G 6077 – Scott (Modified) Reagent
6500 or 6501 – Cocaine ID Swab
6500 or 6501 – Cocaine ID Swab
Test J 6079 – PCP Reagent System
Test K 6080 – Opiates Reagent
Test L 6081 – Brown Heroin Reagent System
Test O 6090 – GHB Reagent
Test Q 6085 – Ephedrine Reagent
Test Q 6085 – Ephedrine Reagent
Test R 6085 – Valium Reagent
Test U 6087 – Methamphetamine Reagent
Test U 6087 – Methamphetamine Reagent
Test W 6088 – Mandelin Reagent System

MISTRAL SECURITY INCORPORATED
7910 WOODMONT AVENUE SUITE 820
BETHESDA, MARYLAND 20814

Drug or Drug Type:

Heroin
Amphetamine
Methamphetamine
Marijuana
Hashish Oil
Methamphetamine
Heroin
Marijuana
Hashish Oil
Cocaine Hydrochloride
Cocaine Base
Amphetamine
Methamphetamine
Ketamine
Marijuana
Cocaine
Heroin

Manufacturer's Field Test:

Detect 4 Drugs Aerosol
Meth 1 and 2 Aerosol
Herosol Aerosol
Cannabispray 1 and 2 Aerosol
Cannabispray 1 and 2 Aerosol
Coca-Test Aerosol
Coca-Test Aerosol
Pen Test Ampoule for Met-Amp-Ket-THC
Pen Test Ampoule for Cocaine
Pen Test Ampoule for Heroin

MILLENNIUM SECURITY GROUP
8300 GREENSBORO DRIVE
MCLEAN, VA 22102

IDenta

Drug or Drug Type:

Marijuana
Hashish Oil

Manufacturer's Field Test:

Marijuana/Hashish (Duquenois-Levine Reagent)
Marijuana/Hashish (Duquenois-Levine Reagent)

Heroin
Cocaine Hydrochloride
Cocaine Base
3,4-Methylenedioxymethamphetamine (MDMA)
Methamphetamine

Heroin Step 1 and Step 2
Cocaine/Crack Step 1 and Step 2
Cocaine/Crack Step 1 and Step 2
MDMA Step 1 and Step 2
Methamphetamine ("Crystal") Step 1 and Step 2

COZART PLC
92 MILTON PARK
ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY

Drug or Drug Type:
Cocaine

Manufacturer's Field Test:
Cocaine Solid Field Test

LYNN PEAVEY COMPANY
10749 WEST 84TH TERRACE
LEXEXA, KS 66214

Drug or Drug Type:

Marijuana
Marijuana
Hashish Oil
Hashish Oil
Heroin
Heroin
Cocaine Hydrochloride
Cocaine Base
Methamphetamine
Methamphetamine
MDMA
MDMA

Manufacturer's Field Test:

Marijuana – 10120
Marijuana – 10121
Marijuana – 10120
Marijuana – 10121
Marquis – 10123
Heroin - 10125
Cocaine – 10124
Cocaine – 10124
Meth/Ecstasy – 10122
Marquis – 10123
Meth/Ecstasy – 10122
Marquis - 10123

DEPARTMENT OF HEALTH

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-130, Notice and Description of Shellfish Area Condemnation, and the process associated with such notices. The purpose of the review is to determine whether the regulations and the process of condemnation should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations and notices protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are

based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Robert Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7487, or email bob.croonenberghs@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-140, Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities. The purpose of the review is to determine whether

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the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Robert Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7487, or email bob.croonenberghs@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-150, Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their

intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Robert Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7487, or email bob.croonenberghs@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-170, Prohibiting the Taking of Fish for Human Consumption from the North Fork of the Holston River. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Dr. Khizar Wasti, Director, Division of Public Health Toxicology, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8182, or email khizar.wasti@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health,

will review 12VAC5-180, State Plan for the Administration of the Virginia Shellfish Sanitation Program. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Robert Croonenberghs, Director, Division of Shellfish Sanitation, Virginia Department of Health, 109 Governor Street, Richmond, Virginia 23219, telephone (804) 864-7487, or email bob.croonenberghs@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-431, Sanitary Regulations for Hotels. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other

information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Gary Hagy, Director, Division of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7466, or email gary.hagy@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

Notice of Periodic Review of Regulations

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Health, on behalf of the State Board of Health, will review 12VAC5-630, Private Well Regulations. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period on October 22, 2007. Comments should be sent to Donald Alexander, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7470, or email don.alexander@vdh.virginia.gov. (Note: Please include your full name and mailing address in any email.)

General Notices/Errata

DEPARTMENT OF STATE POLICE

Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Virginia Department of State Police is conducting a periodic review of 19VAC30-80, Regulations Relating to Specifications of the Description to be Obtained By Pawnbrokers of Persons Pawning or Pledging Goods, to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia.

Comments on the regulations will be accepted until the close of the comment period on October 22, 2007. Comments should be addressed to Lt. Col. Robert Kemmler, Bureau of Administrative and Support Services, Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Virginia Department of State Police is conducting a periodic review of 19VAC30-100, Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period, to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia.

Comments on the regulations will be accepted until the close of the comment period on October 22, 2007. Comments should be addressed to Lt. Col. Robert Kemmler, Bureau of Administrative and Support Services, Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Virginia Department of State Police is conducting a periodic review of 19VAC30-110, Regulations Governing the Creation of a Criminal Firearms Clearinghouse, to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia.

Comments on the regulations will be accepted until the close of the comment period on October 22, 2007. Comments should be addressed to Lt. Col. Robert Kemmler, Bureau of Administrative and Support Services, Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Virginia Department of State Police is conducting a periodic review of 19VAC30-180, Regulations Governing the Establishment and

Maintenance of the Witness Protection Program, to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia.

Comments on the regulations will be accepted until the close of the comment period on October 22, 2007. Comments should be addressed to Lt. Col. Robert Kemmler, Bureau of Administrative and Support Services, Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order - S.I.L. Cleanwater, L.L.C./North Fork Modular Reclamation and Reuse Facility

Purpose of notice: To invite citizens to comment on a proposed consent decree for a facility in Rockingham County, Virginia.

Public comment period: October 1, 2007, to October 31, 2007.

Consent decree description: The State Water Control Board proposes to enter into a consent decree with the Town of Broadway to resolve alleged violations of the State Water Control Law and regulation at the former S.I.L. Cleanwater, L.L.C./North Fork Modular Reclamation and Reuse Facility. The location of the facility where the alleged violations occurred is located adjacent to U.S. Route 211, east of Timberville, Rockingham County, Virginia. The consent decree describes a settlement to resolve these violations including the upgrade of the facility, development of an industrial pretreatment program, and influent monitoring.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, Harrisonburg VA 22801-9519, telephone (540) 574-7833, FAX (540) 574-7844, or email swhetrick@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the

Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at www.virginia.gov and click on the calendar on the right side of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a new web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the new system with DPB's latest upgrade to the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information. The new system was released on July 3, 2007.

Advantages of RIS include:

- Daily updates to the online version of the Virginia Administrative Code (VAC) will provide access to a "real time" administrative code database.
- Agencies will draft regulation sections using the always current VAC database through each stage of the regulatory process.
- Agencies will eventually be able to file most notices and regulatory actions electronically.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (amending 12VAC35-115-10 through 12VAC35-115-250; adding 12VAC35-115-145, 12VAC35-115-146; repealing 12VAC35-115-160).**

Publication: 23:25 VA.R. 4301-4344 August 20, 2007

Correction to Final Regulation:

12VAC35-115-10, pages 4301 and 4302, subsection A should read as follows:

"A. The Code of Virginia authorizes these regulations to further define and to protect the rights of individuals receiving services from providers of mental health, mental retardation ~~and, or~~ or substance abuse services in ~~the Commonwealth~~ of Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights."

VA.R. Doc. No. R05-146

