VIRGINIA REGISTER OF REGULATIONS

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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, and notices of public hearings on regulations.

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 on 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.

A 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

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. 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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

September 2019 through August 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019
36:10	December 18, 2019	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12. 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020
36:18	April 8, 2020	April 27, 2020
36:19	April 22. 2020	May 11, 2020
36:20	May 6, 2020	May 25, 2020
36:21	May 20, 2020	June 8, 2020
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020
36:26	July 29, 2020	August 17, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Initial Agency Notice

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.**

Statutory Authority: § 37.2-203 of the Code of Virginia.

Name of Petitioner: R. C. Carter.

Nature of Petitioner's Request: To develop a new regulation requiring providers to (i) obtain verification from the Virginia Employment Commission required under the Virginia Unemployment Compensation Act, § 60.2-212 C of the Code of Virginia and (ii) submit an SS-8 Form to the Internal Revenue Service.

Agency Plan for Disposition of Request: The State Board of Behavioral Health and Developmental Services will consider this petition at the next scheduled meeting after the close of the public comment period, on October 9, 2019, at Western State Hospital, Staunton, Virginia.

Public Comment Deadline: September 22, 2019.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

VA.R. Doc. No. R20-01; Filed August 14, 2019, 9:33 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Agency Decision

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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

Name of Petitioner: Catherine Satterfield.

Nature of Petitioner's Request: To recognize health care organizations accredited by DNV-GL Healthcare for approval of continuing education.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on July 30, 2019, the board voted to amend 18VAC30-21-100 by a fast-track rulemaking action.

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

VA.R. Doc. No. R19-29; Filed August 1, 2019, 3:59 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC5-130, Regulation for Open Burning**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins September 2, 2019, and ends September 23, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm or sent to the agency contact.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Agency Contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**, and determined that this regulation should be amended. The fast-track regulatory action to amend 12VAC5-460, which is published in this issue of the Virginia Register, serves as the report of findings.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Taxation conducted a small business impact review of **23VAC10-55, Virginia Corn Excise Tax**, and determined that this regulation should be retained in its current form. The Department of Taxation is publishing its report of findings dated August 14, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

As the rate of the tax is not clearly set out in statute, the regulation continues to be necessary to clarify the rate of the tax. The department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2015. The department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. Retaining the regulation clarifies the rate of the corn excise tax and has no economic impact on small businesses.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the board when promulgating regulations pursuant to § 3.2-5206 of the Code of Virginia.

Title of Regulation: **2VAC5-490. Regulations Governing Grade "A" Milk (amending 2VAC5-490-10, 2VAC5-490-25, 2VAC5-490-30, 2VAC5-490-31, 2VAC5-490-32, 2VAC5-490-35 through 2VAC5-490-38, 2VAC5-490-39.2, 2VAC5-490-40, 2VAC5-490-50, 2VAC5-490-103, 2VAC5-490-105, 2VAC5-490-110, 2VAC5-490-131, 2VAC5-490-132, 2VAC5-490-140; adding 2VAC5-490-5; repealing 2VAC5-490-15, 2VAC5-490-20, 2VAC5-490-33, 2VAC5-490-34, 2VAC5-490-39, 2VAC5-490-39.4, 2VAC5-490-60, 2VAC5-490-70, 2VAC5-490-73, 2VAC5-490-80, 2VAC5-490-90, 2VAC5-490-100, 2VAC5-490-120, 2VAC5-490-133 through 2VAC5-490-138).**

Statutory Authority: § 3.2-5206 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 1, 2019.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, 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 ryan.davis@vdacs.virginia.gov.

Background: Regulations Governing Grade "A" Milk (2VAC5-490) details the standards and processing requirements necessary for milk to be considered grade A in Virginia. Much of the language in the current regulation originates from the U.S. Food and Drug Administration (FDA) 2013 Pasteurized Milk Ordinance (PMO), which sets requirements and guidelines for minimum regulatory standards with which state dairy inspection programs must comply. The FDA last revised the PMO in 2017, and Virginia's milk-related regulations must reflect the requirements of this most recent edition of the PMO for the Virginia dairy industry to ship milk out of state. The formal adoption of the 2017 PMO by reference will bring Virginia in line with most other states. In addition to the minimum requirements established in the PMO, 2VAC5-490 also includes provisions that establish certain state-specific provisions for Virginia's regulatory authority over adulterated or misbranded milk or milk products, permits, labeling requirements, standards, milk or milk products that may be sold, construction plans for dairy farms and milk plants, personnel health, the voluntary Hazard Analysis and Critical Control Point (HACCP) program, and interpretation and enforcement.

Summary:

The proposed amendments (i) incorporate the U.S. Food and Drug Administration 2017 Pasteurized Milk Ordinance (PMO) by reference into the regulation; (ii) repeal text that is duplicative of the language in the PMO; (iii) adjust state-specific regulatory requirements for clarity, consistency, and elimination of duplicative language; and (iv) update one additional document incorporated by reference and two forms.

The primary changes resulting from the revised 2017 PMO include:

• An extension of the time that tankers must be evaluated from 24 months to 24 months plus the remaining days in the month in which the inspection is due.

• Clarification regarding electronic recordkeeping on farm bulk tanks.

• Additional requirements and clarification for the operation of automatic milking installations and associated computer system verification and functions.

• A definition for "universal sample" (i.e., any sample taken by any permitted sampler or regulatory personnel) and provisions regarding the evaluation of the collection of a universal sample.

• Clarification of the term "first use" and the length of time a tanker can remain washed and empty before being filled with milk again.

• Requirements for the frequency of taking regulatory milk samples from grade A dairies that operate seasonally, as opposed to year-round.

The proposed amendments to state-specific provisions include:

• Adding a definition for "summarily suspend" to clarify the enforcement process.

• Clarification of when producers that operate multiple milking herds or operate milking herds at separate locations must obtain multiple grade A permits.

• Provisions establishing the agency's ability to administratively cancel any permit that has been under voluntary suspension for more than 24 months in order to ensure the accuracy of the list of Virginia dairy farms.

• Adding a specific date by which dairy plants must submit all results of tests on samples of raw milk so that the department can submit required reports to the FDA in a timely manner.

• Replacing the requirement to cool milk to 40 degrees within two hours of milking with a requirement that milk be cooled to 45 degrees within two hours to be consistent with the 2017 PMO.

• Clarifying that all bulk tanks shall be equipped with temperature recording devices.

2VAC5-490-5. Grade "A" Pasteurized Milk Ordinance.

A. Any person permitted in accordance with Chapter 52 (§ 3.2-5200 et seq.) of Title 3.2 of the Code of Virginia regarding milk, milk products, and dairies shall comply with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision."

B. Section 1 of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" regarding definitions shall be used to determine the meanings of the words or terms used in this chapter or in the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" unless the context clearly indicates otherwise. If any definition in Section 1 of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a definition in 2VAC5-490-10, 2VAC5-490-10 shall control to the extent of the conflict.

C. If any provision of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a provision in 2VAC5-490-10 through 2VAC5-490-140 of this chapter, the provision in 2VAC5-490-10 through 2VAC5-490-140 of this chapter shall control to the extent of the conflict.

~~Part I~~

~~Definitions and Standards of Identity~~

2VAC5-490-10. ~~Definitions and standards of identity~~ Definitions.

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

~~"A hazard that is reasonably likely to occur" means a hazard for which a prudent milk plant, receiving station or transfer station operator would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of these controls, the hazard will occur in the particular type of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product being processed.~~

~~"Abnormal milk" means milk that is visibly changed in color, odor, or texture and is not suitable for sale for grade A purposes.~~

~~"Acidified milk" means "acidified milk" as defined in 21 CFR 131.111.~~

~~"Acidified milk product" means a product with an acidity of not less than 0.50% expressed as lactic acid, which product is obtained by the addition of food grade acids to pasteurized cream, half-and-half, heavy cream, light cream, lowfat milk, milk, skim milk, or sour cream.~~

~~"Acidified sour cream" means "acidified sour cream" as defined in 21 CFR 131.162.~~

~~"Adulterated milk" or "adulterated milk product" means any milk, milk product, condensed milk product, or dry milk product that meets one or more of the conditions specified in Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 342).~~

~~"Aseptically processed milk or milk product" means milk that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Parts 108, 110, and 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.~~

~~"Aseptic processing and packaging" means that the product has been subjected to sufficient heat processing and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Parts 108, 110, and 113 and the provisions of this chapter and to maintain the commercial sterility of the product under normal nonrefrigerated conditions. Aseptic processing and packaging includes low-acid grade A aseptic and packaged milk products.~~

~~"Aseptic processing and packaging system" or "APPS" means the aseptic processing and packaging system in a milk plant that is comprised of the processes and equipment used to process and package aseptic grade A milk or milk products. The APPS shall be regulated in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113. The APPS shall begin at the constant level tank and end at the discharge of the packaging machine, provided that the process authority may provide written documentation that will clearly define additional processes or equipment that are considered critical to the commercial sterility of the product.~~

"Audit" means an evaluation of the entire milk plant, receiving station, or transfer station facility and HACCP system to ensure compliance with the voluntary HACCP program requirements of this chapter, with the exception of the APPS for aseptic processing and packaging of milk plants.

"Automatic milking installation" means the entire installation of one or more automatic milking units, including the hardware and software utilized in the operation of individual automatic milking units, the animal selection system, the automatic milking machine, the milk cooling system, the system for cleaning and sanitizing the automatic milking unit, the teat cleaning system, and the alarm systems associated with the process of milking cooling, cleaning, and sanitation.

"Boiled custard" means "eggnog" as defined in 21 CFR 131.170.

"Bulk milk hauler sampler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport (i) raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) raw milk products from one milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Bulk milk pickup tanker" means a vehicle, including the truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler sampler to transport bulk raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging from a dairy farm to a milk plant, receiving station, or transfer station.

"Buttermilk" means the fluid milk product that remains after the manufacture of butter from milk or cream and contains not less than 8.25% of milk solids not fat.

"Cancel" means to permanently nullify, void, or delete a grade A permit issued by the State Regulatory Authority.

"Centralized deviation log" means a centralized log or file identifying data detailing any deviation of critical limits and the corrective actions taken as referred to in Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."

"CFR" means the Code of Federal Regulations.

"Clean" means the surfaces of equipment and facilities have had an effective and thorough removal of product, soils, and contaminants.

"Clean in place" or "CIP" means the removal of soil from product contact surfaces in the surface's process position by circulating, spraying, or flowing chemical solutions and water rinses onto and over the surfaces to be cleaned. Components of the equipment that are not designed to be CIP are removed from the equipment to be cleaned out of place (COP) or manually cleaned. Product contact surfaces shall be inspectable, except when the cleanability by CIP has been documented and accepted by the State Regulatory Authority. In such accepted equipment, all product and solution contact surfaces are not required to be readily accessible for inspection (i.e., permanently installed pipelines and silo tanks).

"Cleaned out of place" or "COP" means manually cleaned or not designed to be CIP.

"Coffee cream" means "light cream."

"Commercially sterile" means (i) the food has been thermally processed by the application of heat to render the food free of viable microorganisms (including spores) of public health significance and microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; or (ii) the food has been processed with the application of heat, and the water activity of the food has been controlled to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

"Common name" means the generic term commonly used for domestic animals (i.e., cattle, goats, sheep, water buffalo).

"Concentrated milk" means "concentrated milk" as defined in 21 CFR 131.115.

"Concentrated milk product" means any of the following foods: homogenized concentrated milk, homogenized concentrated skim milk, concentrated lowfat milk, concentrated milk, and concentrated skim milk, which when combined with potable water according to the instructions printed on the food's container, conforms to the definition of the corresponding milk product in this chapter.

"Concentrated or condensed buttermilk" means product resulting from the removal of a considerable portion of water from buttermilk and complies with all applicable requirements of this chapter.

"Condensed and dry milk product" means grade A condensed milk, grade A condensed and dry whey, grade A dry milk product, or grade A dry milk and whey product.

"Condensed milk" means concentrated milk as defined in 21 CFR 131.115. This definition does not include:

1. Any sterilized milk or milk product, when the sterilized milk or milk product is hermetically sealed in a container and processed, either before or after sealing, so as to prevent microbial spoilage; or

2. Any evaporated milk or sweetened condensed milk, except when the evaporated milk or sweetened condensed milk is combined with other substances in the commercial preparation of any pasteurized, ultra pasteurized, or aseptically processed and packaged milk or milk product.

"Condensed whey" means "condensed whey" as defined in 21 CFR 184.1979(a)(2).

"Consumer" means any person who uses any grade A milk, grade A milk product, or milk product.

"Contaminated milk" means milk that is unsaleable or unfit for human consumption following treatment of the animal with veterinary products (i.e., antibiotics that have withhold requirements or treatment with medicines or insecticides not approved for use on dairy animals by FDA or the Environmental Protection Agency).

"Corrective action" means procedures followed when a deviation occurs.

"Cottage cheese" means "cottage cheese" as defined in 21 CFR 133.128.

"Cottage cheese dry curd" means "dry curd cottage cheese."

"Cream" means "cream" as defined in 21 CFR 131.3(a).

"Critical control point" or "CCP" means a step at which control can be applied and is essential to prevent or eliminate a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard or reduce it to an acceptable level.

"Critical limit" means a maximum value or a minimum value to which a biological, chemical, or physical parameter shall be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard.

"Cultured half-and-half" means "sour half-and-half."

"Cultured milk" means "cultured milk" as defined in 21 CFR 131.112.

"Cultured sour cream" means "sour cream."

"Dairy farm" means any place or premises (i) where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept for milking purposes; or (ii) from which cow, goat, sheep, water buffalo, or other mammal (except humans) milk or any milk product is sold or offered for sale for human consumption or provided to a milk plant, cheese plant, frozen desserts plant, transfer station, or receiving station.

"Deficiency" means an element that is inadequate or missing from the requirements of a HACCP system or with the voluntary HACCP program requirements of this chapter.

"Deny" means the State Regulatory Authority will not issue a grade A permit to the applicant.

"Deviation" means a failure to meet a critical limit.

"Drug" means: (i) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) articles other than food intended to affect the structure or any function of the body of man or other animals; and (iv) articles intended for use as a component of any articles specified in clause (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

"Dry buttermilk" means "dry buttermilk" as defined in 7 CFR 58.251.

"Dry buttermilk product" means "dry buttermilk product" as defined in 7 CFR 58.251.

"Dry cream" means "dry cream" as defined in 21 CFR 131.149.

"Dry curd cottage cheese" means "dry curd cottage cheese" as defined in 21 CFR 133.129.

"Dry milk product" means a product resulting from the drying of any milk or milk product and any product resulting from the combination of a dry milk product with other safe and suitable dry ingredients.

"Dry whey" means "dry whey" as defined in 21 CFR 184.1979.

"Dry whey product" means a product resulting from the drying of whey or whey products and any product resulting from the combination of dry whey products with other wholesome dry ingredients.

"Dry whole milk" means "dry whole milk" as defined in 21 CFR 131.147.

"Eggnog" means "eggnog" as defined in 21 CFR 131.170.

"Eggnog flavored milk" means a milk product, to which an emulsifier and a maximum of 0.5% stabilizer may have been added consisting of a mixture of (i) at least 3.25% butterfat, (ii) at least 0.5% egg yolk solids, (iii) sweetener, and (iv) flavoring.

"FDA" means the United States Food and Drug Administration.

"Flavored milk" means milk to which a flavor or sweetener has been added.

"Flavored milk product" means any milk product to which a flavor or sweetener has been added.

"Food allergen" means the proteins in foods that are capable of inducing an allergic reaction or response in some individuals and means "food allergen" as defined in the Food Allergen Labeling and Consumer Protection Act of 2004 (21 USC § 301 et seq.).

"Fortified milk" means milk, other than vitamin D milk, the vitamin or mineral content of which milk has been increased.

"Fortified milk product" means any milk product, other than a vitamin D milk product, the vitamin or mineral content of which milk product has been increased.

"Frozen milk concentrate" means the frozen milk product that when water is added in accordance with instructions on the package containing the frozen milk product, the reconstituted milk product contains the percentage of milkfat and the percentage of milk solids not fat of milk. Frozen milk concentrate is stored, transported, and sold in a frozen state.

"Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats that when sold in retail packages, contains not less than 2.5% milkfat and not less than 7.5% nonfat milk solids not fat.

"Grade A buttermilk" or "grade A buttermilk product" means buttermilk from butter made from grade A cream, which has been pasteurized prior to use in accordance with item 16p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," provided that this requirement shall not be construed as barring any other heat treatment process that has been recognized by FDA to be equally efficient in the destruction of staphylococcal organisms and that is approved by the State Regulatory Authority.

"Grade A condensed and dry whey" means condensed or dry whey that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A condensed milk" means condensed milk that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A dry milk product" means any dry milk product that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A dry milk and whey product" means any dry milk or whey product that has been produced for use in any grade A pasteurized, ultra pasteurized, or aseptically processed and packaged milk product and that has been manufactured under the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A permit" means the written document issued by the State Regulatory Authority to the person who operates a (i) dairy farm to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing; (ii) milk plant; (iii) receiving station; (iv) transfer station; (v) milk condensing plant; (vi) milk drying plant; (vii) whey condensing plant; or (viii) whey drying plant after the State Regulatory Authority has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter for the operations specified in this definition.

"Grade A whey" means whey from cheese made from grade A raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging, that has been manufactured under the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"HACCP plan" means the written document, which is based upon the principles of HACCP and delineates the procedures to be followed.

"HACCP system" means the implemented HACCP plan and prerequisite programs, including other applicable requirements of the voluntary HACCP program of this chapter.

"Half and half" means "half and half" as defined in 21 CFR 131.180.

"Hazard" means a biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

"Hazard analysis" means the process of collecting and evaluating information on hazards associated with the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product under consideration, to decide which are reasonably likely to occur and must be addressed in the HACCP plan.

"Hazard analysis critical control point" or "HACCP" means a systematic approach to the identification, evaluation, and control of significant milk and milk product safety hazards.

"Heavy cream" means "heavy cream" as defined in 21 CFR 131.150.

"Lactose-reduced lowfat milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the lowfat milk from which the product is made.

"Lactose-reduced milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the milk from which the product is made.

"Lactose-reduced skim milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the skim milk from which the product is made.

"Light cream" means "light cream" as defined in 21 CFR 131.155.

"Light whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Low acid aseptic milk and retort milk and milk products" means milk or milk products having a water activity (aw) greater than 0.85 and a finished equilibrium pH greater than 4.6 and that are regulated under 21 CFR Parts 108, 110, and 113. Low-acid aseptic milk and retort milk and milk products

~~are stored under normal nonrefrigerated conditions. Excluded from this definition are low-acid milk and milk products that are labeled for storage under refrigerated conditions.~~

~~"Lowfat dry milk" means "lowfat dry milk" as defined in 21 CFR 131.123.~~

~~"Lowfat yogurt" means "lowfat yogurt" as defined in 21 CFR 131.203.~~

~~"Low-sodium lowfat milk" means the milk product resulting from the treatment of lowfat milk by a process of passing the lowfat milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"Low-sodium milk" means the milk product resulting from the treatment of milk by a process of passing the milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"Low-sodium skim milk" means the milk product resulting from the treatment of skim milk by a process of passing the skim milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing, for such a period as may be necessary to render the milk practically colostrum free.~~

~~"Milk condensing plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.~~

~~"Milk distributor" means any person who offers for sale or sells to another any milk or milk product.~~

~~"Milk drying plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.~~

~~"Milkfat" means the fat of milk.~~

~~"Milkhouse" means the building or room in which there is conducted on a grade A dairy farm (i) the cooling, handling, and storing of milk and (ii) the washing, sanitizing, and storing of milk containers and utensils.~~

~~"Milk plant" means any place, premises, or establishment where any milk or milk product is collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed and packaged, retort processed after packaged, condensed, dried, packaged, bottled, or prepared for distribution.~~

~~"Milk producer" means any person who operates a dairy farm and who provides, sells, or offers milk for sale for human consumption or to a milk plant, receiving station, or transfer station.~~

~~"Milk product" means grade A milk and grade A milk products meeting the requirements of 2VAC5-490-15.~~

~~"Misbranded milk" or "misbranded milk product" means any milk, milk product, or condensed and dry milk product that (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2VAC5-490-40.~~

~~"Monitor" means to conduct a planned sequence of observations or measurements to assess whether a CCP is under control or to assess the conditions and practices of all required prerequisite programs.~~

~~"NCIMS" means the National Conference on Interstate Milk Shipments.~~

~~"Nonconformity" means a failure to meet specified requirements of the HACCP system.~~

~~"Nonfat dry milk" means "nonfat dry milk" as defined in 21 CFR 131.125.~~

~~"Nonfat dry milk fortified with vitamins A and D" means "nonfat dry milk fortified with vitamins A and D" as defined in 21 CFR 131.127.~~

~~"Nonfat yogurt" means "nonfat yogurt" as defined in 21 CFR 131.206.~~

~~"Normal storage" means storage at a temperature of 45°F or cooler, but does not include freezing.~~

~~"Official laboratory" means a biological, chemical, or physical laboratory operated by the Commonwealth of Virginia.~~

~~"Officially designated laboratory" means: (i) a commercial laboratory authorized by the State Regulatory Authority to examine milk, milk product, condensed and dry milk product, producer samples of Grade "A" raw milk for pasteurization, or commingled milk tank truck samples of raw milk or milk products or (ii) a milk industry laboratory authorized by the State Regulatory Authority to examine milk producer samples of raw milk for pasteurization, and for drug residues and bacterial limits, samples of raw milk commingled in a tank truck.~~

~~"Pasteurization" or "pasteurized" means the process of heating every particle of milk or milk product in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held~~

continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:

Temperature	Time	Equipment
145°F*	30 minutes	Vat Pasteurization
161°F*	15 seconds	High Temperature Short Time
191°F	1.0 second	High Temperature Short Time
194°F	0.5 second	High Temperature Short Time
201°F	0.1 second	High Temperature Short Time
204°F	0.05 second	High Temperature Short Time
212°F	0.01 second	High Temperature Short Time

*If (i) the fat content of the milk or milk product is 10% or greater; (ii) the total solids content of the milk or milk product is 18% or greater; or (iii) the milk or milk product contains added sweeteners, then pasteurization means increasing the specified temperature by 5°F.

*If the dairy product is cream for butter making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications and equipment:

Temperature	Time	Equipment
155°F	30 minutes	Vat Pasteurization
175°F	25 seconds	High Temperature Short Time
180°F	15 seconds	High Temperature Short Time

Nothing in this definition shall be construed as barring any other process that has been recognized by the Food and Drug Administration as being equally efficacious as pasteurization, so long as that other process has been approved by the State Regulatory Authority.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Prerequisite programs" means procedures, including good manufacturing practices, that address operational conditions that provide the foundation for the HACCP system.

"Process authority" means a certified microbiologist who has expert knowledge of thermal processing requirements for low acid foods, acquired through appropriate education, training, and experience. The process authority must possess advanced testing equipment that will allow them to conduct necessary testing.

"Public" means any person in the Commonwealth.

"Pull date" means the date affixed to a consumer package or container of grade A pasteurized milk or grade A pasteurized milk product that is the date after the day of manufacturing and processing of the package or container and the last day on which the grade A pasteurized milk or grade A pasteurized milk product as determined by the milk plant may be offered for sale to consumers under normal storage.

"Raw milk" means any milk or any milk product that has not been pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaging.

"Receiving station" means any place, premises, or establishment where raw milk is (i) received, collected, handled, stored, or cooled; and (ii) prepared for further transporting.

"Recombined milk" means the food that when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and nonfat milk solids requirements for milk, as specified in the definition of "milk."

"Recombined milk product" means the food that when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and milk nonfat solids requirements for the milk product designated on the food's container.

"Reconstituted milk" means "recombined milk."

"Reconstituted milk product" means "recombined milk product."

"Reduced lactose whey" means "reduced lactose whey" as defined in 21 CFR 184.1979a.

"Reduced minerals whey" means "reduced minerals whey" as defined in 21 CFR 184.1979b.

"Retort processed after packaging" means the milk and or milk product has been subjected to sufficient retort heat processing after packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Parts 108, 110, and 113 and to maintain the commercial sterility of the milk and milk product under normal nonrefrigerated conditions.

"Retort processed after packaging system" or "RPPS" means the processes and equipment used to retort process after packaging low acid grade A milk and milk products. The RPPS shall be regulated in accordance with the applicable

~~requirements of 21 CFR Parts 108, 110, and 113. The RPPS shall begin at the container filler and end at the palletizer, provided that the process authority may provide written documentation that will clearly define additional processes and equipment that are considered critical to the commercial sterility of the milk and milk products.~~

~~"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate a grade A permit issued by the State Regulatory Authority.~~

~~"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).~~

~~"Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable, and when used does not adversely affect (i) the equipment that comes in contact with milk, milk product, or condensed and dry milk product; (ii) the milk, milk product, or condensed and dry milk product; or (iii) the health of consumers.~~

~~"Septage" means material accumulated in a pretreatment system or privy.~~

~~"Sewage" means water-carried and nonwater-carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.~~

~~"Sheep milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy sheep.~~

~~"Sour cream" means "sour cream" as defined in 21 CFR 131.160.~~

"State ~~Regulatory Authority"~~ regulatory agency" means the Commissioner of Agriculture and Consumer Services or his agent when carrying out any duty specified in § 3.2-5207 of the Code of Virginia or the State Health Commissioner or his agent when carrying out any duty specified in § 3.2-5208 of the Code of Virginia.

"Summarily suspend" means the immediate suspension of a permit issued by the state regulatory agency without the permit holder being granted the opportunity to contest the action prior to the effective date and time of the suspension.

~~"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a grade A permit issued by the State Regulatory Authority.~~

~~"Sweetened condensed milk" means "sweetened condensed milk" as defined in 21 CFR 131.120.~~

~~"Table cream" means "light cream" as defined in 21 CFR 131.155.~~

~~"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.~~

~~"Trim" means to shorten the hair on the udder and tail of milking cows and goats by clipping, singeing, cutting, or other means.~~

~~"Ultra-pasteurized" means, when used to describe any milk or milk product, that the milk or milk product has been thermally processed at a temperature of 280°F (138°C) or hotter for at least two seconds, either before or after packaging, so as to produce a product that has an extended shelf life under refrigerated conditions as defined in 21 CFR 131.3.~~

~~"Undesirable milk" means milk that, prior to the milking of the animal, is expected to be unsuitable for sale, such as milk containing colostrum.~~

~~"Validation" means the element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP plan, when properly implemented, will effectively control the hazards.~~

~~"Verification" means those activities, other than monitoring, that determine the validity of the HACCP plan and that the HACCP system is operating according to the plan.~~

~~"Vitamin A milk" means milk, the vitamin A content of which has been increased to at least 2000 International Units per quart.~~

~~"Vitamin A milk product" means a milk product, the vitamin A content of which has been increased to at least 2000 International Units per quart.~~

~~"Vitamin D milk" means milk, the vitamin D content of which has been increased to at least 400 International Units per quart.~~

~~"Vitamin D milk product" means a milk product, the vitamin D content of which has been increased to at least 400 International Units per quart.~~

~~"Water buffalo milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy water buffalo.~~

~~"Whey" means "whey" as defined in 21 CFR 184.1979.~~

~~"Whey condensing plant" means a plant in which whey is condensed or in which whey is received and processed for drying and packaging.~~

~~"Whey drying plant" means a plant in which whey is dried or in which whey is received and processed for drying and packaging.~~

~~"Whey product" means any fluid product removed from whey, or made by the removal of any constituent from whey,~~

~~or by the addition of any wholesome substance to whey or parts thereof.~~

~~"Whipped cream" means "heavy cream" as defined in 21 CFR 131.150 or "light whipping cream" as defined in 21 CFR 131.157, into which air or gas has been incorporated.~~

~~"Whipped light cream" means "light whipped cream" as defined in 21 CFR 131.155, into which air or gas has been incorporated.~~

~~"Whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.~~

~~"Yogurt" means "yogurt" as defined in 21 CFR 131.200.~~

~~Part II~~
~~Grade A Milk and Milk Products~~

2VAC5-490-15. ~~Grade A milk and milk products.~~ (Repealed.)

~~A. Grade A milk and milk products regulated under this chapter include:~~

~~1. All grade A raw milk or milk products for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging, and all grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed and packaged milk and milk products;~~

~~2. All milk and milk products with a standard of identity provided for in 21 CFR Part 131, with the exception of 21 CFR 131.120 sweetened condensed milk;~~

~~3. Cottage cheese as defined by 21 CFR 133.128 and dry curd cottage cheese as defined by 21 CFR 131.129;~~

~~4. Whey and whey products as defined in 21 CFR 184.1979, 21 CFR 184.1979a, 21 CFR 184.1979b, and 21 CFR 184.1979c; whey product; dry whey product; and grade A condensed and dry whey and whey products;~~

~~5. Modified versions of these foods listed in subdivisions 2 and 3 of this subsection, pursuant to 21 CFR 130.10 – Requirements for foods named by use of a nutrient content claim and a standardized term;~~

~~6. Milk and milk products as defined in subdivisions 2, 3, 4, and 5 of this subsection, packaged in combination with other food or foods not included in this section that are appropriately labeled with a statement of identity to describe the food in final package form (e.g., "cottage cheese with pineapple" or "fat free milk with plant sterols"); and~~

~~7. Products not included in subdivisions 2 through 6 of this subsection shall be grade A milk products if they contain a minimum of (i) 2.0% milk protein as determined by total Kjeldahl Nitrogen (TKN) X 6.38; and (ii) a minimum of 65% by weight milk, milk product, or a combination of milk products.~~

~~B. Safe and suitable, as defined in 21 CFR 130.3(d), nongrade A dairy ingredients may be utilized in the production of grade A milk and milk products included under 2VAC5-490-15 A when added to a level needed for a functional or technical effect; limited by good manufacturing practices (GMPs); and are either (i) prior sanctioned or otherwise approved by the federal Food and Drug Administration, (ii) generally recognized as safe, or (iii) an approved food additive listed in the Code of Federal Regulations with the exception that for those grade A milk and milk products for which a federal standard of identity has been established only ingredients provided for under the standard of identity for each grade A milk or milk product may be utilized. Nongrade A dairy ingredients shall not be used to increase the weight or volume of grade A milk or milk products or to displace any grade A dairy ingredients nor shall using nongrade A dairy ingredients to increase the weight or volume of grade A milk or milk products be considered a suitable functional or technical effect.~~

~~C. Grade A milk and milk products shall also include those milk and milk products included under 2VAC5-490-15 A and 2VAC5-490-15 B that have been aseptically processed and then packaged.~~

~~D. Grade A milk and milk products shall not include:~~

~~1. A milk or milk product in which the milkfat of the milk or milk product has been substituted in part or in whole by any other animal or vegetable fat; provided that other fat sources may be included when they are used for purposes currently accepted in any other grade A milk or milk product, such as carriers for vitamins and as an ingredient in emulsifiers and stabilizers;~~

~~2. Coffee based products where coffee or water is the primary ingredient as indicated in the ingredient statement;~~

~~3. Tea based products where tea or water is the primary ingredient as indicated in the ingredient statement;~~

~~4. Dietary products (except as defined in 21 CFR 130.10);~~

~~5. Infant formula;~~

~~6. Ice cream or other frozen desserts;~~

~~7. Butter;~~

~~8. Standardized cheese with the exception of cottage cheese as defined under 21 CFR 133.128 and dry curd cottage cheese as defined under 21 CFR 131.129 and nonstandardized cheese; or~~

~~9. Puddings.~~

~~E. Milk and milk products that have been retort processed after packaging or that have been concentrated (condensed) or dried shall conform to the requirements of 2VAC5-490-15 A~~

~~and 2VAC5-490-15 B if they are utilized as an ingredient in any grade A milk or milk product, or if they are labeled as grade A under 2VAC5-490-15 A 5.~~

~~F. Powdered dairy blends may be labeled grade A and used as ingredients in grade A milk and milk products, such as cottage cheese dressing mixes or starter media for cultures used to produce various grade A cultured milk and milk products, if they meet the requirements of this chapter. If powdered dairy blends are used as an ingredient in grade A milk and milk products, blends of dairy powders must be blended under conditions that meet all applicable grade A powdered dairy blends requirements. Grade A powder blends must be made from grade A powdered milk and milk products, except that small amounts of functional ingredients not to exceed 10% by weight of the finished blend that are not grade A are allowed in grade A blends when the finished ingredient is not available in grade A form (e.g., sodium caseinate).~~

~~G. Grade A milk and milk products include the following: acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half and half, aseptically processed milk, aseptically processed milk product, boiled custard, buttermilk, coffee cream, concentrated milk, concentrated milk product, condensed buttermilk, cottage cheese, cottage cheese dry curd, cream, cultured half and half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half and half, dry buttermilk, dry buttermilk product, dry cream, dry curd cottage cheese, dry whole milk, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half and half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat dry milk, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium nonfat milk, low-sodium milk, low-sodium reduced fat milk, low-sodium skim milk, milk, nonfat milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced lactose whey, reduced fat milk, reduced minerals whey, sheep milk, skim milk, sour cream, sour half and half, table cream, vitamin A milk, vitamin A milk product, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, and yogurt.~~

~~Part III~~
~~Adulterated or Misbranded Milk or Milk Products~~

2VAC5-490-20. ~~Adulterated or misbranded milk or milk products.~~ (Repealed.)

~~A. No person may produce, provide, sell, offer, expose for sale, or possess with intent to sell any adulterated or misbranded condensed milk product, dry milk product, milk, or milk product.~~

~~B. Each person who produces, provides, sells, offers, exposes for sale, or possesses any adulterated or misbranded condensed milk product, dry milk product, milk, or milk product shall be subject to having the person's adulterated or misbranded condensed milk product, dry milk product, milk, or milk product impounded by the State Regulatory Authority.~~

~~C. No person may provide, sell, offer, or expose for sale any condensed milk product, dry milk product, milk, or milk product to any milk plant for use in any grade A milk or grade A milk product if the person does not possess a permit from the State Regulatory Authority, unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that (i) the supply of grade A raw milk for pasteurization, ultra-pasteurization, or aseptic processing is not adequate to meet the nutritional needs of any person who secures milk in the Commonwealth; or (ii) the supply of pasteurized, ultra-pasteurized, or aseptically processed milk or milk product at retail is not available for purchase by any person who secures milk in the Commonwealth.~~

~~D. No person may produce, provide, sell, offer, expose for sale, or possess any condensed milk product, dry milk product, milk, or milk product under the provision of subsection C of this section unless the condensed milk product, dry milk product, milk, or milk product is labeled "ungraded."~~

2VAC5-490-25. Impounding of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product.

The ~~State Regulatory Authority~~ state regulatory agency shall comply with the following administrative procedures when impounding any adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product to prevent movement of these products until such violations of critical processing elements have been corrected:

1. The ~~State Regulatory Authority~~ state regulatory agency shall serve the person with a written impoundment notice. The written impoundment notice shall specify the violations and inform the person of the opportunity to

appear before the ~~State Regulatory Authority~~ state regulatory agency in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to contest the written notice of violation.

2. The written impoundment notice shall include:

a. The name of the adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

b. The size and number of separate units in the lot being impounded;

c. The product code and sell by date for the lot of product, if each exists; and

d. A statement directing the person to:

(1) Immediately remove from sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

(2) Isolate and identify as not for sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product in the person's storage area in a location separate from any storage accessible from a retail sales area; and

(3) Comply with one of the following options:

(a) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is adulterated~~:~~ (i) the entire lot shall be destroyed or (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or

(b) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is misbranded~~:~~ (i) the entire lot shall be destroyed; (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or (iii) the entire lot shall be held and new labels affixed to each container in the lot that comply with all provisions for labeling of condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product contained in this chapter prior to being offered for sale.

~~Part IV~~
~~Permits~~

2VAC5-490-30. Permits.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaging milk or milk product unless the person possesses a grade A permit from the ~~State Regulatory Authority~~ state regulatory agency. Nothing in this chapter shall be deemed to require a person who is a broker, agent, or distributor's representative to have a grade A permit if the person buys condensed and dry milk product for, or sells condensed and dry milk product to, a milk plant that has a valid grade A permit from any state.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain a grade A permit. Permits shall not be transferable with respect to persons or locations. Each person whose name appears on a grade A permit shall be at least 18 years of age. Each person requesting a grade A permit shall provide the ~~State Regulatory Authority~~ state regulatory agency with the following information:

1. The name of the person ~~or persons~~ to whom the permit is to be issued;

2. If the person ~~or persons are~~ is requesting a permit for a partnership, corporation, firm, trustee, or institution, the person ~~or persons~~ shall provide the articles of incorporation, partnership agreement, trust document, or other document identifying the names, titles, and mailing addresses of all responsible officials for the partnership, corporation, firm, trustee, or institution;

3. The address of the facility being permitted, including the street and number, city, state, and zip code. Addresses containing post office box designations shall not be permitted;

4. The trade name the permit holder will use if the permit holder will not be trading in the name to which the grade A permit is issued;

5. The name, mailing address, and telephone number for one responsible person designated by the grade A permit holder to receive all sample reports and official correspondence from the ~~State Regulatory Authority~~ state regulatory agency;

6. If the permit application is for a grade A dairy farm, the name of the milk marketing organization or milk marketing cooperative to which the permit holder belongs or the buyer of its milk;

7. The names and phones numbers of responsible persons to contact at the grade A dairy farm or plant;

8. If the permit application is for a grade A dairy farm, the name, address, and telephone number of the owner of the dairy farm;

9. The printed name, signature, title, and date signed for each person whose name appears on the permit;

10. The printed name, signature, title, and date signed by the most responsible official for the partnership, corporation, firm, trustee, or institution if the permit is to

be issued in the name of a partnership, corporation, company, firm, trustee, or institution; and

11. If the permit application is for a grade A plant permit, the plant code embossed or printed on packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product packaged by the plant to identify the plant in lieu of printing the plant's name and address on the packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product, if one has been assigned.

C. Each person who holds a grade A permit and who requests a change in the name ~~or names~~ on an existing grade A permit shall provide the ~~State Regulatory Authority~~ state regulatory agency with the following information:

1. A written statement requesting that the existing grade A permit be canceled that has been signed by each person whose name appears on the existing grade A permit; except that when a person whose name on an existing grade A permit is deceased, the request for cancellation shall be made in writing by the executor or administrator of the permit holder's estate. A copy of the qualification as executor or administrator shall accompany the request for cancellation along with a statement identifying the name of the deceased and the date of death. Each signature shall be made next to or above the person's printed name and shall be dated with the date on which the written statement was signed by the grade A permit holder;

2. If the existing grade A permit is held in the name of a partnership, corporation, company, firm, trustee, or institution, the written statement requesting the existing grade A permit be canceled shall be signed by a person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution. Each signature shall be made next to or above the person's printed name and official title for the partnership, corporation, company, firm, trustee, or institution and shall be dated with the date on which the written statement was signed by the person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution~~; and 3. All of the information required by 2VAC5-490-50 B for the State Regulatory Agency to issue a grade A permit~~.

D. No person may hold a grade A dairy farm permit if any part of his facilities, equipment, storage, or surroundings (except toilet rooms) requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes may be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the milkroom and (ii) all labor utilized in the milking parlor, milking barn, and milkroom is provided by members of the permit holder's immediate family.

E. No person who holds a grade A permit shall use or allow anyone else to use his facilities and equipment for any purpose other than that for which the grade A permit was issued.

F. Each person who holds a grade A dairy farm permit shall display his permit in the milkroom on his dairy farm.

G. Each person who holds a grade A dairy plant permit shall display his grade A plant permit in his facilities where it is accessible for inspection.

H. No grade A permit holder may transfer any grade A permit to another person or another location.

I. No permit holder who has had his grade A dairy farm permit or dairy plant permit revoked by the ~~State Regulatory Authority~~ state regulatory agency shall be eligible to hold a grade A dairy farm or dairy plant permit at any time after the permit holder's permit is revoked.

J. ~~No grade A dairy farm may hold more than one grade A dairy farm permit. Multiple milking facilities or milk tanks on a grade A dairy farm shall not be issued separate grade A dairy farm permits for any reason.~~ If multiple grade A dairy farms with separate herds and bulk holding tanks exist at the same physical mailing address or are under different ownership, each facility must have a separate grade A permit.

K. If a dairy farm owner has more than one grade A dairy farm at more than one separate physical mailing address, each facility must have a separate permit.

2VAC5-490-31. Authority to cancel, suspend, revoke, or deny a permit.

A. The ~~State Regulatory Authority~~ state regulatory agency may cancel, suspend, or revoke the grade A permit of any person~~,~~ or may deny to any person a grade A permit if:

1. The grade A permit holder fails to engage daily in the business for which the grade A permit is issued;

2. The grade A permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth milk, milk product, condensed milk product, or dry milk product;

3. The grade A permit holder fails to provide at no cost to the ~~State Regulatory Authority~~ state regulatory agency samples of milk, milk product, condensed milk product, and dry milk product in the person's possession for testing by the ~~State Regulatory Authority~~ state regulatory agency;

4. The grade A permit holder fails to provide on a daily basis milk, milk product, condensed milk product, or dry milk product in the person's possession for sampling and testing by the ~~State Regulatory Authority~~ state regulatory agency;

5. The grade A permit holder fails to comply with any requirement of this chapter~~,~~ or of §§ 3.2-5200 through 3.2-5211 or 3.2-5218 through 3.2-5233 of the Code of Virginia;

6. A public health hazard exists that affects the grade A permit holder's milk, milk product, condensed milk product, or dry milk product;

7. The grade A permit holder or any agent of the grade A permit holder has obstructed or interfered with the ~~State Regulatory Authority~~ state regulatory agency in the performance of its duties;

8. The person supplies false or misleading information to the ~~State Regulatory Authority~~ state regulatory agency (i) in the person's application for a grade A permit; (ii) concerning the identity of the person who will control the facility that is the subject of the grade A permit; (iii) concerning the amount of milk, milk product, condensed milk product, or dry milk product that the person produces, provides, manufactures, sells, offers for sale, or stores in the Commonwealth, or brings, sends, or receives into the Commonwealth and the distribution of the person's milk, milk product, condensed milk product, or dry milk product; (iv) concerning any investigation conducted by the ~~State Regulatory Authority~~ state regulatory agency; or (v) concerning the location of any part of the person's operation that is subject to a grade A permit;

9. The grade A permit holder engages in fraudulent activity regarding (i) the amount of milk, milk product, condensed milk product, or dry milk product the person offers to sell or sells; or (ii) the collection of samples of the person's milk, milk product, condensed milk product, or dry milk product used to determine compliance with any provision of this chapter or as a basis for payment for milk, milk product, condensed milk product, or dry milk product;

10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on the grade A permit holder's raw milk exceed the standards specified in this chapter;

11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product exceed the standards specified in this chapter;

12. The most recent aflatoxin or drug residue test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product violates the standards specified in this chapter;

~~13. The most recent phosphatase test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product violates the standard specified in this chapter;~~

~~14.~~ 13. The most recent chemical residue test or pesticide residue test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero;

~~15.~~ 14. The grade A permit holder fails to correct any (i) violation of this chapter documented as a result of an inspection or (ii) deficiency or nonconformity documented as a result of a HACCP audit that the ~~State Regulatory Authority~~ state regulatory agency has cited in a written notice of intent to suspend the person's grade A permit, as a violation of this chapter;

~~16. The grade A permit holder's raw milk for pasteurization is warmer than 50°F two hours after the completion of the first milking or the grade A permit holder's raw milk for pasteurization is warmer than 50°F during or after any subsequent milking;~~

~~17.~~ 15. The grade A permit holder's equipment is covered or partially covered by an accumulation of milk solids, milk fat, or other residue so that the milk, milk product, condensed milk product, or dry milk product is adulterated;

~~18.~~ 16. The grade A permit holder sells or offers for sale milk, milk product, condensed milk product, or dry milk product that violates any requirement of this chapter;

~~19.~~ 17. The grade A permit holder's permit is suspended three times within a 12-month period;

~~20.~~ 18. The ~~authority~~ agency in another state responsible for issuing grade A permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth; or

~~21.~~ 19. The ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency has previously revoked the person's grade A permit.

B. The ~~State Regulatory Authority~~ state regulatory agency may summarily suspend a grade A permit for violation of any of the following subdivisions of subsection A of this section: 6, 9, 10, 11, 12, 13, 14, 15, ~~16, 17,~~ or ~~18~~ 16.

C. The ~~State Regulatory Authority~~ state regulatory agency may suspend from sale any condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product in violation of the requirements of this chapter processed by any

grade A dairy plant permit holder in lieu of suspending the grade A dairy plant permit holder's permit.

D. If the ~~State Regulatory Authority~~ state regulatory agency suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter within any 12-month period.

E. If the ~~State Regulatory Authority~~ state regulatory agency issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the ~~State Regulatory Authority~~ state regulatory agency may issue and enforce a written notice of intent to summarily suspend the person's permit at any time within six months after the date the written notice of intent to summarily suspend is issued, to summarily suspend the person's permit if the same violation exists on any inspection during the six-month period specified in the written notice of intent to summarily suspend.

F. The state regulatory agency shall revoke any permit that has been under voluntary suspension for more than 24 months.

2VAC5-490-32. Authority to impound milk and milk products.

The ~~State Regulatory Authority~~ state regulatory agency may impound any condensed milk, condensed milk product, aseptically processed and packaged milk or milk product, retort processed after packaged milk or milk product, dry milk, dry milk product, milk, or milk product if it is in violation of any requirement of this chapter.

2VAC5-490-33. ~~Written warning and suspension notices for violations of quality standards; required procedures.~~ (Repealed.)

~~A. Whenever two of the last four consecutive cooling temperature checks, bacteria counts, or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements; and (iii) that the permit holder's grade A dairy farm permit will be suspended whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or somatic cell counts exceed the standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A raw milk. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~B. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra-pasteurization, or aseptically processed and packaged milk or milk product, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A commingled raw milk for pasteurization, ultra-pasteurization, or aseptically processed and packaged milk or milk product. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~C. Whenever two of the last four consecutive cooling temperature checks, bacteria counts, or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated for each grade A pasteurized or ultra-pasteurized milk or milk product in retail containers; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A pasteurized or ultra-pasteurized milk or milk product in retail containers will be suspended from sale whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or coliform counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~D. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat treated milk products, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated for each grade A bulk shipped heat treated milk product; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A bulk shipped heat-treated milk products. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~E. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy farm permit holder (i) why the permit holder's grade A permit is being suspended; (ii) that he will be contacted by the State Regulatory Authority to establish a date on which the suspension of his permit will be effective; and (iii) that his grade A permit will not be reinstated until laboratory analysis determine that his raw milk is in compliance with the quality standards.~~

~~F. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra-pasteurization, or aseptically processed milk or milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for commingled grade A raw milk in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.~~

~~G. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra-pasteurized milk or milk products in retail containers, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder (i) that the pasteurized or ultra-pasteurized milk and dairy products in violation of the quality standard are suspended from sale; (ii) why the pasteurized or ultra-pasteurized milk and dairy products are suspended from sale; (iii) that the permit holder must contact the State Regulatory Authority when corrections have been made to bring his pasteurized or ultra-pasteurized milk and milk products into compliance before any action will be taken to reinstate sales of his suspended pasteurized or ultra-pasteurized milk and milk products; and (iv) that his pasteurized or ultra-pasteurized milk and milk products will not be reinstated for sale until laboratory analysis determine that the pasteurized or ultra-pasteurized milk and milk products are in compliance with the quality standards.~~

~~H. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat treated milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for grade A bulk shipped heat treated milk products in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.~~

2VAC5-490-34. ~~Inspection of dairy farms, milk plants, condensing plants, and drying plants; HACCP audits of dairy plants.~~ (Repealed.)

~~A. No person who operates a dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth may hold a grade A permit until his dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant has~~

~~been inspected and approved by the State Regulatory Authority.~~

~~B. After permitting, each person's dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth shall be inspected at the minimum frequency as outlined in Section 5 of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," or at a greater frequency as deemed necessary by the State Regulatory Authority.~~

~~C. After permitting, each person's milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth participating in the voluntary HACCP program shall be HACCP audited at the minimum frequency as outlined in Section 5 of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," or at a greater frequency as deemed necessary by the State Regulatory Authority.~~

2VAC5-490-35. The examination of milk and milk products.

~~A. The State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging, from each dairy farm that holds a grade A permit.~~

~~B. After receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging the State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging, from each milk plant located within the Commonwealth that holds a grade A permit.~~

~~C. The State Regulatory Authority shall collect during any consecutive six-month period at least four samples of each heat-treated, pasteurized, ultra-pasteurized, milk, flavored milk, flavored reduced fat milk or low fat milk, flavored nonfat milk, each fat level of reduced fat or low-fat milk, and milk products collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, from each milk plant located in the Commonwealth and holding a grade A permit.~~

~~D. All pasteurized and ultra-pasteurized milk and milk products required sampling and testing shall be conducted only when there are test methods available that are validated by FDA and accepted by NCIMS. Milk and milk products that do not have validated and accepted methods are not required to be tested. Aseptically processed and packaged milk and milk products and retort processed after packaged milk and milk products shall be exempt from the sampling and testing requirements of subsection C of this section.~~

~~E.~~ A. The ~~State Regulatory Authority~~ state regulatory agency shall, except when the production is not on a yearly basis, during each month collect from each milk condensing plant, milk drying plant, whey condensing plant, or whey drying plant holding a grade A permit at least one sample of raw milk for pasteurization, after receipt of the milk by the plant and before pasteurization, and at least one sample of each grade A condensed milk product, grade A dry milk product, grade A condensed whey, and grade A dry whey manufactured. If the production of grade A dry milk products or grade A dry whey is not on a yearly basis, the ~~State Regulatory Authority~~ state regulatory agency shall collect at least five samples within a continuous production period.

~~F.~~ B. The ~~State Regulatory Authority~~ state regulatory agency may collect samples of milk and milk products as it deems necessary from retail establishments selling milk or milk products to determine compliance with ~~2VAC5-490-20,~~ 2VAC5-490-40~~,~~ and 2VAC5-490-50~~, and 2VAC5-490-80~~. Each person who operates the retail establishment shall furnish the ~~State Regulatory Authority~~ state regulatory agency, upon the request of the ~~State Regulatory Authority,~~ state regulatory agency, with the names of all distributors from whom the person has obtained milk or milk products.

~~G.~~ C. The ~~State Regulatory Authority~~ state regulatory agency shall provide the remaining portion of the original raw milk sample from each grade A dairy farm that has been screened positive for animal drug residues by a milk plant, receiving station, or transfer station to the grade A dairy farm's milk marketing organization upon request.

~~H.~~ D. Each grade A permit holder operating a milk plant within the Commonwealth shall provide to the ~~State Regulatory Authority~~ state regulatory agency laboratory determinations of the quantity of vitamin A and vitamin D present in each of the milk plant's milk and milk products to which vitamin A or vitamin D has been added. Each grade A permit holder who operates a milk plant shall provide these laboratory determinations at least annually from a laboratory certified to determine the amount of vitamin A and vitamin D in milk and milk products under the requirements established in "Evaluation of Milk Laboratories," ~~2011~~ 2017 revision, available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Field Programs, Division of HACCP, Laboratory Quality Assurance Branch, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501, USA. Each grade A permit holder who operates a milk plant shall pay for the cost of the laboratory determinations.

2VAC5-490-36. Drug residue monitoring, farm surveillance and follow up.

A. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall:

~~1. Prior to processing any raw milk from bulk tanks on farms, test for residues of beta-lactam drugs all raw milk that the milk plant, receiving station, or transfer station receives for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging;~~

~~2. Test each shipment of bulk tank raw milk or a raw milk supply that has not been transported in bulk milk pickup tankers received for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging by screening tests methods that have been Association of Official Analytical Chemists (AOAC) reviewed and Food and Drug Administration (FDA) accepted. In lieu of any test specified in this subdivision a grade A permit holder may use AOAC first-action and AOAC final-action tests methods. Nothing in this subdivision shall be deemed to require the testing of individual raw milk samples prior to processing collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging;~~

~~3. Implement a random sampling program when the Commissioner of the Food and Drug Administration determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall continue the random sampling program until such time that the Commissioner of the Food and Drug Administration is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days;~~ 1. Comply with all regulations set forth in Appendix N of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision";

~~4.~~ 2. Retain each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the ~~State Regulatory Authority~~ state regulatory agency unless directed otherwise by a representative of the ~~State Regulatory Authority~~ state regulatory agency;

~~5. Abstain from selling or offering for sale any pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk, milk product, or condensed and dry milk product processed from raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging before results of drug screening tests are available and which raw milk later tests positive for drug residues. All of the grade A permit holder's milk commingled with any raw milk that tests positive for drug residues shall be deemed adulterated. Any grade A permit holder operating a milk plant, receiving station, or transfer station shall report to the State Regulatory Authority instances of adulteration immediately;~~

~~6. Record the results of tests on samples of raw milk and retain such records for a period of six months; report records of all results of tests on samples of raw milk to the State Regulatory Authority by the fifteenth day of each month for the preceding month; and maintain and make available to the State Regulatory Authority for inspection and review at the permitted facility records of results of tests on samples of raw milk. Each record of results of tests on samples of raw milk required by this subdivision shall include:~~

~~a. The analyst's signature, date, time, and place where the test was performed;~~

~~b. The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;~~

~~c. The test method used;~~

~~d. The Interstate Milk Shipper Bulk Tank Unit identification number of each grade A milk supply included on each pickup tanker of bulk raw milk tested; and~~

~~e. A~~ 3. Report records of all results of tests on samples of raw milk to the state regulatory agency by the 15th day of each month for the preceding month to include a statement as to whether the test results ~~were~~ are positive or negative. If the results ~~were~~ are positive, the grade A permit holder shall also record~~: (1) The~~ (i) the identity of each producer contributing to the load from which the positive sample of raw milk was taken; ~~(2) The~~ (ii) the name of the person notified at the ~~State Regulatory Authority~~ state regulatory agency of the positive test results; ~~(3) The~~ (iii) the date and time of day the person at the ~~State Regulatory Authority~~ state regulatory agency was notified of the positive test results; and ~~(4) The~~ (iv) the method of notification of the ~~State Regulatory Authority~~ state regulatory agency;

~~7.~~ 4. Immediately notify the ~~State Regulatory Authority~~ state regulatory agency and the milk marketing cooperative or broker of any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and

milk products when the shipment of bulk tank raw milk is found to be positive for drug residues. Nothing in this subdivision shall be deemed to include individual raw milk samples collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and milk products; and

~~8. Test each producer sample of raw milk to determine the farm of origin represented by any sample of raw milk that tests positive for drug residues and immediately report to the State Regulatory Authority the result of each producer sample representing the raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and milk products found to be positive for drug residues;~~

~~9.~~ 5. Provide by facsimile machine or other electronic means to the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads~~; and 10. Immediately discontinue receiving shipments of raw milk from the grade A permit holder whose milk tests positive for drug residues, until subsequent tests are no longer positive for drug residues~~.

B. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall be responsible for the collection and testing of follow-up milk samples for animal drug residues required for permit reinstatement and resumption of milk shipment from the dairy farm each time the grade A dairy farm permit holder's milk test positive for animal drug residues.

C. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall comply with the following when following up on a producer's dairy farm after a positive animal drug residue:

1. Only persons who hold valid permits to weigh, sample, and collect milk issued by the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency shall collect and deliver follow-up milk samples to laboratories for official testing for the purpose of permit reinstatement and the resumption of milk shipments from the dairy farm; and

2. Reports of laboratory testing shall be provided from officially designated laboratories for each milk sample tested for animal drug residues and shall include the following information:

a. The name of the grade A dairy farm permit holder;

b. The patron number of the grade A dairy farm permit holder;

c. The date, time, and temperature of the milk sample when collected;

d. The name of the person who collected the milk sample;

e. The name of the test method used to test the milk sample; and

f. The test result for the milk sample~~; and 3. Only confirmation test methods approved under M-I-96-10 (Revision #8) dated March 22, 2012, and titled "Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back" may be used for follow-up milk sample testing~~.

2VAC5-490-37. Laboratory certification.

A. Each grade A permit holder operating a dairy plant that receives any milk that could require load confirmation or producer ~~trace back~~ traceback as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency results of animal drug residue tests from an officially designated laboratory. Each officially designated laboratory shall maintain a listing in the IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency within six hours of the initial presumptive positive result at the plant.

B. Each officially designated laboratory shall comply with the requirements contained in the "Evaluation of Milk Laboratories, ~~2011~~ 2017 revision" for certification and listing in the "IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers."

2VAC5-490-38. Disposal of adulterated milk.

Each grade A permit holder whose milk tests positive for drug residues or has been otherwise adulterated as defined in this chapter shall dispose of such milk in a manner that removes it from the human food chain or in any manner approved by the U.S. Food and Drug Administration.

2VAC5-490-39. ~~Records of milk purchased or sold; list of sources.~~ (Repealed.)

~~Each grade A permit holder who operates a milk plant, receiving station, or transfer station, and any person who distributes milk or milk products shall furnish the State Regulatory Authority upon request:~~

~~1. A true statement of the quantities of milk and milk products of each grade purchased or sold by the milk plant,~~

~~receiving station, transfer station, or distributor of milk or milk product; and~~

~~2. A list of all sources from which the milk plant, receiving station, transfer station, or distributor of milk or milk product, received milk or milk products.~~

2VAC5-490-39.2. Milk that may be held in a milk storage tank.

No person who holds a grade A permit may place or hold in his milk storage tank~~:~~ (i) any milk except ~~that~~ milk ~~which~~ that was obtained from cows, sheep, goats, water buffalo, or other hooved mammal milked at the grade A permit holder's dairy farm; (ii) any milk ~~which~~ that did not enter the milk storage tank through the milking and milk-handling equipment on the grade A permit holder's dairy farm during the milking of the grade A permit holder's cows, sheep, goats, water buffalo, or other hooved mammal; (iii) any milk ~~which~~ that has been held without refrigeration; or ~~which~~ (iv) any milk that has been exposed to chemical or physical contamination.

2VAC5-490-39.4. ~~Feeding poultry litter and unprocessed body discharges prohibited.~~ (Repealed.)

~~No person holding a grade A permit to produce milk for pasteurization, ultra-pasteurization or aseptic processing shall feed their lactating cows, goats, sheep, water buffalo, or other milking mammals any unprocessed poultry litter or other unprocessed body discharges from any animal.~~

~~Part V~~
~~Labeling~~

2VAC5-490-40. Labeling.

No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth or bring into, send into, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products that are not labeled in compliance with the following:

1. Each grade A permit holder's bottles, containers, and packages enclosing any milk or milk products shall be labeled in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended; the Nutrition Labeling and Education Act (NLEA) of 1990, and regulations developed thereunder; and the Food Allergen Labeling and Consumer Protection Act of 2004;

2. The grade A permit holder shall label or mark all bottles, containers, and packages enclosing any milk or milk products with:

a. The name of a defined milk product, if there is a definition, and if there is no definition, a name that is not false or misleading;

b. The word "reconstituted" or "recombined" if the milk product is made by reconstitution or recombination;

c. The term "grade A" located on the exterior of the package on the principal display panel, the secondary or informational panel, or the cap or cover;

d. The identity of the plant where the grade A permit holder's milk or milk product is pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged by specifying:

(1) The street address, city, state, and zip code of the plant; or

(2) The code assigned the plant under the National Uniform Coding System for Packaging Identification of Milk and Milk Product Processing Plants;

e. In the case of concentrated milk or concentrated milk products the volume or proportion of water to be added for recombining;

f. The name of the milk product that the concentrated milk product will produce, which name shall be preceded by the term "concentrated." In the case of flavored milk or flavored reconstituted milk, the grade A permit holder shall substitute the name of the principal flavor for the word "flavored";

g. In the case of aseptically processed and packaged milk and milk products or retort processed after packaged milk and milk products, the words "keep refrigerated after opening";

h. In the case of aseptically processed and packaged milk or milk products, the term "UHT" ultra-high-temperature;

i. The term "ultra-pasteurized" if the milk or milk product has been ultra-pasteurized;

j. The term "goat" preceding the name of the milk or milk product when the milk or milk product is goat milk or is made from goat milk;

k. The term "sheep" preceding the name of the milk or milk product when the milk or milk product is sheep milk or is made from sheep milk;

l. The term "water buffalo" preceding the name of the milk or milk product when the milk or milk product is water buffalo milk or is made from water buffalo milk;

m. As in the case of cow's milk, goat's milk, sheep's milk, and water buffalo's milk, the common or usual name of the mammal from which the milk was obtained shall precede the name of the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;

n. The information appearing on the label of any bottle, container, or package of milk or milk product shall contain no marks, pictures, graphics, endorsements, or words that are misleading;

o. The "pull date" shall not interfere with the legibility of other labeling required for the milk or milk product and shall be expressed by the first three letters in the name of the month, followed by or preceded by the numeral or numerals constituting the calendar date after which the product shall not be sold or expressed numerically by the number of the month followed by the number of the day. For example, June 1 shall be expressed "JUN 1," "1 JUN," "06 01," or "06-01";

p. The grade A permit holder who operates a milk plant and offers for sale milk or milk product within the Commonwealth shall file and certify with the ~~State Regulatory Authority~~ state regulatory agency the maximum number of days after manufacturing or processing the grade A permit holder's milk or milk products that will be used to determine the "pull date." The grade A permit holder shall establish a "pull date" that under normal storage the milk or milk product meets for a minimum of 96 hours after the "pull date," standards set by this chapter;

q. No person may sell or offer for sale any packaged grade A pasteurized milk, grade A pasteurized milk product, or milk product after the date of the "pull date" on the package;

r. No person may sell or offer for sale any grade A pasteurized milk, grade A pasteurized milk product, or milk product in a package that does not bear the "pull date";

s. Nothing in this chapter shall apply to containers of grade A pasteurized milk, grade A milk products, or milk products that are not to be sold in the Commonwealth; and

t. In the case of condensed or dry milk products, the label shall also contain (i) the identity of the ~~State Regulatory Authority~~ state regulatory agency issuing the processing plant's permit; (ii) the identity of the distributor if the condensed or dry milk products are distributed by a party other than the processing plant, the name and address of the distributor shall also be shown by a statement such as "distributed by"; (iii) the code or lot number identifying the contents with a specific date, run, or batch of the product; and (iv) a statement of the quantity of the contents of the container.

~~Part VI~~
~~Standards for Milk and Milk Products~~

~~2VAC5-490-50. Quality standards for milk and milk products.~~

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, ~~any milk, milk product, condensed milk product, or dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products that do not comply with the following: 1. Grade A raw milk for pasteurization or ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging and all grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall be produced, processed, manufactured and pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged to conform with the following chemical, physical, bacteriological, somatic cell, and temperature standards, and with the requirements of this chapter; 2. No process or manipulation other than (i) pasteurization; (ii) ultra-pasteurization; (iii) aseptic processing and packaging; (iv) retort processed after packaging; or (v) processing methods integral with pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging; and refrigeration may be applied to milk or milk products for the purpose of removing or deactivating microorganisms provided that filtration, bactofugation, or filtration and bactofugation may be performed in the plant in which the milk or milk product is pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged. Nothing in this chapter is deemed to prohibit any grade A permit holder who operates a milk plant from preparing bulk shipments of cream, skim milk, reduced fat or lowfat milk labeled as "heat treated"; if the raw milk, raw cream, skim milk, reduced fat or lowfat milk is heated, one time, to a temperature warmer than 125°F but cooler than 161°F for separation purposes. In the case of heat treated cream, the cream may be further heated to less than 166°F in a continuing heating process and immediately cooled to 45°F or less when necessary for enzyme deactivation (such as lipase reduction) for a functional reason; 3. Grade~~ grade A raw milk ~~and~~ or milk ~~products~~ product for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging ~~shall~~ that does not comply with the following standards:

~~a. The temperature of the raw milk shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;~~

~~b.~~ 1. The bacteria count of raw cow's milk shall not exceed 50,000 bacteria per milliliter prior to commingling with

any other milk; and the bacteria count of raw cow's milk that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization;

~~c.~~ 2. The bacteria count of raw sheep's milk, raw goat's milk, raw water buffalo's milk, or raw milk from any other hooved mammal shall not exceed 100,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of raw sheep's milk, raw goat's milk, raw water buffalo's milk, or raw milk from any other hooved mammal that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization; and

~~d. Raw milk shall freeze at or below -0.530° Hortvet;~~

~~e. Raw milk shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;~~

~~f.~~ 3. The somatic cell count of raw cow's milk shall not exceed 500,000 somatic cells per milliliter. The somatic cell count of raw water buffalo's milk, raw sheep's milk, or raw milk from any other hooved mammal shall not exceed 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,500,000 somatic cells per milliliter~~;~~.

~~g. Raw milk shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and~~

~~h. Raw milk shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;~~

~~4. Grade A pasteurized or ultra-pasteurized milk and milk products shall comply with the following standards:~~

~~a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained at that temperature;~~

~~b. The bacteria count for any milk or milk products (except acidified or cultured milk or milk products, eggnog, cottage cheese, and other milk or milk products as identified in FDA M-a-98) shall not exceed 20,000 bacteria per milliliter;~~

~~c. Except for commingled milk shipped in a transport tank the coliform count for any milk or milk products shall not exceed 10 coliform organisms per milliliter. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per milliliter;~~

~~d. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) any phosphatase test method prescribed in the Official Methods of Analysis, 19th Edition, 2012, published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be deemed to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed for each separate batch or lot of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;~~

~~e. Milk or milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;~~

~~f. Milk or milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and~~

~~g. Milk or milk products shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;~~

~~5. Grade A pasteurized concentrated (condensed) milk or milk product shall comply with the following standards:~~

~~a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained thereat~~

unless drying is commenced immediately after condensing; and

b. Except for commingled milk shipped in a transport tank, the coliform count for any milk or milk product shall not exceed 10 coliform organisms per gram. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per gram;

6. Grade A aseptically processed and packaged milk and milk products shall comply with the following standards:

a. Aseptically processed and packaged milk and milk products shall be commercially sterile;

b. Aseptically processed and packaged milk and milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

c. Aseptically processed and packaged milk and milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and

d. Aseptically processed and packaged milk and milk products milk shall not contain aflatoxin residues equal to or greater than 0.05 parts per billion;

7. Grade A nonfat dry milk and dry milk or milk products shall comply with the following standards:

a. The bacteria count shall not exceed 10,000 bacteria per gram, and

b. The coliform count shall not exceed 10 coliform organisms per gram;

8. Grade A whey for condensing or drying shall be maintained at a temperature of 45°F (7°C) or less, or 135°F (57°C) or greater; provided that, acid type whey with a titratable acidity of 0.40% or above or a pH of 4.6 or below shall be exempt for the requirements of this subdivision;

9. Grade A pasteurized condensed whey and whey products shall be cooled to 50°F (10°C) or less during crystallization and within 72 hours of condensing. The coliform count of grade A pasteurized condensed whey and whey products shall not exceed 10 coliform organisms per gram; and

10. The coliform count of grade A dry whey, grade A dry whey products, grade A dry buttermilk, and grade A dry buttermilk products shall not exceed 10 coliform organisms per gram.

B. Sanitation requirements for grade A raw milk. 1. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall comply with:

a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 4; Section 7, Items 1r, 2r, 3r, 4r, 5r, 6r, 7r, 8r, 9r, 10r(1), 10r(2), 11r, 12r, 13r, 14r, 15r, 16r, 17r, 18r(2), 18r(3), and 19r; Section 8; Section 10; and Section 13;

b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices A, B, C, D, F, G, H, N, Q, and R;

c. Item 1r. Abnormal milk. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters (based upon bacteriological, chemical, or physical examination) and discard the milk obtained from cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination; and

(2) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health; and dispose of in a manner that will not pollute the environment or any human food the milk obtained from cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health;

d. Item 2r. Milking barn, stable, or parlor; construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the milking herd shall be housed during milking time;

(2) Provide on the grade A permit holder's dairy farm a milking barn, stable, or parlor, which milking barn, stable, or parlor shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling that are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

(c) Have separate stalls or pens for horses, calves, and bulls;

(d) Have natural or artificial light, well distributed for day or night milking;

(e) Have sufficient air space and air circulation to prevent condensation and excessive odors;

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed; and

(g) Not be overcrowded; and

(3) Provide and use only an "automatic milking installation" that complies with the requirements of Appendix Q of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" if the person milks any cows, goats, sheep, water buffalo, or other mammals (except humans) using robots or other automated means in the absence of any human;

e. Item 3r. Milking barn, stable, or parlor; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Keep the interior of the milking barn, stable, or parlor clean;

(2) Keep the floors, walls, ceilings, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;

(3) Keep swine and fowl out of the milking barn, stable, and parlor;

(4) Keep surcingles, belly straps, milk stools, and antikickers clean and stored above the floor; and

(5) Store feed in a manner that will not increase the dust content of the air or interfere with the cleaning of the floor;

f. Item 4r. Cow yard, sheep yard, goat yard, water buffalo yard, or other milking mammal yard. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide and maintain the cow yard, sheep yard, goat yard, water buffalo yard or other milking mammal yard, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;

(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing, or other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing areas remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, and other milking mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's, or other milking mammal's udder and flanks;

(3) Assure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing area;

(4) Maintain any manure packs so as to be properly drained and so as to provide a reasonably firm footing; and

(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing area;

g. Item 5r. Milkhouse or room; construction and facilities. Each who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted except as provided under subdivision 1 n of this subsection;

(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

(3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;

(4) Provide one or more floor drains in the milkhouse, which floor drains shall be accessible, and if connected to a sanitary sewer system trapped;

~~(5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;~~

~~(6) Provide adequate natural or artificial light and ventilation in the milkhouse;~~

~~(7) Use the milkhouse for no other purpose than milkhouse operations;~~

~~(8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight fitting, self closing, solid door, which door has been hinged to be single or double acting. Screened vents in the wall between the milkhouse and a breezeway, which separates the milkhouse from the milking parlor, are permitted, provided animals are not housed within the milking facility;~~

~~(9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;~~

~~(10) Provide in the milkhouse a two compartment wash vat and adequate hot water heating facilities;~~

~~(11) Except as provided for under subdivision 1 g (12) of this subsection provide a suitable shelter for the receipt of milk when the grade A permit holder uses a transportation tank for the cooling or storage of milk on the grade A permit holder's dairy farm, which shelter adjacent to, but not a part of, the milkroom; and with the requirements of the milkroom shall comply with respect to construction, light, drainage, insect and rodent control, and general maintenance. In addition to providing a suitable shelter as required by this subsection, the grade A permit holder shall:~~

~~(a) Install an accurate, accessible temperature recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature recording records;~~

~~(b) Install an indicating thermometer as close as possible to the temperature recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:~~

~~(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;~~

~~(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;~~

~~(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and~~

~~(iv) Have the stem fitting installed in a pressure tight seat or other sanitary fitting with no threads exposed;~~

~~(c) Provide an effective means to agitate the transport tank or an approved in line sampling device in order to collect a representative milk sample;~~

~~(12) If the State Regulatory Authority determines conditions exist whereby the milk transport tank may be adequately protected and sampled without contamination, a shelter need not be provided if the grade A permit holder:~~

~~(a) Provides a means to make all milk hose connections to the transport tank accessible from within the milkhouse;~~

~~(b) Provides a means to completely protect the milk hose connection to the transport tank from the outside environment. With approval of the State Regulatory Authority, the direct loading of milk from the milkhouse to the milk tank truck may be conducted through a properly designed hose port that adequately protects the milkhouse opening or by stubbing the milk transfer and associated CIP cleaned lines outside the milkhouse wall in accordance with Item 5r, Administrative Procedure #15, of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";~~

~~(c) Ensures only milk transport tanks the manholes of which have been sealed after cleaning and sanitizing are utilized;~~

~~(d) Ensures only milk transport tanks that have been washed and sanitized at permitted dairy plants or a permitted milk tank truck cleaning facilities acceptable to the State Regulatory Agency are utilized;~~

~~(e) Installs an accurate, accessible temperature recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature recording records;~~

~~(f) Installs an indicating thermometer as close as possible to the temperature recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:~~

~~(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;~~

~~(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;~~

~~(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and~~

~~(iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;~~

~~(g) Provides an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample; and~~

~~(h) Provides a self-draining concrete or equally impervious surface on which the transport tank can be parked during filling and storage;~~

~~h. Item 6r. Milkhouse or milkroom; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;~~

~~(2) Place in the milkroom only those articles directly related to milkroom activities; and~~

~~(3) Keep the milkroom free of trash, animals, and fowl;~~

~~i. Item 7r. Toilets. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide on the person's grade A dairy farm one or more toilets, which shall be conveniently located and properly constructed, and operated, and maintained in a sanitary manner;~~

~~(2) Prevent the access of flies to the waste contained in or from the toilet;~~

~~(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and~~

~~(4) Assure that there is no direct opening from the toilet into any milkroom;~~

~~j. Item 8r. Water supply. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, of a safe, sanitary quality, and meet the construction standards of Appendix D of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";~~

~~(2) Construct the water supply so that no cross connections between a safe water supply and any unsafe or questionable water supply or other source of pollution exists; and~~

~~(3) Construct the water supply so that no submerged inlets exist through which a safe water supply may be contaminated;~~

~~k. Item 9r. Utensils and equipment construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed as to be easily cleaned; and maintained in good repair;~~

~~(2) Provide milk pails that are constructed to be seamless and of the hooded type if the grade A permit holder does hand milking and stripping;~~

~~(3) Abstain from using multiple-use woven material for straining any milk;~~

~~(4) Use only single-service articles that have been manufactured, packaged, transported, stored, and handled in a sanitary manner and that comply with the requirements of subdivision C 1 of this section;~~

~~(5) Abstain from reusing any article intended for single-service use; and~~

~~(6) Provide farm holding or cooling tanks, welded sanitary piping, and transportation tanks that comply with the requirements of subdivisions C 1 l and C 1 m of this section on any grade A dairy farm;~~

~~l. Item 10r. Utensils and equipment; cleaning. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Clean after each use, or once every 24 hours in the case of continuous operations, the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk;~~

~~(2)~~ 1. Offer for sale or sell no milk that has passed through any equipment if the milk-contact surfaces of the

equipment are no longer visible or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils. Any milk that passes through equipment, the milk-contact surfaces of which are no longer visible~~,~~ or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils, shall be deemed adulterated (Item 10r); ~~and~~

~~(3) Construct a separate wash manifold for all CIP cleaned milk pipelines in all new or extensively remodeled facilities;~~

~~m. Item 11r. Utensils and equipment; sanitization. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall sanitize before each use the product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk;~~

~~n. Item 12r. Utensils and equipment; storage. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to assure complete drainage, and protected from contamination prior to use. Nothing in this requirement shall be deemed to prohibit a grade A permit holder from storing in a milking barn or milking parlor a milk pipeline, or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline or pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk product and solution contact surfaces from contamination at all times;~~

~~o. Item 13r. Milking; flanks, udders, and teats. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Milk all cows, sheep, goats, water buffalo, and other mammals in a milking barn, stable, or parlor;~~

~~(2) Trim the hair from the udder and tail of all milking cows, sheep, goats, water buffalo, and other mammals to facilitate cleaning of the udder and tail;~~

~~(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, goats, water buffalo, and other mammals free of visible dirt;~~

~~(4) Keep the hair on the udders of all milking cows, sheep, goats, water buffalo, and other mammals to a length that the hair on the udder of any cow, sheep, goat, water buffalo, or other mammal cannot be incorporated with the teat in the inflation during milking;~~

~~(5) Abstain from milking any cow, sheep, goat, water buffalo, or other mammal whose udder or teats is not clean and dry;~~

~~(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, goat, water buffalo, and other mammal and dry the teats of each milking cow, sheep, goat, water buffalo, and other mammal before milking; and~~

~~(7) Milk all cows, sheep, goats, water buffalo, and other mammal with dry hands;~~

~~p. Item 14r. Protection from contamination. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Locate and operate the milking and milkhouse operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;~~

~~(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;~~

~~(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;~~

~~(4) Handle all containers, utensils and equipment that have been sanitized in such a manner as to prevent contamination of any product contact surfaces;~~

~~(5) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles that are constructed and operated to protect the milk from sun, freezing, and contamination;~~

~~(6) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and~~

~~(7) Transport no substance capable of contaminating the milk when transporting milk;~~

~~q. Item 15r. Drug and chemical control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the milk product contact surface of any equipment, containers, or utensils;~~

~~(2) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animals or store~~

~~unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:~~

~~(a) For over the counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;~~

~~(b) Directions for use of the drug or medicinal and the prescribed holding time;~~

~~(c) Any cautionary statement for the drug or medicinal, if needed; and~~

~~(d) The active ingredient or ingredients in the drug or medicinal;~~

~~(3) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals to include dairy calves, dairy heifers, and dairy bulls;~~

~~(4) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals, to include dairy calves, dairy heifers, and dairy bulls, separate from those medicinals or drugs used for lactating dairy animals; and~~

~~(5) Store topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products in a manner that does not contaminate any milk or the milk product surfaces of any containers or utensils;~~

~~r. Item 16r. Personnel; hand washing facilities. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, or parlor, and flush toilet and that include separate hot and cold running water; soap or detergent; and individual sanitary towels or other approved hand drying devices. When individual sanitary towels are used, covered trash containers shall be provided;~~

~~s. Item 17r. Personnel; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Wash clean and dry with an individual sanitary towel or other approved hand drying device the person's hands immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and~~

~~(2) Wear clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Bulk milk haulers shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;~~

~~t. Item 18r. Cooling. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Cool to 40°F or cooler (but not freeze) all raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging within two hours after the grade A permit holder completes milking and assure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization that is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold;~~

~~(2) Assure that circular recording charts are operated continuously and maintained in a properly functioning manner. Circular charts shall not overlap; and~~

~~(3)~~ 2. Provide covered trash containers when individual sanitary towels are used (Item 16r);

3. Agitate all raw milk for pasteurization for not less than five minutes at least once every hour; assure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking; and abstain from selling or offering for sale milk that does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking (Item 18r);

4. Equip all farm bulk milk tanks with an approved temperature-recording device (Item 18r); and

~~u. Item 19r. Insect and rodent control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

(1) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals, and by chemicals used to control insects, rodents, and other animals;

(2) 5. Maintain the milkroom free of insects, rodents, and other animals; (Item 19r).

(3) Keep the areas surrounding the milkhouse; milking barn; milking stable; milking parlor; cattle, sheep, water buffalo, other mammal, or goat housing; cattle, sheep, water buffalo, other mammal, or goat loafing area; water supply; or other facilities on the grade A permit holder's dairy farm neat, clean, and free of conditions that might harbor or be conducive to the breeding of insects and rodents; and

(4) Store all feed in such a manner that the feed will not attract birds, rodents, or insects.

C. Sanitation requirements for grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products.

1. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall comply with:

a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 7, Items 1p, 2p, 3p, 4p, 5p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 13p, 14p, 15p, 16p, 17p, 18p, 19p, 20p, 21p, and 22p (provided in the case of milk plants or portions of milk plants that are IMS-Listed to produce aseptically processed and packaged milk or milk products, the APPS or RPPS, respectively, as defined in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," shall be exempt from Items 7p, 10p, 11p, 12p, 13p, 15p, 16p, 17p, 18p, and 19p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and shall comply with the applicable portions of 21 CFR Parts 108, 110, and 113); Section 13; and Section 14;

b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices D, F, G, H, I, J, K, L, N, O, R, and S;

c. Item 1p. Floors; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Except as specified in subdivision C 1 c (2) of this section, provide floors for all rooms in which milk or milk products are processed, handled, packaged, or stored, or in which milk containers, equipment, or utensils are washed, constructed of concrete or other equally impervious and easily cleaned material and that are smooth, properly sloped, provided with trapped drains, and kept in good repair; and

(2) The floor in any cold storage room used for storing milk and milk products need not be provided with floor drains if the floors are sloped to drain to one or more exits from the cold storage room. The floor in any storage room used for storing dry ingredients or packaging materials need not be provided with drains, and the floor in any storage room used for storing dry ingredients or packaging materials may be constructed of tightly joined wood;

d. Item 2p. Walls and ceilings; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide walls and ceilings of rooms in which milk or milk products are handled, processed, packaged, or stored, or in which milk containers, utensils, or equipment are washed, that have a smooth, washable, light-colored surface, and that are in good repair;

e. Item 3p. Doors and windows. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide:

(1) Effective means to prevent the access of insects and rodents to any part of a milk plant, receiving station, or transfer station; and

(2) Solid doors or glazed windows for all openings to the outside of any milk plant, receiving station, or transfer station and keep the doors and windows closed during dusty weather;

f. Item 4p. Lighting and ventilation. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide rooms in which any milk or milk products are handled, processed, packaged, or stored, or in which any milk containers, equipment, or utensils are washed, that are well lighted and well ventilated;

g. Item 5p. Separate rooms. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide separate rooms for: (i) pasteurizing, processing, cooling, reconstituting, condensing, drying, and packaging of milk, dry milk, and milk products; (ii) cleaning milk cans, containers, bottles, cases, and dry milk or dry milk product containers; (iii) the fabrication of containers and closures for milk and milk products, except for aseptically processed and packaged milk and

milk products, or retort processed after packaging milk and milk products in which the containers and closures are fabricated within the APPS or RPPS, respectively; (iv) cleaning and sanitizing facilities for bulk milk transport tanks if the grade A permit holder receives any milk or milk product in bulk milk transport tanks; and (v) receiving cans of milk and milk products separate from clauses (i), (ii) and (iii) of this subdivision, unless all of the grade A permit holder's milk or milk products are received in bulk milk transport tanks;

(2) Not use any room with a direct opening into any stable or room used for domestic purposes to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment;

(3) Use rooms of sufficient size so as not to be crowded to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment; and

(4) Provide designated areas or rooms for the receiving, handling, and storage of returned packaged milk and milk products if the permit holder receives any returned packaged milk or milk products;

h. Item 6p. Toilet sewage disposal facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide each milk plant with toilet facilities conforming with the regulations of the Commonwealth and the following requirements: no toilet room may open directly into any room in which milk or milk products are processed; the toilet room shall be completely enclosed and shall have tight fitting, self-closing doors; the dressing room, toilet room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted; and sewage and other liquid wastes from the toilet room shall be disposed of in a sanitary manner;

i. Item 7p. Water supply. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide water for each milk plant from a supply that is properly located, protected, and operated; and

(2) Provide water from a supply that is easily accessible for inspection by the State Regulatory Authority, adequate, and of a safe, sanitary quality;

j. Item 8p. Hand washing facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide hand-washing facilities, including separate hot and cold running water, mix valve, soap, and individual sanitary towels or other approved hand drying devices, convenient in any area where milk or milk products are handled, processed, or stored, and any area where containers, utensils, or equipment, are washed or stored; and

(2) Keep the hand washing facilities clean and in good repair;

k. Item 9p. Milk plant cleanliness. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Keep clean, neat, and free of any evidence of animals, insects, or rodents all rooms in which milk or milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored; and

(2) Permit only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, in pasteurizing, processing, cooling, condensing, drying, packaging, bulk milk, or milk product storage rooms;

l. Item 10p. Sanitary piping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Use only sanitary piping, fittings, and connections consisting of smooth, impervious corrosion-resistant, nontoxic, easily cleanable materials that are exposed to any milk or milk products, or from which liquids may drip, drain, or be drawn into any milk or milk products;

(2) Keep all piping in good repair;

(3) Except as specified in subdivision 1 l of this subsection, use only sanitary piping to transfer any pasteurized or ultra-pasteurized milk or milk products from one piece of equipment to another piece of equipment; and

(4) Transport cottage cheese, cheese dressings, or cheese ingredients by methods that protect the product from contamination;

m. Item 11p. Construction and repair of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Use only multiuse containers and equipment, that may come in contact with any milk or milk products constructed of smooth, impervious, corrosion-resistant,

and nontoxic materials; constructed for ease of cleaning; and kept in good repair;

(2) Use only single-service containers, closures, gaskets, and other articles that may come in contact with any milk or milk products that are nontoxic and have been manufactured, packaged, transported, and handled in a sanitary manner;

(3) Abstain from using more than once any articles intended for single-service use; and

(4) Use only single-service containers, closures, caps, gaskets, and similar articles manufactured, packed, transported, and handled in a manner that complies with the requirements of Appendix J, "Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products" contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

n. Item 12p. Cleaning and sanitizing of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Effectively clean and sanitize before each use the product-contact surfaces of all multiuse containers and equipment, utensils, and equipment used in the transportation, processing, handling, and storage of any milk or milk products;

(2) Use only multiuse containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count on multiuse containers may not exceed one per milliliter of capacity when the rinse test is used, or the residual bacteria count on multiuse containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product-contact surface when the swab test is used; in three out of four samples taken at random on a given day; and (ii) all multiuse containers shall be free of coliform organisms; and

(3) Use only single-service containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count of single-service containers shall not exceed 50 per container when the rinse test is used, except that in containers less than 100 milliliters, the count shall not exceed 10, or the residual bacteria count of single-service containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product-contact surface when the swab test is used; in three out of four samples taken at random on a given day; and (ii) all single-service containers shall be free of coliform organisms;

o. Item 13p. Storage of cleaned containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products, shall after cleaning any multiuse milk or milk product containers, utensils, or equipment, transport or store the multiuse milk or milk product containers, utensils, or equipment in a manner that assures complete drainage and in a manner that protects the multiuse milk or milk product containers, utensils, or equipment from contamination before use;

p. Item 14p. Storage of single-service containers, utensils, and materials. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Purchase all single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons;

(2) Store in a clean dry place until used, single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products;

(3) Store single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons; and

(4) Handle single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in a sanitary manner;

q. Item 15p. Protection from contamination. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Locate the person's equipment and facilities and conduct milk plant operations to prevent any contamination of any milk or milk products, ingredients, equipment, containers, or utensils;

(2) Discard all milk, milk products, or ingredients that have been spilled, overflowed, or leaked;

(3) Perform the processing and handling of products other than grade A milk and milk products in the person's milk plant to preclude the contamination of any grade A milk or milk products;

(4) Store, handle, or use any poisonous or toxic material to preclude the contamination of any milk, milk product, or ingredient and the milk product contact surfaces of all equipment, containers, or utensils; and

(5) Clean, prior to use, all multiuse cases used to encase packaged milk or milk product containers;

r. Item 16p. Pasteurization and ultra-pasteurization. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Perform pasteurization or ultra-pasteurization as defined in 2VAC5-490-10, and Item 16p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision"; and

(2) Perform aseptic processing and packaging and retort processed after packaging in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113;

s. Item 17p. Cooling of milk. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Maintain all raw milk and milk products at a temperature of 45°F or cooler, but not frozen, until processed;

(2) Maintain all whey and whey products for condensing, drying, or condensing and drying at a temperature of 45°F (7°C) or cooler; or 135°F (57°C) or greater until processed, except that acid-type whey with a titratable acidity of 0.40% or above, or a pH of 4.6 or below, is exempted from these temperature requirements;

(3) Completely empty and clean the tanks and vessels used to blend and hold all milk or milk product flavoring slurries that contain milk and milk products after each four hours of operation or less if such tanks are not intended to be injected within a HTST pasteurization system as part of a liquid ingredient injection system as outlined in Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" or unless the slurry is stored at a temperature of 45°F (7°C) or cooler, or at a temperature of 150°F (66°C) or greater and maintained thereat;

(4) Immediately cool, except for the following milk or milk products, all pasteurized or ultra-pasteurized milk or milk products prior to filling or packaging in approved cooling equipment to a temperature of 45°F or cooler, but not frozen, unless drying is commenced immediately after condensing:

(a) Those milk or milk products to be cultured;

(b) Cultured sour cream at all milkfat levels with a pH of 4.70 or below;

(c) Acidified sour cream at all milkfat levels with a pH of 4.60 or below;

(d) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling;

(e) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below;

(f) All condensed whey and whey products shall be cooled during the crystallization process to 50°F (10°C) or less within 72 hours of condensing, including the filling and emptying time, unless filling occurs above 135°F (57°C), in which case, the 72 hour time period begins when cooling started; and

(g) All cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be cooled as per specifications of Item 17p (6a-6e) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(5) Store, transport, and deliver at a temperature of 45°F or cooler, but not frozen, all pasteurized or ultra-pasteurized milk or milk products with the following exceptions:

(a) Cultured sour cream at all milkfat levels with a pH of 4.70 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(b) Acidified sour cream at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(c) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling and with a subsequent pH of 4.60 or below within 24 hours after filling shall be cooled to 45°F (7°C) or cooler within 96 hours after filling;

(d) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 24 hours after filling; and

(e) Cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be stored as per specifications of item 17p (5a-5d) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(6) Store all pasteurized milk and milk products to be condensed, dried, or condensed and dried at a temperature of 50°F (10°C) or cooler until further processed;

(7) Equip with an accurate indicating thermometer each of the rooms or tanks in which any milk, milk products, whey, or whey products are stored;

(8) Maintain the temperature on delivery vehicles of milk and milk products at 45°F (7°C) or cooler. Aseptically processed and packaged milk and milk products and retort processed after packaged milk and milk products to be packaged in hermetically sealed containers shall be exempt from the cooling requirements of this item; and

(9) Provide ready access at the plant to cleaning records and product storage temperature records stored electronically for review by the State Regulatory Authority. Electronic records of cleaning shall comply with the applicable provisions of Appendix H, Sections IV and V of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

t. Item 18p. Bottling and packaging. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Bottle or package all milk or milk products at the place of pasteurization in the grade A permit holder's milk plant and in approved mechanical equipment;

(2) Package and store in a sanitary manner all dry milk products in new containers, which protect the contents from contamination; and

(3) Transport and store in a sanitary manner all condensed and dry milk products in sealed containers from one milk plant to another milk plant for further processing or packaging;

u. Item 19p. Capping. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Cap or close all milk or milk product containers in a sanitary manner by use of approved mechanical capping or closing and sealing equipment; and

(2) Use only caps or closures for all milk or milk products that protect the pouring lip of a milk or milk product container to at least its largest diameter and, use with respect to fluid product containers, only caps or closures that the removal of the cap or closure cannot be made without detection;

v. Item 20p. Personnel; cleanliness. No person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Permit any person in a milk plant to commence any plant function before the person has thoroughly washed the person's hands to remove soil and contamination or to permit any person in a milk plant to continue any plant function if the person's hands are not clean;

(2) Permit any person in a milk plant to resume work after the person has visited the toilet room before the person has thoroughly washed the person's hands;

(3) Permit any person in a milk plant to engage in the processing, pasteurization, handling, storage, or transportation of any milk, milk products, containers, equipment or utensils, unless the person is wearing clean outer garments;

(4) Permit any person in a milk plant to engage in the processing of any milk or milk products unless the person wears adequate hair covering; or

(5) Permit any person in a milk plant to engage in the processing of any milk or milk products if the person is using tobacco;

w. Item 21p. Vehicles. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall use vehicles to transport pasteurized and ultra-pasteurized milk and milk products that are constructed and operated so that the milk or milk products are maintained at a temperature of 45°F or cooler, but not frozen, and protected from sunlight, from freezing, and from contamination;

x. Item 22p. Surroundings. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall keep neat, clean, and free from conditions that might attract or harbor flies, other insects, rodents, or other pests that otherwise constitute a nuisance, the area surrounding any milk plant;

y. Each grade A permit holder's receiving station shall comply with subdivisions C 1 a through q of this section, inclusive, and subdivisions C 1 s, v, and x of this section, except that the partitioning requirement of subdivision C 1 g of this section shall not be deemed to apply;

z. Each grade A permit holder's transfer station shall comply with subdivisions C 1 c, f, h through n, p, q, s, v, and x of this section, and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section; except that each person shall provide overhead protection for a transfer station; and

a1. Each grade A permit holder's facilities for the cleaning and sanitizing of bulk tanks that transport milk and milk products shall comply with subdivisions C 1 a, f, h through n, p, q, v, and x of this section, and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section except that each grade A permit holder shall provide overhead protection for facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products in the grade A permit holder's milk plant, receiving station, or transfer station.

D. Minimum facilities requirements for milk processing plant. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed

and packaged, or retort processed after packaging milk or milk products shall:

1. Provide a separate receiving room meeting the requirements of subdivision C 1 y of this section from any other area of the plant for the receipt of milk or milk products in bulk if the plant receives any milk or milk products in bulk;

2. Provide cleaning and sanitizing facilities for milk tank trucks as part of the plant's receiving room facilities if the plant receives any milk or milk products in bulk;

3. Provide a separate receiving room from any other area of the plant for the receipt of milk or milk product in cans or other containers if the plant receives any milk or milk product in cans or other containers;

4. Provide a separate room from any other area of the plant for the cleaning of milk cans or containers, bottles, milk cases, and dry milk or milk product containers if the plant receives any milk in cans or containers or washes any bottles, milk cases, or dry milk or milk product containers;

5. Provide a separate room for the fabrication of containers and closures for milk and milk products if the plant fabricates any containers or closures;

6. Provide a separate room for the packaging of dry milk or milk products if the plant packages any dry milk or milk product; and

7. Provide separate rooms from any other area of the plant for each of the following operations performed on any milk, milk product, or condensed and dry milk product: (i) pasteurization; (ii) processing; (iii) cooling; (iv) reconstitution; (v) condensing; (vi) drying; and (vii) packaging, if the operation is performed in the plant.

Part VII
Animal Health

2VAC5-490-60. Animal health. (Repealed.)

A. No person may produce, provide, manufacture sell, offer for sale, store in the Commonwealth, or bring, send, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk product unless the person complies with the following requirements:

1. Milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging from cows, goats, sheep, water buffalo, and other mammals shall (i) be from a herd or flock that complies with the "Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005," 9 CFR Part 77, and each herd or flock shall be located in a Modified Accredited Advanced Tuberculosis Area or an Area Accredited Free of Bovine Tuberculosis as defined in "Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005"; (ii) be accredited as a tuberculosis free herd by the U.S. Department of Agriculture; (iii) have passed an annual tuberculosis test; or (iv) be located in an area that has established a tuberculosis testing protocol for livestock that assures tuberculosis protection and surveillance of the dairy industry within the area and that is approved by FDA, USDA, and the State Regulatory Authority;

2. Milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging from bison and cattle shall be from a herd that complies with "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," 9 CFR Part 78, and the following:

a. Each herd shall be located in a Certified Brucellosis-Free Area as defined in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," or shall be a certified brucellosis-free herd by the United States Department of Agriculture;

b. Each herd shall meet the requirements for an individually certified herd as defined in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003";

c. Each herd shall participate in a milk ring testing program meeting the requirements specified in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," in an area that conducts a milk ring testing program at least two times per year at approximately equal intervals, and any herd with a positive milk ring test result shall be blood tested within 30 days from the date of the positive milk ring test; or

d. Each cow, bull, heifer, calf, and bison in the herd shall be individually tested by an "official" blood test as defined in "Brucellosis Eradication" for the detection of brucellosis annually;

3. Goat's milk, sheep's milk, water buffalo milk, and milk from other mammals (except bison and cattle) for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall be from a herd or flock that:

a. Has an annual whole-herd brucellosis test as recommended by the State Veterinarian or USDA Area Veterinarian in Charge;

b. Has passed an initial whole-herd or flock brucellosis test, followed by the testing of all replacement animals or any animals entering the milking group or sold as dairy animals on a continuing basis;

c. Has passed an annual random blood testing program sufficient to provide a confidence level of 99% with a P

value of 0.05. Any herd or flock with one or more confirmed positive animals shall go to 100% testing until the whole herd tests show no positive animals are found. The following table provides the random sampling size needed to achieve a 99% confidence with a P value of 0.05:

Herd/Flock Size	Sampling Size	Herd/Flock Size	Sampling Size
20	20	500	82
50	41	600	83
100	59	700	84
150	67	800	85
200	72	1000	86
250	75	1400	87
300	77	1800	88
350	79	4000	89
400	80	10000	89
450	81	100000	90

; or

d. Has passed a USDA approved bulk milk brucellosis test certified for use in each species of mammal and at the USDA recommended frequency for testing with an implementation date based on the availability of the test; and

4. For diseases of cows, sheep, goats, water buffalo, or other mammals that might affect human health, other than brucellosis and tuberculosis, the State Regulatory Authority may require physical, chemical, or bacteriological examinations or other tests as may be deemed necessary by a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority to diagnose the disease. Each grade A permit holder shall dispose of any diseased animal disclosed by testing in a manner that prevents the spread of the disease to other animals or humans.

B. Each grade A dairy farm permit holder shall test his whole herd of milking mammals for brucellosis using a test method acceptable to a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority within 30 days after each positive screening test result on a milk ring test.

Part VIII
Milk and Milk Products That May Be Sold

2VAC5-490-70. Milk or milk products that may be sold. (Repealed.)

A. Except as specified in subsection B of this section from and after September 10, 1993, a person may sell, offer for sale, or expose for sale in the Commonwealth only grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products to the final consumer, or to restaurants, soda fountains, and grocery stores or similar establishments, provided only grade A milk and milk products shall be sold to milk plants for use in the commercial preparation of grade A milk and milk products.

B. No person may sell, offer for sale, or expose for sale in the Commonwealth any pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products that have not been graded or the grade of which is not known to the final consumer, or to restaurants, soda fountains, and grocery stores or similar establishments unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that the supply of grade A raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging is not adequate to meet the nutritional needs of any person who secures milk in Virginia; or the supply of pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk product at retail is not available for purchase by any person who secures milk in Virginia.

C. No person may sell, offer for sale or expose for sale or possess in the Commonwealth any pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products under the provision of subsection B of this section unless the milk or milk product is labeled "ungraded."

2VAC5-490-73. Mandatory pasteurization for all milk, milk products, condensed milk, condensed milk products, aseptically processed and packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, and dry milk products in final package form intended for direct human consumption. (Repealed.)

No person shall sell or hold with intent to sell or offer to sell in intrastate commerce any milk, milk product, condensed milk, condensed milk product, aseptically processed and packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, or dry milk product in final package form for direct human consumption unless the product has been pasteurized or is made from milk,

~~milk product, condensed milk, condensed milk product, aseptically processed and packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, or dry milk product that has all been pasteurized, except where alternative procedures to pasteurization are provided for under 21 CFR Part 133 for curing of certain cheese varieties.~~

2VAC5-490-80. ~~Transferring, delivery containers, cooling.~~ (Repealed.)

~~A. No person, except as authorized in this chapter, may transfer any milk or any milk product from one container or tank truck to another container or tank truck in any place except a milk plant, receiving station, transfer station, or milkhouse especially used for that purpose and no person may dip or ladle any milk or milk product;~~

~~B. No person may sell or serve to the public any pasteurized or any ultra pasteurized milk or milk product which has not been maintained at a temperature of 45°F or cooler, but not frozen. No person may store any pasteurized or ultra-pasteurized containers of milk or milk products in ice unless the container is properly drained.~~

2VAC5-490-90. ~~Milk and milk products from beyond the limits of routine inspection.~~ (Repealed.)

~~No person may provide, sell, offer for sale, or store in the Commonwealth or bring, send, or receive in the Commonwealth any condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product from outside the Commonwealth unless the condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk products are produced and pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged under regulations that are substantially equivalent to this chapter and the supply of the milk and the milk plant that produced the condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product has been awarded a milk sanitation compliance rating of at least 90 and an enforcement compliance rating of at least 90, or awarded an acceptable HACCP listing made by a state milk sanitation listing officer certified by the United States Public Health Service. The State Regulatory Authority may impound any condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product within the Commonwealth of Virginia if it does not comply with the requirements of this section.~~

2VAC5-490-100. ~~Construction plans for dairy farms and milk plants.~~ (Repealed.)

~~No grade A permit holder may construct, reconstruct, or modify a milkhouse, milking barn, stable, parlor, milk tank truck cleaning facility, transfer station, receiving station, or milk plant regulated under this chapter without submitting to the State Regulatory Authority written plans for review and approval before construction work is begun.~~

~~Part IX~~
~~Construction Plans for Dairy Farms and Milk Plants~~

2VAC5-490-103. Equipment and facilities; accessibility for inspection.

Each grade A permit holder shall ensure that his facilities and equipment are accessible for inspection by complying with the following:

1. Concrete lids, covers and access doors to each well house, water supply, or pump house shall be easily lifted or opened by a single person and require the person to lift no more than 80 pounds to gain free access to the facilities for inspection;

2. If the permit holder locks any portion of his facilities requiring inspection, the permit holder, upon request, shall provide the ~~State Regulatory Authority~~ state regulatory agency with keys to open the facilities, or the combination code for each lock to unlock the facilities, or the permit holder shall ensure that he or his agent is always available on the premises to provide access to the locked facilities during all normal inspection times;

3. If the permit holder installs floor mats on cow standing surfaces in the milking parlor or barn, the entire area of the floor underneath of the floor mats shall be accessible for inspection by a single person working continuously for 20 minutes including the time necessary to lift and replace the floor mats on the floor;

4. If the permit holder installs any equipment that requires ~~a tool or~~ tools to be disassembled for inspection, the permit holder shall provide the ~~tool or~~ tools freely accessible to the ~~State Regulatory Authority~~ state regulatory agency during all normal inspection times;

5. If the permit holder installs any equipment requiring inspection in an attic, loft, pit, or other area requiring a ladder for access, the permit holder shall provide a ladder convenient to each of these areas during all normal inspection times; and

6. If the permit holder installs any milk lines or other milking equipment, milk transfer or wash solution lines in an attic, loft, pit, or other area not visible from below by the ~~State Regulatory Authority~~ state regulatory agency, the permit holder shall ensure that all fittings and joints are welded and contain no gaskets or joints that could leak and

that the interior surfaces of all milk lines or other milking equipment, milk transfer or wash solution lines is fully accessible for inspection from outside the attic, loft, pit, or other area not visible from below.

2VAC5-490-105. New or test facilities and equipment; equipment design, construction, and approval process.

A. At the request of any grade A permit holder, the ~~State Regulatory Authority~~ state regulatory agency may allow the temporary installation of equipment or the temporary construction of dairy facilities that the ~~State Regulatory Authority~~ state regulatory agency has no or limited regulatory experience with, on a trial basis, to determine if the equipment or dairy facilities can comply with the requirements of this chapter under normal conditions of use. The ~~State Regulatory Authority~~ state regulatory agency will at a minimum evaluate the equipment or facilities for compliance with the requirements of this chapter when newly installed, as well as, complete a separate evaluation of the inspection record during the trial of the equipment or facilities to comply with the requirements of this chapter over time under normal conditions of use.

B. At the conclusion of each trial, the ~~State Regulatory Authority~~ state regulatory agency shall inform the grade A permit holder in writing if the equipment or facilities or both the equipment and facilities comply with the requirements of this chapter. If the equipment or facilities do not comply or both the equipment and facilities do not comply with the requirements of this chapter, the ~~State Regulatory Authority~~ state regulatory agency shall inform the grade A permit holder in writing to alter or remove his equipment or facilities or to alter or remove both his equipment and facilities within a maximum of six months from the date of receipt of the written decision by the permit holder.

C. The ~~State Regulatory Authority~~ state regulatory agency may renew or extend any temporary installation of equipment or the temporary construction of dairy facilities beyond the time specified in the written agreement between the grade A permit holder and the ~~State Regulatory Authority~~ state regulatory agency.

D. If the ~~State Regulatory Authority~~ state regulatory agency agrees to allow the temporary installation of equipment or the temporary construction of dairy facilities, the ~~State Regulatory Authority~~ state regulatory agency and the grade A permit holder installing the equipment or constructing the facilities shall each sign a written agreement that at a minimum includes:

1. A description of the equipment or facilities and detailed plans for their installation acceptable to the ~~State Regulatory Authority~~ state regulatory agency;

2. The name of the grade A permit holder and the physical address where the equipment or facilities will be installed;

3. The name and contact information for the person ~~or persons~~ who will be installing the equipment or constructing the facilities;

4. A detailed plan including:

a. A description of the items to be evaluated by the ~~State Regulatory Authority~~ state regulatory agency;

b. Criteria to judge the acceptability of performance by which each item being evaluated will be measured by the ~~State Regulatory Authority~~ state regulatory agency;

c. A time table specifying the length of the trial, the minimum number of inspections, and time periods between inspections;

d. How inspection findings will be documented and reviewed with the permit holder and at what frequency;

e. A provision for the ~~State Regulatory Authority~~ state regulatory agency to end the temporary installation agreement before the completion of the timeline and reject the equipment or facilities as not complying with the requirements of this chapter if continuation of the trial will not substantially affect the decision of the ~~State Regulatory Authority~~ state regulatory agency;

f. A provision that at the end of the timeline specified in the agreement, the permit holder will remove or alter the equipment or facilities within a maximum of six months from the date ~~he~~ the permit holder receives written instruction to do so from the ~~State Regulatory Authority~~ state regulatory agency to comply with the requirements of this chapter if the ~~State Regulatory Authority~~ state regulatory agency does not approve the equipment or facilities; and

g. A provision that the permit holder's failure to remove or alter the equipment or facilities to comply with the requirements of this chapter within six months after receipt of written instructions from the ~~State Regulatory Authority~~ state regulatory agency shall be considered sufficient cause for permit suspension.

~~Part X~~
~~Personnel Health~~

2VAC5-490-110. Personnel health.

A. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, may work at any dairy farm or milk plant in any capacity ~~which~~ that brings the person into contact with the production, handling, storage, or transportation of milk or milk products, or into contact with milk or milk product containers, equipment, or utensils.

B. No person holding a grade A permit may employ any person having, or suspected of having, any disease in a

communicable form, or of being a carrier of a communicable disease.

C. Any grade A permit holder who produces or distributes milk or milk products, or condensed or dry milk products upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of a communicable disease, shall notify the ~~State Regulatory Authority~~ state regulatory agency immediately.

2VAC5-490-120. ~~Procedure when infection is suspected.~~ (Repealed.)

~~When reasonable cause exists to suspect the possibility of transmission of infection of a communicable disease from any person concerned with the handling of milk or milk products to any other person, the person concerned with the handling of milk or milk products and the person holding the grade A permit shall comply with the following measures:~~

~~1. The immediate exclusion of that person from milk handling;~~

~~2. No grade A permit holder may sell or offer for sale any milk or milk products that have been handled by or exposed to a person who is suspected of having a communicable disease or being a carrier of a communicable disease; and~~

~~3. Each person who is suspected of having a communicable disease or being a carrier of a communicable disease and his associates, at the discretion of the State Regulatory Authority, shall submit to medical and bacteriological examination by a licensed physician in the Commonwealth sufficient to make a medical diagnosis.~~

~~Part XI~~
~~Voluntary HACCP Program~~

~~Article 1~~
~~Program Participation~~

2VAC5-490-131. HACCP program participation voluntary.

~~A. Participation in the HACCP program is voluntary for each person who operates a dairy plant, receiving station, or transfer station and the State Regulatory Authority responsible for the permitting and auditing of each person's dairy plant, receiving station, or transfer station. No person operating a milk plant, receiving station, or transfer station may participate in the voluntary HACCP program unless the State Regulatory Agency responsible for the permitting and auditing of each person's dairy plant agrees to participate in the voluntary HACCP program also.~~

~~B. Each person volunteering to operate his milk plant, receiving station, or transfer station under the voluntary HACCP program shall provide a written commitment to the State Regulatory Authority responsible for his milk plant, receiving station, or transfer station that he will supply the necessary resources to support participation in the voluntary HACCP program.~~

~~C. Each State Regulatory Authority volunteering to participate in the voluntary HACCP program shall provide a written commitment to the person requesting to operate a milk plant, receiving station, or transfer station under the voluntary HACCP program that the State Regulatory Authority will supply the necessary resources to support participation in the voluntary HACCP program.~~

~~D.~~ Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall have a minimum of 60 days of HACCP system records prior to a HACCP listing audit. Each milk plant, receiving station, or transfer station shall be inspected and permitted initially by the ~~State Regulatory Authority~~ state regulatory agency and shall be regulated initially under the requirements of this chapter without taking into consideration the provisions of this part until the ~~State Regulatory Authority~~ state regulatory agency conducts an acceptable HACCP listing audit documenting the successful implementation of a fully functioning HACCP system in the person's milk plant, receiving station, or transfer station.

~~E. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:~~

~~1. Comply with all of the provisions applicable to the voluntary HACCP program contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" to include:~~

~~a. Section 7;~~

~~b. Items 16p, 16p(A), 16p(B), 16p(C), and 16p(D);~~

~~c. Section 13;~~

~~d. Section 14;~~

~~e. Appendix H;~~

~~f. Appendix I;~~

~~g. Appendix K;~~

~~h. Appendix R; and~~

~~i. Appendix S.~~

~~2. Prepare their HACCP plan based on the following HACCP principles:~~

~~a. Conduct a hazard analysis;~~

~~b. Determine the critical control points;~~

~~c. Establish critical limits;~~

~~d. Establish monitoring procedures;~~

~~e. Establish corrective actions;~~

f. Establish verification procedures; and

g. Establish recordkeeping and documentation procedures;

3. Prior to the implementation of a HACCP plan develop, document, and successfully implement written prerequisite programs that provide the basic environment and operating conditions that are necessary for the production of safe, wholesome food.

Article 2
Implementation of a HACCP System

2VAC5-490-132. Prerequisite programs.

A. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall: 1. Provide provide complete, up-to-date process flow diagrams for all grade A milk, milk products, condensed milk, condensed milk products, dry milk, or dry milk products prior to developing the HACCP plan;.

2. Provide a brief written description or checklist for each prerequisite program that can be audited against to ensure compliance. Each prerequisite program shall include procedures that can be monitored, records that specify what is monitored, and how often it will be monitored;

3. Develop and implement prerequisite programs that address conditions and practices before, during, and after processing;

4. Develop and implement prerequisite programs that address:

a. Safety of the water that comes into contact with milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, or product contact surfaces, including steam and ice;

b. Condition and cleanliness of equipment product-contact surfaces;

c. Prevention of cross-contamination from unsanitary objects or practices to milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, or product-contact surfaces, packaging material, and other food-contact surfaces, including utensils, gloves, outer garments, etc., and from raw product to processed product;

d. Maintenance of hand washing, hand sanitizing, and toilet facilities;

e. Protection of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, packaging material, and product-contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminates;

f. Proper labeling, storage, and use of toxic compounds;

g. Control of employee health conditions, including employee exposure to high-risk situations, that could result in the microbiological contamination of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, packaging materials, and product-contact surfaces; and

h. Pest exclusion from the milk plant, receiving station, or transfer station;

5. In addition to the required prerequisite programs specified in this section, any other prerequisite programs that are being relied upon in the hazard analysis to reduce the likelihood of hazards such that they are not reasonably likely to occur shall also be monitored, audited, and documented as required prerequisite programs; and

6. Comply with the requirements of Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."

B. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:

1. Monitor the conditions and practices of all required prerequisite programs with sufficient frequency to ensure conformance with those conditions and that are appropriate both to the milk plant, receiving station, or transfer station and to the safety of the milk, milk products, condensed milk, condensed milk products, dry milk, or dry milk products being processed;

2. Document the correction of those conditions and practices that are not in conformance with all prerequisite programs;

3. Determine the frequency of calibration for indicating thermometers, recording thermometers, and other devices used to monitor prerequisite programs and ensure that they are properly calibrated to assure accuracy at the determined frequency; and

4. Maintain records that document the monitoring and corrections required by their prerequisite programs for review by the State Regulatory Authority.

2VAC5-490-133. ~~Hazard analysis.~~ (Repealed.)

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Develop, or have developed for it, a written hazard analysis to determine whether there are hazards that are reasonably likely to occur for each type of milk, milk product, condensed milk, condensed milk product, dry milk, dry milk product processed or handled by the milk plant, receiving station or transfer station and to identify

~~the control measures that the milk plant, receiving station or transfer station can apply to control those hazards;~~

~~2. Include in the hazard analysis, hazards that can be introduced both within and outside the milk plant, receiving station or transfer station environment, including hazards that can occur during handling, transportation, processing and distribution;~~

~~3. Evaluate milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product hazards that are reasonably likely to occur and at a minimum, giving consideration to the following:~~

~~a. Microbiological contamination;~~

~~b. Parasites;~~

~~c. Chemical contamination;~~

~~d. Unlawful drug and pesticide residues;~~

~~e. Natural toxins;~~

~~f. Unapproved use of food or color additives;~~

~~g. Presence of undeclared ingredients that may be allergens; and~~

~~h. Physical hazards.~~

2VAC5-490-134. ~~HACCP plan.~~ (Repealed.)

~~A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall develop and implement a written HACCP plan whenever a hazard analysis reveals one or more hazards that are reasonably likely to occur.~~

~~B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan complies with the following:~~

~~1. The HACCP plan shall be developed by one or more individuals who have been trained in accordance with the requirements of this chapter;~~

~~2. The HACCP plan shall be subject to the recordkeeping requirements of this chapter; and~~

~~3. The HACCP plan shall be specific to each location and milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;~~

~~C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan shall at a minimum:~~

~~1. Include complete up-to-date process flow diagrams for all milk, milk products, condensed milk, condensed milk products, dry milk and dry milk products manufactured;~~

~~2. List all hazards that are reasonably likely to occur as identified in the hazard analysis and that must be controlled for each type of milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;~~

~~3. List the Critical Control Points for each of the identified hazards, including:~~

~~a. Critical Control Points designed to control hazards that could occur or could be introduced in the milk plant, receiving station or transfer station environment;~~

~~b. Critical Control Points designed to control hazards introduced outside the milk plant, receiving station or transfer station environment, including hazards that occur before arriving at the milk plant, receiving station or transfer station; and~~

~~c. A list of Critical Limits that shall be met at each of the Critical Control Points;~~

~~4. List the procedures and the frequency with which they are to be performed that will be used to monitor each of the Critical Control Points to ensure compliance with the Critical Limits;~~

~~5. Include any corrective action plans that have been developed in accordance with the corrective action requirements as described in this chapter, and that are to be followed in response to deviations from Critical Limits at Critical Control Points;~~

~~6. List the verification and validation procedures, and the frequency with which they are to be performed, that the milk plant, receiving station or transfer station will use in accordance with verification and validation requirements as described in this chapter;~~

~~7. Provide a recordkeeping system that documents the monitoring of the Critical Control Points in accordance with the record requirements as described in this chapter; and~~

~~8. Create records that contain only actual values and observations obtained during monitoring.~~

2VAC5-490-135. ~~Corrective actions.~~ (Repealed.)

~~A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall take corrective action as described in subsection B or subsection C of this section whenever a deviation from a Critical Limit occurs.~~

~~B. Before a deviation occurs each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program:~~

~~1. May develop written corrective action plans, which become a part of their HACCP plan. These corrective action plans may predetermine the corrective actions that~~

~~milk plants, receiving stations and transfer stations will take whenever there is a deviation from a Critical Limit;~~

~~2. Shall develop corrective action plans that are appropriate for each particular deviation and that:~~

~~a. Describes the steps to be taken;~~

~~b. Assigns responsibility for taking those steps to ensure that:~~

~~(1) No milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; or~~

~~(2) If such milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product has entered commerce, it is expeditiously removed; and~~

~~(3) The cause of the deviation is corrected.~~

~~C. When a deviation from a critical limit occurs and a corrective action plan that is appropriate for that deviation does not exist, each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:~~

~~1. Segregate and hold the affected milk or milk product, at least until the requirements of subdivisions 2 and 3 of this subsection have been met;~~

~~2. Perform or obtain a review to determine the acceptability of the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product for distribution. The review shall be performed by an individual or individuals qualified by training or experience to perform such a review;~~

~~3. Take corrective action, when necessary, with respect to the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product to ensure that no milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;~~

~~4.Take corrective action, when necessary, to correct the cause of the deviation; and~~

~~5. Perform or obtain timely validation by a qualified individual or individuals to determine whether modification of the HACCP plan is required to reduce the risk of recurrence of the deviation and modify the HACCP plan as necessary.~~

~~D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure that all corrective actions taken in accordance with this section are fully documented in records that are subject to verification.~~

2VAC5-490-136. ~~Verification and validation.~~ (Repealed.)

~~A. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall verify that the HACCP system is being implemented according to design, except that critical factors for aseptically processed and packaged grade A milk and milk products, as determined by the process authority and listed on the scheduled process under 21 CFR Part 113 shall be managed separately from the voluntary HACCP program, even if identified as a critical control point in the hazard analysis. Critical factors identified in the scheduled process shall be monitored under the operating supervision of an individual who has successfully completed an approved course of instruction in low acid canned foods as required by 21 CFR 108.35.~~

~~B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall include in their verification activities:~~

~~1. The calibration of critical control point process-monitoring instruments;~~

~~2. At the option of the person operating a milk plant, receiving station, or transfer station, the performance of periodic end product or in process testing;~~

~~3. A review, including signing and dating, by an individual who has been trained in accordance with the training requirements of this chapter, of the records that document:~~

~~a. The monitoring of critical control points;~~

~~b. The taking of corrective action; and~~

~~c. The calibrating of any process monitoring instruments used at critical control points and the performance of any periodic end-product or in-process testing that is part of HACCP plan verification activities;~~

~~4. The taking of corrective action procedures whenever any verification procedure establishes the need to take a corrective action; and~~

~~5. The calibration of critical control point process-monitoring instruments, and the performance of any periodic end product and in process testing, in accordance with subdivisions 3 a and b of this subsection, shall be documented in records and maintained as required by this chapter.~~

~~C. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:~~

~~1. Validate that the HACCP plan is adequate to control hazards that are reasonably likely to occur at least once within 12 months after implementation of the HACCP system and annually thereafter or whenever any changes in~~

~~the process occur that could affect the hazard analysis or alter the HACCP plan;~~

~~2. Ensure the validation is performed by a qualified individual or individuals trained in accordance with the requirements of this chapter;~~

~~3. Ensure the validation is documented and the records maintained as required by this chapter; and~~

~~4. Ensure the HACCP plan is modified immediately whenever a validation reveals that the HACCP plan is no longer adequate.~~

~~D. Whenever a milk plant, receiving station, or transfer station does not have a HACCP plan, because a hazard analysis has revealed no hazards that are reasonable likely to occur, the person operating the milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall reassess the adequacy of the hazard analysis whenever there are any changes in the process that could reasonably affect whether a hazard exists.~~

2VAC5-490-137. ~~Records.~~ (Repealed.)

~~A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:~~

~~1. Use consistent terminology to identify each piece of equipment, record, document, or other program throughout their written HACCP system;~~

~~2. Maintain the following records documenting the HACCP system:~~

~~a. Records documenting the ongoing application of the prerequisite programs, including a brief written description, monitoring and correction records;~~

~~b. The written hazard analysis;~~

~~c. The written HACCP plan;~~

~~d. A table of contents and centralized list of the HACCP program records, by title, documenting the ongoing application of the HACCP system;~~

~~e. A document change log;~~

~~f. Records documenting the ongoing application of the HACCP plan that include:~~

~~(1) Monitoring of Critical Control Points and their Critical Limits, including the recording of actual times, temperatures, or other measurements, as prescribed in the HACCP plan;~~

~~(2) Corrective actions, including all actions taken in response to a deviation;~~

~~(3) A centralized deviation log; and~~

~~(4) Plan validation dates;~~

~~g. Required HACCP documents and forms specified in subdivisions 2 a through c of this subsection shall be dated or identified with a version number and each page shall be marked with a new date or version number whenever that page is updated; and~~

~~h. Records documenting verification and validation of the HACCP system, including the HACCP plan, hazard analysis and the prerequisite programs.~~

~~B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records include:~~

~~1. The identity of the milk plant, receiving station or transfer station;~~

~~2. The date and time of the activity that the record reflects;~~

~~3. The signature or initial of the person or persons performing the operation or creating the record;~~

~~4. Where appropriate, the identity of the milk or milk product and the production code, if any;~~

~~5. Processing and other information entered on the records at the time that it is observed; and~~

~~6. Only the actual values and observations obtained during monitoring.~~

~~C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records specified in subdivisions A 2 a through c of this section:~~

~~1. Have been signed and dated by the most responsible individual onsite at the milk plant, receiving station or transfer station to signify that the records have been accepted by the firm; and~~

~~2. Are signed and dated upon initial acceptance;~~

~~a. Upon any modification; and~~

~~b. Upon verification and validation.~~

~~D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:~~

~~1. Ensure all records required by this section for perishable or refrigerated products are retained for one year after the date that such products were prepared, and in the case of frozen, preserved, or shelf stable products, for two years after the date that the products were prepared or the for the shelf life of the product, whichever is greater;~~

~~2. Ensure all records that relate to the adequacy of equipment or processes used, such as commissioning or process validation records, including the results of scientific studies and evaluations, shall be maintained at the milk plant, receiving station or transfer station facility~~

~~for a least two years after the date that the milk plant, receiving station or transfer station last used such equipment or process;~~

~~3. Ensure that all processing records stored off site are a minimum of six months old from the date that the monitoring occurred and can be retrieved and provided on site within 24 hours after a request by the State Regulatory Authority. Electronic records shall be considered accessible on site if they can be accessed on site; and~~

~~4. Ensure all records required by this subsection shall be available for review by the State Regulatory Authority at all reasonable hours.~~

2VAC5-490-138. ~~Training.~~ (Repealed.)

~~Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall ensure that each person who is responsible for (i) developing a hazard analysis; (ii) delineating control measures; (iii) developing a HACCP plan that is appropriate for the specific milk plant, receiving station, or transfer station; (iv) validating and modifying the HACCP plan; or (v) performing required HACCP plan record reviews has received basic HACCP training and an orientation to the HACCP requirements contained in Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."~~

~~Part XII~~
~~Interpretation and Enforcement~~

2VAC5-490-140. Interpretation and enforcement.

A. ~~This chapter is based on the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision." Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision." B.~~ The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~C.~~ B. The ~~State Regulatory Authority~~ state regulatory agency shall comply with the following administrative procedures when summarily suspending a grade A permit as specified in 2VAC5-490-31 B:

1. The ~~State Regulatory Authority~~ state regulatory agency shall serve upon the grade A permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the grade A permit holder of the right to appear before the ~~State Regulatory Authority~~ state regulatory agency in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose grade A permit has been summarily suspended (within 30 days after the effective date of the summary suspension) the ~~State Regulatory Authority~~ state regulatory agency shall within seven days after the date of receipt by the ~~State Regulatory Authority~~ state regulatory agency of a written application from any person whose grade A permit has been summarily suspended proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question and upon evidence presented at the informal fact-finding conference shall affirm, modify, or rescind the summary suspension;

3. The ~~State Regulatory Authority~~ state regulatory agency shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the ~~State Regulatory Authority~~ state regulatory agency for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose grade A permit has been summarily suspended may be granted an informal fact-finding conference by the ~~State Regulatory Authority~~ state regulatory agency unless the ~~State Regulatory Authority~~ state regulatory agency receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the grade A permit holder may request a formal hearing under § 2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and by providing the ~~State Regulatory Authority~~ state regulatory agency with a statement of the issues in dispute. If the request for a formal ~~conference~~ hearing is denied, the ~~State Regulatory Authority~~ state regulatory agency shall notify the grade A permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal ~~fact-finding conference~~ hearing is denied, the ~~State Regulatory Authority~~ state regulatory agency shall notify the grade A permit holder of the right to file an appeal in the circuit court.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (2VAC5-490)

~~Dairy Farm Inspection Report, ODF-DS-102 (rev. 2/06)~~

~~Application for a Dairy Farm Permit, ODF-DS-100 (rev. 6/12)~~

Dairy Farm Inspection Report, ODF-DS-102 (rev. 2/2018)

Application for a Dairy Farm Permit, ODF-DS-100 (rev. 4/2018)

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-490)

~~Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782, or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240~~

~~Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782, or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240~~

~~Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back, M-I-96-10 (Revision #8), March 22, 2012, published by the Food and Drug Administration, Dairy and Egg Branch (HFS-316), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835~~

~~Evaluation of Milk Laboratories, 2011 Revision, published by the Food and Drug Administration Laboratory Proficiency and Evaluation Team, HFH-450, 6502 South Archer Road, Bedford Park, Illinois 60501~~

~~Grade "A" Pasteurized Milk Ordinance, 2013 Revision, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835~~

~~Official Grade "A" Pasteurized Milk Ordinance Regulatory Laboratory Tests for Grade "A" Milk and Milk Products and Grade "A" Dairy Farm and Milk Plant Water, "M-a-98", March 1, 2013~~

~~Official Methods of Analysis of AOAC International, 19th 20th Edition, 2012, 2016, published by AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417~~

Evaluation of Milk Laboratories, 2017 Revision, published by the Food and Drug Administration Laboratory Proficiency and Evaluation Team, HFH-450, 6502 South Archer Road, Bedford Park, Illinois 60501

Grade "A" Pasteurized Milk Ordinance, 2017 Revision, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Fast-Track Regulation

Title of Regulation: **4VAC5-30. Virginia State Parks Regulations (amending 4VAC5-30-10 through 4VAC5-30-32, 4VAC5-30-50, 4VAC5-30-150, 4VAC5-30-160, 4VAC5-30-170, 4VAC5-30-190, 4VAC5-30-220, 4VAC5-30-230, 4VAC5-30-260, 4VAC5-30-274, 4VAC5-30-276, 4VAC5-30-280, 4VAC5-30-300, 4VAC5-30-370, 4VAC5-30-390 through 4VAC5-30-420; adding 4VAC5-30-95; repealing 4VAC5-30-180).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2019.

Effective Date: October 17, 2019.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

Basis: Section 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation "to prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law"; authorizes the department to promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), as necessary to carry out the

purposes and provisions of the subtitle; and establishes that any violation of the Virginia State Parks Regulations constitutes a Class 3 misdemeanor.

Purpose: 4VAC5-30, Virginia State Parks Regulations, governs the behavior of all individuals visiting department-owned or department-operated properties, which includes all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties and protects public safety.

This regulatory action updates definitions to ensure consistency with the Code of Virginia, modernizes procedures to accurately reflect current technologies and policies, and refines existing language to clarify the intent and expectations for individuals visiting department properties or using department facilities.

Many sections of this regulation use out-of-date terms and technologies. For example, 4VAC-5-30-400 (Aviation) currently prohibits the use of "flying machine" within a park; however, there is no reference to drones or other types of unmanned aerial systems. The specific inclusion of "drones" and "unmanned aerials system" clarifies the prohibition for the public. Similarly, 4VAC5-30-230 (Smoking) prohibits smoking but is silent on the use of electronic vaporizing devices; amendments to this section will prohibit the use of vaporizing devices.

Rationale for Using Fast-Track Rulemaking Process: The amendments to this regulation are not expected to be controversial as they reflect operating procedures being currently implemented.

Substance: The amendments update definitions to ensure consistency with the Code of Virginia, modernize procedures to accurately reflect current technologies and policies, and refine existing language to clarify the intent and expectations for individuals visiting department properties or using department facilities.

The amendments add 4VAC5-30-95 prohibiting public urination or defecation. Currently, § 18.2-387 of the Code of Virginia prohibits the intentional obscene display or exposure of a person or private parts. An individual arrested for public urination or defecation by a department conservation officer, even though there may have been no intentional obscene display, would be charged in accordance with § 18.2-387. Under § 18.2-387, the individual could be found guilty of a Class I misdemeanor and required to register on Virginia's Sex Offender and Crimes Against Minors Registry. According to § 10.1-104 of the Code of Virginia, a violation of the Virginia State Park Regulations constitutes a Class 3 misdemeanor. Class 3 misdemeanors are eligible to be resolved without a pretrial and may allow for prepayment of the violation by the individual. The department believes that, in some situations, charging an individual with a Class 3 misdemeanor is more appropriate for this type of behavior than charging an individual under § 18.2-387. Any more significant or serious violation will be charged in accordance with other sections of the Code of Virginia.

An amendment to 4VAC5-30-150 (Camping) expands the prohibition on the use of generators in a campsite. Currently, the use of generators is prohibited during quiet hours (from 10 p.m. until 6 a.m.). The amendment prohibits the use of generators at all times.

Issues: The primary advantage of this rulemaking for the public is that it clarifies the activities and behaviors that are limited or prohibited within facilities and properties owned or operated by the department. The primary advantage of this rulemaking for the department is that the revisions reflect current terminology, technology, and procedures used by the public and the department. There are no disadvantages to the public or the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Conservation and Recreation (DCR) proposes to add language prohibiting public urination or defecation on properties subject to its purview and to make numerous clarifications to reflect current statutes, practices, and policies.

Result of Analysis. The benefits likely exceed the costs for the proposed regulation.

Estimated Economic Impact. This regulation governs the behavior of all individuals visiting DCR owned or operated properties including all state parks, historical and natural areas, natural area preserves, and other recreational areas in the Commonwealth. The regulation also controls the types of activities allowed on those properties.

DCR proposes to add regulatory language prohibiting public urination or defecation on properties subject to this regulation in order to avoid dire consequences on offenders. Currently, an individual arrested for public urination or defecation by a DCR officer, even though there may have been no intentional obscene display, would be charged in accordance with § 18.2-387 (indecent exposure) of the Code of Virginia. Under § 18.2-387, the individual could be found guilty of a Class 1 misdemeanor and required to register on Virginia's Sex Offender and Crimes Against Minors Registry. Section 10.1-104.B of the Code of Virginia, on the other hand, calls for a Class 3 misdemeanor charge for any violation of this regulation. Class 3 misdemeanors may be resolved without a pre-trial and may allow for prepayment of the violation by the individual. DCR believes that, in some situations, charging an individual with a Class 3 misdemeanor is more appropriate for this type of behavior than charging an individual under § 18.2-387. This proposed change will allow for a Class 3 misdemeanor charge where appropriate. This change does not

prevent DCR from bringing other charges in accordance with other sections of the Code of Virginia for more significant or serious violations.

The main economic impact of this particular change is avoidance of possibly lifelong significant adverse consequences of having an indecent exposure conviction on an individual's past who has no ill intentions, but who simply has to relieve himself. Under the proposed change, DCR officers will have the flexibility to bring a lesser charge as appropriate.

The remaining proposed changes are mainly clarifications of existing laws, practice, or policy. Most significant of these include that the use of generators is prohibited at all times, not just during quiet hours (from 10:00 p.m. until 6:00 a.m.); that the portion of Breaks Interstate Park on Virginia soil is subject to this regulation; that the use of drones and unmanned aerial systems are prohibited; that the use of electronic vaporizing devices are prohibited; that the use of wheelchairs and other power-driven mobility devices on trails, paths, and other designated areas are allowed. These clarifications are beneficial in that they will better inform visitors on what is prohibited or allowed and will likely improve compliance and avoid possible misinterpretation of the regulation.

Businesses and Entities Affected. The proposed regulation applies to all visitors to Virginia State Parks and Natural Area Preserves. Virginia State Parks had 10,474,134 visitors during 2017. There were two summons issued for indecent exposure (due to urinating in public) in the last 3 years.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation does not have a direct impact on employment. However, an individual who has to relieve himself in state parks or natural preserves but has no intention of indecent exposure would avoid having a criminal conviction on his record and maintain being employable for all employment opportunities that individual otherwise qualifies for.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments (i) add 4VAC5-30-95 prohibiting public urination or defecation and repeal 4VAC30-180 regarding dressing and undressing, (ii) prohibit the use of generators at campsites and in the campground at all times, (iii) update definitions to reflect current statutory definitions, (iv) update procedures to accurately reflect current technologies, and (v) clarify rules for individuals visiting department properties or using department facilities.

4VAC5-30-10. ~~Definition of terms~~ Definitions.

Whenever used in this chapter, the following ~~respective~~ words and terms~~, unless otherwise therein expressly defined,~~ shall ~~mean and include each of~~ have the following meanings ~~herein respectively set forth.~~ unless the context clearly indicates otherwise:

~~"Bathing area" means any beach or water area designated by the department as a bathing area.~~

"Bicycle path" means any path or trail maintained for bicycles.

"Bridle path or trail" means any path or trail maintained for persons riding on horseback.

"Camping ~~Unit~~ unit" means a tent, tent trailer, travel trailer, camping trailer, pick-up camper, motor ~~homes~~ home, or any other portable device or vehicular-type structure as may be developed, marketed, or used for temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Department" means the Department of Conservation and Recreation.

"Electric power-assisted bicycle" means a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion

by human power and (ii) an electric motor with an input of no more than 1,000 watts that reduces the pedal effort required of the rider. For the purposes of Chapter 8 (§ 46.2-800 et seq.) of Title 46.2 of the Code of Virginia, an electric power-assisted bicycle shall be a vehicle when operated on a highway.

"Foot path or trail" means any path or trail maintained for pedestrians or disabled persons.

"Immediate family" means relatives living at the same common household of residence.

"Motor vehicle" means any vehicle ~~which~~ that possesses a motor of any description used for propulsion or to assist in the propulsion of the vehicle.

"Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not defined as a "wheelchair".

"Owner" means any person, firm, association, copartnership, or corporation owning, leasing, operating, or having the exclusive use of a vehicle, animal, or any other property under a lease or otherwise.

"Park" means, unless specifically limited, all designated state parks, recreational areas, parkways, historical and natural areas, natural area preserves, sites, and other areas under the jurisdiction or management of the Department of Conservation and Recreation.

"Permits" means ~~any~~ all written ~~license~~ licenses issued by or under authority of the department, permitting the performance of a specified act ~~or acts~~.

"Person" means any corporation, company, association, firm, an individual, proprietorship, partnership, joint venture, joint stock company, syndicate, business trust, estate, club, committee, organization, or group of persons acting in concert.

"Swimming area" means any beach or water area designated by the department as a swimming area.

"Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of both indoor and outdoor locomotion.

4VAC5-30-20. Construction of regulations.

In the interpretation of ~~the Virginia State Parks Regulations~~ this chapter, ~~their~~ the provisions shall be construed as follows: (i) any terms in the singular shall include the plural; (ii) any term in the masculine shall include the feminine and the neuter; (iii) any requirements or prohibition of any act shall, respectively, extend to and include the causing or procuring, directly or indirectly, of such act; (iv) no provision hereof shall make unlawful any act necessarily performed by any law-enforcement officer as defined by § 9.1-101 of the Code of Virginia or employee of the department in line of duty or work as such, or by any person, his agents or employees, in the proper and necessary execution of the terms of any agreement with the department; (v) any act otherwise prohibited by ~~Virginia State Parks Regulations~~ this chapter, provided it is not otherwise prohibited by law or local ordinance, shall be lawful if performed under, by virtue of, and strictly within the provisions of a permit so to do, and to the extent authorized thereby~~,~~; and (vi) this chapter are in addition to and supplement the ~~state vehicle and traffic~~ laws set out in the Code of Virginia, which are in force in all parks and which are incorporated herein and made a part hereof.

4VAC5-30-30. Territorial scope.

~~All Virginia State Parks Regulations~~ This chapter shall be effective within and upon all state parks, recreational areas, historical and natural areas, natural area preserves, roads, sites, and other areas in the Commonwealth ~~which~~ that may be under the management or control of the Department of Conservation and Recreation and shall regulate the use thereof by all persons. This chapter shall also be effective in any lands operated as Breaks Interstate Park in accordance with the compact entered into pursuant to § 10.1-205.1 of the Code of Virginia.

4VAC5-30-32. General.

Failure to comply with ~~the Virginia State Parks Regulations~~ this chapter, as well as other applicable laws and regulations, may result in revocation of permits or registrations, forfeiture of applicable prices paid, a citation, arrest, and prosecution.

4VAC5-30-50. Flowers, plants, minerals, etc.

No person shall remove, destroy, cut down, scar, mutilate, injure, deface, take, or gather in any manner any tree, flower, fern, shrub, rock or plant, fungi, historical artifact, or mineral in any park unless a special permit has been obtained for scientific collecting. Edible fruits, berries, or nuts may be collected for personal or individual use only. To obtain a special permit for scientific collecting in a state park, a natural area, or a natural area preserve, a Research and Collecting Permit Application must be completed and provided to the department ~~at:~~ in a manner specified by the department.

~~Department of Conservation and Recreation~~

~~203 Governor Street, Suite 306~~

~~Richmond, Virginia 23219-2010.~~

~~To obtain a special permit for scientific collecting in a natural area or natural area preserve, a Research and Collecting Permit Application must be completed and provided to the department at:~~

~~Department of Conservation and Recreation~~

~~Division of Natural Heritage~~

~~217 Governor Street, Third Floor~~

~~Richmond, Virginia 23219.~~

4VAC5-30-95. Public urination or defecation.

Urinating or defecating other than at the places provided therefore is prohibited, with the exception for trail areas or other remote sites that may not have utilities provided. In such cases, urinating or defecating should not be seen by the public and should take place at least 200 feet from any waterway or trailway path.

4VAC5-30-150. Camping.

A. ~~Permit~~ Reservation. Camping will be conducted only under ~~permit~~ a valid reservation. A ~~permit~~ reservation is obtained ~~by completing a valid Virginia State Parks Camping Permit Form or Honor Camping Application and submitting payment~~ from the individual park office, through the department's designated reservation system, or through the completion of the self-pay process. Payment must be submitted in accordance with all applicable prices and payment policies. ~~A camping permit can only be issued by the park management.~~ Only an individual 18 years of age or older who is a member of and accepts responsibility for the camping party may be issued a camping ~~permit~~ reservation. ~~The act of placing a reservation through the state parks reservation center does not constitute a camping permit.~~

Camping may only be performed in strict accordance with the terms and conditions of the ~~permit~~ reservation. Any violation of the ~~permit by the permittee or~~ terms of the reservation by any member of the party shall constitute grounds for ~~permit~~ reservation revocation by the department, or by its authorized representative, whose action shall be final. In case of revocation of any ~~permit~~ reservation, all moneys paid for or on account thereof shall at the option of the department be forfeited and retained by the department.

B. Occupancy. Occupancy of each campsite shall be limited to not more than six persons or one immediate family, or other maximum occupancy permitted through an approved special use permit. ~~The term immediate family shall mean relatives living at the same common household of residence.~~

C. Camping units, equipment, and vehicles. All camping units, equipment, and vehicles shall be placed within the perimeter of the designated campsite without infringing on adjoining campsites or vegetation. Where high impact areas have been designated, all camping units, equipment, and vehicles shall be placed within the defined borders of the high impact area. There is a maximum of two camping units allowed per campsite; no more than one axled camping unit is allowed per campsite.

D. Camping periods. No camping shall be permitted in excess of 14 nights within a 30-day period. Park managers shall have the authority to increase the number of nights permitted by an approved special use permit. ~~Check-in time shall be 4 p.m. Check-out time is 3 p.m. Campers may be permitted to occupy campsites prior to 4 p.m., but no earlier than 8 a.m., if campsites are available.~~ Any personal property left at the campsite after the reservation period check-out time shall be removed by park staff at the owner's expense.

E. Motor vehicles. Only two motor vehicles in addition to the camping unit allowed under subsection C of this section are permitted on a campsite with no additional prices. All motor vehicles shall be parked in the designated parking area of each campsite. Any additional vehicles beyond two are subject to daily parking prices and shall be parked at designated overflow parking areas.

F. Visitors. ~~All visitors shall register on the visitors register.~~ No visitor shall be allowed before 6 a.m. and all visitors must leave the campground area by 10 p.m. All visitors shall be charged the appropriate daily parking or admissions prices prior to entering the park.

G. Quiet hours. Quiet hours in the campgrounds shall be from 10 p.m. to 6 a.m. ~~Generators~~ Excessive noise, amplified music, or other disturbances that can be heard outside the perimeters of the user's campsite are prohibited during the designated quiet hours.

H. Pets. Domestic and household pets are permitted in campgrounds ~~only with payment of all applicable prices~~. Owners are responsible for cleaning up after their pets and for ensuring their pets do not disturb other campers. Horses and other livestock are not permitted unless facilities are specifically provided for them.

I. Generators. The use of generators at campsites and in the campground is prohibited except when used by the department to perform necessary construction, maintenance, or repairs or for an activity approved by special permit.

J. Damage to any campground or campsite, not considered normal wear and tear, may be billed to the person registering for the campground or campsite on an itemized cost basis in accordance with the reservation acknowledgment or reservation confirmation.

4VAC5-30-160. Cabins.

A. Use of state park cabins, camping cabins, and yurts shall only be permitted pursuant to the reservation acknowledgment, reservation confirmation, or established department ~~regulations (4VAC5-36) and~~ policy dealing with reservations, registration, occupancy, prices, length of stay, and rental period.

B. Damage to any park cabin, camping cabin, or yurt not considered normal wear and tear may be billed to the person registering for the cabin on an itemized cost basis in accordance with the reservation acknowledgment or reservation confirmation.

4VAC5-30-170. ~~Bathing~~ Swimming, where permitted.

No person shall bathe, wade, or swim in any department-owned waters in any park except at such times~~,~~ and in such places~~,~~ as the department may designate as ~~bathing~~ swimming areas~~, and unless so covered with a bathing suit as to prevent any indecent exposure of the person~~.

4VAC5-30-180. ~~Dressing and undressing.~~ (Repealed.)

~~Dressing and undressing, except in bathhouses, camping units or cabins is prohibited.~~

4VAC5-30-190. Boating.

Boating of any kind in a ~~bathing~~ swimming area is prohibited.

4VAC5-30-220. Fires.

No person shall kindle, build, maintain, or use a fire other than in places provided or designated for such purposes in any park. Any fire shall be continuously under the care and direction of a competent person ~~over sixteen~~ older than 16 years of age from the time it is kindled until it is extinguished. No person within the confines of any park shall throw away or discard any lighted match, cigarette, cigar, charcoal, or other burning object. Any lighted match, cigarette, cigar, charcoal, or other burning object must be entirely extinguished before being thrown away or discarded.

4VAC5-30-230. Smoking.

No person shall smoke or use electronic vaporizing devices in any structure or place in any park where smoking is prohibited. Smoking or the use of electronic vaporizing devices may be forbidden by the department or its authorized agent in any part of any park.

4VAC5-30-260. Animals at large.

No person shall cause or permit any animal owned by him, in his custody, or under his control, except an animal restrained by a leash not exceeding six feet in length, to enter any park, and each such animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property then in effect at the place where such stray animals may be seized. No animal shall be left unattended by its owner in any park at any time, except for animals in designated stables. Animals shall not be allowed in ~~bathing~~ swimming areas under any circumstances, except for service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia.

4VAC5-30-274. Foot path or trail use.

Persons shall only use paths, trails, or other designated areas in any park. No person shall engage in an activity expressly prohibited by a trail safety sign. Wheelchairs and other power-driven mobility devices are only allowed on those paths or trails that have been designated by the department as appropriate for such use.

4VAC5-30-276. Bicycle path use.

No person shall use a bicycle, an electric power-assisted bicycle, or a similarly propelled ~~devices~~ device in any area other than designated bicycle paths in any park. No person shall engage in an activity expressly prohibited by a trail safety sign.

4VAC5-30-280. Bridle path use.

No person shall use, ride, or drive a horse or other animal in any park except along a bridle path, to or from a parking area associated with such bridle path, or other designated area. No person shall engage in an activity expressly prohibited by ~~a trail safety sign~~ park rules and regulations.

4VAC5-30-300. Parking.

No owner or driver shall cause or permit a vehicle to stand anywhere in any park outside of designated parking spaces, except ~~a reasonable time in a drive~~ to receive or discharge passengers in a reasonable amount of time in areas where standing vehicles are not prohibited. Parking in designated camping or cabin parking spaces is prohibited unless the individual is registered as an occupant of or a visitor to that specific campsite or cabin.

4VAC5-30-370. Advertising.

No sign, notice or advertisements of any nature shall be erected or posted at any place within any park, nor shall any noise be made for the purpose of attracting attention to any exhibition of any kind except for services, programs, and events approved by the park management.

4VAC5-30-390. Alms and contributions.

No person or organization shall within any park solicit alms or contributions for any purpose unless approved by the park management.

4VAC5-30-400. Aviation.

No person shall voluntarily bring, land, or cause to descend or alight within or upon any park, any airplane, remote control model aircraft, ~~flying machine~~ helicopter, unmanned aerial system, drone, balloon, parachute, or other apparatus for aviation. "Voluntarily" in this connection shall mean anything other than a forced landing. Rescue and evacuation aircraft are exempt for emergencies and approved training exercises.

4VAC5-30-410. Importation of firewood.

A. The Director of the Department of Conservation and Recreation may prohibit the importation of firewood or certain types of firewood into any park or allow such entry only under specified conditions when such firewood may be infected or infested with a species of concern. Any firewood transported to the park by a person found to be in violation of such prohibition shall be confiscated and destroyed. Should any person charged under this section be found not guilty, the person shall be reimbursed for only the cost of the firewood.

B. When the director makes a written determination to implement subsection A of this section, the following minimum requirements apply:

1. Such determination shall be posted to the department's website and posted at the park where applicable.

2. Firewood to be used by any person within a park must be purchased from the park, must be proven to be from a certified source in accordance with subdivision 3 of this subsection if transported to the park, or may be collected from within the confines of the park in accordance with park policy. The department may allow for the sale or distribution of firewood within the park with prior written agreement that it has been treated in accordance with subdivision 3 of this subsection. Firewood includes all wood, processed or unprocessed, meant for use in a campfire. Such ban shall not include scrap building materials, such as ~~2x4s;~~ two-by-fours, but may extend to wood pallets and other wood product packing materials as determined by the director.

3. Firewood certified to be sold and distributed within the park by a firewood dealer shall be subject to at least one of the following conditions:

a. Exclude all ~~ash tree material~~ quarantined tree species from the firewood production area. Dealers will have to demonstrate ability to identify and separate firewood species.

b. Remove bark and outer half inch of sapwood off of all nonconiferous firewood.

c. Kiln dry all nonconiferous firewood to USDA specifications.

d. Heat treat all nonconiferous firewood to USDA specifications.

e. Fumigate all nonconiferous firewood to USDA specifications.

f. Offer conclusive proof demonstrating to the satisfaction of the department that the origin of the wood was from a noninfected area.

g. Offer conclusive proof demonstrating to the satisfaction of the department that the wood containing the infecting or infesting species of concern has been properly treated and the species is controlled by an alternative control mechanism.

The director may eliminate or restrict conditions offered in this subsection as determined to be necessary to properly address the infecting or infesting species of concern to the satisfaction of the department.

4VAC5-30-420. Release of animals or wildlife on park property.

No person shall release animals or wildlife captured or propagated elsewhere into any park, unless approved by the park management.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC5-30)

~~Natural Area Preserve Research and Collecting Permit Application, DCR 199-003 (11/07).~~

~~Research and Collecting Permit Application, DCR 199-043 (12/00).~~

~~Cabin & Camping Permit (1/10).~~

Research and Collecting Permit Application, DCR 199-043 (rev. 7/2014)

VA.R. Doc. No. R20-4581; Filed August 6, 2019, 2:35 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1350. Pertaining to General Oyster Planting Ground Lease Renewal Fee (adding 4VAC20-1350-10 through 4VAC20-1350-40).**

Statutory Authority: § 28.2-613 of the Code of Virginia.

Effective Date: October 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The regulation establishes (i) the application procedures and fee for the renewal of general oyster planting ground leases and (ii) the time limit to request a formal hearing concerning denial of renewal.

CHAPTER 1350
PERTAINING TO GENERAL OYSTER PLANTING GROUND LEASE RENEWAL FEE

4VAC20-1350-10. Purpose.

The purpose of this chapter is to establish the application procedures and fee for the renewal of general oyster planting ground leases and time limits to request a formal hearing concerning any denial of such renewal.

4VAC20-1350-20. Definitions.

The following word or term when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"General oyster planting ground" means any lease granted for the propagation of oysters or clams as defined under § 28.2-603 of the Code of Virginia.

4VAC20-1350-30. General oyster planting ground review form, fee, and denial.

A. Each leaseholder shall complete the application form for renewal of general oyster planting ground prior to the expiration of each 10-year lease term. The form shall be sent to the leaseholder by regular postal mail and certified postal mail approximately two months prior to the 10-year lease renewal date.

B. A nonrefundable fee for review of the renewal application, as authorized by § 28.2-613 of the Code of Virginia, shall be $150 per lease. This fee shall be submitted with the completed form, and the completed form and fee must be received or postmarked on or before the current 10-year lease expiration date.

C. The review for reassignment of a general oyster planting ground lease shall be conducted by the commissioner considering the requirements of § 28.2-613 of the Code of Virginia and all lease use or production requirements contained within either regulation or guidance as approved by the commission. Failure to meet use or production requirements or failure to return the completed form and fee by the expiration date of the current 10-year term shall result in denial of the lease renewal.

D. Any commissioner's decision to deny a lease renewal application shall be mailed by certified mail to the last known address for the applicant.

4VAC20-1350-40. Request for formal hearing of lease renewal denial.

Any request for a formal hearing, pursuant to § 28.2-216 of the Code of Virginia, to appeal a renewal application denied pursuant to this chapter must be received or postmarked no later than 60 days from the date that notice of the commissioner's decision is received.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1350)

Application for Reassignment of Oyster Planting Ground Review Form (eff. 7/2019)

VA.R. Doc. No. R20-6110; Filed August 2, 2019, 11:14 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC20-521. Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours (amending 8VAC20-521-40, 8VAC20-521-50).**

Statutory Authority: § 22.1-98 of the Code of Virginia.

Effective Date: October 2, 2019.

Agency Contact: Zachary Robbins, Director of Policy, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2092, or email zachary.robbins@doe.virginia.gov.

Summary:

In accordance with Chapters 644 and 645 of the 2019 Acts of Assembly, the amendments provide that (i) a waiver may

be granted to those schools that lose instructional time due to an evacuation directed and compelled by the Governor and (ii) a local school division that submits such a waiver will incur no proportionate reduction in funds from the Basic School Aid Fund to the local school division.

8VAC20-521-40. Waivers for a declared state of emergency, evacuations, severe weather conditions, or other emergency situations.

A. The Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from a declared state of emergency, severe weather conditions, or other emergency situations.

B. The Board of Education shall waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the Governor pursuant to § 44-146.17 of the Code of Virginia for up to five teaching days.

~~B.~~ C. If the local school board desires a waiver for days missed as the result of a declared state of emergency, severe weather conditions, or other emergency situations, it shall submit a request for a waiver to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible.

~~C.~~ D. The division superintendent and the chair of the local school board shall certify that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of the requirement.

~~D.~~ E. The Board of Education authorizes the Superintendent of Public Instruction to approve, in compliance with this chapter, reductions in the school term for a school or the schools in a school division.

~~E.~~ F. If the waiver is denied, the school division shall make up the missed instructional time in accordance with 8VAC20-521-30 and § 22.1-98 of the Code of Virginia.

8VAC20-521-50. Funding.

A. There shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division:

1. Completes instructional time in accordance with 8VAC20-521-30 and § 22.1-98 of the Code of Virginia; or

2. Obtains a waiver for closings resulting from a declared state of emergency, an evacuation directed or compelled by the Governor, severe weather conditions, or other emergency situations in accordance with 8VAC20-521-40.

B. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to a reduction in the length of the term of any school if the missed days are made up in accordance with 8VAC20-521-30 or the schools in a school division have been granted a waiver in accordance with 8VAC20-521-40.

VA.R. Doc. No. R20-6104; Filed August 12, 2019, 2:25 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-421. Food Regulations (amending 12VAC5-421-330).**

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2019.

Effective Date: October 17, 2019.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

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

Purpose: Chapter 674 of the 2018 Acts of Assembly mandates the board to promulgate regulations to allow food establishments to receive for sale or service commercially slaughtered or processed rabbits that have not undergone voluntary inspection by the state agency that has animal health jurisdiction or through a voluntary inspection program administered by the U.S. Department of Agriculture (USDA). The Food Regulations prohibit the receipt by food establishments for the sale or service of rabbits that are not under a voluntary inspection program or inspected by the state agency that has animal health jurisdiction or the USDA. The proposed regulatory change is required to conform regulation to statute. This regulation has no significant impact on the health and safety of the public; however, general public welfare is benefited when the agency and the licensees are in compliance with the prevailing laws of the Commonwealth and when all parties are well informed of the applicable laws.

Rational for Using the Fast-Track Rulemaking Process: The proposed regulatory change is best suited for the fast-track rulemaking process for several reasons: (i) the amendment is simple, easy to understand, and affects the requirement

regarding allowance of rabbits for sale or service in food establishments without inspection; (ii) the proposed change is necessary to conform the regulation to the underlying statutory change (§ 3.2-5121 H of the Code of Virginia); and (iii) the rulemaking is not expected to be controversial.

Substance: The amendment allows food establishments to accept for sale or service rabbits that have not been subject to a voluntary inspection by the state agency that has animal health jurisdiction or to a voluntary inspection program administered by the USDA.

Issues: The primary advantage for the public is consistency between law and regulation. A secondary advantage of the proposed regulatory change may include a reduction of costs to small businesses that commercially slaughter or process rabbits as costly inspections are no longer required. In addition, the proposed amendment to the Food Regulations provides clarity to the food industry and the general public regarding approved food source. There are no known advantages or disadvantages to the agency. There are no known disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 674 of the 2018 Acts of Assembly, the State Board of Health (Board) proposes to amend the Food Regulations to allow food establishments within the Commonwealth to receive for sale or service, commercially slaughtered or processed rabbits not under a voluntary inspection.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Under the current regulation, rabbits that are received for sale or service must be commercially raised for food and raised, slaughtered, and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or under a voluntary inspection program administered by the USDA. In the Virginia Department of Agriculture and Consumer Services' (VDACS) Voluntary Inspection Program, the processor is inspected every time they slaughter, which can be many times a year. Chapter 674 of the 2018 Acts of Assembly amended Virginia Code § 3.2-5121 to state that no regulation may require that commercially slaughtered or processed rabbits that are offered for sale or service be slaughtered or processed under (i) the voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or (ii) a voluntary inspection program that is administered by the U.S. Department of Agriculture. Thus, the current regulation conflicts with the current statute. In order to remove the conflict, the Board proposes to amend the regulation to no longer require that rabbits that are received for sale or service be processed under a voluntary inspection program.

After Chapter 674 of the 2018 Acts of Assembly was enacted, VDACS initiated the Virginia Rabbit Program. It allows those who wish to slaughter rabbits for sale in the Commonwealth to do so without being inspected every time rabbits are slaughtered, as is done with the Voluntary Inspection Program. Processors that slaughter rabbits in Virginia now have the option of complying with the requirements of the Virginia Rabbit Program, conducted in accordance with the Virginia Food Laws, or to continue with the Voluntary Inspection Program. In the Virginia Rabbit Program, inspections are conducted prior to initial operations of the processor, and randomly thereafter, no less than annually. The same staff at VDACS conduct the inspections under both the Voluntary Inspection Program and the Virginia Rabbit Program.

Under the Voluntary Inspection Program, VDACS charges the processor $28.06 per hour of inspection and travel time between the processor site and the applicable regional health department office. VDACS has provided an example where they spent 1.25 hours inspecting at a processor, and their travel time was three hours. Thus, they charged the processor $119.26[2] for that day of inspecting. For every day of slaughter, there would be such an inspection charge. Under the Virginia Rabbit Program, after initiating operations rabbit processors are only inspected once a year (though possibly slightly more) and charged just $40 a year regardless of how often they are inspected. Clearly, being inspected under the Virginia Rabbit Program rather than the Voluntary Inspection Program reduces financial outlay for rabbit processors. Since there are far fewer inspections under the Virginia Rabbit Program there may be greater risk to health and safety. Information is currently unavailable as to whether the increase of risk is large, negligible, or somewhere in between. Without this information, an accurate comparison of whether or not the benefits of the reduced burden to processors outweigh the potential increase in risk to health and safety cannot be made.

There are currently four rabbit meat processors in the Commonwealth. According to the Virginia Department of Health, three out of the four have chosen to continue with the voluntary inspection program, while one has chosen to be inspected under the Virginia Rabbit Program. The three processors that have chosen to continue with the voluntary inspection program have likely made that choice due to other states and jurisdictions not accepting rabbit meat that has not been inspected under a federally approved voluntary inspection program.

Businesses and Entities Affected. The proposed amendment potentially affects the four rabbit meat processors in the Commonwealth, as well as permitted food establishments. As

of October 10, 2018, there were 29,200 permitted food establishments in Virginia; it is unknown how many are selling or serving rabbit.[3]

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment reduces costs for rabbit meat processors who choose to take advantage of the new inspection option. The reduced cost would commensurately increase the value of the business.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment reduces costs for small rabbit meat processors who choose to take advantage of the new inspection option.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses: There proposed amendment does not adversely affect businesses.

Localities: The proposed amendment does not adversely affect localities.

Other Entities: The proposed amendment does not adversely affect other entities.

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[1]Adverse impact is indicated if there is any increase in cost for any entity, even if the benefits exceed the costs.

[2]1.25 + 3 = 4.25; $28.06 X 4.25 = $119.26

[3]Data source: Virginia Department of Health

Agency Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapter 674 of the 2018 Acts of Assembly, the amendment removes the requirement that rabbits must be slaughtered or processed under a voluntary inspection program prior to introduction into commerce.

12VAC5-421-330. Game animals.

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

1. Commercially raised for food and raised, slaughtered, and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR Part 352 ~~or rabbits that are "inspected and certified" in accordance with 9 CFR Part 354~~;

2. As allowed by law, 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;[P]

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;[P] 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;[P] or

3. 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

b. 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;[P] and

c. 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.[P]

B. A game animal shall not be received for sale or service if it is a species of wildlife that is listed in 50 CFR Part 17.

C. The requirements of subsection A of this section shall not apply to commercially slaughtered or processed rabbits that are offered for sale or service.

VA.R. Doc. No. R20-5626; Filed August 1, 2019, 4:25 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC5-421. Food Regulations (amending 12VAC5-421-3815).**

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2019.

Effective Date: October 17, 2019.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

Basis: Section 35.1-3 of the Code of Virginia provides the State Health Commissioner the same regulatory authority as the State Board of Health when the board is not in session. Such authority is subject to rules and regulations as may be prescribed by the board. Sections 35.1-11 and 35.1-14 of the Code of Virginia authorize and require the board to promulgate and enforce regulations governing restaurants in accordance with the provisions of Title 35.1 of the Code of Virginia. The board's authority to regulate is mandatory rather than discretionary.

Purpose: 12VAC5-421-3815 A of the food regulations references the 2014 edition of the "Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff." The purpose of the standard is to promote uniformity of regulatory food inspections throughout the Commonwealth and outline the process of training (field and classroom) that is required of environmental health staff who perform regulatory inspections of food establishments to protect public health. Updating the standard ensures the standardization process meets industry standards (Conference for Food Protection), guidance from the U.S. Food and Drug Administration (FDA), and conforms with current Virginia Department of Health (VDH) policies. The new edition includes (i) clarification of the prerequisite training required to enroll in the standardization process, (ii) an update of terminology to reflect changes adopted from the 2013 FDA Food Code, (iii) revision of scoring and "level of agreement" regarding evaluation of standardization candidates, (iv) an update to and clarification of provisions to maintain standardization, and (v) an update to and revision of forms used in the standard.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendment updates a document incorporated by reference, which applies only to VDH staff. The new edition of the document provides clarification of expectations of environmental health staff undergoing or maintaining their standardization status and does not have an adverse impact on the regulatory community. Therefore, VDH believes the proposed change will be noncontroversial, allowing use of the fast-track rulemaking process.

Substance: The proposed amendment updates 12VAC5-421-3815 A from "the Virginia Department of Health Procedures for Certification and Standardization of Retail Food Protection Staff, 2014," to "the Virginia Department of Health Procedures for Certification and Standardization of Food Inspection Staff, 2017 edition."

Issues: The primary advantage to the public and the agency or Commonwealth is in providing transparency as to the training standards of environmental health staff who conduct regulatory inspections of food establishments, which is information included in the updated edition of the document. VDH is providing the public, which includes the regulated community and interested stakeholders, detailed information regarding the criteria the department uses to determine if environmental health staff conducting regulatory inspections of food establishments have the knowledge, skills, and ability to adequately perform their duties. The proposed regulatory action poses no disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The State Board of Health (Board) proposes to replace a reference to its internal document for procedures, certification, and standardization of retail food inspections with the updated 2017 version.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The current regulation incorporates by reference an internal document for procedures, certification, and standardization of retail food inspections created for food inspection staff to follow and to be trained. The Board proposes to update the reference from the 2014 version of that document to the 2017 version. According to the Virginia Department of Health (VDH), the 2017 document incorporates changes adopted from the Food and Drug Administration (FDA) Procedures for Standardization of Retail Food Safety Officers (2015 FDA Standard) and the 2013 FDA Food Code. For example, the new document incorporates the procedures for new federal rules about certified food protection manager, clean-up of vomiting and diarrheal events, using a non-continuous cooking process for raw animal foods, etc. These updates in the document are not expected to create any compliance costs as they are already implemented under the federal authority. However, the proposed amendments are beneficial in that the new document incorporates procedures for new federal requirements for training and enforcement of the existing rules. One of the changes in the document establishes a new requirement for one-time training course, "Environmental

Assessment of Foodborne Illness Outbreaks," for certificates that expire January 1, 2018, and thereafter. This course addresses the role of environmental assessments within the broader context of outbreak investigations and the food safety system. According to VDH, the skills needed to participate in an outbreak investigation are different from those needed to inspect restaurants and the role of environmental health staff is critical. The course is designed specifically for environmental health professionals and food safety program officials in government agencies, as well as those from scientific, industry, and consumer groups. It focuses on practice of critical skills through simulated exercises, such as interviewing food workers and conducting an environmental assessment of a restaurant implicated in an outbreak; how to investigate foodborne illness outbreaks as a member of a larger outbreak response team; how to identify an outbreak's environmental causes; and what to recommend as appropriate control measures. As of December 14, 2018, 208 staff members have not completed the course. The new training course requirement would require VDH to devote some of its existing resources to offer it online and require inspection staff's time (8-10 hours) to take it. This course would likely improve inspection staff's ability to assess and respond to foodborne illness outbreaks.

Businesses and Entities Affected. This regulation pertains to approximately 230 local health department staff and 37 district standardization officers in Virginia.

Localities Particularly Affected. The proposed amendments would not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments would not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments would not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments would not have costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments would not impose adverse impacts on small businesses.

Adverse Impacts:

Businesses. The proposed amendments would not impose adverse impacts on businesses.

Localities. The proposed amendments would not adversely affect localities.

Other Entities. The new training course requirement would require VDH to devote resources to offer it and require inspection staff's time to take it.

Agency Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendment updates a document incorporated by reference.

12VAC5-421-3815. Competency of environmental health specialists.

A. 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. For the purposes of this section, competency shall be demonstrated when an environmental health specialist meets the training and standardization requirements specified in the Virginia Department of Health Procedures for Certification and Standardization of ~~Retail~~ Food Protection Staff, ~~2014,~~ 2017 edition (VDH, Division of Food and Environmental Services).

B. The regulatory authority shall ensure that authorized representatives who inspect a food establishment or conduct plan review for compliance with this chapter have access to training and continuing education as needed to properly identify violations and apply this chapter.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-421)

Approved Drug Products with Therapeutic Equivalence Evaluations, 34th Edition, 2014, 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

Grade "A" Pasteurized Milk Ordinance, 2013 Revision, 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 (NSSP) Guide for the Control of Molluscan Shellfish, 2013 Revision, 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

NSF/ANSI 18-2012 Manual Food and Beverage Dispensing Equipment, 2012, NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, www.nsf.org

Standards for Accreditation of Food Protection Manager Certification Programs, April 2012, Conference for Food Protection, 30 Elliott Court, Martinsville, IN 46151-1331

United States Standards, Grades, and Weight Classes for Shell Eggs, AMS-56, effective July 20, 2000, U.S. Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW, Washington, DC 20250-0259

~~VDH Procedures for Certification and Standardization of Retail Food Protection Staff Workbook, 2014, Virginia Department of Health, Division of Food and Environmental Services, 109 Governor Street, 5th Floor, Richmond, VA 23219~~

VDH Procedures for Certification and Standardization of Food Inspection Staff, 2017, Virginia Department of Health, Division of Food and Environmental Services, 109 Governor Street, 5th Floor, Richmond, VA 23219

VA.R. Doc. No. R20-5409; Filed August 1, 2019, 4:23 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC5-460. Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (amending 12VAC5-460-30, 12VAC5-460-40, 12VAC5-460-60, 12VAC5-460-80 through 12VAC5-460-130, 12VAC5-460-150, 12VAC5-460-170, 12VAC5-460-200, 12VAC5-460-210, 12VAC5-460-220, 12VAC5-460-240, 12VAC5-460-330, 12VAC5-460-350 through 12VAC5-460-380, 12VAC5-460-400, 12VAC5-460-410, 12VAC5-460-430, 12VAC5-460-440; repealing 12VAC5-460-70, 12VAC5-460-140, 12VAC5-460-230, 12VAC5-460-420).**

Statutory Authority: § 35.1-11 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2019.

Effective Date: October 17, 2019.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

Basis: The Virginia Department of Health (VDH) has general authority to promulgate regulations pursuant to § 35.1-11 of the Code of Virginia, which states that the State Board of Health shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of Title 35.1 of the Code of Virginia to protect the public health and safety. Section 35.1-13 of the Code of Virginia requires the board to promulgate regulations for hotels, including minimum standards for swimming pools and spas. Additionally, §§ 35.1-16 and 35.1-17 of the Code of Virginia authorize the board to regulate swimming facilities at summer camps and campgrounds, respectively.

Section 36-98 of the Code of Virginia directs and authorizes the Board of Housing and Community Development to adopt the Virginia Uniform Statewide Building Code (USBC) and outlines that the USBC shall supersede any building codes and regulations of other state agencies, with the exception of public water supply systems, sewage treatment facilities, and solid waste facilities. Section 36-98 also provides that state agencies are not prevented from requiring the maintenance of facilities in accordance with provisions of the USBC.

Purpose: Design and construction provisions of 12VAC5-460 have been superseded by the USBC, and this regulatory action removes the superseded provisions, and where possible, rewords existing requirements to accurately reflect VDH's authority to enforce existing standards. This approach protects the health and safety of pool patrons because it keeps the majority of health standards intact without misrepresenting VDH authority. The goal of this action is to remove superseded and void provisions, make clear to the regulated public and VDH staff where VDH authority lies, and retain standards protective of the health and safety of tourist lodging pool and spa patrons.

Rationale for Using Fast-Track Rulemaking Process: The provisions in 12VAC5-460 that have been superseded by the USBC must be removed to avoid confusion by regulated entities and VDH field staff. This action is noncontroversial because the superseded design and construction provisions now have no legal basis, and their removal effects no significant change in the requirements borne by tourist lodging pool and spa operators. This means that the major effect of the action will be that the regulation will accurately reflect the health requirements in place and what VDH has the authority to inspect. The regulation will continue to protect the health, safety, and welfare of tourist lodging pool and spa patrons because maintenance and operation requirements will remain in place and unaltered by this regulatory action.

Substance:

1. Four sections that pertain only to construction and design are repealed.

2. Two sections containing administrative provisions that conflict with the boundaries of VDH authority are revised so that the text (i) reflects VDH authority and describes procedures that differ only semantically from previous requirements and practices or (ii) prescribes current practices in more detail than previously included in the regulation. These procedures will not present any additional burden to the regulated public.

3. Provisions that include both construction and operational regulations are reworded to shift requirements from design and construction to maintenance and operation only.

4. Where operational standards are found in the 2012 International Swimming Pool and Spa Code of the USBC (i.e., flow and circulation parameters, entrapment prevention, and barrier protection), the language is reworded to retain existing standards only for pools constructed under a prior building code that did not address that operational standard.

Issues: The primary advantages of this regulatory action to the public and the agency are (i) an increase in transparency regarding the authority of VDH and (ii) an increase in clarity regarding health and safety regulations governing tourist lodging pools and spas. There is no disadvantage to either the public or the agency.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary of the Proposed Amendments to Regulation:

The Board of Health (Board) proposes to repeal design/construction criteria for tourist establishment and other public swimming pools in this regulation.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The purpose of this regulation is to prevent illnesses and injuries at tourist establishment and other public swimming pools through design/construction and operation/maintenance standards. Environmental health staff inspect these facilities for water quality and safe operation during hotel, campground, and summer camp periodic inspections.

Currently, the regulation contains both design/construction and operation/maintenance standards. According to the Virginia Department of Health (VDH), at the time of the regulation's promulgation in 1962, Virginia's building codes contained few requirements for swimming pools and spas, and those building code design/construction requirements for tourist lodging pools were incorporated into the regulation by reference. On July 14, 2014, the 2012 International Swimming Pool and Spa Code (ISPSC) was adopted by reference into the Virginia Uniform Statewide Building Code (USBC), increasing the specificity of pool design/construction standards found in the USBC. Virginia Code § 36-98 specifies that the design/construction criteria of the Virginia Uniform Statewide Building Code supersede the regulations of other state agencies.[1] Therefore, design/construction criteria contained in this regulation are effectively void. The Board proposes to repeal the void provisions and reword the operation/maintenance requirements for consistency without introducing any new requirements. Tourist lodging establishments that would have previously sought a construction permit from VDH would now undergo a plan review of items similar to those previously reviewed prior to the issuance of a construction permit, minus design/construction criteria. Local building official approval procedures will not be affected by this regulatory change.

The main effect of repealing the design/construction standards from this regulation is elimination of a potential source of confusion among touristic and public pool owners and VDH field staff. For example, currently, the required deck width in this regulation is four feet while it is three feet in ISPSC.[2] The proposed amendments will eliminate such void and potentially conflicting design/construction standards in this regulation. Owners and operators of tourist lodging pools should benefit from greater transparency and clarity regarding the division of authority over tourist lodging facility pools and spas. The revision to reflect applicable standards may also result in incidental cost savings to VDH, local USBC administrators, and pool owners related to resolving conflicts that may be created by improper application of authority.

Businesses and Entities Affected. There are approximately 1,000 touristic and public swimming pools in the Commonwealth, the majority of which are believed to be owned by small businesses.[3] Inspections generally occur annually, but may be performed up to every three years in some localities.

Localities Particularly Affected. This regulation particularly affects localities with higher concentrations of touristic establishments (e.g., eastern shore).

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and

(ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The majority of affected pool owners are estimated to be small businesses. The proposed amendments would not significantly affect costs for small businesses. The other effects on them are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]https://law.lis.virginia.gov/vacode/title36/chapter6/section36-98/

[2]Source: VDH

[3]Ibid

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis. Regarding the section titled "Localities Particularly Affected," the economic impact analysis refers to the Eastern Shore of Virginia as a locality with a high concentration of tourist lodging. This reference is more accurately made to eastern Virginia's Tidewater Region and Northern Virginia.

Summary:

The amendments (i) remove design and construction provisions, which are currently controlled by the International Swimming Pool and Spa Code incorporated into the Virginia Uniform Statewide Building Code (13VAC5-63), and (ii) clarify maintenance and operation requirements for tourist lodging facility and other public swimming pools, which are inspected by Virginia Department of Health staff during hotel, campground, and summer camp annual inspections.

12VAC5-460-30. ~~Permits~~ Plan review.

~~A permit shall be obtained from the State Health Commissioner before the construction, remodeling, or major alteration of any swimming pool. Plans and specifications shall have been approved by the State State Health Commissioner prior to the issuance of such permit. Plans and specifications must be submitted in triplicate to the State Health Commissioner, and one set of plans and specifications, when approved, will be so stamped and returned to the applicant. Original tracings will not be stamped for approval.~~

A. To ensure the health and safety of all swimming pool patrons, any person planning to initially open a swimming pool after construction, remodeling, or major alteration at a tourist lodging facility must, prior to operation of the swimming pool, submit to the local health department in the locality in which the tourist lodging facility is located complete plans or statements that show the following:

1. Plans for the pump and recirculation system.

2. Plans for the operation and maintenance of the pool disinfection and filtration system, including plans for the filtration room.

3. The proposed source and location of the pool water supply and proposed method and location of all wastewater disposal systems.

4. The name and mailing address of the person operating the pool and the physical address of the pool.

5. Such other pertinent information as the State Health Commissioner may deem necessary to ensure a safe and healthy environment for users of the swimming pool.

B. When, upon review of the plans, the State Health Commissioner is satisfied that the proposed plans if executed will meet the requirements of this chapter and other pertinent laws and regulations designed to protect the public health, written approval shall be issued by the State Health Commissioner.

C. When upon review of the plans, the State Health Commissioner determines that the proposed plans prevent a safe sanitary operation, the plans shall be disapproved and the applicant shall be notified in writing of any deficiency in the plans that constitute the basis for disapproval. The applicant shall be notified of the opportunity for administrative process as provided by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. No person shall operate a tourist establishment swimming pool or spa until written approval has been granted by the State Health Commissioner.

E. Any person whose plans have been disapproved may request and shall be granted an appeal as described by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part II
Swimming Pools; Design and Construction

12VAC5-460-40. Water supplies.

All water used in swimming pools shall be from sources that are approved by the State Health Commissioner. No ~~piping arrangements shall exist which, under any conditions, will permit~~ sewage or ~~waste water~~ wastewater shall be allowed to

enter the swimming pool water system ~~or~~. No water from the swimming pool shall be allowed to enter the make-up water supply.

12VAC5-460-60. Materials of pool shell.

Swimming pool shells shall be ~~constructed of reinforced concrete or its equivalent in strength and durability, designed and built to withstand anticipated stresses, water tight, and shall have smooth and easily cleanable surfaces~~ kept clean. ~~A white or light colored waterproof~~ The interior finish ~~which will withstand repeated brushings, scrubbing, and cleaning procedures shall completely line the pool to the coping~~ shall be maintained so that it does not obscure objects or surfaces within the pool or spa.

12VAC5-460-70. ~~Shape and slopes.~~ (Repealed.)

~~The pool shall be designed and constructed of such shape, contour, etc., that efficient and safe control of the bathers can be accomplished. In water depths under five feet, the slope of the bottom shall not exceed one foot in 12 feet. Pool walls shall be vertical from the break point toward the deep end for at least three feet below the water line and vertical from the break point to the shallow end to within one foot of the finished floor of the pool.~~

12VAC5-460-80. Pool decks.

~~There shall be a deck at least four feet wide extending around the entire perimeter of the pool. The deck shall be constructed of concrete or other approved material. The material shall~~ Decks shall be maintained to have a nonslip but smooth finish. ~~The deck shall have a pitch of not less than 1/8 of an inch nor more than 5/8 of an inch to the foot and be so designed as to conduct drainage~~ Drainage shall be directed away from the pool area in a manner that will not create or maintain pools of water or a nuisance.

12VAC5-460-90. Fences.

~~All outdoor swimming pools~~ Any fences or other barriers, and any gates and latches required by the Virginia Uniform Statewide Building Code (13VAC5-63) shall be ~~enclosed by a substantial barrier or fence of at least three feet in height to promote safety and cleanliness of water~~ properly maintained and in good operable condition. ~~A gate at least three feet in height and of material as substantial as the fence or barrier shall be provided~~ When safety criteria for barriers are not prescribed by the Building Code in effect at the time of the pool's construction, steps shall be taken to protect against undesired access into the pool area.

12VAC5-460-100. Steps and ladders.

~~Two or more ladders shall be provided for all pools having a perimeter greater than 100 feet and one means of egress for pools having a perimeter of 100 feet or less. Steps projecting into the pool area are prohibited. Treads of~~ All ladders, steps, and handrails required by the Virginia Uniform Statewide Building Code (13VAC5-63) shall be properly maintained and in operable condition. Nonslip finishes shall be maintained on all pool steps, ladders, or other means of ingress or egress ~~shall be of nonslip construction. Each recessed step area shall be provided with one or more handrails~~.

12VAC5-460-110. Overflow facilities.

~~Provision shall be made for removal from~~ The presence of floating material and scum is prohibited; pools shall have adequate water circulation and filtration equipment sufficient to keep floating material or scum from accumulating on the surface of the water.

~~If a recessed type of gutter located near the top of the walls is to be used, the gutter shall have a minimum depth of three inches and shall be of a design which will permit satisfactory cleaning of the overflow channel. The gutter drain outlets shall be spaced around the pool not more than 15 feet on centers. The gutter bottom shall slope toward these outlets with a minimum slope of 1/8 of an inch to the foot. The drains shall not be less than 2 ½ inches in diameter and the total orifice area of the grating shall be at least twice the cross sectional area of the outlet pipe.~~

~~For pools with overflowing gutters, a water level control tank shall be provided which will effectively provide for maintenance of the water level so as to produce constant surface skimming action at all times.~~

~~The above described gutter may be replaced by an arrangement of overflow devices in the pool walls which provides the proper removal of scum and floating material. There shall be one such device for each 400 square feet of pool area with a minimum of four per pool, each of which shall be individually controlled.~~

~~If the recirculation system is designed for water to enter the bottom portion of the pool and overflow the top, then adequate drainage of the scum and floating material from the deck must be provided. This drainage may be by a continuous drain or multiple drains. (See also 12VAC5-460-80.) In multiple drains, each drain grating shall have a total orifice area of as least four times the cross sectional area of drain pipe, which shall have a minimum diameter of 2 ½ inches. In the use of drain channels, continuous to and around the perimeter of the pool, the channel grating shall be designed so as not to create a hazard to fingers and toes and be restraint to corrosion.~~

12VAC5-460-120. Inlets and outlets.

~~The inlets for recirculation shall be submerged and located to~~ Pool circulation systems shall produce uniform circulation of water throughout the swimming pool without the existence of dead spots. ~~Wall inlets should be located on not more than 20 foot centers entirely around the perimeter of the swimming pool. Bottom inlets shall be spaced, depending on the pool~~

~~dimensions, so as to produce uniform water circulation. The number of bottom inlets shall be the same as required of wall inlets. Each inlet is to be designed as an adjustable orifice or provided with a valve.~~

~~An outlet drain shall be provided for completely emptying the swimming pool.~~ Direct connection to a sanitary sewer shall not be permitted. ~~Disposal of waste water to a storm sewer or natural watercourse shall be subject to approval of the State Health Commissioner. The~~ When not otherwise prescribed by the Virginia Uniform Statewide Building Code (13VAC5-63) in effect at the time of the pool's construction, the outlet drain shall be covered with a grate of such design that it cannot be readily removed by~~,~~ or produce any hazard to~~,~~ the bathers.

12VAC5-460-130. Depth marking.

~~The depth of the water in the swimming pool shall be marked at every foot increment of depth in water depths five feet and under on both sides of the pool. In water deeper than five feet the markings need not be closer than three feet apart. Numerals and lettering shall be at least five inches in size and of good contrast with the walls and decks~~ Depth markers shall be plainly visible and maintained in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). When depth markers are not prescribed by the Building Code in effect at the time of the pool's construction, steps shall be taken to ensure that the depth of all sections of the pool can be determined by swimmers.

12VAC5-460-140. ~~Diving boards.~~ (Repealed.)

~~At least 12 feet of free and obstructed headroom shall be provided above the diving boards.~~

~~The minimum depth of water in the diving area shall be determined as follows:~~

~~Elevation of Diving Point Above Water Surface~~	~~Depth of Water~~	~~DIMENSIONS~~	
		~~End wall to Maximum Depth~~	~~Maximum Depth to 5 ft.~~
~~0 to 24 in. inclusive~~	~~8 ft.~~	~~12 ft.~~	~~12 ft.~~
~~24 in. to 30 in. inclusive~~	~~8 ft.~~	~~13 ft.~~	~~17 ft.~~
~~30 in. plus to 1 meter inclusive~~	~~8 ft. 6 in.~~	~~15 ft.~~	~~20 ft.~~
~~1 meter plus to 3 meters inclusive~~	~~10 ft.~~	~~15 ft.~~	~~20 ft.~~
~~3 meters plus 5 meters~~	~~14 ft. 6 in.~~	~~17 ft.~~	~~23 ft.~~

~~The minimum length of any diving area terminating at a vertical wall shall be 30 feet.~~

~~Where multiple diving boards are used, the space between center lines shall not be less than 10 feet, and the center of no board shall be closer than 10 feet to a side wall. These dimensions shall apply both from a point of projection four feet from the end wall and the point of maximum depth.~~

~~The space between center lines of three meter and five meter diving boards shall be not less than 15 feet and between five meter and 10 meter boards shall be not less than 18 feet. The minimum distances from center lines of five meter and 10 meter boards shall be the same as to the side walls.~~

12VAC5-460-150. Lighting.

~~Where~~ When pools are to be used after dark, ~~the swimming pool area shall be equipped with lighting fixtures of such number and design as to light~~ all parts of the pool, the water therein, and the entire area shall be well lit. Fixtures ~~should be installed in such a manner as to~~ shall not create ~~no~~ a hazard to the bathers. The ~~design and installation~~ maintenance and operation of the fixtures ~~should~~ shall be such that lifeguards can clearly see every part of the swimming pool, including decks, spring boards, and other appurtenances, without being blinded by glare. ~~If installed, submarine lights shall provide at least one watt per square foot of pool area. Each~~ The electrical grounding of all submarine ~~light~~ lights shall be properly ~~connected to a ground wire~~ maintained.

12VAC5-460-170. Recirculation systems.

~~All swimming pools shall be equipped with a~~ The recirculation system ~~consisting of~~, including all pumps, hair and lint catchers, filters, disinfection equipment, and necessary pipe connections to the inlets and outlets, shall be maintained in working order as designed. Adequate provision shall be made for backwashing filters. ~~Recirculation~~ When not prescribed by the Virginia Uniform Statewide Building Code (13VAC5-63) in effect at the time of the pool's construction, recirculation systems shall be designed for an eight hour or less turnover of the swimming pool water.

12VAC5-460-200. Hair and lint catchers, gutters.

Hair and lint catchers shall be ~~installed ahead of the filter pump and be designed and located so that they can~~ able to be easily and simply ~~be~~ dismantled for cleaning and inspection. Floating material and scum shall not be allowed to collect on the surface of the water.

12VAC5-460-210. Filters.

The ~~recirculation system shall be equipped with a~~ filtration system ~~that will filter the entire contents of the swimming pool within eight hours or less at the rate of three gallons or less per square foot per minute~~ shall be maintained and operated as designed. In sand filters, the layer of filter sand shall be at least 20 inches in depth, properly supported by uniform layers of clean graded gravel to a minimum depth of 12 inches or supported by porous plates. The filter sand shall have an effective size of between 0.45 and 0.55 millimeters

with a uniformity co-efficient not greater than 1.7. In anthracite coal filters, the anthracite shall have a depth of at least 24 inches and shall have an effective size between 0.6 and 0.8 millimeters with a uniformity co-efficient of not greater than 1.8. Pressure filters shall be equipped with readily accessible air relief valves and access holes large enough to permit inspections, maintenance, and repair work. Each pressure filter system shall be equipped with a pressure gauge at least four inches in diameter on the inlet and outlet to indicate the pressure in pounds per square inch, and a sight glass that can be easily removed for cleaning shall be provided on the waste discharge line. Gravity type filters shall be equipped with loss of head gauges.

The filtration rate for diatomaceous earth filters and similar equipment may not exceed 1-1/2 gallons per square foot of filter area with eight hours turn-over of pool volume unless continuous slurry feed is provided, in which case, the rate shall not exceed three gallons per minute per square foot of filter area.

Arrangements or equipment shall be provided for application of filter aid and proper precoating and cleaning of filter elements. All filters shall be capable of being cleaned or backwashed by use of the washwater pump and the manipulation of valves. ~~In view of the constant change of design of such equipment, it will be necessary to evaluate each system individually. Approval or rejection of systems will be at the discretion of the State Health Commissioner, based upon the need for protecting the health and safety of those using any such pool.~~

12VAC5-460-220. Rate of flow indicators.

~~Recirculation~~ When not prescribed by the Virginia Uniform Statewide Building Code (13VAC5-63) in effect at the time of the pool's construction, the recirculation system shall be equipped with a rate of flow indicator reading in gallons per minute~~,~~. Indicators shall be properly maintained, easily readable, and located so as to indicate both the rate of flow of the effluent from the filter and the rate of backwash in gallons per minute in sand or anthracite coal filters.

12VAC5-460-230. ~~Suction cleaners.~~ (Repealed.)

~~Suction cleaners shall be provided. Where the suction cleaner is operated by the recirculating pump, a device shall be provided for throttling the flow from the pool outlet, and the suction cleaner line shall be connected through the hair and lint catcher.~~

12VAC5-460-240. Chemical feeding equipment.

~~Means shall be provided for regulating the feeding of chemicals~~ Chemicals shall be automatically fed into the water in the recirculation system~~. The installation of~~ by mechanically operated, positive~~,~~ chemical feeders or open-type chemical machines ~~is required~~. ~~The installation of closed-type~~ Closed-type solution pots ~~is~~ are prohibited.

12VAC5-460-330. Commissioner approval.

For any items not specifically covered in this chapter or the Virginia Uniform Statewide Building Code (13VAC5-63), the State Health Commissioner is authorized to require that all ~~materials, methods of construction and design~~ swimming pool features ~~shall be proven to~~ function adequately, effectively, and without excessive maintenance and operational difficulties ~~before he grants approval thereof, and such approval shall be based upon the need for protecting~~ to protect the health and safety of those using swimming pools.

It shall be the duty of the applicant to provide such data, tests, or other adequate proof that the device, material, or product will satisfactorily perform the function for which it is intended before such item shall be approved or accepted for tests.

12VAC5-460-350. Location and slopes.

Wading pools shall be located so that drainage from surrounding areas will not wash contamination into pools during rainfall. ~~The bottom of wading pools shall slope not less than three inches in 10 feet toward the drain.~~

12VAC5-460-360. Deck area.

Wading ~~pools shall be entirely surrounded by a deck at least four feet in width. Decks~~ pool decks shall be ~~constructed of a permanently impervious material which shall~~ maintained to have and retain a finish as smooth as possible that is nonslip to bare feet. ~~The deck shall slope not less than three inches in 10 feet away from the pool edge, and the water on the deck shall be discharged to waste.~~

12VAC5-460-370. Protection.

~~Wading~~ When not prescribed by the Virginia Uniform Statewide Building Code (13VAC5-63) in effect at the time of the facility's construction, wading pools and wading areas shall be separated from swimming pools by appropriate ~~protectional~~ protection features.

12VAC5-460-380. Water circulation systems.

~~A complete recirculation system shall be installed at wading pools which cannot be served adequately by an adjacent swimming pool recirculation system.~~ The recirculation system of wading pools shall be maintained in working order as designed. When not prescribed by the Virginia Uniform Statewide Building Code (13VAC5-63) in effect at the time of the pool's construction, the recirculation system shall provide a pool volume turn-over rate of once in three hours or less~~. An alternate method to the water circulation system is the continuous addition of water~~ or have properly treated water continuously added at a rate of flow sufficient to replace all of the water in the wading pool once in three hours or less. The overflow water, with this method, shall be continuously discharged to waste.

Part III
Spray Pools

12VAC5-460-400. Water supplies.

Water sprayed into a pool shall be from an approved supply. Spray heads shall be ~~installed so that there will be no possibility of their submergence and, as a result, of clogged drains~~ properly maintained as designed.

12VAC5-460-410. Materials.

Spray pools shall be ~~constructed of permanently impervious material which shall~~ maintained to have ~~and retain~~ a finish as smooth as possible ~~that is~~, but nonslip to bare feet.

12VAC5-460-420. ~~Slopes.~~ (Repealed.)

~~Spray pool bottoms shall slope not less than three inches in 10 feet toward the drains.~~

12VAC5-460-430. Drains.

~~Spray pools shall be equipped at low points with an unvalved drain to waste. The drain~~ Drains of spray pools shall be ~~of such size and design~~ maintained and operated in a manner so that water sprayed into the pool will not pond in the pool bottom.

12VAC5-460-440. Deck areas.

~~Spray pools shall be entirely surrounded by a deck at least four feet in width.~~ Decks shall be ~~constructed of a permanently impervious material which shall~~ maintained to have and retain a finish as smooth as possible and nonslip to bare feet. ~~The deck shall slope not less than three inches in 10 feet away from the pool edge and the water on the deck discharged to waste.~~

VA.R. Doc. No. R20-5572; Filed August 1, 2019, 11:13 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. 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: **12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-45).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: October 2, 2019.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

In accordance with Item 303 XX 8 a of Chapter 2 of the 2018 Acts of Assembly, Special Session I (the appropriation act), the amendments update the chapter to reflect supplemental payments to state-owned nursing facilities owned or operated by a Type One hospital.

12VAC30-90-45. ~~[Reserved]~~ Supplemental payments for state-owned nursing facilities.

A. Effective July 1, 2018, DMAS shall make supplemental payments to state-owned nursing facilities owned by a Type One hospital. Quarterly supplemental payments for each facility shall be calculated in the manner described in this section.

B. Reimbursement methodology. The supplemental payment shall equal inpatient nursing facility claim payments times the upper payment limit (UPL) gap percentage.

1. The annual UPL gap percentage is the percentage calculated where the numerator is the difference for each nursing facility between a reasonable estimate of the amount that would be paid under Medicare payment principles for nursing facility services provided to Medicaid patients calculated in accordance with 42 CFR 447.272 and what Medicaid paid for such services, and the denominator is Medicaid payments to each nursing facility for nursing facility services provided to Medicaid patients in the same year used in the numerator.

2. The UPL gap percentage will be calculated annually for each nursing facility using data for the most recent year for which comprehensive annual data are available and inflated to the state fiscal year for which payments are to be made.

3. Maximum aggregate payments to all qualifying nursing facilities shall not exceed the available UPL. If nursing facility payments for state nursing facilities would exceed the UPL, the numerator in the calculation of the UPL gap percentage shall be reduced proportionately.

C. Quarterly payments. After the close of each quarter, beginning with the July 1, 2018, to September 30, 2018, quarter, each qualifying nursing facility shall receive supplemental payments for the nursing facility services paid during the prior quarter. The supplemental payments for each qualifying nursing facility shall be calculated by multiplying Medicaid nursing facility payments paid in that quarter by the annual UPL gap percentage.

VA.R. Doc. No. R20-5616; Filed August 9, 2019, 3:28 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption 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.

Titles of Regulations: **14VAC5-100. Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident Sickness Policy Forms (repealing 14VAC5-100-10 through 14VAC5-100-80).**

14VAC5-101. Rules Governing Life and Health Forms Filings (adding 14VAC5-101-10 through 14VAC5-101-120).

14VAC5-110. Rules and Regulations for Simplified and Readable Accident and Sickness Insurance Policies (repealing 14VAC5-110-10 through 14VAC5-110-80).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: September 30, 2019.

Agency Contact: Elsie Andy, Manager, Forms and Rates, Life Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9072, FAX (804) 371-9944, or email elsie.andy@scc.virginia.gov.

Summary:

The proposed action establishes a new chapter, 14VAC5-101 (Rules Governing Life and Health Forms Filings), regarding current filing practices and requirements for electronic filing to replace 14VAC5-100 (Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident Sickness Policy Forms) and 14VAC5-110 (Rules and Regulations for Simplified and Readable Accident and Sickness Insurance Policies). The new chapter contains form and filing requirements, readability requirements, variability provisions, documentation and authorization requirements, and provisions for out-of-state and multiple employer welfare arrangements filings. The proposed action repeals 14VAC5-100 and 14VAC5-110, which are outdated and largely inapplicable.

AT RICHMOND, AUGUST 5, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00088

Ex Parte: In the matter of Repealing and Adopting New Rules Governing Forms Filing for Life and Accident and Sickness Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") 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, and § 38.2-223 of the Code 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.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: http://www.scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal Chapter 100 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident Sickness Policy Forms" set out at 14 VAC 5-100-10 through 14 VAC 5-100-80; repeal Chapter 110 of Title 14 of the Virginia Administrative Code entitled "Rules and Regulations for Simplified and Readable Accident and Sickness Insurance Policies" set out at 14 VAC 5-110-10 through 14 VAC 5-110-80; and to adopt a new chapter, Chapter 101 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Life and Health Forms Filings," which are recommended to be set out at 14 VAC 5-101-10 through 14 VAC 5-101-120.

The repeal of Chapters 100 and 110 is necessary because these Rules are outdated, and many provisions are no longer applicable. The proposed new Rules in Chapter 101 address current filing practices and requirements for electronic filing. These Rules specifically establish form and filing requirements, readability requirements, variability provisions, documentation and authorization requirements as well as provisions for out-of-state and Multiple Employer Welfare Arrangements, or MEWA, filings.

NOW THE COMMISSION is of the opinion that the Rules at Chapters 100 and 110 of Title 14 of the Virginia Administrative Code should be repealed, and the proposed new Rules at Chapter 101 of Title 14 of the Virginia Administrative Code should be considered for adoption with a proposed effective date of January 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to repeal Chapters 100 and 110 of Title 14 of the Virginia Administrative Code and adopt a new chapter proposed at Chapter 101 of Title 14 of the Virginia Administrative Code recommended to be set out at 14 VAC 5-101-10 through 14 VAC 5-101-120, is 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 repeal of, Chapters 100 and 110 and the adoption of the proposed new Chapter 101 shall file such comments or hearing request on or before September 30, 2019, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2019-00088. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/case. All comments shall refer to Case No. INS-2019-00088.

(3) If no written request for a hearing on the proposed repeal and adoption of proposed new rules as outlined in this Order is received on or before September 30, 2019, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal Chapters 100 and 110 and adopt proposed Chapter 101 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write life insurance and annuity contracts, accident and sickness insurance, and viatical settlement policies as well as to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to repeal and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: http://www.scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

CHAPTER 101
RULES GOVERNING LIFE AND HEALTH FORMS FILINGS

14VAC5-101-10. Purpose.

A. The purpose of this chapter is to provide uniform standards for filing forms in accordance with §§ 38.2-316, 38.2-3725, and 38.2-6003 of the Code of Virginia and to establish rules to expedite the review and approval of all forms relating to life, accident and sickness, annuity, credit life, credit accident and sickness, viatical settlements, and legal services plans filed under Chapter 44 (§ 38.2-4400 et seq.) of Title 38.2 of the Code of Virginia that are delivered or issued for delivery in the Commonwealth of Virginia.

B. Any rate filing submitted to the commission that corresponds with a form subject to this chapter shall comply with the applicable filing requirements of this chapter.

C. Medicare supplement and long-term care marketing communications that are required to be filed with the commission pursuant to § 38.2-3609 of the Code of Virginia and 14VAC5-200-160 shall comply with the applicable filing requirements of this chapter.

D. Policyholder notification letters required to be filed with the commission pursuant to 14VAC5-200-75 D shall comply with the applicable filing requirements of this chapter.

14VAC5-101-20. Applicability and scope.

This chapter shall apply to all companies licensed in this Commonwealth to write the types of insurance covered by this chapter.

14VAC5-101-30. Definitions.

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

"Approval" means a disposition applied to a form indicating that it has been filed by a company, reviewed and approved by the commission, and that it may be used in this Commonwealth for the purpose with which it was approved.

"Commission" means the State Corporation Commission.

"Company" means any entity licensed in the Commonwealth to transact the business of insurance or viatical settlements.

"Filed for use" means a disposition applied to a form that is required to be filed with the commission but does not require approval and may be used in this Commonwealth for the purpose with which it was filed.

"Filing description" means a cover letter or electronic summary of the contents of a form filing.

"Form" means a policy, rider, endorsement, amendment, application, enrollment form, certificate of insurance, evidence of coverage, group agreement, supplemental

agreement, rate, or any other form required to be filed with or approved by the commission.

"Policy" means an insurance policy, contract, certificate, evidence of coverage, or other agreement of insurance and includes any attached rider or endorsement.

"SERFF" means the National Association of Insurance Commissioners System for Electronic Rate and Form Filing, or its successor.

14VAC5-101-40. Source of filing.

All filings shall be transmitted electronically through SERFF or submitted in writing to the commission. The filing shall be submitted by the company representative having forms filing responsibilities or by a third-party consulting or legal firm authorized by the company to file its forms. Proof of authorization for any third-party filing shall be included.

14VAC5-101-50. General filing requirements.

A. The commission may set filing deadlines as needed. Deadlines shall be strictly enforced.

B. A form is considered filed with the commission on the date the filing is received.

C. Each filing shall be accompanied by a filing description that shall include:

1. The type of insurance form, including a description of the form and the market for which the form is intended. Intentions to concentrate on a specialized market should be noted.

2. The form number of each form that is being filed.

3. An indication that the form is new, or if replacing, revising, or modifying a previously approved form, the exact changes that are intended.

4. An identification of any change in benefits and an indication of whether the change affects premium rates for the form.

5. An indication when a form submitted has been withdrawn by another regulatory body and the reasons for such a withdrawal.

D. Any form to be used in only the group or only the individual market shall be separately filed.

E. Except for an application or enrollment form, each filing shall pertain to only one type of insurance. Combinations of types of insurance in one filing are otherwise prohibited, unless specifically allowed by law.

F. Any form filed that is to be used with a previously approved form, including an application, shall identify the form number, approval date, and SERFF or state tracking number in the new filing.

G. Any amendment, endorsement, or rider that intends to revise a previously approved form shall be accompanied by the previously approved form filed as supporting documentation.

14VAC5-101-60. Form requirements.

The following requirements shall be met for each form submitted for review or approval:

1. The form number shall appear in the lower left-hand corner of the first page of each form. It shall consist of numbers, letters, or a combination of both. The form number shall distinguish the form from all other forms used by the company.

2. The full licensed name of the company, including the address of the home office, shall appear in prominent print at the top of the cover page of any policy, application, or enrollment form. Examples of prominent print include print that is in all capital letters, bold, enlarged font, contrasting color, underlined, or otherwise differentiated from the other type in the form. The full licensed name of the company shall appear in prominent print on all other forms.

3. A marketing name or logo also may be used on the form, provided that the marketing name or logo does not mislead as to the identity of the company.

4. The cover page of a policy also shall include the address of an office that will administer the policy if different from the home office, a company telephone number, and company website address.

5. Each form shall be submitted in the final form in which it is to be marketed or issued, sufficiently completed in "John Doe" fashion to indicate how it is intended to be used.

6. Each form that is to be used in an electronic version shall be filed in a format that matches the electronic version exactly.

14VAC5-101-70. Readability.

A. Each form submitted for review or approval shall be written in simplified language, logically and clearly arranged, printed in a legible format, and understandable to a person of average intelligence without special insurance knowledge or training.

B. A policy of more than three pages shall include a table of contents listing the principal sections and provisions and the pages on which they are found.

C. Defined words and terms shall be placed in a separate definition section that is clearly identified. A word or term that is used only in one section may be defined within that section.

D. A policy shall be divided into logically arranged sections with an appropriately named caption or heading for ease in locating desired content. Captions and headings shall be clearly set apart from the general text.

E. Any form submitted for review or approval shall be printed in at least 10-point type size.

F. Any policy shall achieve a minimum Flesch reading ease score of 50 or an equivalent score using another comparable test, unless otherwise specified by statute. The commission may approve an alternative to the Flesch reading ease score if it is determined to be comparable. The Flesch reading ease score shall be identified in the certificate of compliance for each policy.

G. A company may request an exception to the Flesch reading ease score. This request shall identify the specific reasons why the minimum standards have not been met and provide details of the policy's Flesch reading ease score test. The commission may except the policy if, in its sole discretion, it finds that a lower score: (i) will provide a more accurate reflection of the readability of the policy; (ii) is warranted by the nature of a particular policy or type or class of policies; or (iii) is caused by certain policy language that is drafted to conform to the requirements of any state or federal law, regulation, or agency interpretation.

14VAC5-101-80. Variability.

A. Use of variable bracketed information shall be limited. Any form submission that contains variable bracketed language that is so extensive that it cannot reasonably be reviewed shall be disapproved.

B. Administrative information, such as officer names, titles and signatures, contact information, or company logo may be presented as variable bracketed text.

C. Different types of benefits may be variable only for inclusion or exclusion within the form. The use of brackets within brackets is not permitted, except when variability is necessary to identify a period of time or other numeric value.

D. Each instance of variable text shall appear in brackets on a form and shall be separately and completely explained in detail in a Statement of Variability document. Each explanation of variability shall appear in the same order that it appears on the form.

E. Requests for revisions to a Statement of Variability contained in a previously approved filing shall be accomplished by notification in the original filing.

14VAC5-101-90. Multiple employer welfare arrangement (MEWA) filings.

Any multiple employer welfare arrangement (MEWA) that has registered with the commission as a licensed insurance company in accordance with 14VAC5-410-40 shall also meet the form and rate filing requirements of §§ 38.2-316 and 38.2-316.1 of the Code of Virginia.

14VAC5-101-100. Out-of-state filings.

A. Any company that wishes to deliver a certificate of insurance to any resident of this Commonwealth in connection with a policy issued outside of Virginia shall file with the commission each form that will be delivered in Virginia. The company shall demonstrate:

1. Whether the state in which the policy was issued has substantially similar laws to Virginia as defined in subdivisions A 1 through A 3 of § 38.2-3319.1 or 38.2-3522.1 of the Code of Virginia as applicable; and

2. The type of group (i) as defined in § 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable; or (ii) a nondefined or discretionary group to which the policy is issued.

B. If the group is defined in accordance with § 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable, the company shall file any form that will be delivered in Virginia along with documentation that substantiates that the issuing state's filing requirements have been met. In addition, a certification from the company is required indicating that the group insurance coverage marketed to residents of this Commonwealth will comply with the provisions of § 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable.

C. If the group is nondefined or discretionary and the state of issue has substantially similar laws to Virginia, the company shall file any form that will be delivered in Virginia along with documentation that substantiates that the issuing state's filing requirements have been met. In addition, a certification from the company is required indicating that the group insurance coverage marketed to residents of this Commonwealth complies with the requirements of subdivisions E 1 through E 3 of this section.

D. If the group is nondefined or discretionary and the state of issue does not have substantially similar laws to Virginia, the company shall file for approval any form that will be delivered in this Commonwealth in accordance with § 38.2-316 of the Code of Virginia.

E. Any policy issued outside of Virginia shall demonstrate that:

1. The policy is not contrary to Virginia's public policy and is in the best interest of the citizens of Virginia;

2. The issuance of the policy will result in economies of acquisition or administration; and

3. The benefits are reasonable in relation to the premiums charged.

14VAC5-101-110. Certificate of compliance.

Each form filing shall include a statement identical to the following that is signed by an officer of the company:

The Flesch reading ease score of the filed policy form is _____.

I represent that a review of the enclosed form has been conducted, and I certify that, to the best of my knowledge and belief, each form submitted is consistent and complies with the requirements of Title 38.2 of the Code of Virginia and the applicable rules and regulations. I understand that a failure to comply with these requirements will result in a disapproval of the filing.

_____

Signature of Officer

_____

Printed Name

_____

Title

14VAC5-101-120. 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.

VA.R. Doc. No. R20-2403; Filed August 5, 2019, 2:13 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22).**

18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-35).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-35).

18VAC85-80. Regulations Governing the Practice of Occupational Therapy (amending 18VAC85-80-26).

18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-25).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-35).

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-35).

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-30).

18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (amending 18VAC85-140-40).

18VAC85-150. Regulations Governing the Practice of Behavior Analysis (amending 18VAC85-150-40).

18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (amending 18VAC85-160-40).

18VAC85-170. Regulations Governing the Practice of Genetic Counselors (amending 18VAC85-170-40).

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

Effective Date: October 2, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The amendments provide for a one-time fee reduction applicable to the next renewal cycle in 2020 or 2021 for all professions regulated by the Board of Medicine.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be $302, and the fee for licensure in chiropractic shall be $277.

D. The fee for a temporary authorization to practice medicine pursuant to clauses (i) and (ii) of § 54.1-2927 B of the Code of Virginia shall be $25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be $55. The annual renewal fee shall be $35. For renewal of a limited professorial or fellow license in ~~2018~~ 2020, the fee shall be $30. An additional fee for late renewal of licensure shall be $15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be $55. The annual renewal fee shall be $35. For renewal of a limited license to interns and residents in ~~2018~~ 2020, the fee shall be $30. An additional fee for late renewal of licensure shall be $15.

G. The fee for a duplicate wall certificate shall be $15~~; the~~. The fee for a duplicate license shall be $5.00.

H. The fee for biennial renewal shall be $337 for licensure in medicine, osteopathic medicine, and podiatry and $312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be $115 for licensure in medicine, osteopathic medicine, and podiatry and $105 for licensure in chiropractic. For renewal of licensure in ~~2018~~ 2020, the fee shall be $270 for licensure in medicine, osteopathic medicine, and podiatry and $250 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be $2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be $497 for licensure in medicine, osteopathic medicine, and podiatry ($382 for reinstatement application in addition to the late fee of $115) and $472 for licensure in chiropractic ($367 for reinstatement application in addition to the late fee of $105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure shall be $10, and the fee for certification of grades to another jurisdiction by the board shall be $25.

L. The fee for biennial renewal of an inactive license shall be $168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $55 for each renewal cycle. For renewal of an inactive license in 2020, the fee shall be $135.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $25 for each renewal cycle. For renewal of a restricted volunteer license in ~~2018~~ 2020, the fee shall be ~~$65~~ $60.

N. The fee for a returned check shall be $35.

18VAC85-40-35. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be $130.

2. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month. For ~~2019~~ 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia, which has lapsed for a period of two years or more, shall be $180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of good standing or verification to another jurisdiction shall be $10~~; the~~. The fee for certification of grades to another jurisdiction shall be $25.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be $130.

2. The biennial fee for renewal of an active license shall be $135 and for renewal of an inactive license shall be $70, payable in each odd-numbered year in the birth month of the licensee. For ~~2019~~ 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.

5. The fee for review and approval of a new protocol submitted following initial licensure shall be $15.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

8. The fee for a returned check shall be $35.

9. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be $130; for the occupational therapy assistant, it shall be $70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be $180; for the occupational therapy assistant, it shall be $90.

3. The fee for active license renewal for an occupational therapist shall be $135; for an occupational therapy assistant, it shall be $70. The fees for inactive license renewal shall be $70 for an occupational therapist and $35 for an occupational therapy assistant. Renewals shall be due in the birth month of the licensee in each even-numbered year. For ~~2018~~ 2020, the fee for renewal of an active license as an occupational therapist shall be $108; for an occupational therapy assistant, it shall be $54. For renewal of an inactive license in ~~2018~~ 2020, the fees shall be $54 for an occupational therapist and $28 for an occupational therapy assistant.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for an occupational therapist and $30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another jurisdiction for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist or radiologist assistant licensure shall be $130.

2. The application fee for the radiologic technologist-limited licensure shall be $90.

3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement for a radiologic technologist or a radiologist assistant.

1. The fee for active license renewal for a radiologic technologist shall be $135, and the fee for inactive license renewal shall be $70. For ~~2019~~ 2021, the fees for renewal shall be $108 for an active license as a radiologic technologist and $54 for an inactive license. If a radiologist assistant holds a current license as a radiologic technologist, the renewal fee shall be $50. If a radiologist assistant does not hold a current license as a radiologic technologist, the renewal fee shall be $150. For renewal of a radiologist assistant license in ~~2019~~ 2021, the fee shall be $40 for a radiologist assistant with a current license as a radiologic technologist and $120 for a radiologist assistant without a current license as a radiologic technologist.

2. An additional fee of $50 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a radiologic technologist or a radiologist assistant license that has lapsed for a period of two years or more shall be $180 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

D. Licensure renewal and reinstatement for a radiologic technologist-limited.

1. The fee for active license renewal shall be $70, and the fee for inactive license renewal shall be $35. For ~~2019~~ 2021, the fees for renewal shall be $54 for an active license as a radiologic technologist and $28 for an inactive license.

2. An additional fee of $25 to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $120 and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

E. Other fees.

1. The application fee for a traineeship as a radiologic technologist or a radiologic technologist-limited shall be $25.

2. The fee for a letter of good standing or verification to another state for licensure shall be $10; the fee for certification of scores to another jurisdiction shall be $25.

3. The fee for a returned check shall be $35.

4. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

18VAC85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be $130.

2. The fee for biennial active license renewal shall be $135~~; the~~. The fee for biennial inactive license renewal shall be $70. For ~~2019~~ 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

3. The additional fee for processing a late renewal within one renewal cycle shall be $50.

4. The fee for reinstatement of a license which has expired for two or more years shall be $180.

5. The fee for a letter of good standing or verification of a license to another jurisdiction shall be $10.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a duplicate wall certificate shall be $15.

8. The fee for a duplicate renewal license shall be $5.00.

9. The fee for a returned check shall be $35.

10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

18VAC85-120-35. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. The following fees have been adopted by the board:

1. The application fee shall be $130.

2. The fee for renewal of licensure shall be $135 and shall be due in the licensee's birth month, in each odd-numbered year.

3. A fee of $50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be $180 and shall be submitted with an application for reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate renewal license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of verification to another jurisdiction shall be $10.

9. The fee for an inactive license shall be $70, and the fee for a late renewal shall be $25.

10. For ~~2019~~ 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

18VAC85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be $277.

2. The fee for biennial active license renewal shall be $312; the additional fee for late renewal of an active license within one renewal cycle shall be $105.

3. The fee for biennial inactive license renewal shall be $168; the additional fee for late renewal of an inactive license within one renewal cycle shall be $55.

4. The fee for reinstatement of a license that has expired for a period of two years or more shall be $367 in addition to the late fee. The fee shall be submitted with an application for licensure reinstatement.

5. The fee for a letter of good standing or verification of a license to another jurisdiction shall be $10.

6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be $2,000.

7. The fee for a duplicate wall certificate shall be $15.

8. The fee for a duplicate renewal license shall be $5.00.

9. The fee for a returned check shall be $35.

10. For ~~2019~~ 2021, the fee for renewal of an active license shall be $250, and the fee for renewal of an inactive license shall be $125.

18VAC85-140-40. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be $130.

2. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month. For ~~2019~~ 2021, the renewal fee for an active license shall be $108, and the renewal fee for an inactive license shall be $54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

7. The fee for a returned check shall be $35.

8. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

18VAC85-150-40. Fees.

A. The following fees have been established by the board:

1. The initial fee for the behavior analyst license shall be $130; for the assistant behavior analyst license, it shall be $70.

2. The fee for reinstatement of the behavior analyst license that has been lapsed for two years or more shall be $180; for the assistant behavior analyst license, it shall be $90.

3. The fee for active license renewal for a behavior analyst shall be $135; for an assistant behavior analyst, it shall be $70. The fees for inactive license renewal shall be $70 for a behavior analyst and $35 for an assistant behavior analyst. Renewals shall be due in the birth month of the licensee in each odd-numbered year. For ~~2019~~ 2021, the renewal of an active license as a behavior analyst shall be $108, and the renewal fee for an inactive license shall be $54; the renewal fee for an active license as an assistant behavior analyst shall be $54, and the renewal fee for an inactive license shall be $28.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for a behavior analyst and $30 for an assistant behavior analyst.

5. The fee for a letter of good standing or verification to another jurisdiction for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-160-40. Fees.

A. The following fees have been established by the board:

1. The fee for registration as a surgical assistant or surgical technologist shall be $75.

2. The fee for renewal of registration shall be $70. Renewals shall be due in the birth month of the registrant in each even-numbered year. For ~~2018~~ 2020, the renewal fee shall be $54.

3. The additional fee for processing a late renewal application within one renewal cycle shall be $25.

4. The fee for a returned check shall be $35.

B. Unless otherwise provided, fees established by the board are not refundable.

18VAC85-170-40. Fees.

The following fees are required:

1. The application fee for licensure, payable at the time the application is filed, shall be $130.

2. The application fee for a temporary license, payable at the time the application is filed, shall be $50.

3. The biennial fee for renewal of active licensure shall be $135 and for renewal of inactive licensure shall be $70, payable in each odd-numbered year in the license holder's birth month. For ~~2019~~ 2021, the renewal fee for an active license shall be $108, and the renewal fee for an inactive license shall be $54.

4. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

5. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be $180 and shall be submitted with an application for licensure reinstatement.

6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

8. The fee for a returned check shall be $35.

9. The fee for a letter of good standing or letter of verification to another jurisdiction shall be $10.

VA.R. Doc. No. R20-6113; Filed August 14, 2019, 8:36 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-50).**

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

Effective Date: October 2, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

In accordance with Chapter 338 of the 2019 Acts of Assembly, the amendments provide for licensure by endorsement for spouses of active duty members of the armed forces if they have current certification from the National Commission on Certification of Physician Assistants and hold a license in another state.

18VAC85-50-50. Licensure: entry requirements and application.

A. The applicant seeking licensure as a physician assistant shall submit:

1. A completed application and fee as prescribed by the board.

2. Documentation of successful completion of an educational program as prescribed in § 54.1-2951.1 of the Code of Virginia.

3. Documentation of passage of the certifying examination administered by the National Commission on Certification of Physician Assistants.

4. Documentation that the applicant has not had a license or certification as a physician assistant suspended or revoked and is not the subject of any disciplinary proceedings in another jurisdiction.

B. The board may issue a license by endorsement to an applicant for licensure if the applicant (i) is the spouse of an active duty member of the Armed Forces of the United States or the Commonwealth, (ii) holds current certification from the National Commission on Certification of Physician Assistants, and (iii) holds a license as a physician assistant that is in good standing, or that is eligible for reinstatement if lapsed, under the laws of another state.

VA.R. Doc. No. R20-6084; Filed August 14, 2019, 8:51 a.m.

EXECUTIVE ORDER NUMBER THIRTY-EIGHT (2019)

Reauthorizing an Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud

Importance of the Issue

The misclassification of actual employees as "independent contractors" creates a competitive disadvantage for Virginia businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenues necessary to supply services to Virginia's citizens, and prevents workers from receiving protections and benefits to which they legally are entitled.

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) found that one third of audited employers in certain industries misclassify employees. By failing to purchase workers' compensation insurance, pay unemployment insurance and payroll taxes, or comply with minimum wage and overtime laws, employers reduce their labor overhead as much as 40%, placing employers who properly classify employees at a competitive disadvantage.

Based on state and national studies, JLARC estimated that worker misclassification lowers Virginia's state income tax collections as much as $28 million per year. Agencies with relevant enforcement responsibilities, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, and the Workers' Compensation Commission, each address only one component of this practice and may not fully coordinate their efforts. In its study, JLARC recommended the establishment of a task force with representatives from the agencies listed above.

Reauthorization of the Taskforce

Pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, and the Code of Virginia, in order to continue to examine the issue of worker misclassification and payroll fraud, I hereby re-authorize the Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud (Taskforce) first established in Executive Order Sixteen (2018).

Initiatives

The purpose of the Taskforce going forward should include, but not be limited to:

1. Reporting on statutes and regulations related to worker misclassification and payroll fraud and, if appropriate, recommending changes or additions to relevant legislation or administrative rules including an assessment of whether existing definitions of "employer" and "employee" are satisfactory or should be updated in light of current employment practices;

2. Reporting on current enforcement practices of the agencies involved and recommending procedures for more effective interagency cooperation and joint enforcement;

3. Reporting on the findings of efforts in other states and providing examples of effective methods for education and outreach;

4. Identifying effective ways to hold accountable companies working on state contracts that commit payroll fraud through misclassification of workers; and

5. Identifying ways to deter such misconduct through incentives and enforcement mechanisms.

The Taskforce, co-chaired by the Secretary of Commerce and Trade and the Governor's Chief Workforce Development Advisor, will include representatives from the Virginia Employment Commission, the Department of General Services, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department of Taxation, the Workers' Compensation Commission, and the Office of the Attorney General.

The Taskforce shall meet with and receive input from stakeholder groups, to include business community representatives and labor organizations, impacted by misclassification statutes and regulations and shall report to the Governor its preliminary findings and recommendations no later than November 1, 2019.

Staffing

Staff necessary for the Taskforce will be provided by the respective participating agencies and from the Secretary of Commerce and Trade and the Chief Workforce Development Advisor.

Effective Date of the Executive Order

This Executive Order supersedes Executive Order No. 16 (2018) and shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 8th day of August, 2019.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Document: Reciprocal Agreement between Virginia Board of Funeral Directors and Embalmers and District of Columbia Board of Funeral Directors.

Public Comment Deadline: October 2, 2019.

Effective Date: October 3, 2019.

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: 2019 Update Regarding DMAS Coverage of Telemedicine and Telehealth.

Public Comment Deadline: October 2, 2019.

Effective Date: October 3, 2019.

Agency Contact: Emily McClellan, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

BOARD OF PHYSICAL THERAPY

Titles of Documents:

Board Guidance on Receipt of Verbal Orders for Medications by Physical Therapists.

Virginia Board of Physical Therapy Bylaws.

Public Comment Deadline: October 2, 2019.

Effective Date: October 3, 2019.

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

STATE WATER CONTROL BOARD

Title of Document: Virginia's Nonpoint Source Implementation Best Management Practice Guidelines for Fiscal Year 2020.

Public Comment Deadline: October 2, 2019.

Effective Date: October 3, 2019.

Agency Contact: Lauren Linville, Nonpoint Source Program Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4096, or email lauren.linville@deq.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Request for Comment on the Combined 2020-2021 Mental Health and Substance Abuse Block Grant Application

Background: The Commonwealth of Virginia, through the Department of Behavioral Health and Developmental Services (DBHDS), uses the mental health (MH) and substance abuse (SA) block grants for treatment, recovery support, and other services to supplement Medicaid, Medicare, and private insurance services. Specifically, block grant recipients use the awards for the following purposes:

• Funding priority treatment and support services for individuals who do not have insurance or for whom coverage is terminated for short periods of time.

• Funding those priority treatment and support services that demonstrate success in improving outcomes or supporting recovery that are not covered by Medicaid, Medicare, or private insurance.

• Collecting performance and outcome data to determine the ongoing effectiveness of behavioral health promotion, treatment, and recovery support services.

The U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) intends for the Fiscal Year (FY) 2020-2021 Combined Block Grant Application to provide an overview and current updates for the behavioral health system and State Plan in the Commonwealth.

Comment: Federal law, in Title XIX, Subpart III, § 1941 of the Public Health Service Act (42 USC § 300x-51), requires as a condition of the funding agreement for the grant that states provide an opportunity for the public to comment on the state block grant plan by making the plan public in such a manner as to facilitate comment from any person (including federal, tribal, or other public agencies) both during the development of the plan (including any revisions) and after the submission of the plan to SAMHSA.

The draft FY 2020-2021 Combined Mental Health and Substance Abuse Block Grant Application documents are posted for comment. Individuals interested in making comments on the draft FY 2020-2021 Combined Mental Health and Substance Abuse Block Grant Application prior to submission may do so on the Virginia Regulatory Town Hall at http://townhall.virginia.gov through 12 p.m. on Monday, September 2, 2019. An individual must first be registered as a public user to make comments on Town Hall. Comments may also be made by email to nathanael.rudney@dbhds.virginia.gov, FAX (804) 786-9248, TDD (804) 371-8977, or postal mail to Nathanael Rudney, Office of Adult Community Behavioral Health Services, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797. The public comment window will remain open for 60 days, including after submission of the plan to SAMHSA. All comments must be received by 12 p.m. on Monday, September 30, 2019.

Contact Information: Nathanael Rudney, Behavioral Health Project Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 663-7270, FAX (804) 786-9248, TDD (804) 371-8977, or email nathanael.rudney@dbhds.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

AT RICHMOND, AUGUST 14, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00081

Ex Parte: In the matter of Adopting New
Rules Governing Health Insurance Balance Billing

ORDER SCHEDULING HEARING

On June 6, 2019, the State Corporation Commission ("Commission") entered an Order to Take Notice ("Order") concerning new rules proposed by the Bureau of Insurance ("Bureau") at Chapter 235 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Insurance Balance Billing." The Order allowed all interested persons to file comments with the Clerk of the Commission ("Clerk") regarding the proposed new rules on or before August 9, 2019. The Order also allowed interested persons to request a hearing before the Commission by filing such request with the Clerk by August 9, 2019.

Following entry of the Order and by August 9, 2019, the Commission received comments on the proposed new rules as well as requests for a hearing.

NOW THE COMMISSION, upon consideration of the filings, is of the opinion that a hearing should be held to receive additional public comment on the proposed new rules,

Accordingly, IT IS ORDERED THAT:

(1) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219 at 10 a.m. on September 12, 2019, to receive additional public comment on the Bureau's proposed new rules.

(2) All persons who desire to appear and be heard at the hearing on the proposed new rules need only appear in the Commission's Courtroom at 9:45 a.m. on September 12, 2019

and complete a notice of appearance form that shall be provided by the Commission.

(3) On or before September 17, 2019, the Bureau shall file, with the Commission's Office of the Clerk, a response to legal issues that have been raised in the comments.

(4) On or before September 27, 2019, any interested person who desires may file a reply to the Bureau's response. An original and fifteen (15) copies of such reply shall be filed with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Alternatively, such reply may be filed electronically with the Clerk of the Commission by following the instructions found on the Commission's website: http://www.scc.virginia.govicase.

(5) The Bureau forthwith shall provide notice of the hearing and opportunity to file a reply to the Bureau's response. Such notice shall be provided to all persons who submitted comments and requested a hearing on the Bureau's proposed new rules, as well as to all health carriers licensed in Virginia to offer a managed care health insurance plan.

(6) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Public Comment on Study to Consider Licensure for Sign Language Interpreters

Comment period: September 2, 2019, through September 16, 2019.

The Board for Professional and Occupational Regulation was requested to perform a study for the licensure of sign language interpreters. Public comments will be received beginning September 2, 2019, through September 16, 2019. Public hearings will be conducted as follows:

Wednesday, September 4 at 11 a.m.
Endependence Center, Inc.
6300 East Virginia Beach Boulevard
Norfolk, Virginia 23502-2827
Telephone (757) 461-8007
Contact: Nicole Davis, Executive Director

Friday, September 6 at 11 a.m.
Northern Virginia Resource Center
3951 Pender Drive, Suite 130
Fairfax, VA 22030
Telephone (703) 352-9055
Contact: Debbie Jones

Monday, September 9 at 1 p.m.
Training Room 1, 2nd floor,
Commonwealth Conference Center
9960 Mayland Drive
Richmond, VA 23233
Telephone (804) 367-8519
Contact: Kate Nosbisch

Wednesday, September 11 at 11 a.m.
Blue Ridge Independent Living Centers
1502 B Williamson Road, North East
Roanoke, VA 24012
Telephone (540) 342-1231
Contact: Karen Michalski-Karney

If unable to attend a public hearing to provide comment, individuals may provide comment beginning Monday, September 2, 2019, via the Virginia Regulatory Town Hall at http://townhall.virginia.gov or to Kathleen R. Nosbisch, Executive Director, Board of Professional and Occupational Regulation at bpor@dpor.virginia.gov; mailing address Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233; or via FAX at (866) 465-6206.

In addition, there will be an American sign language video on this announcement posted at the Virginia Department for the Deaf and Hard of Hearing from September 2, 2019, through September 16, 2019. Individuals who use sign language may submit their comments by video at bpor@dpor.virginia.gov.

Any written comments must be received by close of business on Monday, September 16, 2019, in order to be considered by the board studying this matter.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8519, FAX (866) 465-6206, or email bpor@dpor.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Colonial Heritage LLC

An enforcement action has been proposed for Colonial Heritage LLC for violations of the State Water Control Law in James City County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at

russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 2, 2019, to October 1, 2019.

Proposed Enforcement Action for Continental Automotive Systems Inc.

An enforcement action has been proposed for Continental Automotive Systems Inc. for violations of the State Water Control Law and regulations at the Continental Automotive Systems Culpeper Plant located in Culpeper County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 3, 2019, through October 3, 2019.

Proposed Enforcement Action for SCP-JTL Stonehouse Owner 2 LLC

An enforcement action has been proposed for SCP-JTL Stonehouse Owner 2 LLC for violations of the State Water Control Law in James City County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 2, 2019, to October 1, 2019.

Proposed Consent Special Order for Wakefield Convenience Store Inc.

An enforcement action is being proposed for Wakefield Convenience Store Inc. for alleged violations of 9VAC25-580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements, that occurred at 555 North County Drive, Wakefield, VA 23888. The State Water Control Board proposes to issue a consent special order to Wakefield Convenience Store Inc. to address the noncompliance. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Natalie Womack will accept comments by email at natalie.womack@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from September 2, 2019, to October 2, 2019.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations.* The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-210. Virginia Water Protection Permit Program Regulation.**

Publication: 35:25 VA.R. 2994-3001 August 5, 2019

Correction to Final Regulation:

Page 2994, Effective Date:

After "September 4," replace "2010" with "2019"

VA.R. Doc. No. R19-6014; Filed August 13, 2019.

STATE CORPORATION COMMISSION

Title of Regulation: **21VAC5-30. Securities Registration.**

Publication: 35:24 VA.R. 2942-2965, July 22, 2019

Correction to Proposed Regulation:

Page 2952, DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-30), 2nd column, 5th document, replace "Church Bonds, as adopted April 29, 1981" with "Real Estate Investment Trusts, as amended May 7, 2007"

VA.R. Doc. No. R19-5907; Filed August 9, 2019.