



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at [register.dls.virginia.gov](http://register.dls.virginia.gov).

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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.

**Members of the Virginia Code Commission:** John S. Edwards, Chair; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Rita Davis; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo.

**Staff of the Virginia Register:** Karen Perrine, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Regulations Analyst; Rhonda Dyer, Publications Assistant; Terri Edwards, Senior Operations Staff Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## May 2021 through May 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 ( <b>Monday</b> )	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Agency Decision

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities.**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Name of Petitioner: James Sherlock.

Nature of Petitioner's Request: "Change Virginia Nursing Facility Licensure Regulations to Align with Federal Medicare/Medicaid Certification Regulations. The weaknesses of Virginia's nursing facility (NF) and skilled nursing facility (SNF) system have been exposed by COVID-19 with deadly consequences. Virginia's regulations applicable to these facilities may be part of the problem. 12VAC5-371 Regulations for the Licensure of Nursing Facilities published by the Board of Health conflict with and are more permissive than the regulatory requirements for Medicare/Medicaid certification in 42 CFR Part 483 - Requirements for States and Long Term Care Facilities. The Virginia Department of Health, the state agency contracted with the Centers for Medicare and Medicaid Services to conduct certification inspections, must at least in theory enforce both sets of regulations. However, the Virginia regulations have little practical effect in that 95% of Virginia NFs and SNF's seek certification for Medicare and/or Medicaid and thus must comply with the more stringent federal regulations. Indeed many facilities contain both SNF and NF facilities and swing beds in a single complex. Under Medicaid regulations, NFs are required to meet virtually the same requirements that SNFs participating in Medicare must meet. There is no reason that Virginia regulations for licensing the other 5.0% should be different. I thus recommend Virginia nursing facility licensing regulations either mirror or incorporate by reference 42 CFR Part 483. I also recommend that the Board of Nursing review 18VAC90-19-250 (Criteria for delegation) and other nursing practice regulations to ensure they align with the federal rules for nursing homes. I find important reasons why Virginia regulations should be aligned with federal regulations for the same facilities, and no provision in the Constitution of Virginia or existing Virginia law that prohibits such action. I also see no requirement for additional funding to do so. A few of the federal statutes or regulations allow for waivers in the presence of verified temporary shortages of health personnel or in the presence of equivalent alternative patient safeguards. CMS Medicare SNF waiver authority is re-delegated to the CMS Regional Offices (ROs). Waivers for NFs to provide licensed personnel on a 24-hour basis repose with the states. Life safety code waivers for NFs and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs) are the

responsibility of the states (See 42 CFR 483.470(j)(2)(A)). I suggest that on the heels of the COVID-19 deaths, Virginia not waive or request a waiver for any federal nursing home regulation. But if such waivers exist, they should appear in the VAC in sequence with the federal regulation they waive. It will also prove useful to create a single Nursing and Skilled Nursing Facilities section of the VAC to offer a complete reference for operators and inspectors. Those actions will resolve current regulatory chaos and clarify the state's waivers of federal regulations. They will also save whatever time and cost has historically been expended in drafting, seeking public comments, resolving disagreements, and approving Virginia nursing facility licensure regulations that are, in the main, irrelevant."

Agency Decision: Request granted.

Statement of Reason for Decision: The State Health Commissioner, acting on behalf of the State Board of Health, has decided that a standard regulatory action should be initiated.

Agency Contact: Rebekah E. Allen, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email [regulatorycomment@vdh.virginia.gov](mailto:regulatorycomment@vdh.virginia.gov).

VA.R. Doc. No. R20-54; Filed April 7, 2021, 9:08 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE WATER 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 following regulations are undergoing a periodic review and a small business impact review: **9VAC25-790, Sewage Collection and Treatment Regulations**, and **9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters**. The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each 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 April 26, 2021, and ends May 17, 2021.

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 Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### 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 following regulation is undergoing a periodic review and a small business impact review: **22VAC40-12, Public Participation Guidelines**. The review 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 April 26, 2021, and ends May 17, 2021.

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 Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-160, Rules and Regulations to Comply with the Setoff Debt Collection Act**, and determined that this regulation should be repealed.

The Commonwealth Transportation Board voted on July 17, 2019, to repeal 24VAC30-160. All of the substantive portions of the regulation that affect citizens are duplicative of provisions in the Setoff Debt Collection Act.

The Fast-Track Rulemaking Action to amend 24VAC30-160, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23235, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending **9VAC5-40, Existing Stationary Sources**. The purpose of the proposed action is to fulfill the Governor's direction announced on September 12, 2018. The Virginia Department of Environmental Quality is to identify ways to improve environmental protection in the Commonwealth, specifically, to develop a framework for limiting methane leakage from natural gas infrastructure that applies to new and existing sources and is tailored to Virginia-specific needs. This regulatory action will establish standards for limiting methane leakage from natural gas infrastructure tailored to meet Virginia-specific needs.

The primary focus of the regulatory action will be on transmission and storage, including pipelines, compressor stations and underground storage associated with the natural gas transmission and storage sector, and gathering/boosting compressors and gas processing plants associated with production and processing. Secondary focus will be on production and processing, including drilling and well completion, producing wells, and gathering lines. If additional requirements for new natural gas infrastructure sources are determined to be necessary to meet Virginia-specific needs, amendments to the requirements for new sources may also be considered as part of this rulemaking.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182); 40 CFR Parts 51 and 60.

Public Comment Deadline: June 25, 2021.

Agency Contact: Karen Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400 P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4178, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

VA.R. Doc. No. R21-6494; Filed April 1, 2021, 10:32 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF LAW

#### Fast-Track Regulation

**Title of Regulation: 1VAC45-10. Regulations Governing Disclosure of CID (Civil Investigative Demand) (amending 1VAC45-10-10, 1VAC45-10-30, 1VAC45-10-70, 1VAC45-10-80).**

**Statutory Authority:** § 59.1-9.10 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 26, 2021.

**Effective Date:** June 14, 2021.

**Agency Contact:** R. Thomas Payne, II, Senior Assistant Attorney General, Section Chief, Department of Law, Office of the Attorney General, 202 North 9th Street, Richmond, VA 23219, telephone (804) 225-2019, or email [oagregcoordinator@oag.state.va.us](mailto:oagregcoordinator@oag.state.va.us).

**Basis:** The Office of the Attorney General (OAG) is the promulgating agency. The Attorney General is the chief executive officer of the Virginia Department of Law and is authorized to perform such duties as may be provided by § 2.2-500 of the Code of Virginia. Section 59.1-9.10 of the Code of Virginia authorizes the Attorney General to promulgate rules and regulations to implement and carry out the provisions of the Virginia Antitrust Act (§ 59.1-9.1 et seq. of the Code of Virginia), giving the Attorney General authority to issue a civil investigative demand (CID).

**Purpose:** The amendments serve the public welfare by promoting enforcement of the Bad Faith Assertions of Patent Infringement law and encouraging coordination between consumer protection authorities operating in different states.

**Rationale for Using Fast-Track Rulemaking Process:** The proposed regulatory changes were prompted by a periodic review conducted by the OAG. 1VAC45-10 (the CID regulations) were last amended in November 2015 pursuant to another periodic review. The proposed amendments are expected to be noncontroversial because they do not directly affect the public. The direct effect of the CID Regulations is limited to law-enforcement authorities that represent the Commonwealth (and its political subdivisions) in enforcing the Virginia Antitrust Act and other consumer protection statutes that incorporate its CID provisions. In addition, the CID Regulations merely establish a formal, transparent process for the OAG to evaluate information sharing requests it receives

from other Virginia law-enforcement authorities that enforce the same laws. One proposed amendment extends coverage to allow the OAG to share CID material it receives with other Virginia law-enforcement authorities that enforce the Bad Faith Assertions of Patent Infringement law. The other amendment makes clear that the CID Regulations do not apply to information sharing requests the OAG may receive from law-enforcement authorities that represent states other than the Commonwealth, similar to the manner in which the CID Regulations do not apply to requests the OAG may receive from federal law-enforcement authorities.

**Substance:** The first amendment makes clear that the OAG can share CID material with other Virginia law-enforcement authorities that enforce the Bad Faith Assertions of Patent Infringement law. The law gives this authority to local Commonwealth Attorneys. The second amendment makes clear that the CID Regulations do not apply to the OAG sharing CID material with Attorneys General and agencies in other states that enforce similar consumer protection laws. The CID Regulations already make clear that their provisions do not apply to the OAG sharing of CID material with federal law-enforcement authorities. The CID provisions found within the Virginia Antitrust Act, which are incorporated mutatis mutandis into each of the other consumer protection statutes listed, are clear that the OAG can share investigative material with other federal and state law-enforcement authorities that have restrictions governing confidentiality similar to those contained in § 59.1-9.10 of the Code of Virginia.

**Issues:** The first proposed amendment will benefit the OAG and local Commonwealth Attorneys by allowing the sharing of CID material if it relates to possible violations of the Bad Faith Assertions of Patent Infringement law. The second proposed amendment will benefit the OAG and the Attorneys General and associated agencies in other states that enforce similar consumer protection laws by making clear that nothing in the CID Regulations limits Virginia OAG ability to share CID material with those agencies. The OAG is still limited, however, by the CID statute itself that makes clear that the OAG can only share CID material with federal and state law-enforcement authorities that have similar restrictions governing confidentiality. Neither proposed amendment results in any disadvantages to the public or the agency.

#### **Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. Following a periodic review,<sup>1</sup> the Department of Law (Department) proposes to update this regulation regarding civil investigative demands (CID) to clarify that 1) CIDs issued

pursuant to the Bad Faith Assertions of Patent Infringement statutes are subject to this regulation, and 2) this regulation does not apply to law-enforcement authorities in other states.

**Background.** The Virginia Antitrust Act, the Solicitation of Contributions law, Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act all authorize the Attorney General to issue CIDs. This regulation contains rules on sharing of information obtained through such demands with local law enforcement authorities (e.g., local Commonwealth Attorneys).

**Estimated Benefits and Costs.** Following a periodic review of this regulation, the Department proposes that the authority to share information obtained through CIDs issued pursuant to the "Bad Faith Assertions of Patent Infringement" statutes, which were enacted by Chapter 810 and 819 of the 2014 Acts of Assembly,<sup>2</sup> be incorporated in the regulatory text.

The Department states that since 2015 it has handled between 15 and 20 cases involving bad faith assertions of patent infringement, most of which did not involve litigation. Furthermore, the Department asserts that while these CIDs could have been issued under the statute, no CIDs have been issued under the bad faith assertions of patent infringement law during the same time period nor has any of the local Commonwealth's Attorneys with whom it shares enforcement authority requested sharing of such CID material. The proposed change mainly clarifies the existing authority of the Department to issue CIDs and share the information regarding bad faith assertions of patent infringement. Thus, the proposed amendment is not expected to create any economic effects if this change becomes final other than improving the clarity of the text.

Additionally, consistent with the Code of Virginia § 59.1-9.10(M), the Department proposes to clarify that sharing of CID information with law-enforcement authorities representing states other than the Commonwealth is not limited by this regulation. Current language is clear that sharing of CID information with federal authorities is not inhibited by this regulation. The proposed change would clarify that this regulation also does not inhibit the Department's authority to share information with law enforcement authorities from other states. This change is also not expected to create any economic effects upon becoming final other than improving the clarity of the regulatory text.

**Businesses and Other Entities Affected.** The proposed regulation applies to the Department and the 120 local Commonwealth's Attorneys who have authority to enforce the Bad Faith Assertions of Patent Infringement statutes. As noted, the proposals mainly clarify the regulatory text. Thus, no adverse economic impact<sup>3</sup> on any entity is indicated and no entity appears to be disproportionately affected.

**Small Businesses<sup>4</sup> Affected.** The proposed amendments do not adversely affect small businesses.

**Localities<sup>5</sup> Affected.<sup>6</sup>** The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

**Projected Impact on Employment.** The proposed amendments do not affect employment.

**Effects on the Use and Value of Private Property.** The proposed amendments neither effect the use and value of private property nor affect real estate development costs.

<sup>1</sup><https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1998>

<sup>2</sup><https://lis.virginia.gov/cgi-bin/legp604.exe?141 ful CHAP0810&141 ful CHAP0810>

<https://lis.virginia.gov/cgi-bin/legp604.exe?141 ful CHAP0819&141 ful CHAP0819>

<sup>3</sup>Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

<sup>4</sup>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."

<sup>5</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>6</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The agency concurs with the economic impact analysis performed by the Department of Planning and Budget.

**Summary:**

*Pursuant to Chapters 810 and 819 of the 2014 Acts of Assembly, the amendments provide a uniform procedure for select Virginia law-enforcement authorities to request copies of civil investigative demand (CID) material obtained through CIDs issued pursuant to the Virginia Antitrust Act, Solicitation of Contributions law, Virginia Consumer Protection Act, and Virginia Telephone Privacy Protection Act. The amendments (i) extend coverage to CIDs issued pursuant to the Bad Faith Assertions of Patent Infringement law, which was enacted in 2014 but is not currently included in the list of laws governed by the CID regulations, and (ii) clarify that the chapter does not apply to law-enforcement authorities representing states other than the Commonwealth.*

**1VAC45-10-10. Definitions.**

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

"Bad Faith Assertions of Patent Infringement law" means Chapter 18.1 (§ 59.1-215.1 et seq.) of Title 59.1 of the Code of Virginia.

"Law-enforcement authority" means any public official, and his designees, (i) representing the Commonwealth, which

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# Regulations

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includes its political subdivisions and its public agencies, and (ii) empowered to bring civil actions to enforce the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, the Bad Faith Assertions of Patent Infringement law, or the Solicitation of Contributions law.

"Material" means any information taken, furnished, received, examined, or copied pursuant to civil investigative demands issued by the Attorney General pursuant to the Virginia Antitrust Act, the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act, the Bad Faith Assertions of Patent Infringement law, or the Solicitation of Contributions law, including, ~~but not limited to~~, names, testimony, documents, or answers to interrogatories.

"Person" means any natural person, corporation, trust, partnership, association, company, or any other legal entity.

"Solicitation of Contributions law" means Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia.

"Virginia Antitrust Act" means Chapter 1.1 (§ 59.1-9.1 et seq.) of Title 59.1 of the Code of Virginia.

"Virginia Consumer Protection Act" means Chapter 17 (§ 59.1-196 et seq.) of Title 59.1 of the Code of Virginia.

"Virginia Telephone Privacy Protection Act" means Chapter 44 (§ 59.1-510 et seq.) of Title 59 of the Code of Virginia.

## **1VAC45-10-30. Applicability.**

This chapter shall apply to all law-enforcement authorities that request material from the Attorney General. This chapter shall not apply to federal law-enforcement authorities or to law-enforcement authorities that represent states other than the Commonwealth.

## **1VAC45-10-70. Restrictions on use.**

The law-enforcement authority and its custodian in receipt of material shall strictly maintain the confidentiality of the material. The law-enforcement authority shall use material provided pursuant to this chapter to conduct an investigation into violations of the Virginia Antitrust Act, the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act ~~and, the Bad Faith Assertions of Patent Infringement law~~, or the Solicitation of Contributions law or to conduct any litigation related to such violations. Nothing in this section shall preclude the use of the materials provided by this chapter before a court of law except as may otherwise be precluded by law.

## **1VAC45-10-80. Restrictions on disclosure.**

The law-enforcement authority and its custodian in receipt of materials shall not release material provided pursuant to this chapter, either directly or indirectly, to any person not employed by or assigned to the law-enforcement authority for purposes of enforcement of the Virginia Antitrust Act, the

Virginia Consumer Protection Act, the Virginia Telephone Privacy Act, the Bad Faith Assertions of Patent Infringement law, or the Solicitation of Contributions law, nor to any other law-enforcement authority.

V.A.R. Doc. No. R21-6593; Filed March 31, 2021, 4:27 p.m.

## **TREASURY BOARD**

### **Fast-Track Regulation**

Title of Regulation: **1VAC75-11. Public Participation Guidelines (amending 1VAC75-11-50).**

Statutory Authority: §§ 2.2-2416 and 2.2-4007.02 of the Code of Virginia

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 26, 2021.

Effective Date: June 11, 2021.

Agency Contact: William Watt, Senior Policy Analyst, Department of the Treasury, 101 North 14th Street, Third Floor, Richmond, VA 23219, telephone (804) 371-6242, FAX (804) 225-3187, or email [william.watt@trs.virginia.gov](mailto:william.watt@trs.virginia.gov).

Basis: Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. Chapter 795 of the 2012 Acts of Assembly provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Purpose: This regulatory change is intended to bring the public participation guidelines into conformance with state code and model guidelines development by the Department of Planning and Budget. The change clarifies that public commenters may be represented by counsel or other representatives. Public participation is an integral part in the adoption of regulations that affect the public's health, safety, and welfare. This change will support public participation in the board's regulatory processes.

Rationale for Using Fast-Track Rulemaking Process: As this change is intended to update the regulation to conform with statute it is expected to be noncontroversial, and the fast-track rulemaking process is appropriate.

Substance: Treasury has amended subsection A of 1VAC75-11-50 to include a requirement to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

Issues: This change clarifies language in the public participation guidelines stating that individuals may have counsel or other representatives represent them during regulatory processes. This will provide added assurance to those wishing to comment that they may be represented by

counsel or others and have their views heard. There are no disadvantages to the public or the Commonwealth as a result of this change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,<sup>1</sup> the Treasury Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

Background. Chapter 795 of the 2012 Acts of Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that persons interested in submitting data, views, and arguments, either orally or in writing, to the agency also be afforded an opportunity to be accompanied by and represented by counsel or other representative.

Estimated Benefits and Costs. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative." Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the boards proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Other Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes. It would particularly affect those who are interested in being accompanied by and represented by counsel or other representative, and were not previously aware of this right. The proposal does not produce cost.

Small Businesses<sup>2</sup> Affected. The proposed amendment does not appear to adversely affect small businesses.

Localities<sup>3</sup> Affected.<sup>4</sup> The proposed amendment applies statewide. No locality would be particularly affected. The proposed amendment does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property. The proposed amendment does not affect real estate development costs.

<sup>2</sup>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."

<sup>3</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>4</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

*Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.*

**1VAC75-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

<sup>1</sup>See <http://leg1.state.va.us/cgi-bin/legp504.exe?121 ful CHAP0795 hil>

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7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R21-6695; Filed March 29, 2021, 4:05 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF WILDLIFE RESOURCES

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** 4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-10, 4VAC15-20-65, 4VAC15-20-100, 4VAC15-20-130, 4VAC15-20-150, 4VAC15-20-240; adding 4VAC15-20-151, 4VAC15-20-152).

**Statutory Authority:** §§ 29.1-103 and 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

The proposed amendments (i) add a resident and nonresident elk hunting license, (ii) lower the price of a nonresident license to freshwater fish in designated stocked trout waters, (iii) clarify that class one and class two electric power-assist bicycles may be used on Wildlife Management Areas where bicycles are allowed, (iv) update the List of the

Federal Endangered and Threatened Species, (v) add the Clinch dace and red-cockaded woodpecker and remove the barking treefrog from the state Threatened and Endangered Species List, (vi) set calendar restrictions on leaving treestands on department-owned lands, (vii) add parameters on habitat manipulation on department-owned lands, (viii) add a prohibition on target shooting on department-owned lands that are not designated sighting in ranges, (ix) prohibit use of drones to assist in a hunt on the same calendar day, and (x) define the Counties of Buchanan, Dickenson, and Wise as the newly-established Elk Management Zone.

#### 4VAC15-20-10. Definitions; generally.

A. Words and phrases used in any regulations made by the board shall have the same meaning, unless the context clearly indicates otherwise, as is given for such words and phrases in Title 29.1 (§ 29.1-100 et seq.) of the Code of Virginia.

B. The following word or term when used in this chapter shall have the following meaning unless the context indicates otherwise:

"Elk Management Zone" means the Counties of (i) Buchanan, (ii) Dickenson, and (iii) Wise, and the cities and towns therein.

#### 4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under subdivision 16 of § 29.1-103 of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
One-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00
Two-year Resident License to Hunt, for licensees 16 years of age or older	\$43.00
Three-year Resident License to Hunt, for licensees 16 years of age or older	\$64.00
Four-year Resident License to Hunt, for licensees 16 years of age or older	\$85.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age,	\$7.50

optional for licensees younger than 12 years of age	
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees younger than 16 years of age	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Fish)	\$99.00
Resident Hunting License for Partially Disabled Veterans	\$11.00
Resident Infant Lifetime License to Hunt	\$130.00
Resident Junior Lifetime License to Hunt, for licensees younger than 12 years of age at the time of purchase	\$260.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	\$265.00
45 through 50 years of age	\$215.00
51 through 55 years of age	\$165.00
56 through 60 years of age	\$115.00
61 through 64 years of age	\$65.00
65 years of age and older	\$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt or Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	no fee
<b>Virginia Resident Licenses for Additional Hunting Privileges</b>	
Type license or permit	Fee
Resident Deer and Turkey Hunting License, for licensees 16 years of age or older	\$22.00

Resident Junior Deer and Turkey Hunting License, for licensees younger than 16 years of age	\$7.50
Resident Archery License to Hunt with archery equipment during archery hunting season	\$17.00
Resident Bear Hunting License	\$20.00
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00
Resident Bonus Deer Permit	\$17.00
Resident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	\$22.00
<u>Resident Special Elk Hunting License (not required outside of the Elk Management Zone and only awarded to individuals through a department elk license program)</u>	<u>\$40.00</u>
<b>Virginia Nonresident Licenses to Hunt</b>	
Type license	Fee
Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00
Nonresident Three-Day Trip License to Hunt	\$59.00
Nonresident Youth License to Hunt, for licensees:	
younger than 12 years of age	\$12.00
12 through 15 years of age	\$15.00
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees younger than 16 years of age	\$30.00
Nonresident Annual Hunting License for Partially Disabled Veterans	\$55.00
Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans	\$27.50
Nonresident Infant Lifetime License to Hunt	\$275.00
Nonresident Lifetime License to Hunt	\$580.00

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Virginia Nonresident Licenses for Additional Hunting Privileges	
Type license or permit	Fee
Nonresident Deer and Turkey Hunting License, for licensees:	
16 years of age or older	\$85.00
12 through 15 years of age	\$15.00
younger than 12 years of age	\$12.00
Nonresident Bear Hunting License	\$150.00
Nonresident Archery License to Hunt with archery equipment during archery hunting season	\$30.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00
Nonresident Bonus Deer Permit	\$30.00
Nonresident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	\$110.00
<u>Nonresident Special Elk Hunting License (not required outside of the Elk Management Zone and only awarded to individuals through a department elk license program)</u>	<u>\$400.00</u>
Miscellaneous Licenses or Permits to Hunt	
Type license or permit	Fee
Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
Foxhound Training Preserve License	\$17.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00

Virginia Resident and Nonresident Licenses to Trap	
Type license	Fee
One-year Resident License to Trap, for licensees 16 years of age or older	\$45.00
Two-year Resident License to Trap, for licensees 16 years of age or older	\$89.00
Three-year Resident License to Trap, for licensees 16 years of age or older	\$133.00
Four-year Resident License to Trap, for licensees 16 years of age or older	\$177.00
County or City Resident License to Trap in County or City of Residence Only	\$20.00
Resident Junior License to Trap, for licensees younger than 16 years of age	\$10.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00
Nonresident License to Trap	\$205.00

Virginia Resident Licenses to Fish	
Type license	Fee
One-year Resident License to Freshwater Fish	\$22.00
Two-year Resident License to Freshwater Fish	\$43.00
Three-year Resident License to Freshwater Fish	\$64.00
Four-year Resident License to Freshwater Fish	\$85.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00
Resident License to Fish in Designated Stocked Trout Waters	\$22.00

Resident License to Freshwater and Saltwater Fish	\$38.50
Resident License to Freshwater Fish for Five Consecutive Days	\$13.00
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Hunt)	\$99.00
Resident Fishing License for Partially Disabled Veterans	\$11.00
Resident Infant Lifetime License to Fish	\$130.00
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
through 44 years of age	\$265.00
45 through 50 years of age	\$215.00
51 through 55 years of age	\$165.00
56 through 60 years of age	\$115.00
61 through 64 years of age	\$65.00
65 years of age and older	\$25.00
Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	\$265.00
45 through 50 years of age	\$215.00
51 through 55 years of age	\$165.00
56 through 60 years of age	\$115.00
61 through 64 years of age	\$65.00
65 years of age and older	\$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	no fee

Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	\$46.00
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	<del>\$46.00</del> <u>\$22.00</u>
Nonresident License to Freshwater and Saltwater Fish	\$70.00
Nonresident Fishing License for Partially Disabled Veterans	\$23.00
Nonresident Annual Fishing License for Totally and Permanently Disabled Veterans	\$11.50
Nonresident License to Freshwater Fish for One Day	\$7.00
Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
Nonresident Infant Lifetime License to Fish	\$275.00
Nonresident Special Lifetime License to Freshwater Fish	\$580.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$580.00
Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$7.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$60.00

**4VAC15-20-100. Prohibited use of vehicles on department-owned lands.**

It shall be unlawful on department-owned lands to drive through or around gates designed to prevent entry with any type of motorized vehicle or to use such vehicles to travel anywhere on such lands except on roads open to vehicular traffic. Any motor-driven vehicle shall conform with all state laws for highway travel; provided, that this requirement shall not apply to the operation of motor vehicles for administrative purposes by department-authorized personnel on department-

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owned lands. Nothing in this section shall be construed to prohibit the use of Class one or Class two electric power-assisted bicycles as defined in § 46.2-100 of the Code of Virginia where traditional bicycles are allowed. Class three electric power-assisted bicycles as defined in § 46.2-100 are prohibited. Nothing in this section shall be construed to prohibit the department from allowing the use of wheelchairs or other power-driven mobility devices by individuals with mobility disabilities in accordance with the federal Americans with Disabilities Act of 1990 (P.L. 101-336, 104 Stat. 327).

For the purposes of this section, the term "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 indoor, or of both indoor and outdoor, locomotion. "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 cars, electronic personal assistive mobility devices, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

## 4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~May 7, 2019~~ January 13, 2021, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to subdivision 12 of § 29.1-103 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:	
Endangered:	
<u>Dace, Clinch</u>	<u>Chrosomus sp. cf. saylori</u>
Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum

Sunfish, blackbanded	Enneacanthus chaetodon
Threatened:	
Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, sickle	Percina williamsi
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus
2. Amphibians:	
Endangered:	
Salamander, eastern tiger	Ambystoma tigrinum
Threatened:	
Salamander, Mabee's	Ambystoma mabeei
<del>Treefrog, barking</del>	<del>Hyla gratiosa</del>
3. Reptiles:	
Endangered:	
Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia
Threatened:	
Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta
4. Birds:	
Endangered:	
Plover, Wilson's	Charadrius wilsonia

Rail, black	Laterallus jamaicensis
<u>Woodpecker, red-cockaded</u>	<u>Dryobates borealis</u>
Wren, Bewick's	Thryomanes bewickii bewickii
Threatened:	
Falcon, peregrine	Falco peregrinus
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica
5. Mammals:	
Endangered:	
Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Bat, little brown	Myotis lucifugus
Bat, tri-colored	Perimyotis subflavus
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus
6. Mollusks:	
Endangered:	
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Ghostsnailed, thankless	Holsingeria unthinksensis
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum

Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera
Threatened:	
Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Ioflualis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens
7. Arthropods:	
Threatened:	
Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

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Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
<p>Little brown bat</p> <p>Tri-colored bat</p>	<p>Statewide</p>	<p>Human health risk – need for removal of individual animals from human-habited structures.</p>	<p>Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns.</p> <p><del>DGIF</del> permitted <u>Department-permitted</u> nuisance wildlife control operator with <del>DGIF-recognized</del> <u>department-recognized</u> certification in techniques associated with removal of bats.</p> <p>Use of exclusion devices that allow individual animals to escape.</p> <p>Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.</p>	<p>Little to no direct lethal taking expected.</p>
		<p>Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management actions affecting known roosts; removal of animals from known roosts.</p>	<p>Hibernacula: no tree removal, use of prescribed fire, or other land management action within a 250-foot radius buffer area from December 1 through April 30. Between September 1 and November 30, increase the buffer to a 1/4-mile radius with the following conditions: for timber harvests greater than 20 acres, retain snags and wolf trees (if not presenting public safety or property risk) and small tree groups up to 15 trees of 3-inch diameter at breast height (dbh) or greater, one tree group per 20 acres. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area. Tree removal and prescribed fire are permitted outside of these dates.</p> <p>Known roost trees: no tree removal, use of prescribed fire, or other land management action within a 150-foot radius buffer area from June 1</p>	<p>Little to no direct lethal taking expected.</p>

			<p>through July 31, if possible. Otherwise, document public safety or property damage risk.</p> <p><del>DGIF-permitted</del> <u>Department-permitted</u> nuisance wildlife control operator with <del>DGIF-recognized</del> <u>department-recognized</u> certification in techniques associated with removal of bats.</p> <p>Use of exclusion devices that allow individual animals to escape.</p> <p>Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.</p>	
		<p><del>Facility or project operations when conducted in accordance with a DGIF-approved plan associated with these species.</del></p>	<p><del>Development and implementation of a plan that avoids, minimizes, and mitigates incidental take associated with an otherwise lawful activity.</del></p> <p><del>The plan shall include, but not be limited to, documenting the specific condition or action, the specific mitigation to be taken, and the expected incidental take.</del></p>	<p><del>Little to no direct lethal taking expected.</del></p>

**4VAC15-20-150. Structures on department-owned lands and national forest lands.**

A. It shall be unlawful to construct, maintain or occupy any permanent structure, except by permit, on department-owned lands and national forest lands. This provision shall not apply to structures, stands or blinds provided by the department.

B. It shall be unlawful to maintain any temporary dwelling on department-owned lands for a period greater than 14 consecutive days. Any person constructing or occupying any temporary structure shall be responsible for complete removal of such structures when vacating the site.

C. It shall be unlawful to construct, maintain or occupy any tree stand on department-owned lands and national forest lands and on Department of Conservation and Recreation owned or controlled lands, provided that portable tree stands which are not permanently affixed may be used.

D. Portable tree stands that are not permanently affixed can be placed on department-owned lands on or after September 15 and must be removed on or prior to January 31 of the following calendar year. Tree stands will be considered abandoned and will be confiscated by the department if left on department-owned lands after January 31.

**4VAC15-20-151. Manipulation of vegetation on department-owned lands.**

A. It shall be unlawful to plant, manipulate, cut, mutilate, destroy, or remove vegetation or to remove other minerals, artifacts, or other property from department-owned lands.

B. Nothing in this section shall prohibit the gathering of mushrooms, picking of berries, or collection of other fruits.

C. The use of down and dead trees and branches as firewood while camping on a wildlife management area shall be allowed by individuals with a valid camping permit issued by the department.

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D. The department may issue permits for the collection of firewood under conditions and in locations determined by the department.

E. Nothing in this section shall prohibit department employees, contractors, or permittees from engaging in agriculture, forestry, herbicide application, or other habitat restoration and manipulation for the purpose of enhancing wildlife habitat and populations.

## **4VAC15-20-152. Target shooting on department-owned lands.**

It shall be unlawful to target shoot on any department-owned or department-managed lands, except at designated ranges. Target shooting is defined as the discharge of a firearm (as defined in § 18.2-308.2:2 of the Code of Virginia), muzzleloader (as defined in 4VAC15-50-71), or archery equipment (as defined in 4VAC15-40-20) for purposes other than hunting, trapping, or self-defense. Nothing in this regulation shall prohibit department employees in execution of their duties from training with department-issued firearms.

## **4VAC15-20-240. Use of drones for certain activities prohibited.**

A. Except as authorized by the director or the director's designee, it shall be unlawful at any time for any person to use a drone or unmanned aircraft:

1. To hunt, take, or kill a wild animal or to drive or herd any wild animal for the purpose of hunting, trapping, or killing.
  2. ~~To attempt to locate, surveil, aid, or assist in the hunting of any wild animal.~~
  3. ~~2.~~ To harass any wild animal. For the purposes of this section, "harass" means any action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include breeding, feeding, or sheltering.
  4. ~~3.~~ On department-owned lands, except that department employees and contractors or agents acting on behalf of the department may use drones or other unmanned aircraft when addressing human safety, law enforcement, management, or other needs approved by the department.
4. It shall be unlawful for any person to hunt or assist another to hunt on the same calendar day on a property after having used a drone or unmanned aircraft to locate or surveil any wild animal during any open season.

B. No part of this section shall be construed to restrict the use of drones or other unmanned aircraft for wildlife management activities conducted or authorized by the department; by employees of the United States government or any of its agencies whose responsibility includes fisheries and wildlife management; or by county, city, or town animal control officers in the performance of their official duties.

DOCUMENTS INCORPORATED BY REFERENCE  
(4VAC15-20)

~~List of Native and Naturalized Fauna of Virginia, October 2020, Virginia Department of Wildlife Resources~~

[List of Native and Naturalized Fauna of Virginia, January 2021, Virginia Department of Wildlife Resources](#)

[Federal Endangered and Threatened Animal Species as of May 7, 2019](#)

VA.R. Doc. No. R21-6734; Filed March 30, 2021, 10:41 p.m.

## **Proposed Regulation**

<b>REGISTRAR'S NOTICE:</b> The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.
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**Title of Regulation:** **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, etc., of Animals (amending 4VAC15-30-40).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

*The proposed amendments remove the Mexican axolotl from and add the Alabama bass to the list of predatory and undesirable species that cannot be imported, possessed, or sold within the Commonwealth without a permit.*

**4VAC15-30-40. Importation requirements, possession, and sale of nonnative (exotic) animals.**

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed in the following table and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia.

**AMPHIBIANS**

Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochirus merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	All species, <u>except Ambystoma mexicanum</u>	All mole salamanders, <u>except Mexican axolotl</u>

**BIRDS**

Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan

**FISH**

Order	Family	Genus/Species	Common Name	
Cypriniformes	Catostomidae	Catostomus microps	Modoc sucker	
		Catostomus santaanae	Santa Ana sucker	
		Catostomus warnerensis	Warner sucker	
		Ictiobus bubalus	Smallmouth* buffalo	
		I. cyprinellus	Bigmouth* buffalo	
		I. niger	Black buffalo*	
		Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cobitidae		Misgurnus anguillicaudatus	Oriental weatherfish
	Cyprinidae		Aristichthys nobilis	Bighead carp*
			Chrosomus saylori	Laurel dace
			Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella caerulea	Blue shiner	
		Cyprinella formosa	Beautiful shiner	
		Cyprinella lutrensis	Red shiner	
		Hypophthalmichthys molitrix	Silver carp*	
		Mylopharyngodon piceus	Black carp*	
	Notropis albizonatus	Palezone shiner		
	Notropis cahabae	Cahaba shiner		
	Notropis girardi	Arkansas River shiner		
	Notropis mekistocholas	Cape Fear shiner		

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		Notropis simus pecosensis	Pecos bluntnose shiner
		Notropis topeka (= tristis)	Topeka shiner
		Phoxinus cumberlandensis	Blackside dace
		Rhinichthys osculus lethoporus	Independence Valley speckled dace
		Rhinichthys osculus nevadensis	Ash Meadows speckled dace
		Rhinichthys osculus oligoporus	Clover Valley speckled dace
		Rhinichthys osculus ssp.	Foskett speckled dace
		Rhinichthys osculus thermalis	Kendall Warm Springs dace
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Cyprinodontiformes	Poeciliidae	Gambusia gaigei	Big Bend gambusia
		Gambusia georgei	San Marcos gambusia
		Gambusia heterochir	Clear Creek gambusia
		Gambusia nobilis	Pecos gambusia
		Peociliopsis occidentalis	Gila topminnow
Gasterosteiformes	Gasterosteidae	Gasterosteus aculeatus williamsoni	Unarmored threespine stickleback
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	<u>Centrarchidae</u>	<u>Micropterus henshalli</u>	<u>Alabama bass</u>
	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp. Gymnocephalus cernuum	Tilapia Ruffe*
	Elassomatidae	Elassoma alabamae	Spring pygmy sunfish
	Percidae	Crystallaria cincotta	Diamond darter
		Etheostoma chermocki	Vermilion darter
		Etheostoma boschungii	Slackwater darter
		Etheostoma chienense	Relict darter
		Etheostoma etowahae	Etowah darter
		Etheostoma fonticola	Fountain darter
		Etheostoma moorei	Yellowcheek darter
		Etheostoma nianguae	Niangua darter
		Etheostoma nuchale	Watercress darter
		Etheostoma okaloosae	Okaloosa darter
		Etheostoma phytophilum	Rush darter
		Etheostoma rubrum	Bayou darter
		Etheostoma scotti	Cherokee darter

		Etheostoma sp.	Bluemask (= jewel) darter
		Etheostoma susanae	Cumberland darter
		Etheostoma wapiti	Boulder darter
		Percina antesella	Amber darter
		Percina aurolineata	Goldline darter
		Percina jenkinsi	Conasauga logperch
		Percina pantherina	Leopard darter
		Percina tanasi	Snail darter
Scorpaeniformes	Cottidae	Cottus sp.	Grotto sculpin
		Cottus paulus (= pygmaeus)	Pygmy sculpin
Siluriformes	Clariidae	All species	Air-breathing catfish
	Ictaluridae	Noturus baileyi	Smoky madtom
		Noturus crypticus	Chucky madtom
		Noturus placidus	Neosho madtom
		Noturus stanauli	Pygmy madtom
		Noturus trautmani	Scioto madtom
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel

**MAMMALS**

Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species	Weasels, Badgers,* Skunks and Otters
		(except <i>Mustela putorius furo</i> )	Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Brachylagus idahoensis	Pygmy rabbit
		Lepus europeaeus	European hare
		Oryctolagus cuniculus	European rabbit
		Sylvilagus bachmani riparius	Riparian brush rabbit

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		<i>Sylvilagus palustris hefneri</i>	Lower Keys marsh rabbit
Rodentia		All species native to Africa	All species native to Africa
	Dipodidae	<i>Zapus hudsonius preblei</i>	Preble's meadow jumping mouse
	Muridae	<i>Microtus californicus scirpensis</i>	Amargosa vole
		<i>Microtus mexicanus hualpaiensis</i>	Hualapai Mexican vole
		<i>Microtus pennsylvanicus dukecampbelli</i>	Florida salt marsh vole
		<i>Neotoma floridana smalli</i>	Key Largo woodrat
		<i>Neotoma fuscipes riparia</i>	Riparian (= San Joaquin Valley) woodrat
		<i>Oryzomys palustris natator</i>	Rice rat
		<i>Peromyscus gossypinus allapaticola</i>	Key Largo cotton mouse
		<i>Peromyscus polionotus allophrys</i>	Choctawhatchee beach mouse
		<i>Peromyscus polionotus ammobates</i>	Alabama beach mouse
		<i>Peromyscus polionotus niveiventris</i>	Southeastern beach mouse
		<i>Peromyscus polionotus peninsularis</i>	St. Andrew beach mouse
		<i>Peromyscus polionotus phasma</i>	Anastasia Island beach mouse
		<i>Peromyscus polionotus trissyllepsis</i>	Perdido Key beach mouse
		<i>Reithrodontomys raviventris</i>	Salt marsh harvest mouse
	Heteromyidae	<i>Dipodomys heermanni morroensis</i>	Morro Bay kangaroo rat
		<i>Dipodomys ingens</i>	Giant kangaroo rat
		<i>Dipodomys merriami parvus</i>	San Bernadino Merriam's kangaroo rat
		<i>Dipodomys nitratooides exilis</i>	Fresno kangaroo rat
		<i>Dipodomys nitratooides nitratooides</i>	Tipton kangaroo rat
		<i>Dipodomys stephensi</i> (including <i>D. cascus</i> )	Stephens' kangaroo rat
		<i>Perognathus longimembris pacificus</i>	Pacific pocket mouse
	Sciuridae	<i>Cynomys</i> spp.	Prairie dogs
		<i>Spermophilus brunneus brunneus</i>	Northern Idaho ground squirrel
		<i>Tamiasciurus hudsonicus grahamensis</i>	Mount Graham red squirrel
Soricomorpha	Soricidae	<i>Sorex ornatus relictus</i>	Buena Vista Lake ornate shrew

## MOLLUSKS

Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	<i>Potamopyrgus antipodarum</i>	New Zealand mudsnail
Veneroida	Dreissenidae	<i>Dreissena bugensis</i>	Quagga mussel
		<i>Dreissena polymorpha</i>	Zebra mussel

**REPTILES**

Order	Family	Genus/Species	Common Name
Crocodilia	Alligatoridae	All species	Alligators, caimans*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
Squamata	Colubridae	Boiga irregularis	Brown tree snake*

**CRUSTACEANS**

Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Cambarus aculabrum	Cave crayfish
		Cambarus zophonastes	Cave crayfish
		Orconectes rusticus	Rusty crayfish
		Orconectes shoupi	Nashville crayfish
		Pacifastacus fortis	Shasta crayfish
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A of this section, a person, company, or corporation possessing any nonnative (exotic) animal, designated with an asterisk (\*) in subsection A of this section, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A of this section that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached.

Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business, or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Wildlife Resources.

E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

F. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidae, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

G. Exception for feral hogs. Anyone may legally trap feral hogs with written permission of the landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately.

H. Exception for grass carp. Anglers may legally harvest grass carp of the family Cyprinidae only from public waters of the Commonwealth. It is unlawful to harvest grass carp from any public inland lake or reservoir. Anglers taking grass carp must ensure that harvested grass carp are dead.

I. Exception for Alabama bass. Anglers may possess live Alabama bass of the family Centrarchidae only on the body of

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water from which the fish were captured, provided that the angler does not live transport these fish outside of the body of water from which the fish were captured. Anglers may only release live Alabama bass back into the body of water from which the fish were captured. Anglers may legally harvest Alabama bass provided that the anglers ensure all harvested Alabama bass are dead.

J. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R21-6736; Filed March 31, 2021, 10:54 a.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** 4VAC15-40. **Game:** In General (amending 4VAC15-40-220, 4VAC15-40-240).

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

*The proposed amendments (i) change the maximum loop size for a snare trap from a 12-inch diameter to a maximum size of 38 inches in circumference and (ii) allow the director to issue special permits to take game and fur-bearing animals for the purpose of population reduction in situations where existing statutory and regulatory options for population reduction are not applicable.*

**4VAC15-40-220. Use of deadfalls prohibited; restricted use of snares.**

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than ~~12 inches in diameter~~ 38 inches in circumference and with the bottom of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner. Snares with the top of the snare loop set higher than 12 inches above ground

level must include a single-piece lock that is not power assisted, a cable stop that prevents the snare loop from closing smaller than 2-1/2 inches in diameter, and a break-away device that has been tested to break or disassemble at no more than 285 pounds pull.

**4VAC15-40-240. Animal population control.**

Whenever biological evidence suggests that populations of game animals or fur-bearing animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever population reduction of a species is necessary to manage for another wildlife species, or whenever the health or general condition of a species indicates the need for population reduction, or whenever the threat of human public health and safety or significant economic loss indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction by licensed hunters or licensed trappers on areas prescribed by department wildlife biologists. Further, in situations where existing statutory and regulatory options for population reduction are not applicable, the director is authorized to issue special permits to obtain the desired population reduction by individuals named within the director's authorization document. Designated game species or fur-bearing species may be taken in excess of the general bag limits, during closed seasons, with all legal methods outlined in the Code of Virginia or board regulation, and with any type of lawful weapon, as defined in § 29.1-519 of the Code of Virginia and in board regulation, on special permits issued under this section under such conditions as may be prescribed by the director.

VA.R. Doc. No. R21-6737; Filed March 31, 2021, 11:03 a.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** 4VAC15-50. **Game:** Bear (amending 4VAC15-50-71, 4VAC15-50-81, 4VAC15-50-91, 4VAC15-50-110, 4VAC15-50-120).

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

*The proposed amendments (i) clarify the different types of muzzleloading guns that are legal during the muzzleloading bear season, update language consistent with recent technological changes, and conform regulations regarding muzzleloading guns to statute; (ii) remove all references to checking, check stations, and check cards to reflect the requirement for all big game harvests to be reported electronically using the telephone, Internet, or GoOutdoors Virginia mobile harvest reporting application beginning in the 2021-2022 hunting season; (iii) more explicitly define current time restrictions on the use of dogs for hunting bears to enable the extension of deer firearms open seasons for disease and population management purposes in certain areas; and (iv) add Dinwiddie County to the list of counties allowing bear hound training season as originally intended when the training season was initiated in that area in 2013.*

**4VAC15-50-71. Muzzleloading gun hunting.**

A. It shall be lawful to hunt bears during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in the Cities of Chesapeake, Suffolk, and Virginia Beach.

B. It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. ~~A muzzleloading gun~~ Muzzleloading guns, for the purpose of this section, ~~means a single shot weapon, .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) where the propellant and projectile are loaded from the muzzle of the weapon.~~ include:

1. Single shot muzzleloading rifles .40 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) where the projectile is loaded from the muzzle;

2. Muzzleloading shotguns (one or more barrels) not larger than 10 gauge where the projectiles are loaded from the muzzle;

3. Muzzleloading pistols (one or more barrels) .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per barrel where the propellant and projectile are loaded from the muzzle; and

4. Muzzleloading revolvers .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per cylinder where the propellant and projectile are loaded from the forward end of the cylinder.

D. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

**4VAC15-50-81. Validating tags and ~~checking~~ reporting bear and tooth submission by licensee or permittee.**

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear or special permit by completely removing the designated notch area from the tag ~~or by electronically notching a tag and reporting the bear using the department's mobile harvest reporting application.~~ Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag. All electronically notched tags are permanent and cannot be voided.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided in subsection A of this section, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed or~~ report the kill through the department's automated harvest reporting system. At such time, the person ~~checking or~~ reporting the carcass will be given ~~a black bear check card furnished by the department or~~ a confirmation number from the automated reporting system. The successful hunter shall then immediately record the ~~game check card number or~~ confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at an authorized bear check station, the black bear check card must be kept in possession with the carcass until the carcass is processed. ~~If the carcass is left unattended, the bear check card must be securely attached to the carcass. If~~ After the kill is reported ~~using the automated harvest reporting system, no check card written documentation~~ is required as long as the hunter who killed the animal is in possession of the carcass. If the ~~automated harvest~~ reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a bear killed legally in Virginia may be transported; however, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

C. ~~If the carcass is checked at a bear check station, upon presentation of the carcass and validated (notched) license tag~~

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~~or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. If the kill is reported through the department's automated harvest reporting system, a A premolar tooth must be removed by the hunter immediately after reporting the kill through the department's automated harvest reporting system.~~ The premolar shall be placed in an envelope furnished by the department and labeled with the hunter's full name, check confirmation number, date of kill, and the sex of the harvested bear. This envelope with premolar and accompanying information must be mailed or delivered to the department no later than 14 days after the close of the bear harvest season.

D. It shall be unlawful for any person to destroy the identity of the sex of any bear killed unless and until the license tag or special permit is validated (notched) and ~~checked~~ reported as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required in subsection A of this section, as long as they do not destroy the identity of the sex, and all the parts of the carcass are present when the bear is ~~checked at an authorized bear checking station or~~ reported through the automated harvest reporting system. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been ~~checked at an authorized bear checking station or~~ reported through the department's automated harvest reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

#### **4VAC15-50-91. Checking Reporting bear and tooth submission by persons exempt from license requirements or holding a license authorization number.**

A. Upon killing a bear, any person (i) exempt from license requirements as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E of the Code of Virginia, or (iv) the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present the carcass to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed, or report the kill through the department's automated harvest reporting system. At such time, the person checking or reporting the carcass shall be given a black bear check card furnished by the department or a confirmation number from the automated reporting system. If checked at a bear check station, the black bear check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the black bear check card must be securely attached to the carcass. If~~ After the kill is reported using the automated harvest

reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a black bear killed legally in Virginia may be transported; however, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

~~B. If the bear is checked at a bear checking station, the person checking the carcass shall surrender or allow to be removed one premolar tooth from the carcass. If the kill is reported through the department's automated harvest reporting system, a A premolar tooth must be removed by the hunter immediately after reporting the kill through the department's automated harvest reporting system.~~ The premolar shall be placed in an envelope furnished by the department and labeled with the hunter's full name, check confirmation number, date of kill, and the sex of the harvested bear. This envelope with premolar and accompanying information must be mailed or delivered to the department no later than 14 days after the close of the bear harvest season.

C. It shall be unlawful for any person to destroy the identity of the sex of any bear killed until the bear is ~~checked~~ reported as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the bear is ~~checked at an authorized bear check station or~~ reported through the automated harvest reporting system. Any bear that has not been ~~checked, via an authorized bear check station or the~~ reported through the department's automated harvest reporting system as required by this section, found in the possession of any person exempt from the license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

#### **4VAC15-50-110. Use of dogs in hunting bear.**

A. It shall be unlawful to use dogs for the hunting of bear ~~during the open season for hunting deer on the Saturday prior to the third Monday in November and for 15 consecutive days following~~ in the counties west of the Blue Ridge Mountains and during the first 16 days of the deer open season in the Counties of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, and Nelson (west of Route 151) and within the

boundaries of the national forests, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear ~~during the first 14 days of the open season for hunting deer on the Saturday prior to the third Monday in November and for 13 consecutive days following~~ in the Counties of Greene and Madison, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear during the open season prescribed in 4VAC15-50-11 in the Counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), and Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast, and Cripple Creek on the south); in the City of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew Wildlife Management Areas, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

#### **4VAC15-50-120. Bear hound training season.**

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from August 1 through the last Saturday in September, both dates inclusive, in the Counties of Albemarle, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Carroll, Charlotte, Craig, Culpeper, Dickenson, Floyd, Franklin, Giles, Grayson (east of Route 16), Greene, Greensville, Highland, Lee, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Page, Pulaski, Rappahannock, Roanoke (west of I-81), Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth (except for the part southeast of I-81 and west of State Route 16), Tazewell, Warren, Washington (northwest of I-81), Wise, and Wythe and in the Cities of Chesapeake, Suffolk, and Virginia Beach.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 14 days following, both dates inclusive, in the Counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Dinwiddie, Essex, Gloucester, Greensville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be unlawful to have in possession a firearm, bow, crossbow, or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include having a firearm, bow, crossbow, or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R21-6738; Filed March 31, 2021, 11:16 a.m.

### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** **4VAC15-90. Game: Deer (amending 4VAC15-90-10, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-89, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-241, 4VAC15-90-260, 4VAC15-90-293; adding 4VAC15-90-500 through 4VAC15-90-550; repealing 4VAC15-90-85).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

*The proposed amendments:*

(i) establish an early September antlerless-only firearms deer season and a late (January through March) antlerless-only firearms deer season in certain counties on selected private lands within department-designated disease containment areas to meet antlerless deer harvest population objectives;

(ii) conform the definition of "common interest community" to statute;

(iii) expand early and late muzzleloading hunting days in certain counties to meet deer population objectives;

(iv) clarify that four different types of muzzleloading guns are legal during muzzleloading deer seasons;

(v) change the minimum caliber for muzzleloading rifles from .45 to .40 caliber;

(vi) require that only the projectile be loaded from the muzzle for muzzleloading rifles and muzzleloading shotguns to conform to statute;

(vii) repeal and replace elk hunting regulations;

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(viii) establish an unlimited daily bag limit for deer in all the cities and towns in Virginia that allow deer hunting except in the Cities of Chesapeake, Suffolk, and Virginia Beach;

(ix) create a uniform statewide deer bag limit of one deer per day on national forest, department-owned, and department-managed lands;

(x) clarify that national forest lands in Amherst, Bedford, and Nelson Counties are included under the "west of the Blue Ridge Mountains" bag limit;

(xi) adjust firearms hunting either-sex hunting days in certain counties to meet deer population objectives;

(xii) expand the Earn-A-Buck Program to select private lands while making adjustments to the program in some areas where it is already designated;

(xiii) address electronic deer tags and deer reporting using the eNotch feature of the department's smartphone application;

(xiv) require mandatory drop off of deer heads from designated areas on designated days for disease testing;

(xv) more explicitly define current time restrictions on the use of dogs for hunting deer to enable the extension of deer firearms open seasons for disease and population management purposes in September and January through March;

(xvi) add cleaned jaw bones to the list of parts permitted to be imported and possessed and outline how deer parts and whole deer carcasses may be transported within, outside, and between disease management areas; and

(xvii) outline seasons, bag limits, and tag validation associated with administering the hunting of elk within the Elk Management Zone, including the creation of a special elk license awarded to a wildlife conservation organization, providing access on private lands, a random drawing program, and provisions related to hunting within the Elk Management Zone.

Alleghany County

Saturday prior to the third Monday in November and for 14 consecutive days following

Amelia County

Saturday prior to the third Monday in November through the first Saturday in January

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands)

Saturday prior to the third Monday in November and for 28 consecutive days following

Amherst County (national forest lands)

Saturday prior to the third Monday in November and for 14 consecutive days following

Amherst County (east of Business U.S. 29, as defined above)

Saturday prior to the third Monday in November through the first Saturday in January

Appomattox County

Saturday prior to the third Monday in November through the first Saturday in January

Arlington County

Saturday prior to the third Monday in November through the first Saturday in January

Arlington County (antlerless deer only)

First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

Augusta County

Saturday prior to the third Monday in November and for 14 consecutive days following

## 4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

Locality	Season
Accomack County	Saturday prior to the third Monday in November through the first Saturday in January
Albemarle County	Saturday prior to the third Monday in November through the first Saturday in January

Bath County	Saturday prior to the third Monday in November and for 14 consecutive days following	Carroll County	Saturday prior to the third Monday in November and for 14 consecutive days following
Bedford County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following	Charles City County	Saturday prior to the third Monday in November through the first Saturday in January
Bedford County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following	Charlotte County	Saturday prior to the third Monday in November through the first Saturday in January
Bland County	Saturday prior to the third Monday in November and for 14 consecutive days following	Chesapeake (City of)	October 1 through November 30
Botetourt County	Saturday prior to the third Monday in November and for 14 consecutive days following	Chesterfield County	Saturday prior to the third Monday in November through the first Saturday in January
Brunswick County	Saturday prior to the third Monday in November through the first Saturday in January	Clarke County	Saturday prior to the third Monday in November through the first Saturday in January
Buchanan County	Saturday prior to the third Monday in November and for 14 consecutive days following	<u>Clarke County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Buckingham County	Saturday prior to the third Monday in November through the first Saturday in January	Craig County	Saturday prior to the third Monday in November and for 14 consecutive days following
Campbell County	Saturday prior to the third Monday in November through the first Saturday in January	Culpeper County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Caroline County	Saturday prior to the third Monday in November through the first Saturday in January	Culpeper County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
		<u>Culpeper County (private lands and antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October</u>

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<u>Culpeper County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>	<u>Fauquier County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Cumberland County	Saturday prior to the third Monday in November through the first Saturday in January	Floyd County	Saturday prior to the third Monday in November and for 28 consecutive days following
Dickenson County	Saturday prior to the third Monday in November and for 14 consecutive days following	Fluvanna County	Saturday prior to the third Monday in November through the first Saturday in January
Dinwiddie County	Saturday prior to the third Monday in November through the first Saturday in January	Franklin County	Saturday prior to the third Monday in November and for 28 consecutive days following
Essex County	Saturday prior to the third Monday in November through the first Saturday in January	Frederick County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County	Saturday prior to the third Monday in November through the first Saturday in January	Frederick County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Fairfax County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	<u>Frederick County (non-national forest lands antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Fauquier County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January	Giles County	Saturday prior to the third Monday in November and for 14 consecutive days following
Fauquier County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following	Gloucester County	Saturday prior to the third Monday in November through the first Saturday in January
<u>Fauquier County (private lands and antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October</u>		

Goochland County	Saturday prior to the third Monday in November through the first Saturday in January	King and Queen County	Saturday prior to the third Monday in November through the first Saturday in January
Grayson County	Saturday prior to the third Monday in November and for 14 consecutive days following	King George County	Saturday prior to the third Monday in November through the first Saturday in January
Greene County	Saturday prior to the third Monday in November through the first Saturday in January	King William County	Saturday prior to the third Monday in November through the first Saturday in January
Greensville County	Saturday prior to the third Monday in November through the first Saturday in January	Lancaster County	Saturday prior to the third Monday in November through the first Saturday in January
Halifax County	Saturday prior to the third Monday in November through the first Saturday in January	Lee County	Saturday prior to the third Monday in November and for 14 consecutive days following
Hanover County	Saturday prior to the third Monday in November through the first Saturday in January	Loudoun County	Saturday prior to the third Monday in November through the first Saturday in January
Henrico County	Saturday prior to the third Monday in November through the first Saturday in January	Loudoun County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Henry County	Saturday prior to the third Monday in November and for 28 consecutive days following	Louisa County	Saturday prior to the third Monday in November through the first Saturday in January
Highland County	Saturday prior to the third Monday in November and for 14 consecutive days following	Lunenburg County	Saturday prior to the third Monday in November through the first Saturday in January
Isle of Wight County	Saturday prior to the third Monday in November through the first Saturday in January	Madison County	Saturday prior to the third Monday in November through the first Saturday in January
James City County	Saturday prior to the third Monday in November through the first Saturday in January	<u>Madison County (private lands and antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October</u>

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<u>Madison County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>	Northumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Mathews County	Saturday prior to the third Monday in November through the first Saturday in January	Nottoway County	Saturday prior to the third Monday in November through the first Saturday in January
Mecklenburg County	Saturday prior to the third Monday in November through the first Saturday in January	Orange County	Saturday prior to the third Monday in November through the first Saturday in January
Middlesex County	Saturday prior to the third Monday in November through the first Saturday in January	<u>Orange County (private lands and antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October</u>
Montgomery County	Saturday prior to the third Monday in November and for 14 consecutive days following	<u>Orange County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Nelson County (west of Route 151, except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following	Page County	Saturday prior to the third Monday in November and for 14 consecutive days following
Nelson County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following	<u>Page County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Nelson County (east of Route 151)	Saturday prior to the third Monday in November through the first Saturday in January	Patrick County	Saturday prior to the third Monday in November and for 28 consecutive days following
New Kent County	Saturday prior to the third Monday in November through the first Saturday in January	Pittsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Northampton County	Saturday prior to the third Monday in November through the first Saturday in January	Powhatan County	Saturday prior to the third Monday in November through the first Saturday in January

Prince Edward County	Saturday prior to the third Monday in November through the first Saturday in January	Roanoke County	Saturday prior to the third Monday in November and for 14 consecutive days following
Prince George County	Saturday prior to the third Monday in November through the first Saturday in January	Rockbridge County	Saturday prior to the third Monday in November and for 14 consecutive days following
Prince William County	Saturday prior to the third Monday in November through the first Saturday in January	Rockingham County	Saturday prior to the third Monday in November and for 14 consecutive days following
Prince William County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	Russell County	Saturday prior to the third Monday in November and for 14 consecutive days following
Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the third Monday in November and for 14 consecutive days following	Scott County	Saturday prior to the third Monday in November and for 14 consecutive days following
Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the second Monday in November through the first Saturday in January	Shenandoah County	Saturday prior to the third Monday in November and for 14 consecutive days following
Rappahannock County	Saturday prior to the third Monday in November through the first Saturday in January	<u>Shenandoah County (non-national forest lands antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
<u>Rappahannock County (private lands and antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October</u>	Smyth County	Saturday prior to the third Monday in November and for 14 consecutive days following
<u>Rappahannock County (disease focus areas defined by the department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>	Southampton County	Saturday prior to the third Monday in November through the first Saturday in January
Richmond County	Saturday prior to the third Monday in November through the first Saturday in January		

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Spotsylvania County	Saturday prior to the third Monday in November through the first Saturday in January	Westmoreland County	Saturday prior to the third Monday in November through the first Saturday in January
Stafford County	Saturday prior to the third Monday in November through the first Saturday in January	Wise County	Saturday prior to the third Monday in November and for 14 consecutive days following
Suffolk (City of) (east of Dismal Swamp Line)	October 1 through November 30	Wythe County	Saturday prior to the third Monday in November and for 14 consecutive days following
Suffolk (City of) (west of Dismal Swamp Line)	Saturday prior to the third Monday in November through the first Saturday in January	York County	Saturday prior to the third Monday in November through the first Saturday in January
Surry County	Saturday prior to the third Monday in November through the first Saturday in January		
Sussex County	Saturday prior to the third Monday in November through the first Saturday in January		B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.
Tazewell County	Saturday prior to the third Monday in November and for 14 consecutive days following		C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 14 consecutive days following within the incorporated limits of any city or town that allows deer hunting.
Virginia Beach (City of)	October 1 through November 30		<b>4VAC15-90-70. Archery hunting.</b>
Warren County	Saturday prior to the third Monday in November and for 14 consecutive days following		A. It shall be lawful to hunt deer during the early special archery season with archery equipment or a slingbow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.
<u>Warren (non-national forest lands antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>		B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with archery equipment or a slingbow:  1. From the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, (i) in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County); (ii) in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick; (iii) on the Chester F. Phelps Wildlife Management Area; and (iv) on national forest lands in Frederick County.
Washington County	Saturday prior to the third Monday in November and for 14 consecutive days following		

2. From December 1 through the first Saturday in January, both dates inclusive, in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. It shall be unlawful to carry firearms while hunting with archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. It shall be unlawful to use dogs when hunting with archery equipment during any special archery season, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

F. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season. When consistent with the department's deer management objectives and subject to the director's approval, a participating county may exclude from this season a geographic area by submitting a clear description of such area in a certified letter to the department prior to April 1.

G. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow during dates specified in subsection F of this section within the boundaries of any common interest community as defined in ~~§ 55-528~~ § 54.1-2345 of the Code of Virginia provided that (i) the association submits by certified letter to the department prior to July 1 the association's request to participate in the special urban archery season and (ii) the department approves such request.

1. The special urban archery season will in no way supersede any local ordinance, any restriction in the association's governing documents, or the requirement to obtain a landowner's permission to hunt.

2. An association no longer participating in the special urban archery season shall submit notice of the association's intent

not to participate in the special urban archery season. The association shall submit the certified letter to the department prior to July 1.

3. At its discretion, the department may suspend or revoke the special urban archery season in any association upon written notice to the association.

For the purposes of this subsection, "association" means the governing board or the authorized agent of the governing board of an association of property owners, condominium unit owners, or proprietary lessees.

H. It shall be lawful to hunt antlerless deer during the special antlerless archery season with archery equipment or a slingbow from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in the Counties of Arlington, Fairfax, Loudoun, and Prince William (including the cities and towns within).

**4VAC15-90-80. Muzzleloading gun hunting.**

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 21 consecutive days immediately prior to and on the first Saturday in January:

1. In all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County);

2. East of the Blue Ridge Mountains in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick;

3. On national forest lands in Frederick County; and

4. In the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted in this subsection:

1. Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands (except on Merrimac Farm Wildlife Management Area), and Philpott Reservoir.

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2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson Counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted in this subsection.

1. Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd Counties and on private lands in Augusta, Botetourt, Carroll, Frederick, Grayson, Montgomery, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731), Scott, Shenandoah, Warren, and Wythe Counties.

2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season in Buchanan, on federal and department-managed lands in Dickenson, Lee, Russell, Tazewell, and Wise Counties and on national forest lands in Alleghany, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren Counties, and on national forest and department-owned lands in Augusta, Bath, Botetourt, Carroll, Highland (except Highland Wildlife Management Area), Roanoke, Rockbridge, Smyth, Washington, and Wythe Counties and on Channels State Forest, Grayson Highlands State Park, Hungry Mother State Park, and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed in this subsection:

1. Deer of either sex may be taken full season during the entire late special muzzleloading season in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Augusta, Botetourt, Carroll, Grayson, Montgomery, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731), Shenandoah, Warren, and Wythe Counties.

2. Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson, Highland, Lee, Russell, Tazewell, and Wise Counties and on national forest lands in Amherst, Bedford, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Nelson, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren Counties, and on national forest and department-owned lands in Augusta, Botetourt, Carroll, Roanoke, Rockbridge, Smyth, Washington, and Wythe Counties and on private lands west of Routes 613 and 731 in Rockingham

County, Channels State Forest, Grayson Highlands State Park, and Hungry Mother State Park.

3. Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan County.

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the Cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

H. ~~A muzzleloading gun, Muzzleloading guns, for the purpose of this section, means a single shot weapon, .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) where the propellant and projective are loaded from the muzzle of the weapon. include:~~

1. Single shot muzzleloading rifles .40 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) where the projectile is loaded from the muzzle;

2. Muzzleloading shotguns (one or more barrels) not larger than 10 gauge where the projectiles are loaded from the muzzle;

3. Muzzleloading pistols (one or more barrels) .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per barrel where the propellant and projectile are loaded from the muzzle;

4. Muzzleloading revolvers .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per cylinder where the propellant and projectile are loaded from the forward end of the cylinder.

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

## **4VAC15-90-85. Elk hunting. (Repealed.)**

~~A. Closed season. There shall be a continuous closed season for elk (*Cervus elaphus*) hunting in Buchanan, Dickenson, and Wise counties.~~

~~B. Open season. Except as otherwise provided by this chapter, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons (as prescribed by 4VAC15-90-10 and 4VAC15-90-23), (ii) the special archery seasons (as prescribed by 4VAC15-90-70), and (iii) the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits as prescribed in 4VAC15-90-90.~~

~~C. Validating tags and checking elk by licensee or permittee. Upon killing an elk, any licensed or permitted hunter shall~~

validate a tag, bonus deer permit, or special permit and check the elk in accordance with 4VAC15-90-231. At the time of checking, the hunter must call the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

~~D. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall check the elk in accordance with 4VAC15-90-241. At the time of checking, the hunter must call the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.~~

#### **4VAC15-90-89. Earn a buck (EAB).**

A. For the purposes of this section, the term "license year" defines means the period between July 1 and June 30 of the following year.

~~Albemarle County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Albemarle County prior to taking at least one antlerless deer on private lands in Albemarle County, and it shall be unlawful to take a third antlered deer on private lands in Albemarle County prior to taking at least two antlerless deer on private lands in Albemarle County.~~

~~Arlington County. During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.~~

~~Bedford County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior to taking at least two antlerless deer on private lands in Bedford County.~~

~~Clarke County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least two antlerless deer on private lands in Clarke County.~~

~~Culpeper County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Culpeper County prior to taking at least one antlerless~~

~~deer on private lands in Culpeper County, and it shall be unlawful to take a third antlered deer on private lands in Culpeper County prior to taking at least two antlerless deer on private lands in Culpeper County.~~

~~Fairfax County. During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.~~

~~Fauquier County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Fauquier County prior to taking at least one antlerless deer on private lands in Fauquier County, and it shall be unlawful to take a third antlered deer on private lands in Fauquier County prior to taking at least two antlerless deer on private lands in Fauquier County.~~

~~Floyd County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Floyd County prior to taking at least one antlerless deer on private lands in Floyd County.~~

~~Franklin County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Franklin County prior to taking at least one antlerless deer on private lands in Franklin County, and it shall be unlawful to take a third antlered deer on private lands in Franklin County prior to taking at least two antlerless deer on private lands in Franklin County.~~

~~Frederick County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least two antlerless deer on private lands in Frederick County.~~

~~Grayson County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Grayson County prior to taking at least one antlerless deer on private lands in Grayson County.~~

~~Hanover County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Hanover County prior to taking at least one antlerless deer on private lands in Hanover County, and it shall be unlawful to take a third antlered deer on private lands in Hanover County prior to taking at least two antlerless deer on private lands in Hanover County.~~

~~Henrico County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Henrico County prior to taking at least one antlerless deer on private lands in Henrico County, and it shall be unlawful to take a third antlered deer on private lands in Henrico County prior to taking at least two antlerless deer on private lands in Henrico County.~~

~~James City County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private~~

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lands in James City County prior to taking at least one antlerless deer on private lands in James City County, and it shall be unlawful to take a third antlered deer on private lands in James City County prior to taking at least two antlerless deer on private lands in James City County.

Loudoun County. During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Montgomery County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Montgomery County prior to taking at least one antlerless deer on private lands in Montgomery County.

Prince George County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Prince George County prior to taking at least one antlerless deer on private lands in Prince George County, and it shall be unlawful to take a third antlered deer on private lands in Prince George County prior to taking at least two antlerless deer on private lands in Prince George County.

Prince William County except on Department of Defense lands. During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands), and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Pulaski County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Pulaski County prior to taking at least one antlerless deer on private lands in Pulaski County.

Rappahannock County. During a license year, it shall be unlawful to take a second antlered deer in Rappahannock County prior to taking at least one antlerless deer in Rappahannock County, and it shall be unlawful to take a third antlered deer in Rappahannock County prior to taking at least two antlerless deer in Rappahannock County.

Roanoke County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Shenandoah County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Shenandoah County prior to taking at least one antlerless deer on private lands in Shenandoah County.

Warren County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least two antlerless deer on private lands in Warren County.

York County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in York County prior to taking at least one antlerless deer on private lands in York County, and it shall be unlawful to take a third antlered deer on private lands in York County prior to taking at least two antlerless deer on private lands in York County.

Cities and towns. During a license year in any town or city (except Chesapeake, Suffolk, and Virginia Beach) east of the Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer in that town or city, and it shall be unlawful to take a third antlered deer prior to taking at least two antlerless deer in that town or city. During a license year in any town or city west of the Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer in that town or city.

B. Within a license year and within in each individual county listed in this subsection, a hunter must have taken at least one antlerless deer on private lands in that county before taking a second antlered deer on private lands in that county. In those counties listed in this subsection east of the Blue Ridge Mountains, a hunter must have taken at least two antlerless deer on private lands in that county before taking a third antlered deer on private lands in that county.

The counties subject to the provisions of this subsection are Accomack, Albemarle, Amherst (west of Route 29), Bedford, Carroll, Clarke, Culpeper, Fauquier, Floyd, Franklin, Frederick, Grayson, Greene, Hanover, Henrico, Madison, Montgomery, Orange, Prince George, Pulaski, Rappahannock, Roanoke, Rockingham (east of Routes 613 and 731), Shenandoah, Stafford, Warren, and Wythe.

C. Within a license year and within in each individual county listed in this subsection, a hunter must have taken at least two antlerless deer on private lands in that county before taking a second antlered deer on private lands in that county. A hunter also must have taken at least three antlerless deer on private lands in that county before taking a third antlered deer on private lands in that county.

The counties subject to the provisions of this subsection are James City and York.

D. Within a license year and within each individual county listed in this subsection, a hunter must have taken at least two antlerless deer in that county before taking a second antlered deer in that county. A hunter must also have taken at least three antlerless deer in that county before taking a third antlered deer in that county.

The counties subject to the provisions of this subsection are Arlington, Fairfax, Loudoun, and Prince William (except on Department of Defense lands).

E. Within a license year and within any city or town, except the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach, a hunter must have taken at least one antlerless deer in that city or town before taking a second antlered deer in that city or town. In those cities and towns east of the Blue Ridge Mountains, a hunter must have taken at least two antlerless deer in that city or town before taking a third antlered deer in that city or town.

F. The Earn A Buck Program does not apply to the Cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

#### **4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters.**

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson Counties) is two per day, six per license year, three of which must be antlerless unless otherwise noted in this subsection.

1. ~~The daily bag limit for deer is unlimited in the Counties (including, including the cities and towns within) within, of Arlington, Fairfax, Loudoun, and Prince William and in all the cities and towns that allow deer hunting (except in the Cities of Chesapeake, Suffolk, and Virginia Beach).~~

2. ~~Only one deer per day may be taken on national forest, lands in Amherst, Bedford, and Nelson Counties department-owned, and department-managed lands.~~

3. ~~Only one elk per day may be taken east of the Blue Ridge Mountains.~~

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson Counties is two per day, five per license year, three of which must be antlerless unless otherwise noted in this subsection.

1. The daily bag limit for deer is unlimited in all the cities and towns that allow deer hunting.

2. Only one deer per day may be taken on national forest, department-owned, and department-managed lands west of the Blue Ridge Mountains.

3. If a deer hunter kills two antlered bucks in a license year in Alleghany, Augusta, Bath, Highland, or Rockbridge County, at least one of the antlered bucks must have at least four antler points, one inch or longer, on one side of the antlers. This subdivision shall not apply to any county designated by the department within 25 miles of a confirmed detection of Chronic Wasting Disease.

4. Only one elk per day may be taken west of the Blue Ridge Mountains.

C. Except as noted in subsection E of this section, antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise Counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and younger, including those exempt from purchasing a hunting license and holders of an apprentice hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties.

#### **4VAC15-90-91. General firearms season either-sex deer hunting days.**

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: the second Saturday and the last day.

-National forest lands: the last day.

Amelia County: the second and third Saturdays and the last 13 days.

-Amelia WMA: the second and third Saturdays and the last six days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second and third Saturdays and the last 29 days.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: the last day.

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Appomattox County: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second and third Saturdays and the last 29 days.

Arlington County: full season.

Augusta County: full season.

-National forest and department-owned lands: the last day.

Bath County: the second Saturday and the last day.

-National forest and department-owned lands: the last day.

Bedford County: full season.

-National forest lands: the last day.

Bland County: the second Saturday and the last day.

-National forest lands: the second Saturday and the last day.

Botetourt County: full season.

-National forest and department-owned lands: the last day.

Brunswick County: the second and third Saturdays and the last six days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six days.

-Horsepen Lake WMA: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second and third Saturdays and the last 29 days.

Campbell County (east of Norfolk Southern Railroad): the second and third Saturdays and the last 29 days.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second and third Saturdays and the last six days.

-Mattaponi WMA: the second and third Saturdays and the last six days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Charles City County: ~~the second and third Saturdays and the last 29 days~~ full season.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six days.

Chesapeake (City of): the second and third Saturdays and the last 13 days.

Chesterfield County: the second and third Saturdays and the last ~~six~~ 13 days.

Clarke County: full season.

Craig County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday ~~and the last day~~.

Cumberland County: the second and third Saturdays and the last 13 days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last six days.

Essex County: the second and third Saturdays and the last six days.

Fairfax County: full season.

Fauquier County: full season.

-G. Richard Thompson WMA: the second ~~Saturday and the last day~~ third Saturdays and the last 13 days.

-Chester F. Phelps WMA: the second Saturday ~~and the last day~~.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last ~~13~~ 29 days.

-Hardware River WMA: the second and third Saturdays and the last 13 days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Frederick County: full season.

-National forest lands: the last day.

Giles County: full season.

-National forest lands: the second Saturday and the last day.

Gloucester County: the second and third Saturdays and the last six days.

Goochland County: ~~the second and third Saturdays and the last 29 days~~ full season.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: the last day.

Greene County: full season.

Greensville County: the second and third Saturdays and the last six days.

Halifax County: the second and third Saturdays and the last 13 days.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Highland County: the second Saturday and the last day.

-National forest lands: the last day.

-Department-owned lands: the second Saturday and the last day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second and third Saturdays and the last ~~six~~ 13 days.

King George County: the second and third Saturdays and the last 13 days.

King William County: the second and third Saturdays and the last ~~six~~ 13 days.

Lancaster County: the second and third Saturdays and the last 13 days.

Lee County: the second Saturday and the last two days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second and third Saturdays and the last 29 days.

Lunenburg County: the second and third Saturdays and the last six days.

Madison County: full season.

-Rapidan WMA: the second and third Saturdays and the last ~~29~~ 13 days.

Mathews County: the second and third Saturdays and the last six days.

Mecklenburg County: the second and third Saturdays and the last six days.

-Dick Cross WMA: the second and third Saturdays and the last six days.

Middlesex County: the second and third Saturdays and the last six days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last day.

Nelson County (east of Route 151): the second and third Saturdays and the last 29 days.

-James River WMA: the second Saturday and the last six days.

Nelson County (west of Route 151): full season.

-National forest lands: the last day.

New Kent County: ~~the second and third Saturdays and the last 29 days~~ full season.

Northampton County: full season.

Northumberland County: the second and third Saturdays and the last 13 days.

Nottoway County: the second and third Saturdays and the last six days.

Orange County: full season.

Page County: ~~the second Saturday and the last six days~~ full season.

-National forest lands: the last day.

Patrick County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

Pittsylvania County (east of Norfolk Southern Railroad): the second and third Saturdays and the last 29 days.

-White Oak Mountain WMA: the second Saturday and the last ~~day~~ three days.

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Pittsylvania County (west of Norfolk Southern Railroad): full season.

Powhatan County: ~~the second and third Saturdays and the last 29 days~~ full season.

-Powhatan WMA: the second and third Saturdays and the last 13 days.

Prince Edward County: the second and third Saturdays and the last six days.

-Briery Creek WMA: the second and third Saturdays and the last six days.

-Featherfin WMA: the second and third Saturdays and the last 29 days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last day.

Rappahannock County: full season.

Richmond County: the second and third Saturdays and the last 13 days.

Roanoke County: full season.

-National forest and department-owned lands: the last day.

Rockbridge County: the second Saturday and the last two days.

-National forest and department-owned lands: the last day.

Rockingham County: full season.

-National forest lands: the last day.

-Private lands west of Routes 613 and 731: the second Saturday and the last day.

Russell County: the second Saturday and the last two days.

-Department-owned lands and the Channels State Forest: the last day.

Scott County: the second Saturday and the last six days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the last day.

Smyth County: full season.

-National forest lands, department-owned lands, and Hungry Mother State Park: the last day.

Southampton County: full season.

Spotsylvania County: ~~the second and third Saturdays and the last 29 days~~ full season.

-Oakley Forest WMA: the second and third Saturdays and the last 13 days.

Stafford County: full season.

Suffolk (east of the Dismal Swamp Line): the second and third Saturdays and the last 13 days.

Suffolk (west of the Dismal Swamp Line): full season.

Surry County: full season.

-Carlisle and Stewart Tracts of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

-Big Woods WMA (including the Parkers Branch Tract) and Big Woods State Forest: the second and third Saturdays and the last six days.

Tazewell County: the second Saturday and the last two days.

-National forest and department-owned lands: the last day.

Virginia Beach (City of): the second and third Saturdays and the last 13 days.

Warren County: full season.

-National forest lands: the last day.

Washington County: the second Saturday and the last six days.

-National forest lands, department-owned lands, and the Channels State Forest: the last day.

Westmoreland County: the second and third Saturdays and the last 13 days.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting or within any common interest community participating in the special urban archery season according to provisions of 4VAC15-90-70.

## **4VAC15-90-231. Validating tags and checking reporting deer by licensee or permittee.**

A. Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his

special license for hunting deer and turkey, bonus deer permit, or special permit by completely removing the designated notch area from the tag or by electronically notching a tag and reporting the deer using the department's mobile harvest reporting application. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting deer and turkey, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag. All electronically notched tags are permanent and cannot be voided.

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided in subsection A of this section, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-10 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.~~

C. After the kill is reported, no written documentation is required as long as the hunter who killed the animal is in possession of the carcass. If the reported carcass is left

unattended or transferred to the possession of another individual, written documentation that includes the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

~~E. D. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked reported as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required in subsection A of this section, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law reported.~~

E. Processed carcass parts of a deer killed legally in Virginia may be transported. However, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

F. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been reported as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

~~D. G. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the licensee or permittee shall present the carcass, on the day of kill, at or submit carcass parts or samples as directed by the department, to a location designated by the department for the purposes of disease surveillance or biological monitoring.~~

**4VAC15-90-241. Checking Reporting deer by persons exempt from license requirement or holding a license authorization number.**

A. Upon killing a deer, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E of the Code of Virginia, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present~~

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~~the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, the~~ The successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

B. It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is ~~checked~~ reported as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is ~~checked at a big game check station or reported through the automated harvest reporting system. Any deer that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law reported.~~

C. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

D. Any deer that has not been reported as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

E. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the hunter shall present the carcass, ~~on the same day the deer was killed, at or submit carcass parts or samples as directed by the department to a location designated by the department for the purposes of deer disease surveillance or biological monitoring.~~

## **4VAC15-90-260. Hunting with dogs prohibited in certain counties and areas.**

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first 14 days on the Saturday prior to the third Monday in November and for 13 consecutive days following in the ~~counties~~ counties of Greene and Madison Counties, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to hunt deer with dogs in any county or city during open deer season for antlerless deer only as defined in 4VAC15-90-10.

## **4VAC15-90-293. Unauthorized cervid parts, excretions, and carcass importation, movement, possession, and use.**

A. The following words or terms, when used in 4VAC15-40-285, this section, and 4VAC15-90-294, shall have the following meanings unless the context clearly indicates otherwise:

"Cervid" means any member of the deer family Cervidae, including white-tailed deer, fallow deer, sika deer, elk, and reindeer.

"Import" means to transport a carcass or carcass parts, other than those outlined in subsection B of this section, into the Commonwealth in such a manner that the carcass or carcass parts are removed from their place of storage within a vehicle or other conveyance and placed or deposited within the Commonwealth. Deer harvested on properties that span the Commonwealth's boundary with an adjoining state shall not be considered imported.

B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating outside of the Commonwealth, except that the following carcass parts may be imported and possessed:

1. Boned-out meat;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skulls or skull plates with or without antlers attached;
5. Clean (no meat or tissue attached) lower jaw bones;
6. Antlers (with no meat or tissue attached);
- ~~6-7.~~ Upper canine teeth (buglers, whistlers, or ivories); and
- ~~7-8.~~ Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who either killed or possesses the allowed parts in the Commonwealth.

C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease management area, ~~except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle during transit. Provisions of this section shall not apply to employees of the department or another government agency, or their designees, working in an official disease investigation or management capacity;~~

1. Carcass parts enumerated in subsection B of this section; or
2. Carcasses and parts transported to other locations or areas within the Commonwealth designated by the department or to specified locations in other states and provinces where it is legal to import such materials, provided that such carcasses or parts are transported without delay and secured within a vehicle or other conveyance during transit.

Provided further that, except for carcass parts enumerated in subsection B of this section, no person shall transport any carcass or part of a carcass of any cervid between administrative units of a disease management area when prohibited by the department. Provisions of this section shall not apply to employees of the department or another

government agency, or their designees, working in an official disease investigation or management capacity.

E. No person shall for the purposes of taking or attempting to take, attracting, or scouting any wild animal in Virginia possess or use any substance or material that contains or purports to contain any excretion collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid.

**4VAC15-90-500. Elk hunting outside the Elk Management Zone.**

A. Open season. Except as otherwise provided by 4VAC15-90-510, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons as prescribed by 4VAC15-90-10 and 4VAC15-90-23, (ii) the special archery seasons as prescribed by 4VAC15-90-70, and (iii) the special muzzleloading seasons as prescribed by 4VAC15-90-80 with bag limits as prescribed in 4VAC15-90-90.

B. Upon killing an elk. Any licensed or permitted hunter shall validate a tag on that hunter's special license for hunting deer and turkey or bonus deer permit and check the elk in accordance with 4VAC15-90-231. Upon receiving a confirmation number, the hunter must call the department to schedule an inspection of the carcass and the site of kill for the collection of biological samples.

C. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall check the elk in accordance with 4VAC15-90-241. Upon receiving a confirmation number, the hunter must call the department to schedule an inspection of the carcass and the site of kill for the collection of biological samples.

**4VAC15-90-510. Elk hunting within the Elk Management Zone.**

A. It shall be lawful to hunt elk within the Elk Management Zone from the second Saturday in October through the following Friday, both dates inclusive.

B. The seasonal bag limit for elk shall be one per season as prescribed on the special elk hunting license. The department shall determine the number and type of special elk hunting licenses distributed within a season and license year.

C. Except as provided in 4VAC15-90-540 or 4VAC15-90-550 individuals selected to purchase a special elk hunting license shall not be eligible to receive a subsequent special elk hunting license for a period of three years.

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D. All licensed elk hunters and persons accompanying elk hunters are required to wear or display a blaze color as described in § 29.1-530.1 of the Code of Virginia.

E. Upon killing an elk, any licensed hunter shall validate the tag on the hunter's special elk hunting license and report the elk in accordance with procedures outlined in 4VAC15-90-231. Upon receiving a confirmation number, the hunter must call the department to schedule an inspection of the carcass and the site of kill for the collection of biological samples.

## **4VAC15-90-520. Special provisions for hunting elk within the Elk Management Zone.**

A. It shall be unlawful for any person to destroy the identity of the sex of any harvested elk unless and until requirements outlined in this section are met. Successful elk hunters are allowed to dismember the carcass to pack it out from the place of kill as long as evidence of the sex remains naturally attached to a major portion of the meat. Once the requirements for tag validation, reporting, and biological sampling have been met in accordance with 4VAC15-90-510, evidence of sex is no longer required.

B. Any elk found in the possession of any person without a validated (notched) license tag or documentation that the elk has been reported in accordance with 4VAC15-90-510, shall be forfeited to the Commonwealth to be disposed of as provided by law.

C. It is unlawful for a person to fail to reasonably attempt to dress, care for, and remove from the field the edible portions of any harvested elk, at a minimum that includes the meat from front shoulders, back quarters, and back-straps. Violation of this subsection shall constitute wanton waste for the purposes of section § 29.1-553.1 of the Code of Virginia.

D. It shall be unlawful to hunt elk with dogs. This subsection shall not prohibit the use of tracking dogs, which may be used in accordance with § 29.1-516.1 of the Code of Virginia.

E. It shall be unlawful to drive elk from any area, including man-drives, pushing with vehicles, or any other human action that is intended to cause animals to move into a harvestable situation.

F. The special elk hunting license shall be valid on all private land, with written permission from the landowner, within the Elk Management Zone. The special elk hunting license shall also be valid on public lands as designated on an individual's special elk hunting license. This is only applicable to special elk hunting licenses awarded through the random drawing and conservation license programs.

G. Elk hunters 15 years of age and younger or holders of an apprentice hunting license must be accompanied by and directly supervised by an adult who has a valid Virginia hunting license or is exempt from purchasing a hunting license. Adult hunters accompanying youth or apprentice hunters on a special elk hunt may not carry or discharge weapons.

## **4VAC15-90-530. Special elk hunting license, random drawing license program.**

A. The annual application period to enter the random drawing for a special elk hunting license shall be February 1 to March 30, both dates inclusive, unless extended by the director. Individuals selected for special elk hunting licenses via the random drawing will be notified by May 30, and special elk hunting licenses must be purchased from the department within 30 days of notification.

B. To enter the random drawing for a special elk hunting license, applicants shall:

1. Complete the application for a special elk hunting license as provided by the department.
2. Pay a nonrefundable application fee.
3. Apply only once for each random drawing.

C. Nonresidents shall not comprise more than 10%, or one drawn applicant, whichever is greater, of all drawn applicants in any application pool for the random drawing license program.

D. Applicants who physically reside within the Elk Management Zone shall comprise no less than 10%, or a minimum of one, whichever is greater, of all drawn applicants in any application pool for the random drawing license program.

E. A special elk hunting license awarded through the Random Drawing License Program shall not be transferable.

F. An applicant drawn for a special elk hunting license may be rejected if it is determined that the applicant has been convicted of two or more wildlife violations within three years prior to the last date of the application period. In determining an applicant's eligibility, the director shall take into account the nature and severity of the violations.

G. The department will award unclaimed special elk hunting licenses to alternates who are drawn during the initial application and draw period in the order that the alternates are drawn.

## **4VAC15-90-540. Special elk hunting license, Landowner License Program.**

A. Upon receipt of a valid Landowner License Program application from a landowner within the Elk Management Zone, the director or the director's designee shall verify the application materials and have sole discretion in enrolling the property in the Landowner License Program. Applications must be received or postmarked by July 1 each year to be eligible for the Landowner License Program during that calendar year.

B. A valid Landowner License Program application shall include:

1. Landowner's name, home address, telephone number, and address of the property to be enrolled in the program.
2. A recorded survey or other legal documentation certifying that the property to be enrolled is greater than or equal to 50 contiguous acres.
3. Affidavit that elk hunters on the enrolled property shall not be charged a fee.
4. Original signature of the landowner.
5. Only a single application per license year, per landowner.

C. Landowners enrolled in the Landowner License Program maintain the right to limit access to certain areas of the property for safety or privacy reasons, provided a minimum of 50 acres are open to elk hunting. Areas of limited access must be outlined in the initial application. Enrollment in the Landowner License Program does not preclude or limit in any way the landowner from allowing other hunting or other hunters on the property.

D. The department shall determine and make available to the public a program guidance document outlining how landowners enrolled in the Landowner License Program shall accrue points toward a special elk hunting license, the number of points necessary to be awarded such license, and other program requirements. The program guidance document will be published annually prior to June 1.

E. Landowners who accrue the necessary number of points, as defined in the program guidance document, on an enrolled property may request one either-sex special elk hunting license from the department. A request for a special elk hunting license must be submitted prior to July 1 in the year the license is to be used. Once a request for a special elk hunting license is made, landowners lose all accrued points. There is no time limit over which a landowner is required to accrue license points. Landowners shall not combine points from separate enrolled properties.

F. Landowners enrolled in the Landowner License Program shall not subdivide contiguous properties under the same ownership into multiple, smaller parcels for the purposes of this program.

G. License points cannot be sold or traded. License points are nontransferable if the property changes ownership, except that if the property is inherited from parents, grandparents, or children, resident or nonresident, license points may be transferred. The department may request documentation to certify the relationship between seller and purchaser as well as a copy of bill of sale.

H. Landowners receiving a special elk hunting license shall comply with all of the requirements established in this section as well as 4VAC15-90-510, 4VAC15-90-520, and § 29.1-

305.01 of the Code of Virginia. Landowners who fail to comply with this chapter may forfeit any accrued license points and may not be eligible to accrue new license points.

I. A special elk hunting license awarded to the landowner shall only be used on the property enrolled with the department in the Landowner License Program.

J. A landowner may transfer or sell the special elk hunting license to any person eligible to hunt in Virginia. Transfer of the special elk hunting license must be reported to the department no less than one month prior to the opening day of the elk hunting season during the year in which the special elk hunting license is requested. To report a transfer to the department, the landowner shall provide the department with the hunter's:

1. Name;
2. Department customer identification number;
3. Address; and
4. Telephone number.

K. A special elk hunting license transferee may be rejected if it is determined that the transferee has been convicted of two or more wildlife violations, within three years prior to the last date of the application period. In determining the transferee's eligibility, the director shall take into account the nature and severity of the violations.

#### **4VAC15-90-550. Special elk hunting license, Conservation License Program.**

A. For the purposes of this section, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise:

"Individual, cooperators, or wildlife conservation organizations" means those people or entities whose mission is to promote and ensure the conservation of Virginia's wildlife resources or to promote opportunities for hunting, fishing, trapping, boating, or other wildlife-related recreation within Virginia.

"Proceeds" means the amount of money received by the cooperator or organization from the transfer of a special elk hunting license minus all expenses and administrative costs directly attributable to the transfer of the permit or the implementation of the defined project.

B. Upon receipt of a valid Conservation License Program application from an officer or other designated official representative of any individual, cooperator, or wildlife conservation organization, the director or the director's designee shall verify the application materials and may select a program awardee annually. Applications must be received or postmarked no later than April 1 to be eligible for the Conservation License Program during that calendar year.

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C. A valid Conservation License Program application shall include:

1. Cooperator or organization name, name of the individual designated to submit and receive official correspondence, address for such correspondence, and a telephone number.
2. Cooperator or organization mission statement.
3. A written application describing:
  - a. Cooperator or organization role in wildlife conservation in Virginia.
  - b. Cooperator or organization purpose and intent for requesting special elk hunting license through the Conservation License Program.
  - c. Cooperator or organization proposal for method of generating funds from transfer of the special elk hunting license to an eligible individual.
  - d. Cooperator or organization strategy to direct proceeds received from the transfer of the special elk hunting license and any matching funding toward wildlife conservation or wildlife-related recreation in Virginia's Elk Management Zone.

D. The director shall establish a Conservation License Program Committee to review program applications and submit a recommendation to the director to award no more than one special elk hunting license to a cooperator or organization whose application is deemed to provide the greatest benefit to wildlife conservation and wildlife-related recreation in Virginia per license year. This committee shall be composed of a minimum of three individuals and make a recommendation to the director by May 1 each year.

E. A cooperator or organization receiving a special elk hunting license must direct all proceeds from the transfer of such license, toward a project to improve and enhance wildlife habitat, wildlife populations, or wildlife-related recreation within the Elk Management Zone. The proposed strategy and requirements will be outlined in a memorandum of agreement between the department and the cooperator or organization.

F. A cooperator or organization may transfer the special elk hunting license to any person eligible to hunt in Virginia. The generation of funds from the transfer of the special elk hunting license may only be conducted through a raffle.

G. Transfer of the special elk hunting license must be reported to the department no less than one month prior to the opening day of the elk hunting season during which the special elk hunting license is valid. To report a transfer to the department, the cooperator or organization shall provide the department with the hunter's:

1. Name;
2. Department customer identification number;
3. Address; and

4. Telephone number.

H. A special elk hunting license transferee may be rejected if it is determined that the transferee has been convicted of two or more wildlife violations within three years prior to the last date of the application period. In determining the transferee's eligibility, the director shall take into account the nature and severity of the violations.

I. A cooperator or organization awarded a special elk hunting license shall submit an annual report to the department regarding any proceeds received from the transfer of the license and an accounting of how those funds were directed toward wildlife conservation or wildlife-related recreation in the Elk Management Zone.

VA.R. Doc. No. R21-6739; Filed April 1, 2021, 10:03 a.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** **4VAC15-200. Game: Rabbit and Hares (amending 4VAC15-200-30; adding 4VAC15-200-15, 4VAC15-200-50, 4VAC15-200-60).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Public Hearing Information:**

May 27, 2021 - 12 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

**Summary:**

*The proposed amendments (i) limit the translocation of live wild rabbits box trapped in Virginia to within the county of capture in order to reduce the risk of spreading Rabbit Hemorrhagic Disease, (ii) prohibit the import and possession of all whole wild rabbit carcasses originating from anywhere outside of Virginia, and (iii) prohibit the disposal of wild rabbit parts onto the landscape of the Commonwealth.*

### **4VAC15-200-15. Definitions.**

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

"Import" means to transport a carcass or carcass parts, other than those outlined in 4VAC15-200-60, into the Commonwealth in such a manner that the carcass or carcass

parts are removed from their place of storage within a vehicle or other conveyance and placed or deposited within the Commonwealth. Rabbits harvested on properties that span the Commonwealth's boundary with an adjoining state shall not be considered imported.

"Wild rabbit" means any member of the taxonomic order Lagomorpha, including rabbits, hares, and pika regulated by the Department of Wildlife Resources and not defined as domestic breeds by the American Rabbit Breeders Association.

#### **4VAC15-200-30. Trapping with box traps.**

It shall be lawful to trap rabbits with box traps from October 15 through January 31, both dates inclusive; provided, that no traps shall be set on the lands of another without written permission; provided further, that it shall be lawful to live-trap rabbits and transport them only within the county of capture, for release or restocking purposes in Virginia at any time, provided they are not released onto the lands of another without permission.

#### **4VAC15-200-50. Unauthorized wild rabbit carcass importation and possession.**

No person shall import or possess a whole carcass or any part of a carcass of a wild rabbit originating from outside the Commonwealth, except for a fully dressed carcass with the skin, feet, head, and internal organs removed.

#### **4VAC15-200-60. Disposal of wild rabbit parts.**

No wild rabbit carcasses or carcass parts may be discarded or disposed of directly on the ground. All such carcasses or carcass parts must be buried at least two feet below ground, incinerated, or securely bagged and discarded in household trash for ultimate disposal in a permitted landfill.

VA.R. Doc. No. R21-6740; Filed March 31, 2021, 5:02 p.m.

### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

**Title of Regulation:** **4VAC15-240. Game: Turkey (amending 4VAC15-240-20, 4VAC15-240-32, 4VAC15-240-40, 4VAC15-240-60, 4VAC15-240-81, 4VAC15-240-91).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

#### **Public Hearing Information:**

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

**Public Comment Deadline:** May 10, 2021.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive,

Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

#### **Summary:**

*The proposed amendments (i) increase the Orange County fall turkey season to a six-week season, (ii) allow hunting from one-half an hour before sunrise to sunset for the entire spring turkey season, (iii) align the fall turkey archery season with the current statewide deer and bear archery season dates, and (iv) remove all references to checking, check stations, and check cards to reflect the requirement for all big game harvests, including turkey, to be reported electronically using the telephone, Internet, or GoOutdoors Virginia mobile harvest reporting application beginning in the 2021-2022 hunting season.*

#### **4VAC15-240-20. Open season; certain counties and areas; two-week season.**

It shall be lawful to hunt turkeys 14 days immediately before the Saturday prior to the first Monday in November and on Thanksgiving Day in the Counties of Albemarle, Alleghany, Augusta, Bath, Greene, Highland, Madison, Page, ~~Orange~~, and Rockingham.

#### **4VAC15-240-32. Open season; certain counties and areas; six-week season.**

It shall be lawful to hunt turkeys 14 days immediately before the Saturday prior to the first Monday in November; on Thanksgiving Day and the day before; on the Monday nearest December 2 and for 12 days following, both dates inclusive; and on the second Saturday in January and for 14 days following in the Counties of Amherst, Appomattox, Brunswick, Buchanan, Buckingham, Campbell, Charlotte, Chesterfield, Cumberland, Floyd, Fluvanna, Frederick, Goochland, Halifax, Hanover, Henrico, Henry, Louisa, Lunenburg, Mecklenburg, Nottoway, Orange, Patrick, Pittsylvania, Prince Edward, Shenandoah, Spotsylvania, Tazewell, and Warren.

#### **4VAC15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for 35 days following, both dates inclusive, from 1/2 hour before sunrise to ~~12:00 noon prevailing time during the first 23 days and from 1/2 hour before sunrise to sunset during the last 13 days of the spring season~~ sunset.

B. Turkey hunters 15 years of age and younger and holders of an apprentice hunting license may hunt on the first Saturday in April and the following calendar day from 1/2 hour before sunrise to sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult who is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or

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apprentice license holders on these days may assist with calling but they shall not carry or discharge weapons. Youth and apprentice turkey hunters are limited on this weekend to one turkey per hunter.

C. Upon receipt of an application from an officer or other designated official representative of any nonprofit organization that has support for sportsmen with impaired mobility as one of its mission statements, the director may issue a permit to an officer or representative of the organization that allows sportsmen with impaired mobility to hunt bearded wild turkeys from 1/2 hour before sunrise to sunset from the 10th through 16th days of the spring season. Such authorization shall be valid only when hunting during an authorized event. All participants shall be in compliance with all requirements of law and regulation that apply during the spring season, and bearded turkeys killed during these events shall count toward daily and annual bag limits.

D. Bearded turkeys may be hunted by calling.

E. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

F. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

## **4VAC15-240-60. Archery hunting.**

A. Season. It shall be lawful to hunt turkey with archery equipment or a slingbow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Friday that is 13 days after the Saturday before the last Monday in October prior to the third Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with archery equipment or a slingbow shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with archery equipment or a slingbow during the special archery season.

D. Use of dogs prohibited during archery season. It shall be unlawful to use dogs when hunting with archery equipment from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

## **4VAC15-240-81. Validating tags and reporting turkey by licensee.**

A. Any person killing a turkey shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting deer and turkey by completely removing the designated notch area from the tag or by electronically notching a tag and reporting the turkey using the department's mobile harvest reporting application. Place of kill

shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a turkey tag from any special license for hunting deer and turkey prior to the killing of a turkey. A turkey tag that is mistakenly validated (notched) prior to the killing of a turkey must be immediately voided by the licensee by writing, in ink, the word "VOID" on the line provided on the tag. All electronically notched tags are permanent and cannot be voided.

B. Upon killing a turkey and validating (notching) a license tag, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, ~~present the carcass and validated (notched) license tag to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or~~ report his the kill through the department's automated harvest reporting system. ~~Turkeys killed during the January season (as prescribed in 4VAC15-240-10) and the spring turkey seasons (as prescribed in 4VAC15-240-40 and 4VAC15-240-60) must be reported through the department's automated harvest reporting system.~~ The person reporting the carcass will be given a ~~game check card furnished by the department or a~~ confirmation number from the automated harvest reporting system. The successful hunter shall then immediately record the ~~game check card number or~~ confirmation number, in ink, on the line provided on the license tag that was validated (notched) in the field. ~~If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.~~ If reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the turkey is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the turkey was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed unless and until the license tag is validated (notched) and reported ~~to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed~~ or by using the automated harvest reporting system as required by this section. Any turkey found in the possession of any person without a validated (notched) license tag or documentation that the turkey has been reported ~~to an authorized checking station or to an appropriate representative of the department in the county or adjoining counties in which the turkey was killed~~ or by using the automated harvest

reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

**4VAC15-240-91. Reporting turkey by persons exempt from license requirement or holding a license authorization number.**

A. Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever comes first, and without unnecessary delay, ~~present the carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or~~ report his kill through the department's automated harvest reporting system. ~~Turkeys killed during the January season (as prescribed in 4VAC15-240-10) and the spring turkey seasons (as prescribed in 4VAC15-240-40 and 4VAC15-240-60) must be reported through the department's automated harvest reporting system.~~ The person reporting the carcass shall be given a ~~game check card furnished by the department or a~~ confirmation number from the automated harvest reporting system. ~~If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If reported using the automated harvest reporting system, no~~ No check card is required as long as the hunter who killed the turkey is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the turkey was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

B. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed until the turkey is reported ~~to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or~~ by using the automated harvest reporting system as required by this section. Any turkey that has not been reported ~~to an authorized checking station or to an appropriate representative of the department in the county or adjoining county or counties in which the turkey was killed or~~ by using the automated harvest reporting system as required by this section found in the possession of any person exempt

from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R21-6741; Filed March 31, 2021, 6:16 p.m.

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-270. Game: Firearms (amending 4VAC15-270-10).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

Public Comment Deadline: May 10, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

Summary:

*The proposed amendment includes elk in the list of species that must be hunted with rifles not less than .23 caliber and removes the .23 caliber restriction for humanely dispatching a bear, elk, or deer in circumstances where a smaller caliber weapon may be more appropriate.*

**4VAC15-270-10. Size rifles for hunting bear, elk, and deer.**

It shall be unlawful to use a rifle of a caliber less than 23 for the hunting ~~or killing~~ of bear, elk, and deer.

VA.R. Doc. No. R21-6742; Filed March 31, 2021, 6:30 p.m.

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10, 4VAC15-360-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

May 27, 2021 - 12 p.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, Virginia.

Public Comment Deadline: May 10, 2021.

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Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

Summary:

*The proposed amendments (i) limit the number of native and naturalized amphibians and reptiles that can be held in personal possession, (ii) protect from collection those reptiles and amphibians designated as Species of Greatest Conservation Need in Virginia's 2015 Wildlife Action Plan, (iii) prohibit the use and sale of salamanders as bait, (iv) preclude the collection of reptiles and amphibians on all state and federal lands without an appropriate permit or license, (v) establish an online registry to report those animals legally held prior to the effective date, (vi) include requiring snapping turtles harvested for personal use have a minimum curved-line carapace length of 13 inches for consistency with commercial harvest requirements and protection of the species, and (vii) remove the Mexican axolotl from the list of predatory and undesirable species as found in 4VAC15-30-40, as its listing in 2013 was inadvertent.*

## **4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.**

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale ~~or export no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile~~ one individual of any native or naturalized, as defined in 4VAC15-20-50, species of amphibian or reptile per physical address, and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed in this subsection:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, goldfish, and Asian clams. Grass carp may only be harvested in unlimited numbers from public inland rivers and streams of the Commonwealth. It is unlawful to harvest grass carp from any public inland lake and reservoir. Anglers taking grass carp must ensure that all harvested grass carp are dead.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), ~~salamanders (each under six inches in total length),~~ crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be five. Snapping turtles shall only be taken from June 1 to September 30 and must have a minimum curved-line carapace length of 13 inches. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken or possessed in any number for private use: ~~eastern hellbender, diamondback terrapin, and spotted turtle~~ red-eared slider and all reptile and amphibian Species of Greatest Conservation Need designated in Virginia's 2015 Wildlife Action Plan.

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

- a. Period of captivity does not exceed 30 days;
- b. Animals must be liberated at the site of capture;
- c. Animals must have been housed separately from other wild-caught and domestic animals; and
- d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

7. Native or naturalized amphibians and reptiles, as defined in 4VAC15-20-50, may not be taken or possessed in any number from state or federal land without an appropriate permit or license.

B. Methods of taking species in subsection A of this section. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A of this section may only be taken (i) by hand, hook, and line; (ii) with a seine not exceeding four feet in depth by 10 feet in length; (iii) with an umbrella type net not exceeding five by five feet square; (iv) by small minnow traps with throat openings no larger than one inch in diameter; (v) with cast nets; and (vi) with hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the

provisions of § 29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take the spiny riversnail (*Io fluviialis*) in the Tennessee drainage in Virginia (Clinch, Powell, and the North, South, and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels from any inland waters of the Commonwealth.

~~D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth, and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.~~

D. Reduction of possession limits for native and naturalized amphibians and reptiles. Any person in possession of legally-obtained native and naturalized amphibians and reptiles, as defined in 4VAC15-20-50, prior to the change in personal possession allowances in subsection A of this section, effective July 1, 2021, must declare such possession to the department by January 1, 2022, in a manner prescribed by the department. This declaration shall serve as authorization for possession only and is not transferable.

**4VAC15-360-60. Prohibit the sale of salamander and madtom species.**

It shall be unlawful to sell any species of madtom (*Noturus* sp.) and any species of salamander with the exception of nonnative newts (*Salamandridae*) and Mexican axolotls (*Ambystoma mexicanum*).

VA.R. Doc. No. R21-6743; Filed March 31, 2021, 7:19 p.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**BOARD OF JUVENILE JUSTICE**

**Forms**

REGISTRAR'S 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.

Title of Regulation: **6VAC35-170. Regulation Governing Juvenile Data Requests and Research Involving Human Subjects.**

Agency Contact: Kristen Peterson, Regulatory and Policy Coordinator, Department of Juvenile Justice, 600 East Main Street, Richmond, VA 23219, telephone (804) 971-2776, email [kristen.peterson@djj.virginia.gov](mailto:kristen.peterson@djj.virginia.gov).

FORMS (6VAC35-170)

[Research Agreement \(rev. 1/2016\)](#)

[Research Proposal Summary \(rev. 1/2016\)](#)

[Research Agreement Form \(rev. 4/2021\)](#)

[Research Proposal Summary \(rev. 4/2021\)](#)

[Confidentiality Agreement \(eff. 4/2021\)](#)

VA.R. Doc. No. R21-6750; Filed April 7, 2021, 11:07 a.m.



**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Fast-Track Regulation**

Title of Regulation: **12VAC5-421. Food Regulations (amending 12VAC5-421-10, 12VAC5-421-30, 12VAC5-421-40, 12VAC5-421-55, 12VAC5-421-60, 12VAC5-421-70, 12VAC5-421-80, 12VAC5-421-90, 12VAC5-421-100, 12VAC5-421-180, 12VAC5-421-190, 12VAC5-421-255, 12VAC5-421-260, 12VAC5-421-270, 12VAC5-421-295, 12VAC5-421-300, 12VAC5-421-310, 12VAC5-421-340, 12VAC5-421-350, 12VAC5-421-400, 12VAC5-421-410, 12VAC5-421-440, 12VAC5-421-450, 12VAC5-421-470, 12VAC5-421-540, 12VAC5-421-660, 12VAC5-421-700, 12VAC5-421-720, 12VAC5-421-725, 12VAC5-421-730, 12VAC5-421-740, 12VAC5-421-760, 12VAC5-421-830, 12VAC5-421-850, 12VAC5-421-860, 12VAC5-421-870, 12VAC5-421-900, 12VAC5-421-930, 12VAC5-421-940,**

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12VAC5-421-950, 12VAC5-421-1180, 12VAC5-421-1190, 12VAC5-421-1300, 12VAC5-421-1380, 12VAC5-421-1520, 12VAC5-421-1535, 12VAC5-421-1550, 12VAC5-421-1620, 12VAC5-421-1700, 12VAC5-421-1920, 12VAC5-421-2090, 12VAC5-421-2100, 12VAC5-421-2110, 12VAC5-421-2140, 12VAC5-421-2270, 12VAC5-421-2330, 12VAC5-421-2350, 12VAC5-421-2570, 12VAC5-421-2720, 12VAC5-421-2750, 12VAC5-421-3040, 12VAC5-421-3310, 12VAC5-421-3360, 12VAC5-421-3390, 12VAC5-421-3410, 12VAC5-421-3510, 12VAC5-421-3520, 12VAC5-421-3570, 12VAC5-421-3580, 12VAC5-421-3600 through 12VAC5-421-3750, 12VAC5-421-3770, 12VAC5-421-3780, 12VAC5-421-3800 through 12VAC5-421-3840, 12VAC5-421-3860 through 12VAC5-421-3950, 12VAC5-421-3970, 12VAC5-421-4020, 12VAC5-421-4040, 12VAC5-421-4050, 12VAC5-421-4060; adding 12VAC5-421-235, 12VAC5-421-2505, 12VAC5-421-3595, 12VAC5-421-3961 through 12VAC5-421-3966; repealing 12VAC5-421-3550, 12VAC5-421-3560, 12VAC5-421-3960, 12VAC5-421-4010, 12VAC5-421-4035).

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 26, 2021.

Effective Date: June 10, 2021.

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, TDD (800) 828-1120, or email [julie.henderson@vdh.virginia.gov](mailto:julie.henderson@vdh.virginia.gov).

Basis: Sections 35.1-11 and 35.1-14 of the Code of Virginia authorize and require the State Board of Health to promulgate and enforce regulations governing restaurants in accordance with the provisions of Title 35.1 of the Code of Virginia. Section 35.1-14 provides the legal basis for the promulgation and modification of this regulation when the board elects to adopt any edition of the Food and Drug Administration (FDA) Food Code, or any portion thereof. The authority to adopt the FDA Food Code is discretionary; the authority to regulate food establishments is not.

Purpose: The U.S. Centers for Disease Control and Prevention estimate that foodborne diseases cause approximately 48 million people to become ill, 128,000 hospitalizations, and 3,000 deaths in the United States each year. This translates into one in six Virginians who become ill. The purpose of this regulation is to prevent foodborne illness by ensuring that foods prepared and served at food establishments in Virginia are safe, unadulterated, and prepared under sanitary conditions. This is accomplished by ensuring the regulation reflects current science and technology regarding minimum sanitary standards for food establishments to protect the dining public. These standards include approved sources for foods used in food establishments; specifications for safe handling, storage, preparation, and serving of food; personal hygiene of

employees; precautions to prevent the transmission of diseases communicable through food; and the general sanitation of the facility. When followed, these minimum standards protect the public health, safety, and welfare. In addition, amending the Food Regulations to conform to the 2017 FDA Food Code will ensure the regulation promotes uniformity in administration of the food safety program. The benefits of adopting and implementing uniform standards have shown to lead to higher compliance, consistent training of public health staff, and an increased shared responsibility of the food industry and the government in ensuring food provided to the consumer is safe and does not become a vehicle for a disease outbreak or for the transmission of communicable disease.

Rationale for Using Fast-Track Rulemaking Process: The Virginia Department of Health is initiating this regulatory action to amend its regulations to comport the Food Regulations with the current FDA Food Code and to ensure clarity and uniform application. The FDA Food Code, revised approximately every four years, serves as a model document to assist state and local agencies with regulatory authority over food safety by creating a regulatory scheme that reflects the most current science available to reduce the risk of food borne illnesses associated with food establishments. VDH has revised the Food Regulations to reflect updates to the FDA Food Code, which include updates to effective controls as a means to reduce the risk of foodborne illness that contribute to financial losses and have dire health consequences. This regulatory action is best suited for the fast-track rulemaking process as it is expected to be noncontroversial. The proposed changes ensure the Food Regulations reflect changes made to the 2017 FDA Food Code, complement current Virginia law, and provide minimal burdens on regulants while protecting public health.

Substance: The proposed changes to the Food Regulations revise the regulations to incorporate the 2017 FDA Food Code and the 2017 FDA Food Code Annex I, in part. The proposed changes also ensure that the regulations complement current Virginia law and provide minimal burdens on regulants while protecting public health. Substantive changes include (i) the removal, addition, and revision of definitions; (ii) language amended to require the person in charge to be a certified food protection manager, (iii) language added to include standards for the use of bandages, finger cots, or finger stalls, (iv) language added to require written procedures for the clean-up of vomiting and diarrheal events, (v) language added to require the separation of raw animal foods from fruits and vegetables in certain instances, (vi) language amended to reflect new cooking time for raw animal foods, (vii) the removal of the Food Service Advisory Committee to reflect changes within the Food and Drug Administration, and (viii) language added to provide clarity to enforcement procedures when impounding food.

Issues: The primary advantage of the regulation to the public is the establishment of modern science-based standards that support the prevention of foodborne illness risk factors and

ensure the safety of food service within the Commonwealth. The revisions will also make the regulation more understandable and align them with best practices. The primary advantage to the agency is that the regulation will be based on current food science and clarify ambiguous areas relating to enforcement and inspection standards. Staff who better understand the regulatory scheme of food safety provide enhanced communication to the public and regulant community on how to prevent food borne illness. The primary advantage to the regulated community, particularly chains and franchises that operate in other states as well as in multiple jurisdictions across the Commonwealth that have adopted the current version of the FDA Food Code, will be more consistent regulatory application. There are no known disadvantages to the public or the Commonwealth with the adoption of this regulation.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health proposes numerous amendments to 12VAC5-421 Food Regulations, many of which conform to the latest U.S. Food and Drug Administration (FDA) model regulations.

Background. The FDA describes its Food Code as "a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service."<sup>1</sup> The FDA encourages states to adopt the latest version of the FDA Food Code,<sup>2</sup> but it is not federal law.

### Conforming to 2017 FDA Food Code

The following proposed amendments to the regulation conform to requirements in the 2017 FDA Food Code:

- Require that there be a certified food protection manager (CFPM) on the premises of the food establishment<sup>3</sup> at all times of operation.
- Require that if used, an impermeable cover such as a bandage, finger cot, or finger stall located on the wrist, hand or finger of the food employee working with exposed food shall be covered with a single-use glove.
- Require that food establishments have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment. The procedures must address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.
- Require the protection of prewashed fruits and vegetables from cross contamination by separating them from raw animal foods during storage, preparation holding and display.

- Increase the minimum required cooking time from 15 to 17 seconds (at 155°F) for certain raw animal foods.<sup>4</sup>
- Reduce the minimum required cooking time from 15 seconds to less than one second (165°F or above) for certain raw animal foods.<sup>5</sup>
- Include timelines for required reporting of nitrate and E. coli positive lab results to the Virginia Department of Health (VDH).
- Require that food establishments notify customers that a copy of the most recent establishment inspection report is available upon request by either: a) posting a sign or placard in a location in the food establishment that is conspicuous to customers, or b) by another method acceptable to the department.

When inspectors find violations of any of the regulations requirements, the food establishment must correct the deficiencies within specified time periods. All requirements are delineated as priority, priority foundation, or core. Priority items must be remedied within 72 hours, priority foundation items within 10 calendar days, and core items within 90 days. In order to conform to the 2017 FDA Food Code, the Board proposes to change times in which violations of requirements must be corrected as follows:

### Core to Priority (90 calendar days to 72 hours):

- When a food employee is excluded from the food establishment as required due to being diagnosed with an infection from Salmonella (nontyphoidal), the exclusion for the food employee who is symptomatic should be retained until either of the following are met: a) the excluded food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Salmonella (nontyphoidal) infection based on test results showing two consecutive negative stool specimen cultures that are taken, or b) the food employee was restricted after symptoms of vomiting or diarrhea are resolved, and more than 30 days have passed since the food employee became asymptomatic.
- In a food establishment that serves a highly susceptible population,<sup>6</sup> unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form must be processed under a Hazard Analysis and Critical Control Point (HACCP) plan<sup>7</sup> and as specified in 21 CFR 120.24.

### Priority Foundation to Priority (10 calendar days to 72 hours):

- Food must be safe, unadulterated, and honestly presented.<sup>8</sup>
- Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory must, if individually cut in a food establishment, be cut from whole-muscle intact beef that is labeled by a food processing plant.

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Core to Priority Foundation (90 calendar days to 10 calendar days):

- In manual warewashing<sup>9</sup> operations, a temperature measuring device must be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.
- In hot water mechanical warewashing operations, an irreversible registering temperature indicator must be provided and readily accessible for measuring the utensil surface temperature.
- Water from a private well must be sampled and tested at least annually for nitrate and total coliform.
- For a food establishment that is required to have a HACCP plan, the HACCP plan must include general information such as the name of the permit applicant or permit holder, the food establishment address, and contact information.

Priority to Priority Foundation (72 hours to 10 calendar days):

- If time without temperature control is used as the public health control up to a maximum of four hours, the food must be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;
- If time without temperature control is used as the public health control up to a maximum of six hours, the food shall be monitored to ensure the warmest portion of the food does not exceed 70°F (21°C) during the six-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 70°F (21°C) during the six-hour holding period.

## Other Proposed Changes

The following proposed amendments to the regulation are not related to the 2017 FDA Food Code:

- Specify that shucked shellfish from one tagged or labeled container are not commingled with shellstock<sup>10</sup> or shucked shellfish from another container with different certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer.
- Specify that records demonstrating inspection and service of water treatment devices and backflow preventers be maintained by the person in charge for a minimum of five years.
- Require that any food establishment permit applicant who fails to complete the application process within 12 months of receipt of the application by the local health department's office may be required to submit a new application and plan.
- Require that existing food establishments notify VDH in writing of a change of legal ownership or when business operations have terminated. Such notice must be submitted, in writing, to VDH at least 30 days prior to the

legal ownership transfer or termination of business operation.

- Eliminate the option for Bed & Breakfast operations to have a food establishment permit.

## Estimated Benefits and Costs

### Conforming to 2017 FDA Food Code

The current regulation requires food establishments to employ a CFPM; however, they are not required to be onsite at all times of operation. The proposed regulation expands this, and requires that a CFPM be onsite at all times of operation. More specifically, the person in charge of the open food establishment would have to be a CFPM. The regulation defines "person in charge" as "the individual present at a food establishment who is responsible for the operation at the time of inspection." Since most food establishments do not have one person who works 100 percent of open hours, most would need to get one or more additional employees certified.

Under both the existing and proposed regulations, proficiency as a certified food protection manager is established through passing a test, not completing a program. According to VDH, certification costs (for the test) range from \$28 to \$100 per individual and requires renewal every five years. Tests are available via six accredited programs and take approximately two hours. Those persons who elect to take training (not required) may sign up for a training course via an accredited provider where the training time varies from self-pace to approximately sixteen hours. Training and tests are available both online and in person.<sup>11</sup> The total cost of requiring that a CFPM be onsite at all times of operation would be: a) the test fees for each additional needed CFPM, b) fees for training if needed to pass the test, and c) the value of the staff time spent preparing for and taking the test. If say a CFPM candidate spends eight hours preparing for the test and two hours taking the test, there is the cost of ten hours of staff time that has to be covered by another employee. Having a CFPM always present in the open operation who is knowledgeable on food protection as guaranteed through certification, would likely reduce the probability of unsafe food practices occurring.

The current regulation only requires the use of a single-use glove when "a lesion containing pus such as a boil or infected wound that is open or draining and is on the hands or wrists..." The proposed regulation requires that "If used, an impermeable cover such as a bandage, finger cot, or finger stall located on the wrist, hand or finger of the food employee working with exposed food shall be covered with a single-use glove." This would include band aids for simple uninfected cuts. Thus, single use gloves would need to be purchased and used more often under the proposed regulation. Single-use gloves are available for about five cents a glove when purchasing in bulk (100 gloves).<sup>12</sup>

The current regulation requires that food establishments have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment.

The procedures must address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter. The Board proposes to specify that those procedures are written. This would help ensure that those procedures are consistent, regardless of whoever is in charge at a given time. VDH has a template that it can make available to food establishments to use for their written procedures. Thus, it should not be costly for the businesses to produce written procedures that satisfy the department.

The FDA believes that: a) requiring the protection of prewashed fruits and vegetables from cross contamination by separating them from raw animal foods during storage, preparation holding and display and b) increasing the minimum required cooking time from 15 to 17 seconds (at 155°F) for certain raw animal foods,<sup>13</sup> would increase food safety. For any food establishments that do not already separate prewashed fruits and vegetables from raw animal foods during storage, preparation holding and display, there may be some cost in finding additional space to keep these items separated. For establishments that already keep such separation, neither of these two proposals appear to be particularly costly.

For other raw animal foods,<sup>14</sup> which must be cooked at 165°F or above, the FDA believes that it is safe to reduce the minimum required cooking time from 15 seconds to less than one second (instantaneous). The Board's proposal to make this amendment would cumulatively moderately reduce the time necessary to prepare such food without apparently increasing health risks.

The current regulation requires that water from a private well be sampled and tested at least annually for nitrate and total coliform. If nitrate exceeds 10 milligrams per liter, the owner must notify VDH. If a sample is total coliform positive, the positive culture medium must be further analyzed to determine if *E. coli* is present. The owner must notify VDH within two days from when the owner is notified of the coliform positive test result. If *E. coli* is present, the owner must notify VDH. The current regulation does not specify deadlines for notification for positive results of either nitrate exceeding 10 mg/L or the presence of *E. coli*. The Board proposes to specify that notification must be within 24 hours. This would be beneficial in that it would enable VDH to take faster action regarding a potential health threat.

The Board proposes to require that food establishments notify customers that a copy of the most recent establishment inspection report is available upon request by either: a) posting a sign or placard in a location in the food establishment that is conspicuous to customers, or b) by another method acceptable to department. According to VDH, the food establishment would not need to have the report on hand. The customers could be referred to VDH's online portal that publicly displays the reports, as well as the local health department. Thus, there would only be the minimal cost of posting the sign or placard.

Other Proposed Changes. The current regulation specifies that shellstock from one tagged or labeled container are not to be commingled with shellstock from another container with different certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer. "Shellstock" is defined as "raw, in-shell molluscan shellfish," and thus does not include shucked shellfish. The Board proposes to mandate that shucked shellfish from one tagged or labeled container are not commingled with shellstock or shucked shellfish from another container with different certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer. To the extent that this is not already done by food establishments with shucked shellfish, this proposal would be beneficial in that it would likely reduce the probability that spoiled shellfish is mistakenly served to patrons.

The current regulation states that records demonstrating inspection and service of water treatment devices and backflow preventers be maintained by the person in charge. The Board proposes to specify that the records be maintained for a minimum of five years. Since the current language implies that the records must be kept indefinitely, the proposal for a five-year minimum reduces the burden in that the records could be disposed of after five years.

The Board proposes to state that any food establishment permit applicant who fails to complete the application process within 12 months of receipt of the application by the local health department's office may be required to submit a new application and plan. This is valuable for the department in that relevant information that was already submitted might have changed such that the application would no longer be appropriate for approval. The applicant would have to pay an additional \$40 application fee, and if a new plan review is deemed necessary, an additional \$40 plan review fee. The applicant would also incur the time needed to produce the new application and plan.

The current regulation does not specify that existing food establishments notify VDH in writing of a change of legal ownership or when business operations have terminated. The Board proposes to specify that such notice be submitted, in writing, to VDH at least 30 days prior to the legal ownership transfer or termination of business operation. To the extent that it is followed, this proposal would help the department maintain contact with those actually serving food to the public and help ensure food safety.

Bed & Breakfasts are not required to have a food establishment permit. Under the current regulation these businesses may optionally apply for such a permit, which does not provide them with any privileges that they would not possess without the permit. It is likely that the permit is used for marketing purposes.<sup>15</sup> The Board proposes to eliminate the option for Bed & Breakfasts to have a food establishment permit. This would not prevent any Bed & Breakfast from operating, but to the

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extent that the permit helped garner demand for some, it may reduce revenue. According to VDH, allowing voluntary permitting has created issues for its staff when these facilities are found in violation and then elect to "deregulate" to avoid corrections.

**Businesses and Other Entities Affected.** The proposed amendments affect the approximate 38,000 food establishments in the Commonwealth, the six accredited CFPM programs, and Bed & Breakfasts<sup>16</sup> that have or might wish to have a food establishment permit. As described in the Estimated Benefits and Costs section, the proposal to require that there be a CFPM on the premises of the food establishment at all times of operation would increase costs for most food establishments. The proposal to mandate that single-use gloves be worn whenever there is an impermeable cover such as a bandage, finger cot, or finger stall located on the wrist, hand or finger of the food employee would also increase costs for most food establishments. The proposal to state that any food establishment permit applicant who fails to complete the application process within 12 months of receipt of the application by the local health department's office may be required to submit a new application and plan would increase cost for applicants in such a situation. The proposal to eliminate the option for Bed & Breakfasts to have a food establishment permit may reduce revenue for those Bed & Breakfasts that have had a permit.

Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. While the benefits to public health may be large, there would likely be some increases in net costs for some of the affected entities as described in the Estimated Benefits and Costs section.

**Small Businesses<sup>17</sup> Affected:**

**Types and Estimated Number of Small Businesses Affected.** VDH estimates that 95% to 100% of the approximate 38,000 food establishments in the Commonwealth are small businesses. The sizes of the six accredited CFPM programs are unknown.

**Costs and Other Effects.** Costs for small food establishments are affected by the proposed amendments as described in the Estimated Benefits and Costs section. The proposal to require that there be a CFPM on the premises of the food establishment at all times of operation would very likely increase revenue for at least some of the six accredited CFPM programs

**Alternative Method that Minimizes Adverse Impact.** There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

**Localities<sup>18</sup> Affected<sup>19</sup>.** The proposed amendments affect food establishments in all localities, not disproportionately affecting any particularly. The proposed amendments do not appear to introduce additional costs for local governments.

**Projected Impact on Employment.** The proposal to require that there be a CFPM on the premises of the food establishment at

all times of operation would very likely increase demand for the services of the six accredited CFPM programs, which may moderately increase their employment.

**Effects on the Use and Value of Private Property.** The proposals to require that there be a CFPM on the premises of the food establishment at all times of operation and that single-use gloves be worn whenever there is an impermeable cover on the wrist, hand or finger of the food employee would increase costs for most food establishments. The proposal to state that any food establishment permit applicant who fails to complete the application process within 12 months of receipt of the application by the local health department's office may be required to submit a new application and plan would increase cost for applicants in such a situation. The proposal to eliminate the option for Bed & Breakfasts to have a food establishment permit may reduce revenue for those Bed & Breakfasts that have had a permit. These cost increases and potential revenue reduction would likely moderately reduce the value of affected firms commensurately.

The proposal to specify that records demonstrating inspection and service of water treatment devices and backflow preventers must only be maintained for five years would moderately reduce recordkeeping costs, producing a potential small commensurate increase in firm value. The proposal to require that there be a CFPM on the premises of the food establishment at all times of operation would very likely increase demand for the services of the six accredited CFPM programs, which may moderately increase their value.

The proposed amendments do not appear to affect real estate development costs.

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<sup>1</sup>See <https://www.fda.gov/food/fda-food-code/food-code-2017>

<sup>2</sup>Ibid

<sup>3</sup>"Food establishment" is defined as "an operation that (i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food to the public for human consumption, such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food bank, and (ii) relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers."

<sup>4</sup>See 12VAC5-421-700 A 2 for affected raw animal foods. <https://townhall.virginia.gov/l/viewXML.cfm?textid=14169&replace=yes>

<sup>5</sup>See 12VAC5-421-700 A 3 for affected raw animal foods. <https://townhall.virginia.gov/l/viewXML.cfm?textid=14169&replace=yes>

<sup>6</sup>"Highly susceptible population" is defined as "persons who are more likely than other people in the general population to experience foodborne disease because they are: 1. immunocompromised, preschool age children, or older adults; and 2. obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center."

<sup>7</sup>"Hazard Analysis and Critical Control Point plan" is defined as "a written document that delineates the formal procedures for following the Hazard

Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods."

<sup>8</sup>Pursuant to 12VAC5-421-890, honestly presented is: a) food shall be offered for human consumption in a way that does not mislead or misinform the consumer, and b) food or color additives, colored overwraps, or lights shall not be used to misrepresent the true appearance, color, or quality of a food.

<sup>9</sup>"Warewashing" is defined as "the cleaning and sanitizing of utensils and food-contact surfaces of equipment."

<sup>10</sup>"Shellstock" is defined as "raw, in-shell molluscan shellfish."

<sup>11</sup>Data and other information source: VDH

<sup>12</sup>Source: Amazon.com accessed on March 13, 2020.

<sup>13</sup>See 12VAC5-421-700 A 2 for affected raw animal foods. <https://townhall.virginia.gov/l/viewXML.cfm?textid=14169&replace=yes>

<sup>14</sup>See 12VAC5-421-700.A 3 for affected raw animal foods. <https://townhall.virginia.gov/l/viewXML.cfm?textid=14169&replace=yes>

<sup>15</sup>VDH does not have data on the number of Bed & Breakfasts with permits.

<sup>16</sup>Ibid

<sup>17</sup>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."

<sup>18</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>19</sup>§2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The agency concurs with the economic impact analysis of the Department of Planning and Budget.

**Summary:**

*The amendments comport (12VAC5-421) Food Regulations with the current 2017 Food and Drug Administration (FDA) Food Code and the Supplement to the 2017 FDA Food Code Annex I, increase clarity, and ensure uniform application. The FDA Food Code, revised approximately every four years, serves as a model document to assist state and local agencies with regulatory authority over food safety by creating a regulatory scheme that reflects the most current science available to reduce the risk of food borne illnesses associated with food establishments. Changes to the FDA Food Code reflected in the amendments to 12VAC5-421 include updates to effective controls as a means to reduce the risk of foodborne illness that contribute to financial losses and have dire health consequences. Substantive changes include (i) the removal, addition, and revision of definitions; (ii) a requirement that the person in charge be a certified food protection manager; (iii) standards for the use of bandages, finger cots, or finger stalls; (iv) written procedures requirements for the clean-up of vomiting and diarrheal events; (v) requirements for the separation of raw animal foods from fruits and vegetables in certain instances; (vi) new cooking time requirements for raw animal foods; (vii) removal of the Food Service Advisory Committee to reflect changes within the Food and Drug Administration; and (viii) clarifying enforcement procedures when impounding food.*

**12VAC5-421-10. Definitions.**

A. Section 35.1-1 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter.

"Board"

"Commissioner"

"Department"

B. For the purposes of implementing this chapter, the term "food establishment" as defined herein is equivalent to the term "restaurant" as defined in 35.1-1 of the Code of Virginia.

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

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

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170.3(e)(1) or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.3(f).

"Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

"Agent" means a legally authorized representative of the owner.

~~"Agent of the commissioner" means the district or local health director, unless otherwise stipulated.~~

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

"Approved water system" means a permitted waterworks constructed, maintained, and operated pursuant to 12VAC5-590, Waterworks Regulations; or a private well constructed, maintained, and operated pursuant to 12VAC5-630, Private Well Regulations.

"Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not

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showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

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

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"Bed and breakfast operation" means a residential-type establishment that provides (i) two or more rental accommodations for transient guests and food service to a maximum of 18 transient guests on any single day for five or more days in any calendar year or (ii) at least one rental accommodation for transient guests and food service to a maximum of 18 transient guests on any single day for 30 or more days in any calendar year.

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

~~"Board" means the State Board of Health.~~

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

"Building official" means a representative of the Department of Housing and Community Development.

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

"Catering operation" means a person who contracts with a client to prepare a specific menu and amount of food in ~~an approved and~~ a permitted food establishment for service to the client's guests or customers at a service location different from the permitted food establishment. Catering may also include cooking or performing final preparation of food at the service location.

"Catering operation" does not include:

1. A private chef or cook who, as the employee of a consumer, prepares food solely in the consumer's home.
2. Delivery service of food by an approved and permitted food establishment to an end consumer.

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

"CFR" means Code of Federal Regulations. Citations in this chapter to the CFR refer sequentially to the title, part, and section number, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

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

"Commingle" means:

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

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

"Commissary" means a ~~eating establishment,~~ food establishment, ~~or any other place~~ in which food, food containers, or supplies are kept, handled, prepared, packaged, or stored for distribution to satellite operations.

~~"Commissioner" means the State Health Commissioner, his duly designated officer, or his agent.~~

"Commonwealth" means the Commonwealth of Virginia.

"Conditional employee" means a potential food employee to whom a job offer is made ~~with employment dependent upon,~~ conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

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

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

"Core item" means a provision in this chapter that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

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

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

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

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

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program and is listed in the U.S. Food and Drug Administration's Interstate Certified Shellfish Shippers List, updated monthly (U.S. Food and Drug Administration).

~~"Delicatessen" means a store where ready-to-eat products such as cooked meats, prepared salads, etc. are sold for off-premises consumption.~~

~~"Department" means the Virginia Department of Health.~~

"Director" means the district or local health director.

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

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

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

1. Allows effective removal of soil by normal cleaning methods;

2. Is dependent on the material, design, construction, and installation of the surface; and

3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

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

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

1. Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ~~ratite~~, ratites, or turkey. Egg does not include a balut; egg of the reptile species such as alligator; or an egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs. Egg product does not include food that contains eggs only in a relatively small proportion such as cake mixes.

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

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

"Equipment" means an article that is used in the operation of a food establishment. "Equipment" includes items such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. Equipment does not include apparatuses used for handling or storing large

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quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

"°F" means degrees Fahrenheit.

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

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

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

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

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

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

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

"Food establishment" includes (i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted under this chapter; and (ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises and regardless of

whether there is a charge for the food; and (iii) a facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a facility that meets the exemption requirements but chooses to be regulated under this chapter.

For the purpose of implementing this chapter, the following places are also included in the definition of a "food establishment" as defined in § 35.1-1 of the Code of Virginia:

~~1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68 of the Code of Virginia.~~

~~2. Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public, including operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service.~~

~~3. Mobile points of service to which food is distributed by a place or operation described in subdivision 2 of this definition, unless the point of service and of consumption is in a private residence.~~

"Food establishment" does not include:

1. An establishment that offers only prepackaged food that is not time/temperature control for safety food;

2. A produce stand that only offers whole, uncut fresh fruits and vegetables; or

3. A food processing plant, including those that are located on the premises of a food establishment;

~~4. A kitchen in a private home if only food that is not time/temperature control for safety food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;~~

~~5. An area where food that is prepared as specified in subdivision 4 of this definition is sold or offered for human consumption;~~

~~6. A kitchen in a private home, such as, but not limited to, a family day care provider or a home for adults, serving 12 or fewer recipients;~~

~~7. A private home that receives catered or home delivered food; or~~

~~8. Places manufacturing packaged or canned foods that are distributed to grocery stores or other similar food retailers for sale to the public.~~

For the purpose of implementing this chapter, the following are also exempt from the definition of a "food establishment" in this chapter, as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:

- ~~1. Boarding houses that do not accommodate transients;~~
- ~~2. Cafeterias operated by industrial plants for employees only;~~
- ~~3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;~~
- ~~4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off premises consumption and places manufacturing or selling packaged or canned goods;~~
- ~~5. Churches that serve meals for their members as a regular part of their religious observance;~~
- ~~6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax; and~~
- ~~7. Any bed and breakfast operation that prepares food for and offers food to guests, regardless of the time the food is prepared and offered, if (i) the premises of the bed and breakfast operation is a home that is owner occupied or owner agent occupied, (ii) the bed and breakfast operation prepares food for and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by the bed and breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is prepared and to whom food is offered are informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to the regulations governing restaurants.~~

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or food

establishments. Food processing plant does not include a food establishment.

"Game animal" means an animal, the products of which are food, that is not classified as (i) livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2; (ii) poultry; or (iii) fish. "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes. "Game animal" does not include ratites.

~~"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.~~

~~"Game animal" does not include ratites such as ostrich, emu, and rhea.~~

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

"Grade A standards" means the requirements of the Grade "A" Pasteurized Milk Ordinance, ~~2013~~ 2017 Revision (U.S. Food and Drug Administration), with which certain fluid and dry milk and milk products comply.

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

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handwashing sink includes an automatic handwashing facility.

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

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

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

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

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

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1. Immunocompromised, preschool age children, or older adults; and
2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

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

"Injected" means manipulating meat to which a solution has been introduced into its interior by processes ~~such that are~~ referred to as "injecting," "pump marinating," or "stitch pumping."

"Intact meat" means a cut of whole muscle meat that has not undergone comminution, injection, mechanical tenderization, or reconstruction.

"Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

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

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

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P.L. 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 2 and A 3.

"Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as

"blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device. "Mechanically tenderized" does not include processes by which solutions are injected into meat.

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

"Mobile food unit" means a food establishment mounted on wheels (excluding boats in the water) readily moveable from place to place at all times during operation and shall include pushcarts, trailers, trucks, or vans. The unit, all operations, and all equipment must be integral to and be within or attached to the unit.

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

"Noncontinuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. "Noncontinuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

"Permit" means a license issued by the ~~regulatory authority~~ department that authorizes a person to operate a food establishment.

"Permit holder" means ~~the entity person~~ the entity person that is legally responsible for the operation of the food establishment ~~such as the owner, the owner's agent, or other person~~, and possesses a valid permit to operate a food establishment.

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

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

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

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7.0 7 indicate acidity and values between 7.0 7 and 14 indicate alkalinity. The value for pure distilled water is 7.0 7, which is considered neutral.

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

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

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

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

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

"Potable water" means water fit for human consumption that is obtained from an approved water supply and that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia). Potable water is traditionally known as drinking water and excludes such nonpotable forms as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking water."

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1, and any migratory waterfowl, game bird, pheasant, partridge, quail, grouse, or pigeon whether live or dead, as defined in 9 CFR 362.1.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

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

"Priority foundation item" means a provision in this chapter whose application supports, facilitates, or enables one or more priority items. "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling and is denoted in this regulation with a superscript Pf<sub>-Pf</sub>.

"Priority item" means a provision in this chapter whose application contributes directly to the elimination, prevention or reduction to an acceptable level of hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing and is denoted in this chapter with a superscript P<sub>-P</sub>.

"Private well" means any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Pure water" means potable water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see §§ 32.1-167 and 32.1-176.1 of the Code of Virginia and 12VAC5-590, Waterworks Regulations and ~~12VAC5-630-370~~, 12VAC5-630, Private Well Regulations. Potable water is traditionally known as drinking water, and excludes such nonpotable forms as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking water."

~~"Pushcart" means any wheeled vehicle or device other than a motor vehicle or trailer that may be moved with or without the assistance of a motor and that does not require registration by the department of motor vehicles.~~

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

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

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1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A, B, and C, 12VAC5-421-710 or 12VAC5-421-730;
2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421-700 D 1 and 3; or
3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 4.

~~Ready-to-eat food~~ "Ready-to-eat food" may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or 12VAC5-421-710 or frozen as specified under 12VAC5-421-730;
2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;
3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;
4. All time/temperature control for safety food that is cooked to the temperature and time required for the specific food under ~~12VAC5-421-700 Article 4~~ (12VAC5-421-700 et seq.) of Part III and cooled as specified in 12VAC5-421-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;
7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
9. Food manufactured ~~according to~~ as specified in 21 CFR Part 113.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and a process as specified in this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require

control in the final packaged form. Reduced oxygen packaging includes:

1. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
2. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air, but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
3. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;
4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of ~~psychrotrophie~~ psychotrophic pathogens; or
5. Sous vide packaging, in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of ~~psychrotrophie~~ psychotropic pathogens.

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

"Regulatory authority" means the ~~Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.~~ local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

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

~~"Reservice"~~ "Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

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

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

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 and that is limited to use by or under the direct supervision of a certified applicator.

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

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

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

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

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

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

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution. Sewage includes water-carried and non-water-carried human excrement or kitchen, laundry, shower, bath, or lavatory waste separately or together with such underground surface, storm, or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

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

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

"Shiga toxin-producing Escherichia coli" or "STEC" means any E. coli capable of producing Shiga toxins (also called verocytotoxins). STEC infections can be asymptomatic or may

result in a spectrum of illness ranging from mild nonbloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea) to hemolytic uremic syndrome (HUS), which is a type of kidney failure. Examples of serotypes of STEC include E. coli 0157:H7, E. coli 0157:NM, E. coli 026:H11; ~~E. coli 0145:NM~~ E. Coli 0145:NM, E. coli 0103:H2, and E. coli 0111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic E. coli) or as EHEC (Enterohemorrhagic E. coli). EHEC are a subset of STEC that can cause hemorrhagic colitis or HUS.

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

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

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans ~~which that~~ do not meet the materials, durability, strength, and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

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

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

"Substantial compliance" means equipment or structure design or construction; food preparation, handling, storage, transportation; or cleaning procedures that will not substantially affect health consideration or performance of the facility or the employees.

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

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

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

"Time/temperature control for safety food" or "TCS food" means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation:

1. TCS food includes an animal food that is raw or heat treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and except as specified in subdivision 2 d of this definition, a food that because of the interaction of its  $A_w$  and pH values is designated as product assessment required (PA) in Table A or B of this definition:

Table A. Interaction of pH and $A_w$ for control of spores in food heat treated to destroy vegetative cells and subsequently packaged.			
$A_w$ values	pH values		
	4.6 or less	>4.6 - 5.6	>5.6
≤0.92	non-TCS food*	non-TCS food	non-TCS food
>0.92 - 0.95	non-TCS food	non-TCS food	PA**
>0.95	non-TCS food	PA	PA
*TCS food means time/temperature control for safety food			
**PA means product assessment required			

Table B. Interaction of pH and $A_w$ for control of vegetative cells and spores in food not heat treated or heat treated but not packaged.				
$A_w$ values	pH values			
	< 4.2	4.2 - 4.6	> 4.6 - 5.0	> 5.0
<0.88	non-TCS food*	non-TCS food	non-TCS food	non-TCS food
0.88 - 0.90	non-TCS food	non-TCS food	non-TCS food	PA**

>0.90 - 0.92	non-TCS food	non-TCS food	PA	PA
>0.92	non-TCS food	PA	PA	PA
*TCS food means time/temperature control for safety food				
**PA means product assessment required				

2. TCS food does not include:

- a. An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
- b. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- c. A food that because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-TCS food in Table A or B of this definition;
- d. A food that is designated as PA in Table A or B of this definition and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
  - (1) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;
  - (2) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf-life and use, or temperature range of storage and use; or
  - (3) A combination of intrinsic and extrinsic factors; or
- e. A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the subdivisions 2 a through 2 d of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

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

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

"Variance" means a written document issued by the regulatory authority department that authorizes a modification

or waiver of one or more requirements of this chapter if, in the opinion of the ~~regulatory authority~~ department, a health hazard or nuisance will not result from the modification or waiver.

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

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

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

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment, and distribution of ~~potable~~ pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

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

**12VAC5-421-30. Purpose.**

This chapter has been promulgated by the ~~State Board of Health~~ board to specify the following requirements to protect public health:

1. A procedure for obtaining a license (permit);
2. Criteria for assuring the safe preparation, handling, protection and/or temperature control for food;
3. Criteria for the safe and sanitary maintenance, storage, operation and use of equipment;
4. Requirements that food establishments ~~be connected to, and use~~ utilize an approved water supply and sewage disposal system;
5. Requirements for toilet and cleansing facilities for employees ~~and customers~~;
6. Criteria for vector and pest control;
7. Requirements for the sanitary maintenance and use of food establishment's physical plant;
8. Requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; and

9. A classification system for food establishments.

**12VAC5-421-40. Administration of regulation.**

This chapter is administered by the following:

1. The ~~State Board of Health, hereinafter referred to as the board,~~ board has responsibility to promulgate, amend and repeal regulations necessary to protect the public health.
2. The ~~State Health Commissioner, hereinafter referred to as the commissioner,~~ commissioner is the chief executive officer of the ~~State Department of Health~~ department. The commissioner has the authority to act within the scope of regulations promulgated by the board and for the board when it is not in session.
3. The ~~district or local health director, hereinafter referred to as the director;~~ is responsible for the permitting and inspection of food establishments located within the director's district and for assuring compliance with this ~~part~~ chapter. ~~The director is the duly designated officer or agent of the commissioner.~~

**12VAC5-421-55. Certified food protection manager.**

A. ~~At least one employee with supervisory and management responsibility and the authority to direct and control food preparation and service~~ The person in charge shall be a certified food protection manager, ~~demonstrating who has shown~~ proficiency of required knowledge and information through passing a test that is part of an accredited program.

B. This section does not apply to food establishments that serve only ~~non-temperature~~ non-time/temperature control for safety food and food establishments ~~where food handling does not exceed reheating, cold holding, and hot holding of commercially processed and packaged ready-to-eat foods that store and prepare food only to the extent that they reheat or cold hold commercially processed, fully cooked~~ time/temperature control for safety foods. Food establishments exempt from the certified food protection manager requirement may not cool time/temperature control for safety foods.

C. For purposes of enforcement, this section will take effect on ~~July 1, 2018~~ June 10, 2023.

**12VAC5-421-60. Demonstration of knowledge.**

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the ~~regulatory authority~~ department knowledge of foodborne disease prevention, and the requirements of this chapter. The person in charge shall demonstrate this knowledge by:

1. Complying with this chapter by having no violations of priority items during the current inspection;<sup>Pf</sup>

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2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program;<sup>Pf</sup> or

3. Responding correctly to the environmental health specialist's questions as they relate to the specific food operation. The areas of operation may include:

a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;<sup>Pf</sup>

b. Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;<sup>Pf</sup>

c. Describing the symptoms associated with the diseases that are transmissible through food;<sup>Pf</sup>

d. Explaining the significance of the relationship between maintaining the time and temperature of time/temperature control for safety food and the prevention of foodborne illness;<sup>Pf</sup>

e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;<sup>Pf</sup>

f. Stating the required food temperatures and times for safe cooking of time/temperature control for safety food including meat, poultry, eggs, and fish;<sup>Pf</sup>

g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature control for safety food;<sup>Pf</sup>

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

(1) Cross contamination;<sup>2</sup><sup>Pf</sup>

(2) Hand contact with ready-to-eat foods;<sup>2</sup><sup>Pf</sup>

(3) Handwashing;<sup>2</sup><sup>Pf</sup> and

(4) Maintaining the food establishment in a clean condition and in good repair;<sup>Pf</sup>

i. Describing the foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction;<sup>Pf</sup>

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

(1) Sufficient in number and capacity;<sup>2</sup><sup>Pf</sup> and

(2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;<sup>Pf</sup>

k. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;<sup>Pf</sup>

l. Identifying the source of water used and measures taken to ensure that the water supply remains protected from contamination such as providing protection from

backflow and precluding the creation of cross connections;<sup>Pf</sup>

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

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

o. Explaining the details of how the person in charge and food employees comply with a HACCP plan if such a plan is required by the law, this chapter, or a ~~voluntary~~ an agreement between the regulatory authority department and the food establishment;<sup>Pf</sup>

p. Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

(1) Food employee;<sup>2</sup><sup>Pf</sup>

(2) Conditional employee;<sup>2</sup><sup>Pf</sup>

(3) Person in charge;<sup>2</sup><sup>Pf</sup> and

(4) ~~Regulatory authority Department~~;<sup>Pf</sup> and

q. Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and the exclusion or restriction of food employees.<sup>Pf</sup>

## 12VAC5-421-70. Duties of person in charge.

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 12VAC5-421-2990;<sup>Pf</sup>

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

3. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this chapter;<sup>Pf</sup>

4. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;<sup>Pf</sup>

5. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by

routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;<sup>Pf</sup>

6. Employees are verifying that foods delivered to the food establishment during non-operating hours are from approved sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented;<sup>Pf</sup>

7. Employees are properly cooking time/temperature control for safety food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under 12VAC5-421-1180 and 12VAC5-421-1730 B;<sup>Pf</sup>

8. Employees are using proper methods to rapidly cool time/temperature control for safety food that is not held hot or is not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;<sup>Pf</sup>

9. Employees are properly maintaining the temperatures of time/temperature control for safety food during hot and cold holding through daily oversight of the employees routine monitoring of food temperatures;<sup>Pf</sup>

10. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 12VAC5-421-930 that the food is not cooked sufficiently to ensure its safety;<sup>Pf</sup>

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

12. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified in 12VAC5-421-590;<sup>Pf</sup>

13. Except when approval is obtained from the ~~regulatory authority~~ department as specified in 12VAC5-421-450 E, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;<sup>Pf</sup>

14. Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties;<sup>Pf</sup>

15. Food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to

diseases that are transmissible through food, as specified under 12VAC5-421-80;<sup>Pf</sup> and

16. Written procedures and plans, where specified by this chapter and as developed by the food establishment, are maintained and implemented as required.<sup>Pf</sup>

**12VAC5-421-80. Responsibility of permit holder, person in charge, and conditional employees.**

A. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

1. Has any of the following symptoms:
  - a. Vomiting;<sup>P</sup>
  - b. Diarrhea;<sup>P</sup>
  - c. Jaundice;<sup>P</sup>
  - d. Sore throat with fever;<sup>P</sup> or
  - e. A lesion containing pus such as a boil or infected wound that is open or draining and is:
    - (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;<sup>P</sup>
    - (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover;<sup>P</sup> or
    - (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;<sup>P</sup>
2. Has an illness diagnosed by a health practitioner due to:
  - a. Norovirus;<sup>P</sup>
  - b. Hepatitis A virus;<sup>P</sup>
  - c. Shigella spp.;<sup>P</sup>
  - d. Shiga toxin-producing Escherichia coli;<sup>P</sup>
  - e. Typhoid fever (caused by Salmonella typhi);<sup>P</sup> or
  - f. Salmonella (nontyphoidal);<sup>P</sup>
3. Had ~~typhoid~~ Typhoid fever, diagnosed by a health practitioner, within the past three months, without having received antibiotic therapy, as determined by a health practitioner;<sup>P</sup>
4. Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

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- a. Norovirus within the past 48 hours of the last exposure;<sup>P</sup>
- b. Shiga toxin-producing *Escherichia coli*, or *Shigella* spp. within the past three days of the last exposure;<sup>P</sup>
- c. Typhoid fever (caused by *Salmonella typhi*) within the past 14 days of the last exposure;<sup>P</sup> or
- d. Hepatitis A virus within the past 30 days of the last exposure;<sup>P</sup> or

5. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, ~~and~~ an individual diagnosed with an illness caused by:

- a. Norovirus within the past 48 hours of the last exposure;<sup>P</sup>
- b. Shiga toxin-producing *Escherichia coli* or *Shigella* spp. within the past three days of the last exposure;<sup>P</sup>
- c. Typhoid fever (caused by *Salmonella typhi*) within the past 14 days of the last exposure;<sup>P</sup> or
- d. Hepatitis A virus within the past 30 days of the last exposure.<sup>P</sup>

B. The person in charge shall notify the ~~regulatory authority~~ department when a food employee is:

1. Jaundiced;<sup>Pf</sup> or
2. Diagnosed with an illness due to a pathogen as specified under subdivisions A 2 a through f of this section.<sup>Pf</sup>

C. The person in charge shall ensure that a conditional employee:

1. Who exhibits or reports a symptom, or who reports a diagnosed illness as specified under subdivisions A 1, 2, and 3 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under 12VAC5-421-100;<sup>P</sup> and
2. Who will work as a food employee in a food establishment that serves a highly susceptible population and reports a history of exposure as specified under subdivisions A 4 and 5 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria specified under subdivision 10 of 12VAC5-421-100.<sup>P</sup>

D. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or history of exposure as specified under subdivisions A 1 through 5 of this section is:

1. Excluded as specified under subdivisions 1, 2, and 3 of 12VAC5-421-90, and subdivisions 4 a, 5 a, 6 a, 7, or 8 a of 12VAC5-421-90 and in compliance with the provisions

specified under subdivisions 1 through 8 of 12VAC5-421-100;<sup>P</sup> or

2. Restricted as specified under subdivision 4 b, 5 b, 6 b, or 8 b of 12VAC5-421-90, or subdivision 9 or 10 of 12VAC5-421-90 and in compliance with the provisions specified under subdivisions 4 through 10 of 12VAC5-421-100.<sup>P</sup>

E. A food employee or conditional employee shall report to the person in charge the information as specified under subsection A of this section.<sup>Pf</sup>

F. A food employee shall:

1. Comply with an exclusion as specified under subdivisions 1, 2, and 3 of 12VAC5-421-90 and subdivision 4 a, 5 a, 6 a, 7, or 8 a of 12VAC5-421-90 and with the provisions specified under subdivisions 1 through 8 of 12VAC5-421-100;<sup>P</sup> or

2. Comply with a restriction as specified under ~~subdivisions~~ subdivision 4 b, 5 b, 6 b, 7, or 8 b of 12VAC5-421-90, or subdivision 8, 9, or 10 of 12VAC5-421-90 and comply with the provisions specified under subdivisions 4 through 10 of 12VAC5-421-100.<sup>P</sup>

## 12VAC5-421-90. Exclusions and restrictions.

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

- a. Symptomatic with vomiting or diarrhea;<sup>P</sup> or
- b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from *Norovirus*, *Shigella* spp., *Salmonella* (nontyphoidal), or Shiga toxin-producing *Escherichia coli*.<sup>P</sup>

2. Exclude a food employee who is:

- a. Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by Hepatitis A virus or other fecal-orally transmitted infection;<sup>P</sup>
- b. Diagnosed with an infection from Hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within seven calendar days of the onset of jaundice;<sup>P</sup> or
- c. Diagnosed with an infection from Hepatitis A virus without developing symptoms.<sup>P</sup>

3. Exclude a food employee who is diagnosed with ~~typhoid~~ Typhoid fever, or reports having had ~~typhoid~~ Typhoid fever within the past three months as specified in 12VAC5-421-80 A 3.<sup>P</sup>

4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population;<sup>P</sup> or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.<sup>P</sup>

5. If a food employee is diagnosed with an infection from *Shigella* spp. and is asymptomatic:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population;<sup>P</sup> or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.<sup>P</sup>

6. If a food employee is diagnosed with an infection from Shiga toxin-producing *Escherichia coli*, and is asymptomatic:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population;<sup>P</sup> or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.<sup>P</sup>

7. If a food employee is diagnosed with an infection from *Salmonella* (nontyphoidal) and is asymptomatic, restrict the food employee who works in a food establishment:

- a. Serving a highly susceptible population,<sup>P</sup> or
- b. Not serving a highly susceptible population.<sup>P</sup>

8. If a food employee is ill with symptoms of acute onset of sore throat with fever:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population;<sup>P</sup> or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.<sup>P</sup>

9. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under 12VAC5-421-80 A 1 e, restrict the food employee.<sup>P</sup>

10. If a food employee is exposed to a foodborne pathogen as specified under 12VAC5-421-80 A 4 or 5, restrict the food employee who works in a food establishment serving a highly susceptible population.<sup>P</sup>

**12VAC5-421-100. Removal, adjustment, or retention of exclusions and restrictions.**

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

1. Except when a food employee is diagnosed with ~~typhoid~~ Typhoid fever or an infection from Hepatitis A virus:

a. Reinstate a food employee who was excluded as specified under subdivision 1 a of 12VAC5-421-90 if the food employee:

- (1) Is asymptomatic for at least 24 hours;<sup>P</sup> or
- (2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.<sup>P</sup>

b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subdivision 1 b of 12VAC5-421-90:

- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met;<sup>P</sup> or
- (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met.<sup>P</sup>

c. If a food employee was diagnosed with an infection from *Shigella* spp. and excluded as specified under subdivision 1 b of 12VAC5-421-90:

- (1) Restrict the food employee, who is asymptomatic, for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b of this section are met;<sup>P</sup> or
- (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b, or 5 a and 1 c (1) of this section are met.<sup>P</sup>

d. If a food employee was diagnosed with an infection from Shiga toxin-producing *Escherichia coli* and excluded as specified under subdivision 1 b of 12VAC5-421-90:

- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met;<sup>P</sup> or
- (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.<sup>P</sup>

e. If a food employee was diagnosed with an infection from *Salmonella* (nontyphoidal) and excluded as specified under subdivision 1 b of 12VAC5-421-90:

- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met;<sup>P</sup> or
- (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.<sup>P</sup>

f. If a food employee was diagnosed with an infection from *Salmonella* (nontyphoidal) and excluded as specified under subdivision 1 b of 12VAC5-421-90:

- (1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met;<sup>P</sup> or
- (2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.<sup>P</sup>

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- (1) Restrict the food employee who is asymptomatic for at least 30 days until conditions for reinstatement as specified under subdivision 7 a or 7 b of this section are met;<sup>P</sup> or
  - (2) Retain the exclusion for the food employee who is symptomatic, until conditions for reinstatement as specified under subdivision 7 a or 7 b of this section are met.<sup>P</sup>
2. Reinstatement a food employee who was excluded as specified under subdivision 2 of 12VAC5-421-90 if the person in charge obtains approval from the ~~regulatory authority~~ department and one of the following conditions is met:
- a. The food employee has been jaundiced for more than seven calendar days;<sup>P</sup>
  - b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days;<sup>P</sup> or
  - c. The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection.<sup>P</sup>
3. Reinstatement a food employee who was excluded as specified under subdivision 3 of 12VAC5-421-90 if:
- a. The person in charge obtains approval from the ~~regulatory authority~~ department;<sup>P</sup> and
  - b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the employee is free from ~~typhoid~~ Typhoid fever.<sup>P</sup>
4. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 4 a of 12VAC5-421-90, who was restricted under subdivision 4 b of 12VAC5-421-90 if the person in charge obtains approval from the ~~regulatory authority~~ department and one of the following conditions is met:
- a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection;<sup>P</sup>
  - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became ~~symptomatic~~ asymptomatic;<sup>P</sup> or
  - c. The food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed.<sup>P</sup>
5. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 5 a of 12VAC5-421-90 or who was restricted under subdivision 5 b of 12VAC5-421-90 if the person in charge obtains approval from the ~~regulatory~~

~~authority~~ department and one of the following conditions is met:

- a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:
    - (1) Not earlier than 48 hours after discontinuance of antibiotics;<sup>P</sup> and
    - (2) At least 24 hours apart;<sup>P</sup>
  - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic;<sup>P</sup> or
  - c. The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed.<sup>P</sup>
6. Reinstatement a food employee who was excluded or restricted as specified under subdivision 1 b or 6 a of 12VAC5-421-90 or who was restricted under subdivision 6 b of 12VAC5-421-90 if the person in charge obtains approval from the ~~regulatory authority~~ department and one of the following conditions is met:
- a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Shiga toxin-producing Escherichia coli based on test results that show two consecutive negative stool specimen cultures that are taken:
    - (1) Not earlier than 48 hours after the discontinuance of antibiotics;<sup>P</sup> and
    - (2) At least 24 hours apart;<sup>P</sup>
  - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the employee became asymptomatic;<sup>P</sup> or
  - c. The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the employee was diagnosed.<sup>P</sup>
7. Reinstatement a food employee who was excluded as specified under subsection 1 ~~a~~ b of 12VAC5-421-90 or who was restricted as specified under subsection 7 of 12VAC5-421-90 if the person in charge obtains approval from the ~~regulatory authority~~ department<sup>P</sup> and one of the following conditions is met:
- a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Salmonella (nontyphoidal) infection based on test results showing two consecutive negative stool specimen cultures that are taken:

- (1) Not earlier than 48 hours after discontinuance of antibiotics;<sup>P</sup> and
- (2) At least 24 hours apart;<sup>P</sup>
- b. The food employee was restricted after symptoms of vomiting or diarrhea resolved, and more than 30 days have passed since the food employee became asymptomatic;<sup>P</sup> or
- c. The food employee was excluded or restricted and did not develop symptoms and more than 30 days have passed since the food employee was diagnosed.<sup>P</sup>
8. Reinstate a food employee who was excluded or restricted as specified under subdivision 8 a or b of 12VAC5-421-90 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:
- a. Has received antibiotic therapy for *Streptococcus pyogenes* infection for more than 24 hours;<sup>P</sup>
- b. Has at least one negative throat specimen culture for *Streptococcus pyogenes* infection;<sup>P</sup> or
- c. Is otherwise determined by a health practitioner to be free of *Streptococcus pyogenes* infection.<sup>P</sup>
9. Reinstate a food employee who was restricted as specified under subdivision 9 of 12VAC5-421-90 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:
- a. An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;<sup>P</sup>
- b. An impermeable cover on the arm if the infected wound or pustular boil is on the arm;<sup>P</sup> or
- c. A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.<sup>P</sup>
10. Reinstate a food employee who was restricted as specified under subdivision 10 of 12VAC5-421-90 and was exposed to one of the following pathogens as specified under 12VAC5-421-80 A 4 or 5:
- a. Norovirus and one of the following conditions is met:
- (1) More than 48 hours have passed since the last day the food employee was potentially exposed;<sup>P</sup> or
- (2) More than 48 hours have passed since the food employee's household contact became asymptomatic.<sup>P</sup>
- b. *Shigella* spp. or Shiga toxin-producing *Escherichia coli* and one of the following conditions is met:
- (1) More than three calendar days have passed since the last day the food employee was potentially exposed;<sup>P</sup> or
- (2) More than three calendar days have passed since the food employee's household contact became asymptomatic.<sup>P</sup>
- c. Typhoid fever (caused by *Salmonella typhi*) and one of the following conditions is met:
- (1) More than 14 calendar days have passed since the last day the food employee was potentially exposed;<sup>P</sup> or
- (2) More than 14 calendar days have passed since the food employee's household contact became asymptomatic.<sup>P</sup>
- d. Hepatitis A virus and one of the following conditions is met:
- (1) The food employee is immune to Hepatitis A virus infection because of prior illness from Hepatitis A;<sup>P</sup>
- (2) The food employee is immune to Hepatitis A virus infection because of vaccination against Hepatitis A;<sup>P</sup>
- (3) The food employee is immune to Hepatitis A virus infection because of IgG administration;<sup>P</sup>
- (4) More than 30 calendar days have passed since the last time the food employee was potentially exposed;<sup>P</sup>
- (5) More than 30 calendar days have passed since the food employee's household contact became jaundiced;<sup>P</sup> or
- (6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subdivisions 10 d (4) and (5) of this section, and the food employee receives additional training about:
- (a) Hepatitis A symptoms and preventing the transmission of infection;<sup>P</sup>
- (b) Proper handwashing procedures;<sup>P</sup> and
- (c) Protecting ready-to-eat food from contamination introduced by bare hand contact.<sup>P</sup>

#### **12VAC5-421-180. Hand antiseptics.**

A. A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

1. Comply with one of the following:
  - a. Be an approved drug that is listed in the FDA publication "Approved Drug Products with Therapeutic Equivalence Evaluations," ~~34th Edition, 2014~~, 39th Edition, 2019 (U.S. Food and Drug Administration) as an approved drug based on safety and effectiveness;<sup>Pf</sup> or
  - b. Have active antimicrobial ingredients that are listed in the FDA monograph for OTC (over the counter) Health-Care Antiseptic Drug Products as an antiseptic handwash;<sup>Pf</sup>
2. Consist only of components which the intended use of each complies with one of the following:
  - a. A threshold of regulation exemption under 21 CFR 170.39;<sup>Pf</sup>
  - b. 21 CFR Part 178, as regulated for use as a food additive with conditions of safe use;<sup>Pf</sup>

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c. A determination of generally recognized as safe (GRAS). Partial listings of substances with food uses that are GRAS may be found in 21 CFR Part 182, 21 CFR 184, or 21 CFR Part 186 for use in contact with food and in FDA's Inventory of GRAS Notices;<sup>Pf</sup>

d. A prior sanction listed under 21 CFR 181;<sup>Pf</sup> or

e. A ~~Food Contact Notification~~ food contact notification that is effective;<sup>Pf</sup> and

3. Be applied only to hands that are cleaned as specified under 12VAC5-421-140.<sup>Pf</sup>

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

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

2. Limited to situations that involve no direct contact with food by the bare hands.<sup>Pf</sup>

C. A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 ppm (mg/l) chlorine ~~or above~~.<sup>Pf</sup>

## **12VAC5-421-190. Maintenance of fingernails.**

A. Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.<sup>Pf</sup>

B. Unless wearing intact gloves in good repair, a food employee shall not wear fingernail polish or artificial nails when working with exposed food.<sup>Pf</sup>

## **12VAC5-421-235. Use of bandages, finger cots, or finger stalls.**

If used, an impermeable cover such as a bandage, finger cot, or finger stall located on the wrist, hand, or finger of the food employee working with exposed food shall be covered with a single-use glove.

## **12VAC5-421-255. Clean-up of vomiting and diarrheal events.**

A food establishment shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food establishment. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.<sup>Pf</sup>

## **12VAC5-421-260. Safe and, unadulterated, and honestly presented.**

Food shall be safe, ~~and~~ unadulterated, and, as specified in 12VAC5-421-890, honestly presented.<sup>PfP</sup>

## **12VAC5-421-270. Compliance with food law.**

A. Food shall be obtained from sources that comply with law.<sup>P</sup>

B. Food prepared in a private home shall not be used or offered for human consumption in a food establishment unless the home kitchen is inspected and regulated by the Virginia Department of Agriculture and Consumer Services.<sup>P</sup>

C. Packaged food shall be labeled as specified in law, including 21 CFR Part 101, 9 CFR Part 317, and Subpart N of 9 CFR Part 381, and as specified under 12VAC5-421-400 and 12VAC5-421-410.<sup>Pf</sup>

D. Fish, other than those specified in 12VAC5-421-730 B, that are intended for consumption in raw or undercooked form and allowed as specified in 12VAC5-421-700 D, may be offered for sale or service if they are obtained from a supplier that freezes fish as specified under 12VAC5-421-730 A; or if they are frozen on premises as specified under 12VAC5-421-730 A and records are retained as specified under 12VAC5-421-740.

E. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 12VAC5-421-700 C shall be:

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

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

3. If individually cut in a food establishment:

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

b. Prepared so they remain intact;<sup>Pf</sup> and

c. If packaged for undercooking in a food establishment, labeled as specified in subdivision 1 of this subsection or identified as specified in subdivision 2 of this subsection.<sup>Pf</sup>

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

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

**12VAC5-421-295. Juice treated.**

Prepackaged juice shall:

1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120;<sup>Pf</sup> and
2. Be obtained pasteurized or otherwise treated to attain a five-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR 120.24.<sup>P</sup>

**12VAC5-421-300. Fish.**

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

1. Commercially and legally caught or harvested;<sup>P</sup> or
2. Approved for sale or service ~~by a regulatory agency of competent jurisdiction.~~<sup>P</sup>

B. Molluscan shellfish that are recreationally caught shall not be received for sale or service.<sup>P</sup>

**12VAC5-421-310. Molluscan shellfish.**

A. Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, ~~2013~~ 2017 Revision, (U.S. Food and Drug Administration).<sup>P</sup>

B. Molluscan shellfish shall be from sources that are listed in the "Interstate Certified Shellfish Shippers List;" ~~updated monthly~~ (U.S. Food and Drug Administration).<sup>P</sup>

**12VAC5-421-340. Temperature.**

A. Except as specified in subsection B of this section, refrigerated, time/temperature control for safety food shall be at a temperature of 41°F (5°C) or below when received.<sup>P</sup>

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

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

D. ~~Time/temperature control for safety food that is cooked to a temperature and for a time specified under 12VAC5-421-700, 12VAC5-421-710, and 12VAC5-421-720 and received hot shall be at a temperature of 135° (57°C) or above.~~<sup>P</sup>

E. A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.<sup>Pf</sup>

F. Upon receipt, time/temperature control for safety food shall be free of evidence of previous temperature abuse.<sup>Pf</sup>

**12VAC5-421-350. Additives.**

Food shall not contain unapproved food additives or additives that exceed amounts ~~allowed~~ specified in 21 CFR Parts 170-180 relating to food additives; generally recognized as safe (GRAS) or prior sanctioned substances that exceed amounts allowed in 21 CFR Parts 181-186; substances that exceed amounts specified in 9 CFR 424.21(b), Subpart C; or pesticide residues that exceed provisions specified in 40 CFR Part ~~185~~ 180 and exceptions.<sup>P</sup>

**12VAC5-421-400. Shucked shellfish, packaging, and identification.**

A. Raw shucked shellfish shall be obtained in nonreturnable packages that bear a legible label that identifies ~~the~~.<sup>Pf</sup>

1. ~~Name~~ The name, address, and certification number of the ~~shucker, packer, shucker-packer~~ or repacker of the molluscan shellfish;<sup>Pf</sup> and

2. The "sell by" or "best if used by" date for packages with a capacity of less than ~~one-half gallon (1.89 L)~~ 64 fluid ounces (1.89L) or the date shucked for packages with a capacity of ~~one-half gallon (1.89 L)~~ 64 fluid ounces (1.89L) or more.<sup>Pf</sup>

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

**12VAC5-421-410. Shellstock identification.**

A. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by a dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, ~~2013~~ 2017 Revision; (U.S. Food and Drug Administration),<sup>2</sup> and that include the following information:<sup>Pf</sup>

1. The dealer's name and address, and the certification number assigned by the shellfish control authority;<sup>2</sup><sup>Pf</sup>

2. The original shipper's certification number assigned by the shellfish control authority;<sup>2</sup><sup>Pf</sup>

3. The harvest date, or if depurated, the date of depuration processing, or if wet stored, the original harvest date and the final harvest date;<sup>2</sup><sup>Pf</sup>

4. If wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "w."<sup>2</sup><sup>Pf</sup>

5. The harvest area, including the initials of the state or, as applicable, country of harvest;<sup>2</sup><sup>Pf</sup>

6. The type and quantity of shellstock;<sup>2</sup><sup>Pf</sup>

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7. The following statement in bold, capitalized type: "**THIS TAG (OR LABEL) IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS. "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE)"<sup>Pf</sup>, and**

8. All shellstock intended for raw consumption shall include a consumer advisory using the statement from 12VAC5-421-930 C, or an equivalent statement.

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

## **12VAC5-421-440. Shellstock; maintaining identification.**

A. Except as specified under subdivision C 2 of this section, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty.<sup>Pf</sup>

B. The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.<sup>Pf</sup>

C. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label as specified in subsection B of this section, by:<sup>Pf</sup>

1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subsection B of this section;<sup>Pf</sup> and
2. If shellstock are removed from its tagged or labeled container:
  - a. Preserving source identification by using a recordkeeping system as specified under subdivision C 1 of this section,<sup>Pf</sup> and
  - b. Ensuring that shellstock or shucked shellfish from one tagged or labeled container are not commingled with shellstock or shucked shellfish from another container with different certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer.<sup>Pf</sup>

## **12VAC5-421-450. Preventing contamination from hands.**

A. Food employees shall wash their hands as specified under 12VAC5-421-140.

B. Except when washing fruits and vegetables as specified under 12VAC5-421-510 or as specified in subsections D and E of this section, food employees shall not contact exposed,

ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.<sup>P</sup>

C. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.<sup>Pf</sup>

D. Subsection B of this section does not apply to a food employee who contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to food that:

1. Contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in subsection A or B of 12VAC5-421-700 or in 12VAC5-421-710; or
2. Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 145°F (63°C).

E. Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

1. The permit holder obtains prior approval from the regulatory authority department;
2. Written procedures are maintained in the food establishment and made available to the regulatory authority department upon request that include:
  - a. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands;
  - b. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-3020, 12VAC5-421-3030, and 12VAC5-421-3045 are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;
3. A written employee health policy that details how the food establishment complies with 12VAC5-421-80, 12VAC5-421-90, and 12VAC5-421-100 including:
  - a. Documentation that the food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 12VAC5-421-80 A;
  - b. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 12VAC5-421-80 E and F; and
  - c. Documentation that the person in charge acknowledges the responsibilities as specified under 12VAC5-421-80 B, C, and D, and 12VAC5-421-90 and 12VAC5-421-100;

4. Documentation that the food employees acknowledge that they have received training in:

- a. The risks of contacting the specific ready-to-eat foods with their bare hands;
- b. Proper handwashing as specified under 12VAC5-421-140;
- c. When to wash their hands as specified under 12VAC5-421-160;
- d. Where to wash their hands as specified under 12VAC5-421-170;
- e. Proper fingernail maintenance as specified under 12VAC5-421-190;
- f. Prohibition of jewelry as specified under 12VAC5-421-200; and
- g. Good hygienic practices as specified under 12VAC5-421-220 and 12VAC5-421-230;

5. Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 12VAC5-421-130 through 12VAC5-421-170 during all hours of operation when the specific ready-to-eat foods are prepared;

6. Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

- a. Double handwashing;
- b. Nail brushes;
- c. A hand antiseptic after handwashing as specified under 12VAC5-421-180;
- d. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill; or
- e. Other control measures approved by the ~~regulatory authority~~ department; and

7. Documentation that corrective action is taken when subdivisions 1 through 6 of this subsection are not followed.

**12VAC5-421-470. Packaged and unpackaged food - separation, packaging, and segregation.**

A. Food shall be protected from cross contamination by:

- 1. Except as specified in subdivision 1 e ~~d~~ of this subsection, separating raw animal foods during storage, preparation, holding, and display from:
  - a. Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables;<sup>2</sup> ~~and~~
  - b. Cooked ready-to-eat food;<sup>2</sup> ~~and~~
  - c. Fruits and vegetables before they are washed;<sup>P</sup> ~~and~~

e- ~~d~~. Frozen, commercially processed, and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food;

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

- a. Using separate equipment for each type;<sup>2</sup> ~~P~~ or
- b. Arranging each type of food in equipment so that cross contamination of one type with another is prevented;<sup>2</sup> ~~P~~ and
- c. Preparing each type of food at different times or in separate areas;<sup>2</sup> ~~P~~

3. Cleaning equipment and utensils as specified under 12VAC5-421-1780 A and sanitizing as specified under 12VAC5-421-1900;

4. Except as specified in subsection B of this section and 12VAC5-421-810 B 2, storing the food in packages, covered containers, or wrappings;

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

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

7. Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 12VAC5-421-3150; and

8. Separating fruits and vegetables, before they are washed as specified under 12VAC5-421-510 from ready-to-eat food.

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

- 1. Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption;
- 2. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
- 3. Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;
- 4. Food being cooled as specified under 12VAC5-421-810 B 2; or
- 5. Shellstock.

**12VAC5-421-540. Food contact with equipment and utensils.**

Food shall only contact surfaces of:

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1. Equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through ~~12VAC5-421-1870~~ 12VAC5-421-1860 and sanitized as specified under 12VAC5-421-1885, 12VAC5-421-1890 and 12VAC5-421-1900;<sup>P</sup>
2. Single-service and single-use articles;<sup>P</sup> or
3. Linens, such as cloth napkins, as specified under 12VAC5-421-560 that are laundered as specified under 12VAC5-421-1920 C.<sup>P</sup>

## 12VAC5-421-660. Condiments; protection.

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

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

## 12VAC5-421-700. Raw animal foods.

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

1. 145°F (63°C) or above for 15 seconds for:<sup>P</sup>
  - a. Raw eggs that are broken and prepared in response to a consumer's order and for immediate service;<sup>P</sup> and
  - b. Except as specified under subdivisions A 2 and 3 and subsections B and C of this section, fish and intact meat, including game animals commercially raised for food and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 1;<sup>P</sup>
2. 155°F (68°C) for ~~15~~ 17 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites ~~and~~, mechanically tenderized meats, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 1; and raw eggs that are not prepared as specified under subdivision 1 a of this subsection:<sup>P</sup>

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

; or

3. 165°F (74°C) or above for ~~15 seconds~~ less than one second (instantaneous) for poultry, baluts, wild game animals as specified under 12VAC5-421-330 A 2, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.<sup>P</sup>

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

1. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:<sup>P</sup>

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

<sup>1</sup>Holding time may include postoven heat rise.

; and

2. ~~In~~ If cooked in an oven, use an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature;<sup>Pf</sup> ~~and~~

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs (4.5 kg)	10 lbs (4.5 kg) or more

Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less

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

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

Temperature °F (°C)	Time <sup>1</sup> in Minutes	Temperature °F (°C)	Time <sup>1</sup> in Seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	9
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

~~<sup>1</sup>Holding time may include postoven heat rise.~~

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

1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 12VAC5-421-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and
3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

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

offered for sale upon request or consumer selection in a ready-to-eat form if:

1. As specified under subdivisions 3 a and b of 12VAC5-421-950 the food establishment serves a population that is not a highly susceptible population;
2. The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat;<sup>Pf</sup> and
3. The consumer is informed as specified under 12VAC5-421-930 that to ensure its safety, the food should be cooked as specified under subsection A or B of this section; or
4. The ~~regulatory authority~~ department grants a variance from subsection A or B of this section as specified in 12VAC5-421-3570 based on a HACCP plan that:
  - a. Is submitted by the permit holder and approved as specified under 12VAC5-421-3570;
  - b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and
  - c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

**12VAC5-421-720. Plant food cooking for hot holding.**

~~Fruits and vegetables~~ Plant foods that are cooked for hot holding shall be cooked to a temperature of 135°F (57°C).<sup>Pf</sup>

**12VAC5-421-725. Noncontinuous cooking.**

Raw animal foods that are cooked using a noncontinuous cooking process shall be:

1. Subject to an initial heating process that is no longer than 60 minutes in duration;<sup>P</sup>
2. Immediately after initial heating, cooled according to the time and temperature requirements specified for cooked time/temperature control for safety food under 12VAC5-421-800 A;<sup>P</sup>
3. After cooling, held frozen or cold, as specified for time/temperature control for safety food under 12VAC5-421-820 A 2;<sup>P</sup>
4. Prior to sale or service, cooked using a process that heats all parts of the food to a temperature and for a time as designated in 12VAC5-421-700 A, B, and C;<sup>P</sup>
5. Cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 12VAC5-421-800 A if not either hot held as specified under 12VAC5-421-820 A 1, served immediately, or held using time as a public health control as specified under 12VAC5-421-850 after complete cooling;<sup>P</sup> and
6. Prepared and stored according to written procedures that:

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- a. Have obtained prior approval from the ~~regulatory authority department~~,<sup>Pf</sup>
- b. Are maintained in the food establishment and are made available to the ~~regulatory authority department~~ upon request;<sup>Pf</sup>
- c. Describe how the requirements specified under subdivisions 1 through 5 of this section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;<sup>Pf</sup>
- d. Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under subdivision 4 of this section prior to being offered for sale or service;<sup>Pf</sup> and
- e. Describe how the foods, after initial heating but prior to cooking as specified in subdivision 4 of this section, are to be separated from ready-to-eat foods as specified under 12VAC5-421-470 A.<sup>Pf</sup>

## 12VAC5-421-730. Parasite destruction.

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

1. Frozen and stored at a temperature of -4°F (-20°C) or below for a minimum of 168 hours (seven days) in a freezer;<sup>P</sup>
2. Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) or below for a minimum of 15 hours;<sup>P</sup> or
3. Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of 24 hours.<sup>P</sup>

B. Subsection A of this section does not apply to:

1. Molluscan shellfish, ~~including the shucked adductor muscle of scallops~~;
2. A scallop product consisting only of the shucked adductor muscle;
3. Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern);
3. 4. Aquacultured fish, such as salmon, that:
  - a. If raised in open water, are raised in net-pens; or
  - b. Are raised in land-based operations such as ponds or tanks; and
  - c. Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish, or
4. 5. Fish eggs that have been removed from the skein and rinsed.

## 12VAC5-421-740. Records, creation and retention.

A. Except as specified in 12VAC5-421-730 B and subsection B of this section, if raw, ~~marinated~~, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.<sup>Pf</sup>

B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 12VAC5-421-730 may substitute for the records specified under subsection A of this section.

C. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 12VAC5-421-730 B ~~3~~ 4, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 12VAC5-421-730 B ~~3~~ 4 shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.<sup>Pf</sup>

## 12VAC5-421-760. Reheating for hot holding.

A. Except as specified under subsections B, C, and E of this section, time/temperature control for safety food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach at least 165°F (74°C) for 15 seconds.<sup>P</sup>

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

C. Ready-to-eat time/temperature control for safety food that has been commercially processed and packaged in a food processing plant that is inspected by the ~~regulatory authority department~~ that has jurisdiction over the plant shall be heated to a temperature of at least 135°F (57°C) when being reheated for hot holding.<sup>P</sup>

D. Reheating for hot holding as specified under subsections A, B, and C of this section shall be done rapidly and the time the food is between 41°F (5°C) and the temperatures specified under subsections A, B, and C of this section may not exceed two hours.<sup>P</sup>

E. Remaining unsliced portions of meat roasts that are cooked as specified under 12VAC5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12VAC5-421-700 B.

**12VAC5-421-830. Ready-to-eat, time/temperature control for safety food; date marking.**

A. Except when packaging food using a reduced oxygen packaging method as specified under 12VAC5-421-870, and except as specified in subsections ~~D~~ and E and F of this section, refrigerated ready-to-eat time/temperature control for safety food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days. The day of preparation shall be counted as day 1.<sup>Pf</sup>

B. Except as specified in subsections ~~D~~, E, F, and ~~F~~ G of this section, refrigerated ready-to-eat, time/temperature control for safety food prepared and packaged by a food processing plant shall be clearly marked at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection A of this section and:<sup>Pf</sup>

1. The day the original container is opened in the food establishment shall be counted as day 1;<sup>Pf</sup> and
2. The day or date marked by the food establishment shall not exceed a manufacturer's "use by" date if the manufacturer determined the "use by" date based on food safety.<sup>Pf</sup>

C. A refrigerated, ready-to-eat, time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.<sup>Pf</sup>

D. A date marking system that meets the criteria specified in subsections A and B of this section may include:

1. Using a method approved by the ~~regulatory authority department~~ for refrigerated, ready-to-eat time/temperature control for safety food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;
2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in subsection A of this section;
3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection B of this section; or

4. Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the ~~regulatory authority department~~ upon request.

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

F. Subsections A and B of this section do not apply to shellstock.

G. Subsection B of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

1. Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR Part 110;
2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133, such as cheddar, gruyere, parmesan and reggiano, and romano;
3. Semi-soft cheese containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR Part 133, such as blue, edam, gorgonzola, gouda, and monterey jack;
4. Cultured dairy products as defined in 21 CFR Part 131, such as yogurt, sour cream, and buttermilk;
5. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products as defined in 21 CFR Part 114;
6. Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami; and
7. Shelf stable salt-cured products such as prosciutto and Parma (ham).

**12VAC5-421-850. Time as a public health control.**

A. Except as specified under subsection D of this section, if time without temperature control is used as the public health control for a working supply of time/temperature control for safety food before cooking or for ready-to-eat time/temperature control for safety food that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the food establishment, and made available to the ~~regulatory authority department~~ upon request that specify:<sup>Pf</sup>

1. Methods of compliance with ~~subdivisions subsection B 1, 2, and 3~~ or subdivisions subsection B 1, 2, and 3 or C 1 through 5 of this section;<sup>Pf</sup> and
2. Methods of compliance with 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.<sup>Pf</sup>

B. If time without temperature control is used as the public health control up to a maximum of four hours:

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1. The food shall have an initial temperature of 41°F (5°C) or less when removed from cold holding temperature control or 135°F (57°C) or greater when removed from hot holding temperature control;<sup>P</sup>
  2. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;<sup>P Pf</sup>
  3. The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control;<sup>P</sup> and
  4. The food in unmarked containers or packages, or marked to exceed a four-hour limit shall be discarded.<sup>P</sup>
- C. If time without temperature control is used as the public health control up to a maximum of six hours:

1. The food shall have an initial temperature of 41°F (5°C) or less when removed from temperature control and the food temperature may not exceed 70°F (21°C) within a maximum time period of six hours;<sup>P</sup>
2. The food shall be monitored to ensure the warmest portion of the food does not exceed 70°F (21°C) during the six-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 70°F (21°C) during the six-hour holding period;<sup>PPf</sup>
3. The food shall be marked or otherwise identified to indicate:<sup>Pf</sup>
  - a. The time when the food is removed from 41°F (5°C) or less cold-holding temperature control,<sup>Pf</sup> and
  - b. The time that is six hours past the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control;<sup>Pf</sup>
4. The food shall be:
  - a. Discarded if the temperature of the foods exceeds 70°F (21°C);<sup>P</sup> or
  - b. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six hours from the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control;<sup>P</sup> and
5. The food in unmarked containers or packages, or marked with a time that exceeds the six-hour limit shall be discarded.<sup>P</sup>

D. A food establishment that serves a highly susceptible population may not use time as specified under subsection A, B, or C of this section as the public health control for raw eggs.

## 12VAC5-421-860. Variance requirement.

A food establishment shall obtain a variance from the ~~regulatory authority~~ department as specified in 12VAC5-421-3570 and 12VAC5-421-3580 before.<sup>Pf</sup>

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;<sup>Pf</sup>
2. Curing food;<sup>Pf</sup>
3. Using food additives or adding components such as vinegar:<sup>Pf</sup>
  - a. As a method of food preservation rather than as a method of flavor enhancement;<sup>Pf</sup> or
  - b. To render a food so that it is not a time/temperature control for safety food;<sup>Pf</sup>
4. Packaging time/temperature control for safety food using a reduced oxygen packaging method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under 12VAC5-421-870;<sup>Pf</sup>
5. Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;<sup>Pf</sup>
6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment;<sup>Pf</sup>
7. Sprouting seeds or beans;<sup>Pf</sup> or
8. Preparing food by another method that is determined by the ~~regulatory authority~~ department to require a variance.<sup>Pf</sup>

## 12VAC5-421-870. Reduced oxygen packaging without a variance, criteria.

A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860, a food establishment that packages time/temperature control for safety food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.<sup>P</sup>

B. Except as specified under subsection F of this section, a food establishment that packages time/temperature control for safety food using a reduced oxygen method shall ~~have~~ implement a HACCP plan that contains the ~~following~~ information specified under subdivisions 3 and 4 of 12VAC5-421-3630 and that.<sup>Pf</sup>

1. Identifies food to be packaged;<sup>Pf</sup>
2. Except as specified in subsections C, D, and E of this section ~~and as specified in subsection D of this section~~, requires that the packaged food shall be maintained at 41°F (5°C) or less and meet at least one of the following criteria:<sup>Pf</sup>
  - a. Has an  $A_w$  of 0.91 or less;<sub>2</sub><sup>Pf</sup>
  - b. Has a pH of 4.6 or less;<sub>2</sub><sup>Pf</sup>
  - c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21 and is received in an intact package;<sub>2</sub><sup>Pf</sup> or
  - d. Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;<sub>2</sub><sup>Pf</sup>

3. Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:<sup>Pf</sup>

- a. Maintain food at 41°F (5°C) or below;<sup>2</sup><sup>Pf</sup> and
- b. Discard the food if within 30 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;<sup>Pf</sup>

4. Limits the refrigerated shelf life to no more than 30 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;<sup>P</sup>

5. Includes operational procedures that:

- a. Prohibit contacting ready-to-eat food with bare hands as specified in 12VAC5-421-450 B;<sup>2</sup><sup>Pf</sup>
- b. Identify a designated work area and the method by which:<sup>Pf</sup>
  - (1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination;<sup>2</sup><sup>Pf</sup> and
  - (2) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation;<sup>2</sup><sup>Pf</sup> and
- c. Delineate cleaning and sanitization procedures for food contact surfaces;<sup>Pf</sup>

6. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:<sup>Pf</sup>

- a. Concepts required for safe operation;<sup>2</sup><sup>Pf</sup> and
- b. Equipment and facilities;<sup>2</sup><sup>Pf</sup> and
- c. Procedures specified under subdivision B 5 of this section and subdivisions 3 and 4 of 12VAC5-421-3630;<sup>2</sup><sup>Pf</sup> and

7. Is provided to the ~~regulatory authority~~ department prior to implementation as specified under 12VAC5-421-3620 B.

C. Except for fish that is frozen before, during, and after packaging and bears a label indicating that it is to be kept frozen until time of use, a food establishment may not package fish using a reduced oxygen packaging method.<sup>P</sup>

D. Except as specified in subsections C and F of this section, a food establishment that packages time/temperature control for safety food using a cook-chill or sous-vide process shall:

1. Provide to the ~~regulatory authority~~ department prior to implementation a HACCP plan that contains the information as specified under subdivisions 3 and 4 of 12VAC5-421-3630;<sup>Pf</sup>

2. Ensure the food is:

a. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer;<sup>Pf</sup>

b. Cooked to heat all parts of the food to a temperature and for a time as specified under subsections A, B, and C of 12VAC5-421-700;<sup>P</sup>

c. Protected from contamination before and after cooking as specified in 12VAC5-421-450 through 12VAC5-421-765;<sup>P</sup>

d. Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking, and before reaching a temperature below 135°F (57°C);<sup>P</sup>

e. Cooled to 41°F (5°C) in the sealed package as specified under 12VAC5-421-800;<sup>2</sup> and:<sup>P</sup>

(1) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within 30 days after the date of packaging;<sup>P</sup>

(2) Held at 41°F (5°C) or less for no more than seven days, at which time the food must be consumed or discarded;<sup>P</sup> or

(3) Held frozen with no shelf-life restriction while frozen until consumed or used;<sup>P</sup>

f. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;<sup>Pf</sup>

g. If transported off site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation;<sup>Pf</sup> and

h. Labeled with the product name and the date packaged;<sup>Pf</sup> and

3. Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan, ~~are~~ maintained and ~~are~~:

a. Made available to the ~~regulatory authority~~ department upon request;<sup>2</sup><sup>Pf</sup> and

b. Held for six months;<sup>Pf</sup> and

4. Implement written operational procedures as specified under subdivision B 5 of this section and a training program as specified under subdivision B 6 of this section.<sup>Pf</sup>

E. Except as specified under subsection F of this section, a food establishment that packages cheese using a reduced oxygen packaging method shall:

1. Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards

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of Identity as specified in 21 CFR 133.150, 21 CFR 133.169, or 21 CFR 133.187;<sup>Pf</sup>

2. Have a HACCP plan that contains the information specified in subdivisions 3 and 4 of 12VAC5-421-3630 and as specified under subdivisions B 1, B 3 a, B 5, and B 6 of this section;<sup>Pf</sup>

3. Label the package on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first;<sup>Pf</sup> and

4. Discard the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.<sup>Pf</sup>

F. A HACCP plan is not required when a food establishment uses a reduced oxygen packaging method to package time/temperature control for safety food that is always:

1. Labeled with the production time and date;
2. Held at 41°F (5°C) or less during refrigerated storage; and
3. Removed from its packaging in the food establishment within 48 hours after packaging.

## 12VAC5-421-900. Food labels.

A. Food packaged in a food establishment, shall be labeled as specified in accordance with all applicable laws and regulations, including 21 CFR Part 101 and 9 CFR Part 317.

B. Label information shall include:

1. The common name of the food, or absent a common name, an adequately descriptive identity statement;
2. If made from two or more ingredients, a list of ingredients and sub-ingredients in descending order of predominance by weight, including a declaration of artificial colors, artificial flavors, and chemical preservatives, if contained in the food;
3. An accurate declaration of the net quantity of contents;
4. The name and place of business of the manufacturer, packer, or distributor; and
5. The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;<sup>Pf</sup>
6. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) through (5), nutrition labeling as specified in 21 CFR Part 101 and 9 CFR Part 317, Subpart B; and
7. For any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

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

1. The manufacturer's or processor's label that was provided with the food; or
2. A card, sign, or other method of notification that includes the information specified under subdivisions B 1, 2, and 5 6 of this section.

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

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

## 12VAC5-421-930. Consumer advisory: consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.

A. Except as specified in 12VAC5-421-700 C and D 4 and under subdivision 3 of 12VAC5-421-950, if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections B and C of this section, using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.<sup>Pf</sup>

B. Disclosure shall include:

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

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

1. "Regarding the safety of these items, written information is available upon request";<sup>Pf</sup>
2. "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness";<sup>Pf</sup> or

3. "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."<sup>Pf</sup>

**12VAC5-421-940. Discarding or reconditioning unsafe, adulterated, or contaminated food.**

A. A food that is unsafe, adulterated, or not ~~from an approved source as specified under 12VAC5-421-270 through 12VAC5-421-330~~ honestly presented as specified in 12VAC5-421-260 shall be ~~rendered unusable and discarded~~ or reconditioned according to an approved procedure.<sup>P</sup>

B. Food that is not from an approved source as specified under 12VAC5-421-270 through 12VAC5-421-330 shall be discarded.<sup>P</sup>

~~C.~~ Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 12VAC5-421-90 shall be rendered unusable and discarded.<sup>P</sup>

~~C.~~ D. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be rendered unusable and discarded.<sup>P</sup>

**12VAC5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.**

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice that bears a warning label as specified in 21 CFR 101.17(g) (~~Juices that have not been specifically processed to prevent, reduce or eliminate the presence of pathogens~~) or a packaged juice or beverage containing juice that bears a warning label as specified under subdivision 2 of 12VAC5-421-765 may not be served or offered for sale;<sup>P</sup> and
  - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions ~~2 through 3, 4, and 5~~ of 12VAC5-421-3630 and as specified in 21 CFR 120.24.<sup>P</sup>
2. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:<sup>P</sup>
  - a. Foods such as Caesar salad, hollandaise or ~~bearnaise~~ bèarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages;<sup>P</sup> and

b. Except as specified in subdivision 6 of this section, recipes in which more than one egg is broken and the eggs are combined.<sup>P</sup>

3. The following foods shall not be served or offered for sale in a ready-to-eat form:<sup>P</sup>

- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;<sup>P</sup>
- b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue;<sup>P</sup> and
- c. Raw seed sprouts.<sup>P</sup>

4. Food employees shall not contact ready-to-eat food as specified in 12VAC5-421-450 B and E.<sup>P</sup>

5. Time only, as the public health control as specified under 12VAC5-421-850 D, may not be used for raw eggs.<sup>P</sup>

6. Subdivision 2 b of this section does not apply if:
- a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;
  - b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
  - c. The preparation of the food is conducted under a HACCP plan that:
    - (1) Identifies the food to be prepared;
    - (2) Prohibits contacting ready-to-eat food with bare hands;
    - (3) Includes specifications and practices that ensure:
      - (a) Salmonella Enteritidis growth is controlled before and after cooking; and
      - (b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;
    - ~~(4)~~ (4) Contains the information specified under subdivision 4 of 12VAC5-421-3630 including procedures that:
      - ~~(a)~~ (a) Control cross contamination of ready-to-eat food with raw eggs; and
      - ~~(b)~~ (b) Delineate cleaning and sanitization procedures for food-contact surfaces; and
    - ~~(5)~~ (5) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

7. Except as specified in subdivision 8 of this section, food may be re-served as specified under 12VAC5-421-680 B 1 and 2.

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8. ~~Food~~ Food may not be re-served under the following conditions:

- a. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.
- b. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

## **12VAC5-421-1180. Temperature measuring devices; food.**

A. Food temperature measuring devices that are scaled only in ~~Fahrenheit~~ Celsius or dually scaled in ~~Fahrenheit~~ and Celsius shall be ~~sealed in 2°F increments and accurate to ±2°F plus or minus 1°C~~ in the intended range of use.<sup>Pf</sup>

B. Food temperature measuring devices that are scaled only in ~~Celsius~~ Fahrenheit shall be ~~sealed in 1°C increments accurate to ±1°C plus or minus 2°F~~ in the intended range of use.<sup>Pf</sup>

## **12VAC5-421-1190. Temperature measuring devices; ambient air and water.**

A. Ambient air and water temperature measuring devices that are scaled in ~~Fahrenheit~~ Celsius or dually scaled in ~~Fahrenheit~~ and Celsius shall be designed to be easily readable and ~~sealed in 3°F increments and accurate to ±3°F plus or minus 1.5°C~~ in the intended range of use.<sup>Pf</sup>

B. Ambient air and water temperature measuring devices that are scaled only in ~~Celsius~~ Fahrenheit shall be ~~sealed in 1.5°C increments and accurate to ±1.5°C plus or minus 3°F~~ in the intended range of use.<sup>Pf</sup>

## **12VAC5-421-1300. Molluscan shellfish tanks.**

A. Except as specified under subsection B of this section, molluscan shellfish life support system display tanks shall not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to consumers that the shellfish are for display only.<sup>P</sup>

B. Molluscan shellfish life-support system display tanks that are used to ~~store and~~ or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the ~~regulatory authority~~ department as specified in 12VAC5-421-3570 and a HACCP plan that:<sup>Pf</sup>

1. Is submitted by the permit holder and approved as specified under ~~12VAC5-421-3580~~ 12VAC5-421-3620,<sup>Pf</sup> and
2. Ensures that:
  - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank;<sup>Pf</sup>

- b. The safety and quality of the shellfish as they were received are not compromised by the use of the tank;<sup>Pf</sup> and
- c. The identity of the source of the shellstock is retained as specified under 12VAC5-421-440.<sup>Pf</sup>

## **12VAC5-421-1380. Warewashing machines, flow pressure device.**

A. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine-; and

B. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch or 6.4 millimeter Iron Pipe Size (IPS) valve.

C. Subsections A and B of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

~~D. Subsections A and B of this section shall not apply to home model dishwashers used in bed and breakfast operations serving 18 or fewer guests.~~

## **12VAC5-421-1520. Temperature measuring devices, manual and mechanical warewashing.**

A. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.<sup>Pf</sup>

B. In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature.<sup>Pf</sup>

## **12VAC5-421-1535. Cleaning agents and sanitizers, availability.**

A. Cleaning agents that are used to clean equipment and utensils as specified under Article 6 (12VAC5-421-1770 et seq.) of this part shall be provided and available for use during all hours of operation.

B. Except for chemical sanitizers that are generated on site at the time of use, chemical sanitizers that are used to sanitize equipment and utensils as specified under Article ~~6~~ 7 shall be provided and available for use during all hours of operation.

## **12VAC5-421-1550. Fixed equipment, spacing or sealing.**

A. Equipment that is fixed because it is not easily movable shall be installed so that it is:

1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;

2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 inch or 1 millimeter; or

3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

B. Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

1. Sealed ~~to the table~~; or
2. Elevated on legs as specified under 12VAC5-421-1560 D.

**12VAC5-421-1620. Warewashing sinks, use limitation.**

A. A warewashing sink shall not be used for handwashing.

B. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 12VAC5-421-1600 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Article 7 (~~12VAC5-421-1880 et seq.~~) (12VAC5-421-1885 et seq.) of this part before and after using the sink to wash produce or thaw food.

**12VAC5-421-1700. Manual and mechanical warewashing equipment, chemical sanitization - temperature, pH, concentration, and hardness.**

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under subdivision 3 of 12VAC5-421-1900 shall ~~be listed in 40 CFR 180.940, shall meet the criteria as specified under 12VAC5-421-3380, shall~~ be used in accordance with the EPA-registered label use instructions,<sup>P</sup> and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:<sup>P</sup>

Minimum Concentration	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 or less °F (°C)
mg/L (ppm)		
25-49	120 (49)	120 (49)
50-99	100 (38)	75 (24)
100	55 (13)	55 (13)

2. An iodine solution shall have a:
  - a. Minimum temperature of 68°F (20°C);<sup>P</sup>
  - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective;<sup>P</sup> and
  - c. Concentration between 12.5 mg/L (ppm) and 25 mg/L (ppm);<sup>P</sup>
3. A quaternary ammonium compound solution shall:

- a. Have a minimum temperature of 75°F (24°C);<sup>P</sup>
- b. Have a concentration as specified under ~~40 CFR 180.940 12VAC5-421-3380~~ and as indicated by the manufacturer's use directions included in the labeling;<sup>P</sup> and
- c. Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;<sup>P</sup>

4. If another solution of a chemical specified under subdivisions 1, 2 and 3 of this section is used, the permit holder shall demonstrate to the ~~regulatory authority~~ department that the solution achieves sanitization and the use of the solution shall be approved;<sup>P</sup>

5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions;<sup>P</sup> and

6. If a chemical sanitizer is generated by a device located on site at the food establishment it shall be used as specified in subdivisions 1 through 4 of this section and shall be produced by a device that:

- a. Complies with regulation as specified in §§ 2(q)(1) and 12 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),<sup>P</sup>
- b. Complies with 40 CFR 152.500 and 40 CFR 156.10,<sup>P</sup>
- c. Displays the EPA device manufacturing facility registration number on the device,<sup>Pf</sup> and
- d. Is operated and maintained in accordance with manufacturer's instructions.<sup>Pf</sup>

**12VAC5-421-1920. Laundering frequency for linens, cloth gloves, napkins, and wiping cloths.**

A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

B. Cloth gloves used as specified in 12VAC5-421-580 D shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork, and fish poultry.

C. Linens ~~and napkins~~ that are used as specified under 12VAC5-421-560 and cloth napkins shall be laundered between each use.

D. Wet wiping cloths shall be laundered daily.

E. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

**12VAC5-421-2090. Nonpotable water.**

A. A nonpotable water supply shall be used only if its use is approved by the ~~regulatory authority~~ department.<sup>P</sup>

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B. Nonpotable water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection, ~~and irrigation.~~<sup>P</sup>

## 12VAC5-421-2100. Sampling.

Water from a private well shall be sampled and tested at least annually for nitrate and total coliform.<sup>Pf</sup>

1. If nitrate, which is reported as "N" on the test results, exceeds 10 mg/L (ppm), the owner shall notify the ~~regulatory authority~~ department within 24 hours from when the owner is notified of the nitrate positive test result.<sup>Pf</sup>
2. If a sample is total coliform positive, the positive culture medium shall be further analyzed to determine if E. coli is present. The owner shall notify the ~~regulatory authority~~ department within two calendar days from when the owner is notified of the coliform positive test result.<sup>Pf</sup>
3. If E. coli is present, the owner shall notify the ~~regulatory authority~~ department within 24 hours from when the owner is notified of the E. coli positive test result.<sup>Pf</sup>

## 12VAC5-421-2110. Sample report.

All sample reports for the private well shall be retained on file in the food establishment for a minimum of five years and be made available to the ~~regulatory authority~~ department upon request.

## 12VAC5-421-2140. ~~[Reserved]~~ Water System.

Water shall be received from the source through the use of:

1. An approved public water main;<sup>Pf</sup> or
2. One or more of the following that shall be constructed, maintained, and operated according to law:<sup>Pf</sup>
  - a. Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;<sup>Pf</sup>
  - b. Water transport vehicles;<sup>Pf</sup> or
  - c. Water containers.<sup>Pf</sup>

## 12VAC5-421-2270. Backflow prevention device, carbonator.

A. If not provided with an air gap as specified under 12VAC5-421-2200, a ~~double~~ dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 1 inch (100 mesh to 25.4mm) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.<sup>P</sup>

B. A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise ~~approved~~ provided as specified under subsection A of this section.

## 12VAC5-421-2330. Scheduling inspection and service for a water system device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge for a minimum of five years and made available to the department upon request.<sup>Pf</sup>

## 12VAC5-421-2350. System maintained in good repair.

A plumbing system shall be ~~(i) repaired;~~

1. Repaired according to law;<sup>P</sup> and ~~(ii) maintained~~
2. Maintained in good repair.

## 12VAC5-421-2505. Establishment drainage system.

Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 12VAC5-421-2180 A.

## 12VAC5-421-2570. Approved sewage disposal system.

Sewage shall be disposed through an approved facility that is:

1. A public sewage treatment plant;<sup>P</sup> or
2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to the State Board of Health's regulations promulgated pursuant to Chapter 6 (§ 32.1-163 et seq.) of Title 32 of the Code of Virginia, including 12VAC5-610, Sewage Handling and Disposal Regulations, 12VAC5-613, ~~and 12VAC5-640 Regulations for Alternative Onsite Sewage Systems,~~ or otherwise according to law.<sup>P</sup>

## 12VAC5-421-2720. Covering receptacles.

1. Inside the food establishment if the receptacles and units ~~(i) contain;~~
  - a. Contain food residue and are not in continuous use; or
  - (ii) after
  - b. After they are filled; and
2. With tight-fitting lids or doors if kept outside the food establishment.

## 12VAC5-421-2750. Cleaning receptacles.

A. Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under ~~12VAC5-421-2550~~ 12VAC5-421-2540.

B. Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency

necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

**12VAC5-421-3040. Handwashing aids and devices, use restrictions.**

A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, shall not be provided with the handwashing aids and devices required for a handwashing sink as specified under 12VAC5-421-3020 ~~and~~, 12VAC5-421-3030, and 12VAC5-421-2650 C.

**12VAC5-421-3310. Prohibiting animals.**

A. Except as specified in subsections B and C of this section, live animals shall not be allowed on the premises of a food establishment.<sup>Pf</sup>

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person if a health or safety hazard will not result from the presence or activities of the service animal;
4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, residential care facilities, and bed and breakfast operations at times other than during meals if:
  - a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
  - b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
  - c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;
5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals; and

6. Dogs in outdoor dining areas if:

- a. The outdoor dining area is not fully enclosed with floor to ceiling walls and is not considered a part of the interior physical facility;
- b. The outdoor dining area is equipped with an entrance that is separate from the main entrance to the food establishment and the separate entrance serves as the sole means of entry for patrons accompanied by dogs;
- c. A sign stating that dogs are allowed in the outdoor dining area is posted at each entrance to the outdoor dining area in such a manner as to be clearly observable by the public;
- d. A sign within the outdoor dining area stating the requirements as specified in subdivisions 6 e, 6 f, and 6 g of this subsection is provided in such a manner as to be clearly observable by the public;
- e. Food and water provided to dogs is served using equipment that is not used for service of food to persons or is served in single-use articles;
- f. Dogs are not allowed on chairs, seats, benches, or tables;
- g. Dogs are kept on a leash or within a pet carrier and under the control of an adult at all times; and
- h. Establishment provides effective means for cleaning up dog vomitus and fecal matter.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

~~D. In bed and breakfast operations serving 18 or fewer guests, live animals shall be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.~~

**12VAC5-421-3360. Conditions of use.**

Poisonous or toxic materials shall be:

1. Used according to:
  - a. Law and this chapter;
  - b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;<sup>P</sup>
  - c. The conditions of certification, if certification is required, for use of the pest control materials;<sup>P</sup> and
  - d. Additional conditions that may be established by the ~~regulatory authority.~~<sup>P</sup> department; and
2. Applied so that:
  - a. A hazard to employees or other persons is not constituted;<sup>P</sup> and
  - b. Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is

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prevented, and for a restricted-use pesticide, this is achieved by:<sup>P</sup>

- (1) Removing the items, ~~covering;~~<sup>P</sup>
- (2) Covering the items with impermeable covers;<sup>P</sup> or ~~taking~~
- (3) Taking other appropriate preventive actions;<sup>P</sup> and
- ~~(2)~~ (4) Cleaning and sanitizing equipment and utensils after the application.<sup>P</sup>

A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC § 136(e) (Federal Insecticide, Fungicide and Rodenticide Act), or a person under the direct supervision of a certified applicator.<sup>Pf</sup>

## **12VAC5-421-3390. Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria.**

~~A. Chemicals, including those generated on site, used to wash or peel raw, whole fruits and vegetables or used in the treatment, storage, and processing of fruits and vegetables shall:~~

1. Be an approved food additive listed for this intended use in 21 CFR Part 173;<sup>P</sup> or
2. Be generally recognized as safe (GRAS) for this intended use;<sup>P</sup> or
3. Be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification);<sup>P</sup> and
4. Meet the requirements in ~~the~~ 40 CFR Part 156.<sup>P</sup>

~~B. Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368.~~<sup>P</sup>

## **12VAC5-421-3410. Drying agents, criteria.**

Drying agents used in conjunction with sanitization shall:

1. Contain only components that are listed as one of the following:
  - a. Generally recognized as safe (GRAS) for use in food as specified in 21 CFR Part 182 or 21 CFR Part 184,<sup>P</sup>
  - b. ~~Generally recognized as safe~~ GRAS for the intended use as specified in 21 CFR Part 186,<sup>P</sup>
  - c. ~~Generally recognized as safe~~ GRAS for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to food as described in 21 CFR 170.30,<sup>P</sup>
  - d. Subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) § 409(h),<sup>P</sup>

e. Approved for use as a drying agent under a prior sanction specified in 21 CFR Part 181 as specified in the Federal Food Drug and Cosmetic Act (FFDCA) § 201(s)(4),<sup>P</sup>

f. Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts ~~175~~ 174 through 178,<sup>P</sup> or

g. Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39;<sup>P</sup> and

2. When sanitization is with chemicals, the approval required under subdivision 1 e or g of this section or the regulation as an indirect food additive required under subdivision 1 f of this section, shall be specifically for use with chemical sanitizing solutions.<sup>P</sup>

## **12VAC5-421-3510. Public health protection.**

A. The ~~regulatory authority~~ department shall apply this ~~regulation chapter~~ to promote its underlying purpose, as specified in 12VAC5-421-30, of safeguarding public health and ensuring that food is safe ~~and~~, unadulterated ~~and~~ honestly presented when offered to the consumer.

B. In enforcing the provisions of this regulation, the ~~regulatory authority~~ department shall assess existing facilities or equipment that were in use before ~~March 1, 2002~~ June 10, 2021, based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
2. Whether food-contact surfaces comply with 12VAC5-421-960 through 12VAC5-421-1060; and
3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 12VAC5-421-1450.

## **12VAC5-421-3520. Preventing health hazards, provision for conditions not addressed.**

A. If necessary to protect against public health hazards or nuisances, the ~~regulatory authority~~ department may impose specific requirements in addition to the requirements contained in this regulation that are authorized by law.

B. The ~~regulatory authority~~ department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the ~~regulatory authority's~~ department's file for the food establishment.

## **12VAC5-421-3550. Food Service Advisory Committee. (Repealed.)**

~~The commissioner shall appoint a Food Service Advisory Committee (FSAC). He shall appoint to the FSAC as many members as he wishes, but a minimum of one individual each from the following: Department of Agriculture and Consumer Services, Department of Housing and Community~~

~~Development, Department of Social Services, Virginia Hospitality and Travel Association, Virginia Retail Merchants Association, public at large, Virginia Public Health Association, Virginia Environmental Health Association, Virginia Caterers Association, Virginia Food Dealers Association, a consumer and/or civic organization representative, and an environmental health specialist.~~

~~Ex officio members shall be the Director of the Division of Food and General Environmental Services and the Director of Health Facilities Regulation.~~

~~Appointed members of the FSAC shall serve at the discretion of the commissioner and shall make recommendation to the commissioner regarding food service policies, procedures and other food program operations. The FSAC shall meet at least annually.~~

**12VAC5-421-3560. Exemptions to regulations. (Repealed.)**

~~A. The following are exempt from this chapter as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:~~

- ~~1. Boarding houses that do not accommodate transients;~~
- ~~2. Cafeterias operated by industrial plants for employees only;~~
- ~~3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads which hold dinners and bazaars of not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;~~
- ~~4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;~~
- ~~5. Churches that serve meals for their members as a regular part of their religious observance;~~
- ~~6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax; and~~
- ~~7. Any bed and breakfast operation that prepares food for and offers food to guests, regardless of the time the food is prepared and offered, if (i) the premises of the bed and breakfast operation is a home that is owner occupied or owner agent occupied, (ii) the bed and breakfast operation prepares food for and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by~~

~~the bed and breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is prepared and to whom food is offered are informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to regulations governing restaurants.~~

~~B. The governing body of any county, city or town may provide by ordinance that this chapter shall not apply to food booths at fairs and youth athletic activities if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof. The ordinance shall provide that the director of the county, city, or town in which the fair and youth athletic activities are held, or a qualified person designated by the director, shall exercise such supervision of the sale of food as the ordinance may prescribe.~~

**12VAC5-421-3570. Variances.**

A. The commissioner or his designee may grant a variance to this chapter by following the appropriate procedures set forth in this section and 12VAC5-421-3580.

B. The commissioner or the commissioner's designee may grant a variance if he finds that the hardship imposed, which may be economic, outweighs the benefits that may be received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution.

C. Any owner or permit holder who seeks a variance shall apply in writing within the time period specified in 12VAC5-421-4000. The request ~~should~~ shall be sent to the local health department. The application shall include:

1. A citation to the regulation from which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant analytical results including result of relevant tests conducted pursuant to the requirements of these regulations;
4. Statements or evidence which establishes that the public health, welfare and environment would not be adversely affected if the variance were granted;
5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
6. A HACCP plan if required as specified under 12VAC5-421-3620 A that includes the information specified under 12VAC5-421-3630 as it is relevant to the variance requested.
7. Other information believed pertinent by the applicant; and

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8. Such other information as the district or local health department or commissioner may require.

## **12VAC5-421-3580. Evaluation of a variance application.**

A. The commissioner shall act on any variance request submitted pursuant to 12VAC5-421-3570 ~~B C~~ within 60 days of receipt of the request.

B. In evaluating a variance application, the commissioner shall consider such factors as the following:

1. The effect that such a variance would have on the operation of the food establishment.
2. The cost and other economic considerations imposed by this requirement;
3. The effect that such a variance would have on protection of the public health, safety, welfare and the environment;
4. Such other factors as the commissioner, deputy commissioner, or director of the office of environmental health services may deem appropriate.

## **12VAC5-421-3595. Conformance with approved procedures.**

If the commissioner or the commissioner's designee grants a variance as specified in 12VAC5-421-3570, or a HACCP plan is otherwise required as specified under 12VAC5-421-3620, the permit holder shall:

1. Comply with the HACCP plans and procedures that are submitted as specified under 12VAC5-421-3630 and approved as a basis for the variance;<sup>P</sup> and
2. Maintain and provide to the department, upon request, records specified under subdivisions 4 and 5 c of 12VAC5-421-3630 that demonstrate that the following are routinely employed:
  - a. Procedures for monitoring the critical control points;<sup>PF</sup>
  - b. Monitoring of the critical control points;<sup>PF</sup>
  - c. Verification of the effectiveness of the operation or process;<sup>PF</sup> and
  - d. Necessary corrective actions if there is failure at the critical control point.<sup>PF</sup>

## **12VAC5-421-3600. Facility and operating plans.**

A permit applicant or permit holder shall submit to the ~~regulatory authority department~~ properly prepared plans and specifications for review and approval before:

1. The construction of a food establishment;<sup>PF</sup>
2. The conversion of an existing structure for use as a food establishment;<sup>PF</sup> or
3. The remodeling of a food establishment or a change of type of food establishment or food operation as specified under subdivision 3 of ~~12VAC 421-3700~~ 12VAC5-421-

3700 if the ~~regulatory authority department~~ determines that plans and specifications are necessary to ensure compliance with this chapter.<sup>PF</sup>

## **12VAC5-421-3610. Contents of the plans and specifications.**

The plans and specifications for a food establishment, including a food establishment specified under 12VAC5-421-3620, shall include, as required by the ~~regulatory authority department~~ based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with the provisions of this chapter:

1. Intended menu;
2. Anticipated volume of food to be stored, prepared, and sold or served;
3. Proposed layout, mechanical schematics, construction materials, and finish schedules;
4. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
5. Evidence that standard procedures ensuring compliance with the requirements of this chapter are developed or are being developed; and
6. Other information that may be required by the ~~regulatory authority department~~ for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

## **12VAC5-421-3620. When a HACCP plan is required.**

A. Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the ~~regulatory authority department~~ for approval a properly prepared HACCP plan as specified under 12VAC5-421-3630 and the relevant provisions of this chapter if:

1. Submission of a HACCP plan is required according to law;
2. A variance is required as specified under 12VAC5-421-700 D 4, 12VAC5-421-860, or 12VAC5-421-1300 B, ~~or 12VAC5-421-700 D 4~~; or
3. The ~~regulatory authority department~~ determines that a food preparation or processing method requires a variance based on a plan submittal specified under 12VAC5-421-3610, an inspectional finding, or a variance request.

B. Before engaging in reduced oxygen packaging without a variance as specified under 12VAC5-421-870, a permit applicant or permit holder shall submit a properly prepared HACCP plan to the ~~regulatory authority department~~.

**12VAC5-421-3630. Contents of a HACCP plan.**

For a food establishment that is required under 12VAC5-421-3620 to have a HACCP plan, the permit applicant or permit holder shall submit to the ~~regulatory authority~~ department a properly prepared HACCP plan that includes:

1. General information such as the name of the permit applicant or permit holder, the food establishment address, and contact information;<sup>Pf</sup>
2. A categorization of the types of time/temperature control for safety food that is to be controlled under the HACCP plan;<sup>Pf</sup>
3. A flow diagram or chart for each specific food or category type that identifies:<sup>Pf</sup>
  - a. Each step in the process;<sup>Pf</sup>
  - b. The hazards and controls for each step in the flow diagram or chart;<sup>Pf</sup>
  - c. The steps that are critical control points;<sup>Pf</sup>
  - d. The ingredients, materials, and equipment used in the preparation of that food;<sup>Pf</sup> and
  - e. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;<sup>Pf</sup>
4. A critical control ~~point~~points summary for each specific food or category type that clearly identifies:
  - a. Each critical control point;<sup>Pf</sup>
  - b. The critical limits for each critical control point;<sup>Pf</sup>
  - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;<sup>Pf</sup>
  - d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;<sup>Pf</sup>
  - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met;<sup>Pf</sup> and
  - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed;<sup>Pf</sup>
5. Supporting documents such as:
  - a. Food employee and supervisory training plan addressing food safety issues;<sup>Pf</sup>
  - b. Copies of blank records forms that are necessary to implement a the HACCP plan;<sup>Pf</sup>
  - c. Additional scientific data or other information, as required by the ~~regulatory authority~~ department supporting the determination that food safety is not compromised by the proposal;<sup>Pf</sup> and

6. Any other information required by the ~~regulatory authority~~ department.

**12VAC5-421-3640. Confidentiality -- trade secrets.**

The ~~regulatory authority~~ department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under 12VAC5-421-3610 and 12VAC5-421-3630.

**12VAC5-421-3650. Preoperational inspections.**

The ~~regulatory authority~~ department shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under subdivision 5 of 12VAC5-421-3610 and is in compliance with law and this chapter.

**12VAC5-421-3660. Permits.**

A. No person shall own, establish, conduct, maintain, manage, or operate any food establishment in this Commonwealth unless the food establishment is permitted as provided in this section. All permits shall be in the name of the owner ~~or lessee~~. Permits shall not be issued to newly constructed or extensively remodeled food establishments until a certificate of occupancy has been issued by the Building Official. Only a person who complies with the requirements of this part shall be entitled to receive or retain such a permit.

B. Permits issued shall not be transferable from one person to another or from one location to another. A new owner shall be required to make a written application for a permit. The application forms are obtainable at all local health departments.

C. Any person operating a food establishment with a valid permit who desires to expand or modify the establishment, shall notify the ~~director~~ local health department in the jurisdiction where the food establishment is located, and the ~~director~~ local health department shall determine whether such expansion, modification, or reclassification is in compliance with the applicable sections of this chapter.

D. The permit shall be posted in every food establishment in a place where it is readily observable by the public transacting business with the establishment.

E. Permits shall expire annually otherwise not to exceed 12 months from the date of issuance.

**12VAC5-421-3670. Application procedure, submission before proposed opening.**

A. An applicant seeking to operate a nontemporary food establishment shall submit an application for a permit at least 30 calendar days before the date planned for opening a food

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establishment or at least 30 calendar days before the expiration date of the current permit for an existing facility.

B. An applicant seeking to operate a temporary food establishment shall submit an application for a permit at least 10 calendar days before the date planned for opening the temporary food establishment.

C. Any applicant who fails to complete the application process within 12 months of receipt of the application by the local health department's office may be required to submit a new application and plan.

## **12VAC5-421-3680. Form of submission.**

A person desiring to operate a food establishment shall submit to the ~~regulatory authority~~ department a written application for a permit on a form provided by the ~~regulatory authority~~ department.

## **12VAC5-421-3690. Qualifications and responsibilities of applicants.**

To qualify for a permit, an applicant shall:

1. Be an owner of the food establishment or an officer of the legal ownership;
2. Comply with the requirements of this ~~regulation chapter~~; and
3. As specified under 12VAC5-421-3820, agree to allow access to the food establishment and to provide required information.

## **12VAC5-421-3700. Contents of the application.**

The application shall include:

1. The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
3. A statement specifying whether the food establishment:
  - a. Is mobile or stationary, and temporary or permanent; and
  - b. Is an operation that includes one or more of the following:
    - (1) Prepares, offers for sale, or serves time/temperature control for safety food:
      - (a) Only to order upon a consumer's request;
      - (b) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
      - (c) Using time as the public health control as specified under 12VAC5-421-850;

(2) Prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

(3) Prepares food as specified under subdivision 3 b (2) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared;

(4) Prepares food as specified under subdivision 3 b (2) of this section for service to a highly susceptible population;

(5) Prepares only food that is not time/temperature control for safety food; or

(6) Does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;

4. The name, title, address, and telephone number of the person directly responsible for the food establishment;

5. The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under subdivision 4 of this section such as the zone, district, or regional supervisor;

6. The names, titles, and addresses of:

a. The persons comprising the legal ownership as specified under subdivision 2 of this section including the owners and officers; and

b. The local resident agent if one is required based on the type of legal ownership;

7. A statement signed by the applicant that:

a. Attests to the accuracy of the information provided in the application; and

b. Affirms that the applicant will:

(1) Comply with this chapter; and

(2) Allow the ~~regulatory authority~~ department access to the establishment as specified under 12VAC5-421-3820 and to the records specified under 12VAC5-421-440 and 12VAC5-421-2330 and subdivision 4 of 12VAC5-421-3630; and

8. Other information required by the ~~regulatory authority~~ department.

## **12VAC5-421-3710. New, converted, or remodeled establishments.**

For food establishments that are required to submit plans as specified under 12VAC5-421-3600 the ~~regulatory authority~~ department shall issue a permit to the applicant after:

1. A properly completed application is submitted;
2. Any required fee is submitted;

3. The required plans, specifications, and information are reviewed and approved; and

4. A preoperational inspection as specified in 12VAC5-421-3650 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter.

**12VAC5-421-3720. Existing establishments, permit renewal, ~~and~~ change of ownership, or termination.**

A. The ~~regulatory authority~~ department may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, any fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

B. An existing food establishment shall notify the department in writing of a change of legal ownership or when business operations have terminated. Such notice shall be submitted in writing to the department at least 30 days prior to the legal ownership transfer or termination of business operation.

**12VAC5-421-3730. Denial of application for permit, notice.**

If an application for a permit to operate is denied, the ~~regulatory authority~~ department shall provide the applicant with a notice that includes:

1. The specific reasons and chapter citations for the permit denial;
2. The actions, if any, that the applicant must take to qualify for a permit; and
3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

**12VAC5-421-3740. Responsibilities of the ~~regulatory authority~~ department.**

A. At the time a permit is first issued, the ~~regulatory authority~~ department shall provide to the permit holder a copy (or opportunity to obtain a copy) of this chapter so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under 12VAC5-421-3750, that are applicable to the permit.

B. Failure to provide the information specified in subsection A of this section does not prevent the ~~regulatory authority~~ department from taking authorized action or seeking remedies if the permit holder fails to comply with this chapter or an order, warning, or directive of the ~~regulatory authority~~ department.

**12VAC5-421-3750. Responsibilities of the permit holder.**

~~Upon acceptance of the permit issued~~ In order to retain a permit issued by the ~~regulatory authority~~ department, the permit holder in order to retain the permit shall:

1. Post the permit in a location in the food establishment that is conspicuous to consumers;

2. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 12VAC5-421-3590 ~~and 12VAC5-421-3595~~, and approved plans as specified under 12VAC5-421-3610;

3. If a food establishment is required under 12VAC5-421-3620 to operate under a HACCP plan, comply with the plan as specified under ~~12VAC5-421-3590~~ 12VAC5-421-3595;

4. Immediately contact the ~~regulatory authority~~ department to report an illness of a food employee or conditional employee as specified under 12VAC5-421-80 B;

5. Immediately discontinue operations and notify the ~~regulatory authority~~ department if an imminent health hazard may exist as specified under 12VAC5-421-3910;

6. Allow representatives of the ~~regulatory authority~~ department access to the food establishment as specified under 12VAC5-421-3820;

7. Replace existing facilities and equipment specified in 12VAC5-421-3510 with facilities and equipment that comply with this chapter if:

- a. The ~~regulatory authority~~ department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;
- b. The ~~regulatory authority~~ department directs the replacement of the facilities and equipment because of a change of ownership; or
- c. The facilities and equipment are replaced in the normal course of operation;

8. Comply with directives of the ~~regulatory authority~~ department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the ~~regulatory authority~~ department in regard to the permit holder's food establishment or in response to community emergencies;

9. Accept notices issued and served by the ~~regulatory authority~~ department according to law; and

10. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the ~~regulatory authority~~ department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

11. Notify customers that a copy of the most recent establishment inspection report is available upon request by:

- a. Posting a sign or placard in a location in the food establishment that is conspicuous to customers; or

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b. By another method acceptable to the department.

## 12VAC5-421-3770. Summary suspension of a permit.

The director may summarily suspend a permit to operate a ~~restaurant~~ food establishment if the director finds the continued operation constitutes a substantial and imminent threat to the public health, ~~except the director may summarily suspend the permit of a temporary restaurant as addressed under 12VAC5-421-3870.~~ Upon receipt of such notice that a permit is suspended, the permit holder shall cease food operations immediately and begin corrective action.

Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing by ~~certified~~ mail or by hand delivery. Upon ~~service~~ receipt of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity for an informal fact-finding conference in accordance with § 2.2-4019 of the Code of Virginia. The request for an informal fact-finding conference shall be in writing. The written request shall be filed with the local department by the former holder of the permit. If written request for an informal fact-finding conference is not filed within 10 working days, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal fact-finding conference, within three working days of receipt of a request for the informal fact-finding conference. The director may end the suspension at any time if the reasons for the suspension no longer exist.

## 12VAC5-421-3780. Revocation of a permit.

The director may, after ~~providing an opportunity for~~ conducting an informal fact-finding conference in accordance with § 2.2-4019 of the Code of Virginia, revoke a permit for ~~flagrant or continuing~~ violation of any of the requirements of this part.

## 12VAC5-421-3800. Periodic inspection.

Food establishments shall be inspected by the ~~designee of the director~~ department. Inspections of the food establishments shall be performed as often as necessary for the enforcement of this ~~part~~ chapter in accordance with the following:

1. Except as specified in subdivisions 2 and 3 of this section, the ~~regulatory authority~~ department shall inspect a food establishment at least once every six months.
2. The ~~regulatory authority~~ department may increase the interval between inspections beyond six months if:
  - a. The food establishment is fully operating under an approved and validated HACCP plan as specified under 12VAC5-421-3595 and 12VAC5-421-3630;
  - b. The food establishment is assigned a less frequent inspection frequency based on an established risk-based inspection schedule uniformly applied throughout the Commonwealth and updated annually upon reissuance of the annual permit; or

c. The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food, such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

3. The ~~regulatory authority~~ department shall inspect a temporary food establishment during its permit period, unless the ~~Virginia Department of Health~~ department develops a written risk-based plan for adjusting the frequency of inspections of temporary food establishments that is uniformly applied throughout the Commonwealth.

## 12VAC5-421-3810. Performance-based and risk-based inspections.

Within the parameters specified in 12VAC5-421-3800, the ~~regulatory authority~~ department shall prioritize, ~~and conduct~~ the conducting of more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

1. Past performance for nonconformance with this chapter or HACCP plan requirements that are priority items or priority foundation items;
2. Past performance for numerous or repeat violations of this chapter or HACCP plan requirements that are core items;
3. Past performance for complaints investigated and found to be valid;
4. The hazards associated with the particular foods that are prepared, stored, or served;
5. The type of operation including the methods and extent of food storage, preparation, and service;
6. The number of people served; and
7. Whether the population served is a highly susceptible population.

## 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, (VDH, Division of Food and Environmental Services)~~ as determined by the department.

B. The ~~regulatory authority~~ department 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.

**12VAC5-421-3820. Access allowed at reasonable times after due notice.**

After the ~~regulatory authority~~ department presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the ~~regulatory authority~~ department to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the ~~regulatory authority~~ department is entitled according to law, during the food establishment's hours of operation and other reasonable times.

**12VAC5-421-3830. Refusal, notification of right to access, and final request for access.**

If a person denies access to the ~~regulatory authority~~ department, the ~~regulatory authority~~ department shall:

1. Inform the person that:
  - a. The permit holder is required to allow access to the ~~regulatory authority~~ department as specified under 12VAC5-421-3820,
  - b. Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under subdivision 6 of 12VAC5-421-3750 ~~¶~~, and
  - c. If access is denied, the commissioner or his designee may apply to an appropriate circuit court for an inspection warrant authorizing such inspection, testing, or taking samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia; and

2. Make a final request for access.

**12VAC5-421-3840. Refusal, reporting.**

If after the ~~regulatory authority~~ department presents credentials and provides notice as specified under 12VAC5-421-3820, explains the authority upon which access is requested, and makes a final request for access as specified in 12VAC5-421-3830, the person in charge continues to refuse access, the ~~regulatory authority~~ department shall provide details of the denial of access on an inspection report form.

**12VAC5-421-3860. Documenting information and observations.**

The ~~regulatory authority~~ department shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 12VAC5-421-3700, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:

- a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 12VAC5-421-60;
- b. Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under 12VAC5-421-80 B and D;
- c. Nonconformance with priority ~~items or~~ priority foundation, or core items of this chapter;
- d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the ~~regulatory authority~~ department as specified under 12VAC5-421-60;
- e. Failure of the person in charge to provide records required by the ~~regulatory authority~~ department for determining conformance with a HACCP plan as specified under subdivision 4 f of 12VAC5-421-3630; and
- f. Nonconformance with critical limits of a HACCP plan.

**12VAC5-421-3870. Specifying time frame for corrections.**

The ~~regulatory authority~~ department shall specify on the inspection report form the time frame for correction of the violations as specified under 12VAC5-421-3910, 12VAC5-421-3930, and 12VAC5-421-3950. ~~In the case of temporary food establishments, all violations shall be corrected within a maximum of 24 hours or the permit shall be suspended. The establishment shall immediately cease food service operations until authorized to resume by the director.~~

**12VAC5-421-3880. Issuing report and obtaining acknowledgment of receipt.**

At the conclusion of the inspection and according to law, the ~~regulatory authority~~ department shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

**12VAC5-421-3890. Refusal to sign acknowledgment.**

The ~~regulatory authority~~ department shall:

1. Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in 12VAC5-421-3880 that:
  - a. An acknowledgment of receipt is not an agreement with findings,
  - b. Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and

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c. A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the ~~regulatory authority's~~ department's historical record for the food establishment; and

2. Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

## 12VAC5-421-3900. Public records.

Except as specified in 12VAC5-421-3640, the ~~regulatory authority~~ department shall treat the inspection report as a public record and shall make it available for disclosure to a person who requests it as provided in law.

## 12VAC5-421-3910. Imminent health hazard, ceasing operations and reporting.

A. Except as specified in ~~subsection~~ subsections B and C of this section, a permit holder shall immediately discontinue operations and notify the ~~regulatory authority~~ department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.<sup>P</sup>

B. A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the department may agree to continuing operations in the event of an extended interruption of electrical or water service if:

1. A written emergency operating plan has been approved by the department;

2. Immediate corrective action is taken to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

3. The department is informed upon implementation of the written emergency operating plan.

## 12VAC5-421-3920. Resumption of operations.

If operations are discontinued as specified under 12VAC5-421-3910 or otherwise according to law, the permit holder shall obtain approval from the ~~regulatory authority~~ department before resuming operations.

## 12VAC5-421-3930. Timely correction.

A. Except as specified in subsection B of this section, a permit holder shall at the time of inspection correct a priority item or priority foundation item in this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.<sup>Pf</sup>

B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the ~~regulatory authority~~ department may agree to or specify a longer timeframe, not to exceed:

1. 72 hours after the inspection for the permit holder to correct priority items; or

2. 10 calendar days after the inspection for the permit holder to correct priority foundation items or HACCP plan deviations.

C. In the case of temporary food establishments, priority items shall be corrected within a maximum of 24 hours after inspection.

## 12VAC5-421-3940. Verification and documentation of correction.

A. After observing at the time of inspection a correction of a priority item ~~or~~, priority foundation item, or a HACCP plan deviation, the ~~regulatory authority~~ department shall enter the observation and information about the corrective action on the inspection report.

B. As specified under 12VAC5-421-3930 B, after receiving notification that the permit holder has corrected a priority item, ~~or~~ priority foundation item, or a HACCP plan deviation, or at the end of the specified period of time, the ~~regulatory authority~~ department shall verify correction, document the information on an inspection report, and enter the report in the ~~regulatory authority's~~ department records.

## 12VAC5-421-3950. Core item, timeframe for correction.

A. Except as specified in subsection B of this section, the permit holder shall correct core items by a date and time agreed to or specified by the ~~regulatory authority~~ department but no later than 90 calendar days after the inspection.

B. The ~~regulatory authority~~ department may approve a compliance schedule that extends beyond the time limits specified under subsection A of this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

## 12VAC5-421-3960. Examination for condemnation of food. (Repealed.)

~~Food may be examined or sampled by the department as often as necessary for enforcement of this chapter. Also, the department may, upon written notice to the owner or permit holder or person in charge impound any food which it believes is in violation of Part III (12VAC5-421-260 et seq.) or any other section of this chapter. The department shall tag, label, or otherwise identify any food subject to impoundment. No food under conditions specified in the impoundment shall be used, served or moved from the establishment. The department shall permit storage of the food under conditions specified in the impoundment unless storage is not possible without risk to the~~

~~public health in which case immediate destruction shall be accomplished by the owner or permit holder or person in charge. The impoundment shall state that a request for an informal fact finding conference may be filed within 10 days and that if no conference is requested, the food shall be destroyed by the owner or permit holder or person in charge. The department shall hold an informal fact finding conference if so requested, and on the basis of evidence produced at the hearing, the impoundment may be vacated, or the owner or permit holder or person in charge of the food may be directed in writing by the director to denature or destroy such food or to bring it into compliance with the provisions of this chapter.~~

**12VAC5-421-3961. Hold order, justifying conditions, and removal of food.**

Upon written notice to the owner, permit holder, or person in charge, the department may place a hold order on food that:

1. Originated from an unapproved source;
2. May be unsafe, adulterated, or not honestly presented; or
3. Is not otherwise in compliance with this chapter.

**12VAC5-421-3962. Hold order, contents.**

The hold order notice shall:

1. State food subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order from the department;
2. State the specific reasons for placing the food under the hold order with reference to the applicable provisions of this chapter and the hazard or adverse effect created by the observed condition;
3. Sufficiently identify the food subject to the hold order by the common name, the label information, a container description, quantity, department's tag or identification information, and location; and
4. Notify the permit holder of the right to request an informal fact-finding conference pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) within 10 calendar days of receipt of the hold order notice. Otherwise, the food under the hold order shall be destroyed by the owner, permit holder, or the person in charge.

**12VAC5-421-3963. Hold order, official tagging of food.**

A. The department shall securely place an official tag or label on the food or containers or otherwise conspicuously identify food subject to the hold order.

B. The tag or label used to identify a food subject to a hold order shall include a summary of the provisions specified in 12VAC5-421-3962 and shall be signed and dated by the department.

C. Only the department may remove hold order tags, labels, or other identification from food subject to a hold order.

**12VAC5-421-3964. Hold order, food may not be used or moved.**

A. Except as specified in subsection B of this section, food placed under a hold order may not be used, sold, served, or moved from the food establishment.

B. The department may allow the permit holder to store the food in an area of the food establishment if the food is protected from subsequent deterioration.

**12VAC5-421-3965. Appeals, releasing hold order.**

A. Any appeal of a hold order must be made in writing and received by the department within 10 calendar days of receipt of the hold order.

B. The department shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the food if the hold order is lifted.

**12VAC5-421-3966. Destroying or denaturing food.**

The department may order the permit holder to bring food under a hold order into compliance with this chapter or to destroy or denature food if:

1. Following an informal fact-finding conference held pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) the director affirms the hold order; or
2. The permit holder fails to file an appeal within 10 calendar days of receipt of the hold order notice.

**12VAC5-421-3970. Enforcement of regulation.**

~~A. This chapter shall be enforced by the State Board of Health and the State Health Commissioner, as executive officer of the board.~~

~~B. A. The directors are appointed by the board and commissioner as duly designated officers and are department is responsible for the implementation and enforcement of this chapter.~~

~~C. All food establishments shall operate in compliance with the requirements set forth in this chapter and shall not operate without a valid permit.~~

~~D. The commissioner shall be vested with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.~~

~~E. B Pursuant to the authority granted in §§ 32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require any owner or permit holder or other person to comply with the provisions of this chapter. The order may require the following:~~

- ~~1. The immediate cessation and correction of the violation;~~

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2. Appropriate remedial action to ensure that the violation does not continue or recur;
3. The submission of a plan to prevent future violations;
4. The submission of an application for a variance; and
5. Any other corrective action deemed necessary for proper compliance with the regulations.

~~F. C.~~ The commissioner may act as the agent of the board to enforce all effective orders and this chapter. Should any owner or permit holder fail to comply with any effective order or this chapter, the commissioner may:

1. Institute a proceeding to revoke the owner's or permit holder's permit in accordance with 12VAC5-421-3780;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

~~G. Not exclusive means of enforcement.~~ D. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

~~H. E.~~ Proceedings before the commissioner or his designee shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

1. Informal fact-finding conferences. An informal fact-finding conference is a meeting with a district or local health department with the ~~district or local health~~ director presiding and held in conformance with § 2.2-4019 of the Code of Virginia.
2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before a hearing officer as defined by § 2.2-4001 of the Code of Virginia, and held in conformance with § 2.2-4020 of the Code of Virginia.

## **12VAC5-421-4010. Penalties, injunctions, civil penalties and charges for violations. (Repealed.)**

~~1. Any person willfully violating, or refusing, failing, or neglecting to comply with any regulations or order of the board or commissioner, or any provision of this title, shall be guilty of a Class 3 misdemeanor unless a different penalty is specified. Each day of violation shall constitute a separate offense.~~

~~2. Any person violating, or failing, neglecting, or refusing to obey any order of the board or commissioner, or any provision of this part may be compelled, in a proceeding instituted in an appropriate court by the board or commissioner, to obey and~~

~~comply with such regulations, order, or any applicable provision of Title 35.1 of the Code of Virginia. The proceeding may be by injunction, mandamus, or other appropriate remedy.~~

~~3. Without limiting the remedies which may be obtained pursuant to the above subsection, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to the above subsection shall be subject, in the discretion of the court, to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation shall constitute a separate offense.~~

~~4. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board or commissioner or any applicable provision of Title 35.1, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit set forth in the above subsection. Such civil charges shall be in place of any appropriate civil penalty which could be imposed under the above subsection.~~

## **12VAC5-421-4020. Compliance with the Uniform Statewide Building Code.**

All buildings or structures utilized as ~~restaurants~~ food establishments constructed prior to the effective date of the Virginia Uniform Statewide Building Code shall be maintained in conformance with the Virginia Fire Safety Law or other code in effect at the time of construction.

## **12VAC5-421-4035. Exempt facilities that choose to be regulated. (Repealed.)**

~~Exempt facilities, as defined in subdivision 6 of 12VAC5-421-10 of the definition of a "food establishment" and subdivision A 7 of 12VAC5-421-3560, that choose to be regulated by this chapter, shall be exempt from the following requirements:~~

- ~~1. In lieu of 12VAC5-421-1200, home model dishwashers may be used in lieu of manual cleaning and drying of utensils;~~
- ~~2. 12VAC5-421-1340, the requirement for internal baffles in warewashing machines does not apply to home model dishwashers;~~
- ~~3. 12VAC5-421-1350, the requirement for temperature measuring devices does not apply to home model dishwashers;~~
- ~~4. 12VAC5-421-1360, manual warewashing equipment, heaters and baskets are not required but manual warewashing shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;~~

- ~~5. 12VAC5 421 1370, the requirement for a sanitizer level indicator does not apply to home model dishwashers;~~
- ~~6. 12VAC5 421 1380, the requirement for flow pressures device does not apply to home model dishwashers;~~
- ~~7. 12VAC5 421 1460, the requirement for sink compartments does not apply to exempt facilities. It shall include thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;~~
- ~~8. 12VAC5 421 1520, temperature measuring devices for manual warewashing are not required;~~
- ~~9. 12VAC5 421 1530, sanitizing solutions testing devices are not required;~~
- ~~10. 12VAC5 421 1620, warewashing sinks in exempt facilities may be used for handwashing, however, approved dispensers, soap, and single use paper towels are provided;~~
- ~~11. 12VAC5 421 1640, clean solutions in warewashing equipment is not required for exempt facilities. It shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;~~
- ~~12. 12VAC5 421 1660, minimum wash solution temperature for mechanical warewashing equipment shall not be required for home model dishwashers;~~
- ~~13. 12VAC5 421 1670, minimum hot water sanitization temperatures for manual warewashing equipment shall not be required;~~
- ~~14. 12VAC5 421 1680, minimum hot water sanitization temperatures for mechanical warewashing equipment shall not be required for home model dishwashers;~~
- ~~15. 12VAC5 421 1690, sanitization pressure for mechanical warewashing equipment shall not be required;~~
- ~~16. 12VAC5 421 1700, minimum and maximum pressure, pH, sanitizer concentration, and hardness levels shall not be required for home model dishwashers;~~
- ~~17. 12VAC5 421 1710, chemical sanitization for manual warewashing using detergent sanitizers shall not be required;~~
- ~~18. 12VAC5 421 1720, determination of chemical sanitizer concentration shall not be required;~~
- ~~19. 12VAC5 421 1885, food contact surfaces and utensils shall not be required to be sanitized;~~
- ~~20. 12VAC5 421 1890, before use after cleaning, utensils and food contact surfaces shall not be required to be sanitized;~~
- ~~21. 12VAC5 421 1900, hot water and chemical sanitizing shall not be required;~~

- ~~22. 12VAC5 421 2790, floors, walls, and ceilings shall be in good repair and kept clean;~~
- ~~23. 12VAC5 421 2810, floors, walls, and ceilings in exempt facilities shall not be required to meet the cleanability requirements but shall be in good repair and kept clean;~~
- ~~24. 12VAC5 421 2820, the prohibition of exposed utility service lines and pipes shall not apply;~~
- ~~25. 12VAC5 421 2840, floor carpeting in exempt facilities may be installed in food preparation areas, walk in refrigerators, warewashing areas, toilet rooms, refuse storage rooms or other areas, however they shall be kept in good repair and kept clean;~~
- ~~26. 12VAC5 421 2850, floor covering, mats and duckboards may be used in exempt facilities, however, they shall be kept clean and in good repair.~~
- ~~27. 12VAC5 421 2870, attachments to walls and ceilings in exempt facilities shall be kept in good repair and kept clean;~~
- ~~28. 12VAC5 421 3130, approved dispensers, soap and single use paper towels shall be made available to accommodate hand washing;~~
- ~~29. 12VAC5 421 3310, live animals may be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.~~

**12VAC5-421-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.**

The regulatory authority department shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee and other employees or conditional employee.

**12VAC5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.**

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority department may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

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1. Restricting the food employee or conditional employee;
2. Excluding the food employee or conditional employee; or
3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

## **12VAC5-421-4060. Restriction or exclusion order: warning or hearing not required, information required in order.**

Based on the findings of the investigation as specified in 12VAC5-421-4040 and to control disease transmission, the ~~regulatory authority~~ department may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

1. States the reasons for the restriction or exclusion that is ordered;
2. States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
3. States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
4. Provides the name and address of the ~~regulatory authority~~ department representative to whom a request for an appeal hearing may be made.

## 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~~

[Approved Drug Products with Therapeutic Equivalence Evaluations, 40th Edition, 2020, U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Office of General Drugs](#)

[Grade "A" Pasteurized Milk Ordinance, 2017 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, \[www.nsf.org\]\(http://www.nsf.org\)](#)

[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 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. R21-5671; Filed April 3, 2021, 5:09 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Final Regulation

[Title of Regulation: 18VAC60-25. Regulations Governing the Practice of Dental Hygiene \(amending 18VAC60-25-40\).](#)

[Statutory Authority: §§ 54.1-2400 and 54.1-2722 of the Code of Virginia.](#)

[Effective Date: May 25, 2021.](#)

[Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone \(804\) 367-4437, FAX \(804\) 527-4428, or email \[sandra.reen@dhp.virginia.gov\]\(mailto:sandra.reen@dhp.virginia.gov\).](#)

#### [Summary:](#)

*The amendments (i) adopt the protocols for the remote supervision of dental hygienists employed by the Department of Behavioral Health and Developmental Services (DBHDS) by dentists employed by DBHDS in accordance with*

*Chapter 86 of the 2019 Acts of Assembly and (ii) update the protocols for remote supervision of dental hygienists employed by the Department of Health (VDH) by dentists employed by VDH. The amendments replace emergency regulations currently in effect.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

**18VAC60-25-40. Scope of practice.**

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect ~~or~~ general, or remote supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Administration of deep sedation or general anesthesia and moderate sedation;
7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with any sedation or anesthesia administered.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.
4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.
5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and
6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 ~~D E~~ of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the ~~protocol~~ Protocol adopted by ~~the Commissioner~~ Virginia Department of Health (VDH) for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists,

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~~September 2012~~ May 2019, which is hereby incorporated by reference.

G. A dental hygienist employed by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 E of the Code of Virginia, of a dentist employed by DBHDS and in accordance with the Protocol for Virginia Department of Behavioral Health and Developmental Services (DBHDS) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, May 2019, which is hereby incorporated by reference.

## DOCUMENTS INCORPORATED BY REFERENCE

~~Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012~~

Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, Virginia Department of Health (rev. 5/2019)

Protocol for Virginia Department of Behavioral Health and Developmental Services (DBHDS) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, Virginia Department of Behavioral Health and Developmental Services (rev. 5/2019)

VA.R. Doc. No. R20-6044; Filed March 29, 2021, 3:26 p.m.

## Notice of Extension of Emergency Regulation

**Title of Regulation: 18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-40).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2722 of the Code of Virginia.

**Expiration Date Extended Through:** September 30, 2021.

The Governor has approved the request of the Board of Dentistry to extend the expiration date of the emergency regulation for 18VAC60-25 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through September 30, 2021. This extension is required because this regulation provides for remote supervision of Virginia Department of Health and Department of Behavioral Health and Developmental Services dental hygienists; its expiration may have an impact on the ability of those agencies to deliver dental services to underserved populations in the Commonwealth. The emergency regulation was published in [36:4 VA.R. 325-327 October 14, 2019](#).

**Agency Contact:** Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA

23233, telephone (804) 367-4437, FAX (804) 527-4428, email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

VA.R. Doc. No. R20-6044; Filed March 29, 2021, 3:26 p.m.

## BOARD OF NURSING

### Forms

**REGISTRAR'S 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.

**Title of Regulation: 18VAC90-27. Regulations for Nursing Education Programs.**

**Agency Contact:** Elaine Yeatts, Board of Nursing, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC90-27)

~~Application to Establish a Nursing Education Program (rev. 10/2016)~~

~~Survey Visit Report (rev. 10/2016)~~

~~Survey Visit Report for Programs Having Accreditation (rev. 10/2016)~~

~~Application to Establish a Nursing Education Program~~

~~Continued Approval Survey Visit Report~~

[Application to Establish a Nursing Educational Program \(rev. 3/2021\)](#)

[Continued Approval Survey Visit Report \(rev. 12/2019\)](#)

VA.R. Doc. No. R21-6664; Filed April 11, 2021, 10:13 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

#### Fast-Track Regulation

**Title of Regulation: 24VAC20-100. Virginia Motor Vehicle Rental Taxes and Fees Rules and Regulations (repealing 24VAC20-100-10 through 24VAC20-100-550).**

**Statutory Authority:** §§ 46.2-203 and 58.1-2421 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 26, 2021.

**Effective Date:** June 10, 2021.

**Agency Contact:** Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, TDD (800) 272-9268, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.virginia.gov).

**Basis:** Section 46.2-203 of the Code of Virginia provides the Department of Motor Vehicles (DMV) with specific and general authority to adopt reasonable administrative regulations necessary to carry out the laws administered by the department, and the Commissioner of the DMV may enforce these regulations and laws through the agencies of the Commonwealth the commissioner may designate. Chapters 405 and 639 of the 2011 Acts of Assembly transferred authority to administer and collect the motor vehicle rental tax from the DMV to the Department of Taxation. Therefore, the DMV's Virginia Motor Vehicle Rental Taxes and Fees Rules and Regulations (24VAC20-100) must be repealed.

**Purpose:** The intent of this legislative action is to repeal 24VAC20-100. Repeal of the regulation does not affect the public health, safety, or welfare.

**Rationale for Using the Fast-Track Rulemaking Process:** This regulatory action is in compliance with Chapters 405 and 639 of the 2011 Acts of Assembly, which transferred administration and collection of the motor vehicle rental tax from the DMV to the Department of Taxation. This action is deemed to be noncontroversial.

**Substance:** 24VAC20-100 will be repealed since the administration and collection of the motor vehicle rental tax was transferred to the Department of Taxation in 2012.

**Issues:** There are no disadvantages to the public or to the department. The advantage to the public, agency, and Commonwealth is that this regulatory change eliminates obsolete language from the Virginia Administrative Code.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to repeal 24VAC20-100 Virginia Motor Vehicle Rental Taxes and Fees Rules and Regulations, since motor vehicle rental taxes are now administered and collected by the Department of Taxation (TAX.)

Background. Chapters 405 and 639 of the 2011 Acts of Assembly, which became effective on July 1, 2012, transferred the authority to administer the motor vehicle rental tax to TAX and added Article 9 Virginia Motor Vehicle Rental Tax to Title 58.1 (Chapter 17) of the Code of Virginia.<sup>1</sup> Hence, DMV seeks to repeal 24VAC20-100, which is no longer under its authority.

Estimated Benefits and Costs. The proposed repeal does not introduce any additional costs to operators or consumers of rental motor vehicles. It may benefit readers of regulations by

preventing any confusion about taxes owed to DMV. However, none of the current TAX regulations appear to address the motor vehicle rental tax, nor do any of TAX's regulatory actions currently underway.<sup>2</sup> Hence, readers looking for the current motor vehicle rental tax regulation would not find it in the Virginia Administrative Code (VAC) once 24VAC20-100 is repealed and would need to refer to the Code of Virginia (§ 58.1-1734 1741, link in footnote 1) or to guidance on the agency's website.<sup>3</sup>

**Businesses and Other Entities Affected.** Readers of regulations may be affected if it appears that the VAC no longer addresses motor vehicle rental taxes; they would need to refer to the Code of Virginia or agency guidance as mentioned. The proposed repeal does not appear to introduce any new costs for businesses or other entities.

**Small Businesses<sup>4</sup> Affected.** The proposed repeal neither directly affects any small businesses nor causes small businesses to face any new costs as a result of the proposed amendments.

**Localities<sup>5</sup> Affected.<sup>6</sup>** The proposed repeal neither disproportionately affects any specific localities nor introduces new costs for local governments.

**Projected Impact on Employment.** The proposed repeal is unlikely to cause any changes to total employment.

**Effects on the Use and Value of Private Property.** The proposed repeal is unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

<sup>1</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=111&typ=bil&val=ch405> for the Act and <https://law.lis.virginia.gov/vacodefull/title58.1/chapter17/article9/> for the provisions of Article 9.

<sup>2</sup>As per <https://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=75> and <https://townhall.virginia.gov/L/NowInProgress.cfm?BoardID=75> as of this writing.

<sup>3</sup>See <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/13-109> and <https://www.tax.virginia.gov/motor-vehicle-rental-tax-and-fee>

<sup>4</sup>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."

<sup>5</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>6</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Motor Vehicles concurs with the economic impact analysis conducted by the Virginia Department of Planning and Budget.

**Summary:**

*Chapters 405 and 639 of the 2011 Acts of Assembly transferred administration and collection of the motor vehicle rental tax from the Department of Motor Vehicles (DMV) to the Department of Taxation, removing DMV's authority to*

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# Regulations

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*regulate motor vehicle rental tax, therefore the amendments repeal Virginia Motor Vehicle Rental Taxes and Fees Rules and Regulations (24VAC20-100).*

VA.R. Doc. No. R21-6226; Filed March 29, 2021, 3:28 p.m.

## Fast-Track Regulation

**Title of Regulation: 24VAC20-110. T&M Vehicle, Trailer, and Motorcycle Dealer Advertising Practices and Enforcement Regulations (repealing 24VAC20-110-10 through 24VAC20-110-60).**

**Statutory Authority:** §§ 46.2-1991, 46.2-1992.85, and 46.2-1993.82 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 26, 2021.

**Effective Date:** June 10, 2021.

**Agency Contact:** Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1844, FAX (804) 367-6631, TDD (800) 272-9268, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.virginia.gov).

**Basis:** Section 46.2-203 of the Code of Virginia provides the Department of Motor Vehicles (DMV) with specific and general authority to adopt reasonable administrative regulations necessary to carry out the laws administered by the department, and the commissioner may enforce these regulations and laws through the agencies of the Commonwealth he may designate. Chapter 615 of the 2015 Acts of Assembly transferred administration of the T&M Vehicle, Trailer, and Motorcycle Dealer Advertising Practices and Enforcement Regulations from the DMV to the Motor Vehicle Dealer Board (MVDB).

**Purpose:** The intent of this regulatory action is to repeal 24VAC20-110 as DMV no longer has authority to regulate T&M vehicle, trailer, and motorcycle dealer advertising practices. Repeal of the regulation does not affect the public health, safety, or welfare.

**Rationale for Using Fast-Track Rulemaking Process:** This regulatory action is in compliance with Chapter 615 of the 2015 Acts of Assembly, which transferred authority to regulate T&M T&M vehicle, trailer, and motorcycle dealer advertising practices from the DMV to the MVDB, and therefore the action is deemed to be noncontroversial.

**Substance:** The amendments repeal 24VAC20-110 in entirety since the administration of T&M vehicle, trailer, and motorcycle dealer advertising practices was transferred to the MVDB in 2015.

**Issues:** There are no disadvantages to the public or to the department. The advantage to the public, agency, and Commonwealth is that this regulatory change eliminates obsolete language from the Virginia Administrative Code.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Motor Vehicles (DMV) proposes to repeal 24VAC20-110 T&M Vehicle, Trailer, and Motorcycle Dealer Advertising Practices and Enforcement Regulations, since all motor vehicle dealer advertising practices are now regulated by the Motor Vehicle Dealer Board (MVDB.)

Background. Chapter 615 of the 2015 Acts of Assembly transferred the administration of 24VAC20-110 from DMV to MVDB.<sup>1</sup> MVDB's current regulations include a chapter on advertising practices for motor vehicle dealers in general, including dealers of T&M (recreation) vehicles, trailers and motorcycles.<sup>2</sup>

Estimated Benefits and Costs. The proposed repeal does not introduce any additional costs to motor vehicle dealers or consumers. Readers of the regulations may benefit from greater clarity since all rules and requirements pertaining to advertising by motor vehicle dealers would now be contained in the same chapter.

Businesses and Other Entities Affected. Readers of the regulations may be affected by gaining greater clarity. The proposed repeal does not appear to introduce any new costs for businesses or other entities.

Small Businesses<sup>3</sup> Affected. The proposed repeal would not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities<sup>4</sup> Affected.<sup>5</sup> The proposed repeal neither disproportionately affects any specific localities nor introduces new costs for local governments.

Projected Impact on Employment. The proposed repeal is unlikely to cause any changes to total employment.

Effects on the Use and Value of Private Property. The proposed repeal is unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

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<sup>1</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?151 ful HB2189>

<sup>2</sup>See 24 VAC 22-30 Motor Vehicle Dealer Advertising Practices and Enforcement Regulations <https://law.lis.virginia.gov/admincode/title24/agency22/chapter30/>

<sup>3</sup>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."

<sup>4</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>5</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Motor Vehicles concurs with the economic impact analysis conducted by the Virginia Department of Planning and Budget.

**Summary:**

*Pursuant to Chapter 615 of the 2015 Acts of Assembly, which transferred administration of T&M vehicle, trailer, and motorcycle dealer advertising practices from the Department of Motor Vehicles to the Motor Vehicle Dealer Board, the amendments repeal Virginia Motor Vehicle Rental Taxes and Fees Rules and Regulations (24VAC20-110).*

VA.R. Doc. No. R21-6225; Filed March 29, 2021, 10:55 a.m.

**COMMONWEALTH TRANSPORTATION BOARD****Fast-Track Regulation**

**Title of Regulation:** 24VAC30-11. Public Participation Guidelines (amending 24VAC30-11-50).

**Statutory Authority:** §§ 2.2-4007.02 and 33.2-210 of the Code of Virginia.

**Public Hearing Information:** No public hearing in currently scheduled.

**Public Comment Deadline:** May 26, 2021.

**Effective Date:** June 11, 2021.

**Agency Contact:** JoAnne P. Maxwell, Director, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

**Basis:** Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. Chapter 795 of the 2012 Acts of Assembly provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative. The Commonwealth Transportation Board is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the Code of Virginia.

**Purpose:** This regulatory change is intended to bring the public participation guidelines into conformance with state code and model guidelines development by the Department of Planning and Budget. The change clarifies that public commenters may be represented by counsel or other representatives. Public participation is an integral part in the adoption of regulations that affect the public's health, safety, and welfare. This change will support public participation in the board's regulatory processes.

**Rationale:** As this change is intended to update the regulation to conform with statute it is expected to be noncontroversial, and the fast-track rulemaking process is appropriate.

**Substance:** The current action will amend 24VAC30-11-50 to allow for interested persons to be accompanied by and represented by counsel or other representative when

submitting data, views, and information to an agency during the promulgation of regulations.

**Issues:** This change clarifies language in the public participation guidelines stating that individuals may have counsel or other representatives represent them during regulatory processes. This will provide added assurance to those wishing to comment that they may be represented by counsel or others and have their views heard. There are no disadvantages to the public or the Commonwealth as a result of this change.

**Department of Planning and Budget's Economic Impact Analysis.**

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly (Chapter 795),<sup>1</sup> the Commonwealth Transportation Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

Background. Chapter 795 added to Code of Virginia § 2.2-4007.02. "Public participation guidelines" that persons interested in submitting data, views, and arguments, either orally or in writing, to the agency also be afforded an opportunity to be accompanied by and represented by counsel or other representative.

The current regulation Public Participation Guidelines states that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Estimated Benefits and Costs. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation would not change the law in effect, but would be beneficial in that it would inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Other Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes. It would particularly affect those who are interested in being accompanied by and represented by counsel or other representative, and were not previously aware of this right. The proposal does not produce cost.

Localities<sup>2</sup> Affected.<sup>3</sup> The proposed amendment applies statewide. No locality would be particularly affected. The proposed amendment does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to affect total employment.

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Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property. The proposed amendment does not affect real estate development costs.

Adverse Effect on Small Businesses.<sup>4</sup> The proposed amendment does not adversely affect small businesses.

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<sup>1</sup>See [http://leg1.state.va.us/cgi-bin/legp504.exe?121 ful CHAP0795 hil](http://leg1.state.va.us/cgi-bin/legp504.exe?121%20ful%20CHAP0795%20hil)

<sup>2</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>3</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>4</sup>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."

**Agency's Response to Economic Impact Analysis:** The agency agrees with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.*

**24VAC30-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R21-6088; Filed March 29, 2021, 3:46 p.m.

**Fast-Track Regulation**

**Title of Regulation:** **24VAC30-160. Rules and Regulations to Comply with the Setoff Debt Collection Act (repealing 24VAC30-160-10 through 24VAC30-160-90).**

**Statutory Authority:** §§ 33.2-215 and 58.1-526 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 26, 2021.

**Effective Date:** June 11, 2021.

**Agency Contact:** Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23235, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

**Basis:** Section 33.2-210 of the Code of Virginia authorizes the Commonwealth Transportation Board (CTB) to develop regulations relating to traffic and the use of systems of state highways. The CTB promulgated the Rules and Regulations to Comply with the Setoff Debt Collection Act (24VAC30-160) to comply with the Setoff Debt Collection Act.

**Purpose:** The Commonwealth Transportation Board originally adopted the regulation in 1984, and the regulation has not been amended since. However, all of the substantive portions that affect citizens are duplicative of provisions in the Setoff Debt Collection Act. Keeping the current administrative sections would be inefficient, confusing, and duplicative. VDOT currently is the only agency that has regulations regarding the

Setoff Debt Collection Act. Since the Setoff Debt Collections Act describes the process sufficiently, there is no longer a need for 24VAC30-160. The repeal of the regulation will have no practical effect on public health, safety, or welfare.

**Rationale for Using Fast-Track Rulemaking Process:** The decision to repeal the regulation was made after a periodic review, pursuant to § 2.2-4007.1 of the Code of Virginia and Executive Order 14 (2018). All of the substantive portions of the regulation that affect citizens are duplicative of provisions in the Setoff Debt Collection Act, therefore the action is noncontroversial.

**Substance:** The current action will repeal 24VAC30-160.

**Issues:** The repeal will not substantively affect the public or the department because the regulation is duplicative of substantive provisions in the Setoff Debt Collection Act. There are no disadvantages to the public or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Commonwealth Transportation Board (Board) proposes to repeal 24VAC30-160 Rules and Regulations to Comply with the Setoff Debt Collection Act.

Background. The Virginia Debt Collection Act, § 2.2-4800, et seq., states that "Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable."<sup>2</sup> The Setoff Debt Collection Act, § 58.1-520, et seq., establishes a method by which state agencies pursue collection via the withholding of state or local income tax refunds; § 58.1-525 of the Setoff Debt Collection Act provides for the impacted party to have the opportunity to give written notice of intent to contest the validity of the claim. Section 58.1-526 states that: If a claimant agency "receives written application of the debtor's intention to contest at a hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established by that agency under its operating statutes to determine whether the claim is valid. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made."

Unlike most agencies, in 1984 the Department of Transportation (VDOT) promulgated a regulation pertaining to its rules and procedures in relation to setoff debt collection: 24VAC30-160, Rules and Regulations to Comply with the Setoff Debt Collection Act. Most of the regulation concerns hearings when the impacted party contests VDOT's claim. All parts of the regulation that are not duplicative of the Act concern such hearings. VDOT has a manual that covers debt setoff hearing procedures. The agency has indicated that it would send a copy of the manual to the debtor as an attachment to the acknowledgment letter that is sent when a written application of the debtor's intention to contest a claim is received.

In 2017, VDOT collected \$371,929.62 against delinquent debts through setoff of tax return funds. In 2018, the agency collected \$113,320.37. Through October 21, VDOT has collected \$169,773.04 for the current year.<sup>3</sup>

**Estimated Benefits and Costs.** To the degree that regulations confer broader protections to the regulated community and provide greater transparency than internal policies and procedures, then the proposed repeal of the regulation has the potential to impact the public. However, in this instance, other than hearings, all rules and procedures concerning setoff debt collection are set forth within statutes. Specifics concerning hearings are covered in the manual that would be provided to affected individuals and entities.

**Businesses and Other Entities Affected.** The proposal affects individuals and entities who in VDOT's understanding owe debt to VDOT. The proposal does not substantively produce cost.

**Localities<sup>4</sup> Affected.<sup>5</sup>** The proposal does not disproportionately affect particular localities. The proposal does not introduce costs for local governments.

**Projected Impact on Employment.** The proposal is unlikely to affect total employment.

**Effects on the Use and Value of Private Property.** The proposal does not substantively affect the use and value of private property or real estate development costs.

**Adverse Effect on Small Businesses.<sup>6</sup>** The proposed amendment does not adversely affect small businesses.

<sup>1</sup>Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

<sup>2</sup>See § 2.2-4806 specifically: <https://law.lis.virginia.gov/vacode/title2.2/chapter48/section2.2-4806/>

<sup>3</sup>Source: VDOT

<sup>4</sup>"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>5</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>6</sup>Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "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."

**Agency's Response to Economic Impact Analysis:** The agency agrees with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The amendments repeal Rules and Regulations to Comply with the Setoff Debt Collection Act (24VAC30-160). The regulation is unnecessary as all of the substantive portions of the regulation that affect citizens are duplicative of provisions in the Setoff Debt Collection Act (§ 58.1-520, et seq. of the Code of Virginia).*

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# GUIDANCE DOCUMENTS

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## 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.

### STATE BOARD OF EDUCATION

Title of Document: [Guidelines for the Consideration of the Need for Age and Developmentally Appropriate Instruction.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

Agency Contact: Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-8079, or email [samantha.hollins@doe.virginia.gov](mailto:samantha.hollins@doe.virginia.gov).

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Title of Document: [Virginia Social Emotional Learning Standards.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

Agency Contact: Maribel Saimre, Director, Office of Student Services, Department of Education, 101 North 14th Street Richmond, VA 23219, telephone (804) 225-2818, or email [maribel.saimre@doe.virginia.gov](mailto:maribel.saimre@doe.virginia.gov).

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Title of Document: [Definition of Students with Limited or Interrupted Formal Education.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

Agency Contact: Michael Bolling, Assistant Superintendent for Learning and Innovation, Department of Education, 101 North 14th Street Richmond, VA 23219, telephone (804) 225-2034, or email [michael.bolling@doe.virginia.gov](mailto:michael.bolling@doe.virginia.gov).

### BOARD OF PHARMACY

Titles of Documents: [Pharmacist-In-Charge Responsibilities.](#)

[Pharmacy Interns as Pharmacy Technicians; Pharmacy Technician Ratio.](#)

[Proximity of a School or Daycare to a Cannabis Dispensing Facility.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

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

### BOARD OF PSYCHOLOGY

Title of Document: [Preparing for Expected and Unexpected Departures from the Operation of a Psychological Practice.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

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

### STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual Chapter A, Practice Foundations.](#)

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations, and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email [nikki.clark@dss.virginia.gov](mailto:nikki.clark@dss.virginia.gov).

## STATE WATER CONTROL BOARD

Title of Document: [2022 Water Quality Assessment Guidance Manual](#).

Public Comment Deadline: May 26, 2021.

Effective Date: May 27, 2021.

Agency Contact: Amanda Shaver, Department of Environmental Quality, 1100 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4181, or email [amanda.shaver@deq.virginia.gov](mailto:amanda.shaver@deq.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Michaux Solar Center LLC Notice of Intent for Small Renewable Energy Project (Solar) - Pittsylvania and Henry Counties

Michaux Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Pittsylvania and Henry Counties. Michaux Solar LLC will be located in the southeast corner of Henry County and the southwest corner of Pittsylvania County adjacent to Michaux Road and the North Carolina state border. Latitude and longitude coordinates are 36.553241, -79.718679. The estimated fenced-in project area will be 600 acres, and the maximum generating capacity of the project in alternating current will be 50 megawatts. The solar facility will consist of approximately 104,000 photovoltaic modules that will be supported by 17 separate metal skids supported by driven piles.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

### Solar VA 2019 LLC Notice of Intent for Small Renewable Energy Project (Solar) - Westmoreland County

Solar VA 2019 LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Westmoreland County. Solar VA 2019 LLC will be located approximately 0.2 miles northeast of Kings Highway (State Route 3) and approximately 0.3 miles east of Leedstown Road, approximately 2.4 miles west of the Potomac River. Latitude and longitude coordinates are 38.185139, -76.987864. The estimated fenced-in project area will be 125 acres, and the maximum generating capacity of the project in alternating current will be 20 megawatts.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Draft Addiction and Recovery Treatment Services Appendix B Provider Manual

The draft Addiction and Recovery Treatment Services Appendix B Provider Manual is now available on the Department of Medical Assistance Services website at

<https://www.dmas.virginia.gov/#/manualdraft> for public comment until May 2, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

### Draft Hospital Appendix E Provider Manual

The draft Hospital Appendix E Provider Manual is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until May 2, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

### Draft Hospital Manual Chapter V

The draft Hospital Manual Chapter V is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until May 2, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

### Draft Physician/Practitioner Provider Manual Chapter V

The draft Physician/Practitioner Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until May 2, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for Chemung Contracting Corporation

An enforcement action has been proposed for Chemung Contracting Corporation for violations of the State Water Control Law and regulations at the Chemung Contracting Corporation Facility located in Gainesville, Virginia. The State

Water Control Board proposes to issue a consent order to resolve violations associated with the Chemung Contracting Corporation Facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person will accept comments by email or by postal mail from April 27, 2021, through May 27, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@deq.virginia.gov).

### **Proposed Enforcement Action for Leisure Capital Corporation**

An enforcement action has been proposed for Leisure Capital Corporation for violations of the State Water Control Law and regulations associated with the Shenandoah Crossing Sewage Treatment Plant, located at 174 Horseshoe Circle, Gordonsville, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with Shenandoah Crossing Sewage Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person will accept comments by email or postal mail from April 27, 2021, through May 27, 2021.

Contact Information: Stephanie Bellotti, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [stephanie.bellotti@deq.virginia.gov](mailto:stephanie.bellotti@deq.virginia.gov).

### **Proposed Enforcement Action for Snow Mountain Properties Inc.**

An enforcement action has been proposed for Snow Mountain Properties Inc. for violations of the State Water Control Law in Carroll 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](http://www.deq.virginia.gov). The staff contact person will accept comments by email or postal mail from April 27, 2021, through May 27, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

## **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](mailto: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/cumulatab.pdf>.

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# ERRATA

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## BOARD OF NURSING

Title of Regulation: **18VAC90-26. Regulations for Nurse Aide Education Programs.**

Publication: 37:17 VA.R. 2445-2453 April 12, 2021.

Correction to Final Regulation:

Page 2448-2449, 18VAC90-26-30, column 1, at "A. Program coordinator." remove subsections A through G

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