



VIRGINIA

REGISTER OF REGULATIONS

VOL. 31 ISS. 4

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 20, 2014

TABLE OF CONTENTS

Register Information Page	195
Publication Schedule and Deadlines	196
Petitions for Rulemaking	197
Notices of Intended Regulatory Action	198
Regulations	199
2VAC5-585. Retail Food Establishment Regulations (Proposed)	199
4VAC20-490. Pertaining to Sharks (Final)	261
4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (Final)	263
8VAC105-11. Parking and Traffic (Final)	264
9VAC5-170. Regulation for General Administration (Rev. F14) (Final)	265
10VAC5-120. Money Order Sellers and Money Transmitters (Proposed)	267
14VAC5-260. Rules Governing Insurance Holding Companies (Proposed)	271
18VAC76-20. Regulations Governing the Prescription Monitoring Program (Final)	280
Governor	282
General Notices/Errata	285

VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

October 2014 through December 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 (Tuesday)	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 22, 2014 (Monday)	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015
31:15	March 4, 2015	March 23, 2015
31:16	March 18, 2015	April 6, 2015
31:17	April 1, 2015	April 20, 2015
31:18	April 15, 2015	May 4, 2015
31:19	April 29, 2015	May 18, 2015
31:20	May 13, 2015	June 1, 2015
31:21	May 27, 2015	June 15, 2015
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
31:24	July 8, 2015	July 27, 2015
31:25	July 22, 2015	August 10, 2015
31:26	August 5, 2015	August 24, 2015
32:1	August 19, 2015	September 7, 2015
32:2	September 2, 2015	September 21, 2015
32:3	September 16, 2015	October 5, 2015
32:4	September 30, 2015	October 19, 2015
32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 11, 2015	November 30, 2015
32:8	November 24, 2015 (Tuesday)	December 14, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

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

Name of Petitioner: Gerard Lawson.

Nature of Petitioner's Request: To require graduation from a clinically focused counselor preparation program accredited by CACREP or an approved affiliate of CACREP that includes a minimum of 60 semester credits (90 quarter hour credits) of curricular experiences and a practicum of at least 100 hours and an internship of at least 600 hours. Allow a grandfathering of programs that meet current requirements for seven years from the effective date of the regulations.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on September 19, 2014, the board discussed the request to amend regulations and all comment received. The board voted to submit a Notice of Intended Regulatory Action (NOIRA) to initiate rulemaking and receive further information and comment. Once the NOIRA is approved by the Governor, it will be published and a 30-day comment period will be opened.

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

VA.R. Doc. No. R14-36; Filed September 22, 2014, 11:42 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Initial Agency Notice

Title of Regulation: 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Bertha Simmons.

Nature of Petitioner's Request: Requesting that regulations be amended to allow all of the continuing education hours to be obtained through self-study or Internet.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Register of Regulations and posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. Comment is requested from interested parties until November 19, 2014. The petition and

copies of all comment will be considered by the Board of Long-Term Care Administrators at its meeting scheduled for December 16, 2014. After considering the request and reviewing the comments, the board will decide whether to initiate rulemaking or deny the petition and retain the current requirements.

Public Comment Deadline: November 19, 2014.

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

VA.R. Doc. No. R15-08; Filed September 24, 2014, 11:33 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER 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 Water Control Board intends to consider amending **9VAC25-110, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day**. The purpose of the proposed action is to amend and reissue the existing general permit that expires on August 1, 2016, to continue to make it available after that date. The general permit will establish limitations and monitoring requirements for point source discharges of treated domestic sewage to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day. In addition, a periodic review and a small business impact review of this regulation will be conducted as part of this regulatory action.

For purposes of the periodic review, public comment is sought on any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare and is designed to achieve its intended objective in the most efficient, cost-effective manner; (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.

For purposes of the small business impact review, public comment is also requested on the components of this review that include: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: November 19, 2014.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, TTY (804) 698-4021, or email burton.tuxford@deq.virginia.gov.

V.A.R. Doc. No. R15-4177; Filed September 23, 2014, 2:19 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the Board of Agriculture and Consumer Services when promulgating regulations pursuant to § 3.2-5121 of the Code of Virginia, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code. Pursuant to § 3.2-5121 C, the regulatory action is exempt from portions of the Administrative Process Act provided the State Board of Health adopts the same version and both agencies' regulations have the same effective date.

Title of Regulation: **2VAC5-585. Retail Food Establishment Regulations (amending 2VAC5-585-40 through 2VAC5-585-100, 2VAC5-585-130 through 2VAC5-585-200, 2VAC5-585-220, 2VAC5-585-230, 2VAC5-585-250 through 2VAC5-585-410, 2VAC5-585-430 through 2VAC5-585-600, 2VAC5-585-620, 2VAC5-585-630, 2VAC5-585-650 through 2VAC5-585-680, 2VAC5-585-700 through 2VAC5-585-765, 2VAC5-585-780 through 2VAC5-585-870, 2VAC5-585-900, 2VAC5-585-930 through 2VAC5-585-960, 2VAC5-585-980, 2VAC5-585-990, 2VAC5-585-1000, 2VAC5-585-1070, 2VAC5-585-1090, 2VAC5-585-1100, 2VAC5-585-1110, 2VAC5-585-1120, 2VAC5-585-1180, 2VAC5-585-1190, 2VAC5-585-1230, 2VAC5-585-1240, 2VAC5-585-1300 through 2VAC5-585-1330, 2VAC5-585-1350, 2VAC5-585-1360, 2VAC5-585-1370, 2VAC5-585-1450, 2VAC5-585-1460, 2VAC5-585-1500 through 2VAC5-585-1570, 2VAC5-585-1630 through 2VAC5-585-1680, 2VAC5-585-1700, 2VAC5-585-1720, 2VAC5-585-1730, 2VAC5-585-1740, 2VAC5-585-1770, 2VAC5-585-1780, 2VAC5-585-1790, 2VAC5-585-1810, 2VAC5-585-1890, 2VAC5-585-1900, 2VAC5-585-1920, 2VAC5-585-1960, 2VAC5-585-2000, 2VAC5-585-2010, 2VAC5-585-2040 through 2VAC5-585-2100, 2VAC5-585-2120 through 2VAC5-585-2210, 2VAC5-585-2230 through 2VAC5-585-2280, 2VAC5-585-2310 through 2VAC5-585-2360, 2VAC5-585-2420, 2VAC5-585-2430, 2VAC5-585-2460, 2VAC5-585-2490, 2VAC5-585-2520, 2VAC5-585-2540, 2VAC5-585-2550, 2VAC5-585-2570, 2VAC5-585-2840, 2VAC5-585-2930, 2VAC5-585-2990 through 2VAC5-585-3040, 2VAC5-585-3070, 2VAC5-585-3130, 2VAC5-585-3150,**

2VAC5-585-3210, 2VAC5-585-3240, 2VAC5-585-3250, 2VAC5-585-3270, 2VAC5-585-3310 through 2VAC5-585-3480, 2VAC5-585-3500, 2VAC5-585-3510, 2VAC5-585-3541, 2VAC5-585-3542, 2VAC5-585-3600, 2VAC5-585-3620, 2VAC5-585-3630, 2VAC5-585-3800 through 2VAC5-585-3840, 2VAC5-585-3860, 2VAC5-585-3910, 2VAC5-585-3930, 2VAC5-585-3940, 2VAC5-585-3950, 2VAC5-585-4040, 2VAC5-585-4050, 2VAC5-585-4060; adding 2VAC5-585-55, 2VAC5-585-57, 2VAC5-585-125, 2VAC5-585-725, 2VAC5-585-755, 2VAC5-585-1435, 2VAC5-585-1885, 2VAC5-585-2045, 2VAC5-585-2505, 2VAC5-585-2595, 2VAC5-585-3047, 2VAC5-585-3655, 2VAC5-585-3660; repealing 2VAC5-585-15, 2VAC5-585-1870).

Statutory Authority: § 3.2-5121 of the Code of Virginia.

Public Hearing Information:

December 11, 2014 - 10 a.m. - Virginia State Capitol, Senate Room 3, 1000 Bank Street, Richmond, VA 23219

Public Comment Deadline: December 19, 2014.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 786-8910, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia.

Section 3.2-5121 of the Code of Virginia provides the legal basis for the promulgation and modification of the Retail Food Establishment Regulations (2VAC5-585). Specifically, subsections B and C of § 3.2-5121 identify the authority and certain requirements for the expedited adoption of the U.S. Food and Drug Administration's Food Code. The authority is discretionary.

These amendments are also being proposed concurrently with adoption by the Virginia Department of Health (VDH) of the current 2013 FDA Food Code. Pursuant to § 3.2-5121 C of the Code of Virginia, this action is exempt from portions of the Administrative Process Act, provided VDH adopts the same version and both agencies' regulations have the same effective date. Both agencies are working toward that end.

Purpose: This proposed regulatory action is essential to the protection of the health and welfare of citizens in that it sets the necessary standards of operation for the retail segment of Virginia's food industry to (i) provide a system of prevention and overlapping safeguards designed to minimize foodborne

Regulations

illness; (ii) ensure employee health, industry manager knowledge, safe food, nontoxic and cleanable equipment, and acceptable levels of sanitation on food establishment premises; and (iii) promote fair dealings with the consumer. Additionally, 2VAC5-585-20 of the proposed regulation states, "The purpose of this regulation is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented."

The first goal of the regulation and the proposed amendments is to maintain a scientifically sound basis for regulation of the retail food industry. The proposed amendments are necessary to ensure appropriate measures that address emerging and ongoing food safety concerns that exist within an evolving food industry.

The second goal is to facilitate the shared responsibility of the food industry and the government in ensuring that food provided to the consumer is safe and does not become a vehicle in a disease outbreak or in the transmission of communicable disease. Foodborne disease in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. 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. Epidemiological outbreak data repeatedly identify five major risk factors related to employee behaviors and preparation practices in retail and food service establishments as contributing to foodborne illness. Those risk factors include (i) improper holding temperatures; (ii) inadequate cooking, such as undercooking raw eggs; (iii) contaminated equipment; (iv) food from unsafe sources; and (v) poor personal hygiene. The proposed amendments address controls for these risk factors. The regulation also provides the necessary guidance to the retail food industry relative to controlling risk factors and implementing appropriate intervention strategies.

The third goal of the proposed regulation is to ensure a regulatory approach that is uniform throughout the retail segment of Virginia's food industry by administering standards that are equivalent to those administered by Virginia Department of Health (VDH) in restaurants and food service establishments. This regulatory uniformity also extends throughout the nation as most states have adopted versions of these regulations.

Substance: Substantive changes are as follows:

Part I (2VAC5-585-10 through 2VAC5-585-40)

1. The term "Potentially Hazardous Food (Time/Temperature Control for Safety Food)" has been deleted and a universal change made throughout the regulation to replace it with the term "Time/Temperature Control for Safety Food" or "TCS."
2. "Cut leafy greens" has been added as a TCS food to the TCS food definition.

Part II (2VAC5-585-50 through 2VAC5-585-250)

1. Sections have been added to the Food Code that require at least one employee who supervises or has authority over food establishment operations to be a certified food protection manager (CFPM). Food establishments that pose minimal risk to contributing to foodborne illness may be exempt from the requirement to have a CFPM.
2. The revisions specify that CFPM certification must be obtained through the following programs approved by the Conference for Food Protection:
 - National Restaurant Association Solutions
 - National Registry of Food Safety Professionals
 - Prometric
 - 360 Training.
3. Employee training must now include food allergy awareness, in addition to food safety.
4. Nontyphoidal Salmonella is added as one of the reportable illnesses for action by the person in charge, and language is added to address employee health controls for the exclusion and restriction of nontyphoidal Salmonella, as well as the removal of exclusion and restriction from nontyphoidal Salmonella once clearance has been received.
5. Language has been added that requires the regulatory authority to verify that food establishment employees have been informed of their responsibility to report information to the person in charge regarding their health and illnesses that can be transmitted through food.
6. Language has been added that requires food establishments to mandate that all food employees sign a reporting agreement form and maintain the signed forms on site. The person in charge must be able to provide the regulatory authority access to the documentation.
7. A new section was added that requires a food establishment to have procedures in place for employees to follow when responding to vomitus or fecal matter discharge on surfaces in the establishment.

Part III (2VAC5-585-260 through 2VAC5-585-950)

1. Existing language that requires a mushroom identification expert to identify all wild mushrooms sold in retail establishments has been removed. New language has been added that recognizes a regulatory authority's ability to approve the sale of wild mushrooms within a food establishment.
2. 2VAC5-585-330, addressing game animals, has been amended to require either voluntary inspection by the state regulatory agency that has animal health jurisdiction or voluntary inspection by U.S. Department of Agriculture (USDA) for game animals that are commercially raised for food and sold in retail food establishments.

3. Regulation to allow bare hand contact with ready-to-eat food has been amended if the ingredient is added to a food that will be cooked to temperatures that comply with 2VAC5-585-700 A and B, with 2VAC5-585-710, or is cooked to a minimum temperature of 145°F.

4. "Mechanically tenderized" meats have been added to the list of foods that should be cooked to heat all parts of the food to 155°F (68°C) for 15 seconds.

5. New subdivision D 2 has been added to 2VAC5-585-700, prohibiting the sale of undercooked, comminuted meat from a children's menu.

6. New section, 2VAC5-585-725, Noncontinuous cooking of raw animal foods, allows for partially cooking raw animal foods with prior approval from the regulatory authority and written procedures maintained at the firm.

Part IV (2VAC5-585-960 through 2VAC5-585-2040)

2VAC5-585-1520 B has been added to require the use of temperature sensitive tape in mechanical warewashing operations.

Part VIII (2VAC5-585-3510 through 2VAC5-585-4060)

1. Added language requires the correction of a priority item within 72 hours and correction of a priority foundation item or Hazard Analysis and Critical Control Points (HACCP) plan deviation within 10 days.

2. New section, 2VAC5-585-3655, Responsibilities of the department, requires the department to provide to the operator a copy of the regulations at the time of the initial inspection, so that the operator is notified of the compliance requirements and the conditions of retention. Failure of the department to provide a copy of the regulations does not prevent the department from taking action or seeking remedies if the operator fails to comply.

3. New section, 2VAC5-585-3660, Responsibilities of the operator, requires the establishment owner or operator to do the following 10 things:

- a. Comply with the regulation;
- b. If required under 2VAC5-585-3620 to operate under a HACCP plan, comply with the plan as specified;
- c. Immediately contact the department to report an illness of a food employee;
- d. Immediately discontinue operations and notify the department if an imminent health hazard may exist;
- e. Allow authorized representatives of the commissioner access to the food establishment;
- f. Replace existing facilities and equipment as needed;
- g. Comply with directives of the department including time frames for corrective actions;
- h. Accept notices issued and served by the department according to law;
- i. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply

with Retail Food Establishment Regulations (2VAC5-585); and

j. Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers.

The following items have been added to the regulation in relevant areas to designate the criticality of certain regulatory requirements:

1. The term "critical item" has been changed to "priority item." "Priority item" means a provision whose application contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury, and no other provision exists 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 a superscript P^(P).

2. The term "priority foundation item" has been added. "Priority foundation item" means a provision 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 recordkeeping, and labeling, and is denoted in this chapter with a superscript Pf^(Pf).

3. The term "core item" has been added. "Core item" means a provision 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, facilities or structures, equipment design, or general maintenance. Any item that is not designated as a "priority" or "priority foundation" item is a "core item."

Issues: Public: The proposed amendments are intended to further enhance the safety of food products sold through the retail segment of the food industry. The proposed amendments are based on the most current sound science available. Consumers purchasing food products from retail establishments should develop greater confidence in the safety of the retail food supply. There do not appear to be any disadvantages to the public.

Regulated entities or businesses: The advantages of well-written, scientifically sound, and up-to-date retail food safety requirements have long been recognized by industry and government officials. Industry conformance with acceptable procedures and practices is far more likely where regulatory officials "speak with one voice" about what is required to protect public health, why it is important, and which

Regulations

alternatives for compliance may be accepted. If both the Virginia Department of Agriculture and Consumer Services and Virginia Department of Health administer equivalent food safety requirements in their respective portion of the retail segment of the food industry, Virginia's regulatory officials will be "speaking with one voice," greatly enhancing the uniform application of retail standards and requirements. This will in turn prevent the retail food industry from adhering to separate standards and will ultimately eliminate confusion and additional costs relative to compliance with two different regulations and will further enhance the industry's ability to comply with existing food safety standards. The standards and proposed amendments can also be applied by the retail segment of the food industry in training and quality assurance programs.

The requirement that each retail food establishment have a certified food protection manager may pose an initial disadvantage in that it will require additional time, expense, and effort by the industry. However, the acquisition of an individual within each retail food establishment who is knowledgeable regarding food safety will provide an advantage to each establishment as taking additional steps to further ensure that food products produced and offered for sale should enhance consumer confidence and ultimately food product sales. The requirement to document the safety of alternate processes and to verify to the regulatory authority that necessary and critical information regarding public health has been disseminated to employees is necessary to ensure the safety of the food supply.

The agency and the Commonwealth: The advantage to the agency and the Commonwealth is that the proposed changes will further ensure the safety of the food supply. This will in turn engender a greater level of confidence by the public that both the agency and the Commonwealth are taking the necessary steps to provide an appropriate level of public health protection. This confidence in the food supply should ultimately enhance Virginia's economy via enhanced food product sales.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will update the food establishment regulations to be consistent with the Food and Drug Administration's (FDA's) most recent, 2013, Food Code.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. This regulation establishes minimum sanitary standards for retail food establishments such as supermarkets, grocery stores, and convenience stores. The current regulation is based on the FDA's 2005 Food Code and the 2007 Food Code Supplement. The existing regulation is being amended to be consistent with the most recent, 2013, FDA Food Code.

The proposed changes include 1) the addition of cut leafy greens to the list of foods that retail food establishments need to refrigerate in order to ensure that the product is safe to consume; 2) food establishments must have employees who are fully informed regarding food allergens and their dangers; 3) retail food establishment employees must be aware of their responsibility to inform management of any health or illness issues that might affect the safety of food products; 4) the firm must have procedures in place for addressing vomitus or fecal matter discharge on surfaces in the food establishment; 5) wild mushrooms cannot be sold unless the establishment has been approved to do so by the regulatory authority; 6) bare hand contact with ready-to-eat food ingredients is allowed in certain instances; 7) game animals that are sold must be raised, slaughtered, and processed under a voluntary inspection program that is conducted by the United States Department of Agriculture or the state agency that has jurisdiction over animal health; 8) the food establishment must discontinue operations and notify the Virginia Department of Agriculture and Consumer Services (VDACS) if an imminent health hazard exists at the establishment; 9) the firm must immediately contact the agency to report the illness of a food employee if the illness is of a nature that can be transmitted through food; 10) the firm must correct all priority item violations within 72 hours and all priority foundation item violations within 10 days; and 11) the food establishment must have at least one supervisor who is a certified food protection manager.¹

Many of the proposed changes simply refine and provide further clarity to existing regulations and are not expected to create a significant economic impact. The change that will have some economic impact is the requirement to have at least one supervisor who is a certified food protection manager.² The proposed language specifies that certification must be obtained through one of the programs approved by the Conference for Food Protection. The certification classes are offered online as well as at physical locations and take a few days to complete. Once all the classes are taken, the candidate takes the certification exam in a physical location. VDACS estimates the cost of the certification to be around \$100. In addition, there would be time and travel costs involved to take the classes and the certification exam. It is also estimated that 40% of the affected industry already meet this requirement. Thus, this proposed change will require additional time, expense and effort from some of the regulated grocery stores, supermarkets, and convenience stores.

On the other hand, this change will help ensure that an individual is in place at the establishment who fully understands food safety risk factors, practices, and principles. As a result, a reduction in food borne illnesses and a greater degree of public confidence in the safety of the food supply may be expected. According to VDACS, food borne disease in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The U.S.

Centers for Disease Control and Prevention estimates that food borne diseases cause approximately 48 million people to become ill, 128,000 hospitalizations, and 3,000 deaths in the United States each year.

Businesses and Entities Affected. The proposed amendments apply to retail food establishments such as grocery stores, supermarkets, convenience stores, etc. VDACS estimates that there are 9,578 retail food stores in Virginia, of which approximately 4,789 may be considered as small businesses.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed changes will require food store managers to take food safety classes and obtain certification from approved providers. Thus, an increase in the demand for services of food safety instructors may be expected. In addition, the food stores may have to schedule additional hours for other supervisors to fill in when the food safety supervisor is working toward the certification.

Effects on the Use and Value of Private Property. Food safety certification will impose costs on food stores. Consequently, their asset values may be negatively affected by a very small amount.

Small Businesses: Costs and Other Effects. Of the 9,578 retail food stores, 4,789 are estimated to be small businesses. The costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the adverse impact on small businesses while accomplishing the same goals.

Real Estate Development Costs. No impact on real estate development costs is expected.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

¹ These changes are also being proposed concurrently with the Virginia Department of Health's (VDH) adoption of the current 2013 FDA Food Code. Pursuant to § 3.2-5121(C) of the Code of Virginia, this action is exempt from portions of the Administrative Process Act, provided VDH adopts the same version and both agencies' regulations have the same effective date.

² Food establishments that pose minimal risk to contributing to food borne illness, such as a convenience store selling only prepackaged potato chips, may be exempt from this requirement.

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

Summary:

The Retail Food Establishment Regulations (2VAC5-585) establish minimum sanitary standards for retail food establishments such as supermarkets, grocery stores, and convenience stores. Those standards include the safe and sanitary maintenance, storage, operation, and use of equipment; the safe preparation, handling, protection, and preservation of food including necessary refrigeration or heating methods and procedures for vector and pest control; requirements for toilet and hand washing facilities for employees; requirements for appropriate lighting and ventilation; requirements for an approved water supply and sewage disposal system; personal hygiene standards for employees; and the appropriate use of precautions to prevent the transmission of communicable diseases.

The current regulation is based on the U.S. Food and Drug Administration (FDA) 2005 Food Code and the 2007 Food Code Supplement. The existing regulation is being amended to be consistent with the current 2013 FDA Food

Code. Many of the changes refine and provide further clarity to existing regulations.

Amendments include (i) retail food establishments must refrigerate cut leafy greens in order to ensure that the product is safe to consume; (ii) food establishments must have employees who are fully informed regarding food allergens and their dangers; (iii) retail food establishment employees must be aware of their responsibility to inform management of any health or illness issue that might affect the safety of food products; (iv) the food establishment must have procedures in place for addressing vomitus or fecal matter discharge on surfaces in the food establishment; (v) wild mushrooms cannot be sold unless the establishment has been approved to do so by the regulatory authority; (vi) bare hand contact with ready-to-eat food ingredients is allowed in certain instances; (vii) game animals that are sold must be raised, slaughtered, and processed under a voluntary inspection program that is conducted by the United States Department of Agriculture or the state agency that has animal health jurisdiction; (viii) the food establishment must discontinue operations and notify the Virginia Department of Agriculture and Consumer Services if an imminent health hazard exists at the establishment; (ix) the food establishment must immediately contact the agency to report a food employee illness due to nontyphoidal Salmonella if it is determined that the illness is of a nature that can be transmitted through food; (x) the food establishment must correct all priority item violations within 72 hours and all priority foundation item violations within 10 days; and (xi) the food establishment must have at least one supervisor who is a certified food protection manager.

2VAC5-585-15. Categories of requirements. (Repealed.)

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

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

Article 2 Definitions

2VAC5-585-40. Definitions.

The following words and terms when used in this ~~regulation~~ 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 for organizations that certify individuals. "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline, and grievance procedures; and test development and administration. "Accredited program" does not refer to training functions or educational programs.

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, 21 USC § 321(s) and 21 CFR ~~Part 170~~ 170.3(e)(1) or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, 21 USC § 321(t) and 21 CFR ~~Part 70~~ 70.3(f).

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

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

"Asymptomatic" means without obvious symptoms; not showing or producing ~~indication~~ 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 showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

" a_w " " 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 . 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.

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

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

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

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

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

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

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

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

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

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

"Commingle" means:

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

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. "Comminuted" includes (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.

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

"Conditional employee" means a potential food employee to whom a job offer is made, 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, 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 easily movable 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 item" means a provision of this regulation that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. "Critical item" is an item that is denoted in this regulation with an asterisk (*).~~

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

"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.

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

Regulations

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

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

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not ~~potentially hazardous 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, 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 operator, 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.

~~"Enterohemorrhagic *Escherichia coli* (EHEC)" means *E. coli*, which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesion in the intestine. EHEC is a subset of Shiga toxin producing *Escherichia coli* (STEC), whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga toxin producing *E. coli*.~~

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

"Equipment" means an article that is used in the operation of a food establishment. ~~"Equipment" includes, but is not limited to, items,~~ such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

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

"Exclude" means to prevent a person from working as a ~~food~~ 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; all mollusks, if such animal life is intended for human consumption; and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

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

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

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

1. An establishment that offers only prepackaged foods that are not ~~potentially hazardous~~ time/temperature control for safety foods;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A food processing plant, including those that are located on the premises of a food establishment;
4. A food warehouse;
5. A kitchen in a private home; or
6. A private home that receives catered or home delivered food.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and 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" as previously defined in this section.~~
~~establishment."~~

"Game animal" means an animal, the products of which are food, that is not classified as ~~cattle,~~ (i) livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR ~~Part 301, Definitions, as Poultry in 9 CFR Part 381, Poultry Products Inspection Regulations,~~ or as fish as previously defined in this section. 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 ~~such as ostrich, emu, and hea.~~

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

"Grade A standards" means the requirements of the ~~United States Public Health Service/FDA "Grade "A" Pasteurized Milk Ordinance (2003),~~ 2013 Revision, (U.S. Food and Drug Administration) and ~~"Grade A Condensed and Dry Milk Ordinance (1995)"~~ with which certain fluid and dry milk and milk products comply.

"HACCP ~~Plan"~~ 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.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical ~~profession~~ 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 (i) immunocompromised; preschool age children, or older adults; and (ii) obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is

Regulations

evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Injected" means ~~tenderizing a meat with deep penetration or injecting the meat such as with juices that may be referred to as "injecting," "pinning," or "stitch pumping."~~ During injection infectious or toxigenic microorganisms may be introduced from its surface to its interior. manipulating meat to which a solution has been introduced into its interior by processes such as "injecting," "pump marinating," or "stitch pumping."

"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 (i) any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil; or (ii) 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, Title II, Sec. 204~~) (Pub. L. No. 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 2VAC5-585-330 A 2 and 3 ~~and 4~~.

"Mechanically tenderized" means manipulating meat with deep penetration by processes that 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).

"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.

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

"Packaged" means bottled, canned, cartoned, ~~securely bagged, or securely packaged wrapped, whether packaged in a food establishment or a food processing plant.~~ "Packaged" does not include a wrapper, carry out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer. 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.

"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 indicate acidity and values between 7.0 and 14 indicate alkalinity. The value for pure distilled water is 7.0, 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, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
2. Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, ~~paints~~, and personal care items that may be deleterious to health; and
4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

~~"Potentially hazardous food (time/temperature control for safety food)" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation:~~

- ~~1. Potentially hazardous food (time/temperature control for safety 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 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 that results in mixtures that do not support pathogenic microorganism growth or toxin formation; and except as specified in subdivision 2 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.			
Aw values	pH values		
	4.6 or less	>4.6-5.6	>5.6
<0.92	non-PHF*/non-TCS food***	non-PHF/non-TCS food	non-PHF/non-TCS food
>0.92-0.95	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.95	non-PHF/non-TCS food	PA	PA
*PHF means Potentially Hazardous Food **TCS 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.

Aw values	pH values			
	<4.2	4.2-4.6	>4.6-5.0	>5.0
<0.88	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88-0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
>0.90-0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
>0.92	non-PHF/non-TCS food	PA	PA	PA
*PHF means Potentially Hazardous Food **TCS means Time/Temperature Control for Safety Food ***PA means Product Assessment required				

~~2. Potentially hazardous food (time/temperature control for safety 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;~~
- e. ~~A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non TCS food in Table A or B of this definition;~~
- d. ~~A food that is designated as Product Assessment required (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~~

Regulations

~~(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.~~

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, ~~or guineas~~), guineas, ratites, or squabs, whether live or dead, as defined in 9 CFR ~~Part 381, Poultry Products Inspection Regulations, 381.1~~ and any migratory waterfowl, game bird, ~~or squab such as pheasant, partridge, quail, grouse, or guineas, or pigeon or squab~~, whether live or dead, as defined in 9 CFR ~~Part 362 362.1, Voluntary Poultry Inspection Regulations. "Poultry" does not include ratites.~~

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the operator ~~or person in charge or the physical facility, its contents, and the land or property not described above if its facilities and contents are under the control of the operator and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation.~~

"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 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^p.

"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 recordkeeping, and labeling and is denoted in this chapter with a superscript Pf^{pf}.

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

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

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

1. (i) Is in a form that is edible without additional preparation to achieve food safety, as specified under ~~subsections A through C of 2VAC5-585-700 or A, B, and C;~~ 2VAC5-585-710; or 2VAC5-585-730; (ii) is a raw or

partially cooked animal food and the consumer is advised as specified under ~~subdivisions D 1 and D 2 of 2VAC5-585-700 D 1 and D 3;~~ or (iii) is prepared in accordance with a variance that is granted as specified under ~~subdivisions D 1 and D 3 of 2VAC5-585-700 D 4;~~ and

2. May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 2VAC5-585-700 or 2VAC5-585-710, or frozen as specified under 2VAC5-585-730;
2. Raw fruits and vegetables that are washed as specified under 2VAC5-585-510;
3. Fruits and vegetables that are cooked for hot holding, as specified under 2VAC5-585-720;
4. All ~~potentially hazardous food~~ time/temperature control for safety food that is cooked to the temperature and time required for the specific food under Article 4 (2VAC5-585-700 et seq.) of Part III of this ~~regulation~~ chapter and cooled as specified in 2VAC5-585-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;
7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
9. Food manufactured according to 21 CFR Part 113; ~~Thermally Processed Low Acid Foods Packaged in Hermetically Sealed Containers.~~

"Reduced oxygen packaging" means (i) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and (ii) a process as specified in clause (i) of 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, ~~such as sous vide~~;

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

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 psychotrophic pathogens; or

5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotrophic pathogens.

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

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

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

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

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

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

"Sanitization" means the application of cumulative heat or chemicals on cleaned ~~food contact~~ food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a 5-log 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.

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

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

"Shiga toxin-producing Escherichia coli" (~~STEC~~) or "STEC" means any E. coli capable of producing Shiga toxins (also called ~~verocytotoxins or "Shiga like" toxins~~) 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 ~~both O157 and non O157 E.coli.~~ Also see ~~Enterohemorrhagic Escherichia coli:~~ E. coli O157:H7, E. coli O157:NM, E. coli O26:H11, E. coli O145:NM, E. coli O103:H2, and E. coli O111: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.

Regulations

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

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

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

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach 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 nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

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

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

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

"Time/temperature control for safety food" or "TCS" (formerly "potentially hazardous food") means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation:

1. Time/temperature control for safety 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 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 means time/temperature control for safety food
**PA means product assessment required

2. Time/temperature control for safety 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 department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the department, a health hazard or nuisance will not result from the modification or waiver.

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

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

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

Part II Management and Personnel

Article I Supervision

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

~~The~~ A. Except as specified in subsection B of this section, the operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.^{Pf}

B. In a food establishment with two or more separately inspected departments that are the legal responsibility of the same operator and that are located on the same premises, the operator may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately inspected food establishment on the premises.^{Pf}

2VAC5-585-55. Certified food protection manager.

A. At least one employee who has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

B. This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation.

C. For purposes of enforcing this section, this requirement will take effect [insert date 18 months after the effective date of this chapter].

2VAC5-585-57. Food protection manager certification.

A. A person in charge who demonstrates knowledge by being a food protection manager and is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Standards for Accreditation of Food Protection Manager Certification Programs, April 2012, (Conference for Food Protection) is deemed to comply with subdivision 2 of 2VAC5-585-60.

B. A food establishment that has an employee who is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Standards for Accreditation of Food Protection Manager

Regulations

Certification Programs, April 2012, (Conference for Food Protection) is deemed to comply with 2VAC5-585-55.

2VAC5-585-60. Demonstration.*

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

1. Complying with this regulation chapter by having no violations of priority items during the current inspection;^{Pf}
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;^{Pf} or
3. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
 - a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;^{Pf}
 - 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;^{Pf}
 - c. Describing the symptoms associated with the diseases that are transmissible through food;^{Pf}
 - d. Explaining the significance of the relationship between maintaining the time and temperature of ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) food and the prevention of foodborne illness;^{Pf}
 - e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;^{Pf}
 - f. Stating the required food temperatures and times for safe cooking of ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) food including meat, poultry, eggs, and fish;^{Pf}
 - g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) food;^{Pf}
 - h. Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (1) Cross contamination;^{Pf}
 - (2) Hand contact with ready-to-eat foods;^{Pf}
 - (3) Handwashing;^{Pf} and
 - (4) Maintaining the food establishment in a clean condition and in good repair;^{Pf}

- 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;^{Pf}
- j. Explaining the relationship between food safety and providing equipment that is:
 - (1) Sufficient in number and capacity;^{Pf} and
 - (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;^{Pf}
- k. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;^{Pf}
- l. Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;^{Pf}
- 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;^{Pf}
- 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 regulation chapter;^{Pf}
- o. Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this regulation chapter, or an agreement between the department and the food establishment;^{Pf}
- p. Explaining the responsibilities, rights, and authorities assigned by this regulation chapter to the:
 - (1) Food employee;^{Pf}
 - (2) Conditional employee;^{Pf}
 - (3) Person in charge;^{Pf} and
 - ~~(3)~~ (4) Department;^{Pf} 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.^{Pf}

2VAC5-585-70. 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 2VAC5-585-2990;^{Pf}
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;^{Pf}

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

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

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;^{Pf}

6. Employees are verifying that foods delivered to the food establishment during nonoperating 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;^{Pf}

7. ~~Employees are properly cooking potentially hazardous food~~ 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 2VAC5-585-1180 and 2VAC5-585-1730 B;^{Pf}

7. ~~8.~~ Employees are using proper methods to rapidly cool potentially hazardous foods time/temperature control for safety foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;^{Pf}

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

9. ~~10.~~ 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;^{Pf}

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

11. ~~12.~~ Except when otherwise approved approval is obtained from the department as specified in 2VAC5-585-450 B 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;^{Pf}

~~12.~~ 13. Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; ~~and~~^{Pf}

~~13.~~ 14. 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 2VAC5-585-80. A;^{Pf} and

15. Written procedures and plans where specified by this chapter and as developed by the food establishment are maintained and implemented as required.^{Pf}

Article 2
Employee Health

2VAC5-585-80. Responsibility of the operator, person in charge, and conditional employees.*

A. The ~~person in charge~~ operator 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;^P
 - b. Diarrhea;^P
 - c. Jaundice;^P
 - d. Sore throat with fever;^P 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;^P
 - (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover;^P or
 - (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;^P
2. Has an illness diagnosed by a health practitioner due to:
 - a. Norovirus;^P
 - b. Hepatitis A virus;^P
 - c. Shigella spp.;^P
 - d. ~~Enterohemorrhagic or Shiga toxin-producing~~ Shiga toxin-producing Escherichia coli; ~~or~~^P
 - e. Salmonella Typhi;^P or
 - f. Nontyphoidal Salmonella;^P

Regulations

3. Had a previous illness, diagnosed by a health practitioner, within the past three months due to Salmonella Typhi, without having received antibiotic therapy, as determined by a health practitioner;^P

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:

- a. Norovirus within the past 48 hours of the last exposure;^P
- b. ~~Enterohemorrhagic or Shiga toxin-producing~~ Shiga toxin-producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;^P
- c. Salmonella Typhi within the past 14 days of the last exposure;^P or
- d. Hepatitis A virus within the past 30 days of the last exposure;^P 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, an individual diagnosed with an illness caused by:

- a. Norovirus within the past 48 hours of the last exposure;^P
- b. ~~Enterohemorrhagic or Shiga toxin-producing~~ Shiga toxin-producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;^P
- c. Salmonella Typhi within the past 14 days of the last exposure;^P or
- d. Hepatitis A virus within the past 30 days of the last exposure.^P

B. The person in charge shall notify the ~~regulatory authority~~ department when a food employee is:

1. Jaundiced;^{Pf} or
2. Diagnosed with an illness due to a pathogen as specified under subdivisions A 2 a through ~~e~~ f of this section.^{Pf}

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 2 a through e~~ A 1 through 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 2VAC5-585-100;^P 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 ~~9~~ 10 of 2VAC5-585-100.^P

D. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under ~~subdivision subsection A 4 through 5~~ of this section is:

1. Excluded as specified under subdivisions 1 through 3 and 4 a, 5 a, 6 a, ~~or 7, or 8~~ a of 2VAC5-585-90 and in compliance with the provisions specified under subdivisions 1 through ~~7~~ 8 of 2VAC5-585-100;^P or
2. Restricted as specified under ~~subdivisions~~ subdivision 4 b, 5 b, 6 b, ~~7 b, 8 b, or 9, or 10~~ of 2VAC5-585-90 and in compliance with the provisions specified under subdivisions 4 through ~~9~~ 10 of 2VAC5-585-100.^P

E. A food employee or conditional employee shall report to the person in charge the information as specified under subsection A of this section.^{Pf}

F. A food employee shall:

1. Comply with an exclusion as specified under subdivisions 1 through 3 and 4 a, 5 a, 6 a, ~~or 7, or 8~~ a of 2VAC5-585-90, and with the provisions specified under subdivisions 1 through ~~7~~ 8 of 2VAC5-585-100;^P or
2. Comply with a restriction ~~as~~ specified under ~~subdivisions~~ subdivision 4 b, 5 b, 6 b, ~~7 b, or 8, or 9 b~~ of 2VAC5-585-90 or under subdivision 8, 9, or 10 of 2VAC5-585-90 and comply with the provisions specified under ~~subdivisions~~ subdivisions 4 through ~~9~~ 10 of 2VAC5-585-100.^P

2VAC5-585-90. 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;^P or
 - b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., ~~or Enterohemorrhagic nontyphoidal Salmonella, or Shiga toxin-producing Escherichia~~ Shiga toxin-producing E. coli.^P
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;^P
 - 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;^P or

- c. Diagnosed with an infection from Hepatitis A virus without developing symptoms.^P
- 3. Exclude a food employee who is diagnosed with an infection from Salmonella Typhi, or reports a previous infection with Salmonella Typhi within the past three months as specified in 2VAC5-585-80 A 3.^P
- 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;^P or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.^P
- 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;^P or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.^P
- 6. If a food employee is diagnosed with an infection from ~~Enterohemorrhagic or Shiga toxin-producing~~ Shiga toxin-producing E. coli, and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population;^P or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.^P
- ~~7.~~ 7. If a food employee is diagnosed with an infection from nontyphoidal Salmonella and is asymptomatic, restrict the food employee who works in a food establishment serving a highly susceptible population or in a food establishment not serving a highly susceptible population.^P
- ~~7.~~ 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;^P or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.^P
- ~~8.~~ 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 2VAC5-585-80 A 1 e, restrict the food employee.^P
- ~~9.~~ 10. If a food employee is exposed to a foodborne pathogen as specified under 2VAC5-585-80 A 4 or 5,

restrict the food employee who works in a food establishment serving a highly susceptible population.^P

2VAC5-585-100. Removal 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 an infection from Hepatitis A virus or Salmonella Typhi:
 - a. Reinstate a food employee who was excluded as specified under subdivision 1 a of 2VAC5-585-90 if the food employee:
 - (1) Is asymptomatic for at least 24 hours;^P or
 - (2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.^P
 - b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under ~~subdivision 1 b of 2VAC5-585-90~~ subdivision 1 b of 2VAC5-585-90:
 - (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;^P 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.^P
 - c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision 1 b of 2VAC5-585-90:
 - (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;^P 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~~ 1 a or b, or ~~5~~ 1 a and c (1) of this section are met.^P
 - d. If a food employee was diagnosed with an infection from ~~Enterohemorrhagic or Shiga toxin-producing~~ Shiga toxin-producing Escherichia coli and excluded as specified under subdivision 1 b of 2VAC5-585-90:
 - (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;^P or

Regulations

(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.^P

e. If a food employee was diagnosed with an infection from nontyphoidal Salmonella and excluded as specified in subdivision 1 b of 2VAC5-585-90:

(1) Restrict the food employee, who is asymptomatic, for at least 30 days until conditions for reinstatement as specified in subdivision 7 a or b of this section are met;^P
or

(2) Retain the exclusion for the food employee, who is symptomatic, until conditions for reinstatement as specified in subdivision 7 a or b of this section are met.^P

2. Reinstatement a food employee who was excluded as specified under subdivision 2 of 2VAC5-585-90 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;^P

b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days;^P 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.^P

3. Reinstatement a food employee who was excluded as specified under subdivision 3 of 2VAC5-585-90 if:

a. The person in charge obtains approval from the ~~regulatory authority~~ department;^P and

b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from ~~S. Salmonella~~ Typhi infection.^P

4. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 4 a of 2VAC5-585-90, who was restricted under subdivision 4 b of 2VAC5-585-90 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;^P

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;^P 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.^P

5. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 5 a of 2VAC5-585-90 or who was restricted under subdivision 5 b of 2VAC5-585-90 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;^P and

(2) At least 24 hours apart;^P

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;^P 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.^P

6. Reinstatement a food employee who was excluded or restricted as specified under subdivision 1 b or 6 a of 2VAC5-585-90 or who was restricted under subdivision 6 b of 2VAC5-585-90 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 ~~Enterohemorrhagic or Shiga toxin producing~~ 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;^P and

(2) At least 24 hours apart;^P

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;^P or

c. The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the food employee was diagnosed.^P

7. Reinstatement a food employee who was excluded as specified under subdivision 1 b of 2VAC5-585-90 or who was restricted under subdivision 7 of 2VAC5-585-90 if the

person in charge obtains approval from the department^P 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 nontyphoidal Salmonella 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,^P and

(2) At least 24 hours apart;^P

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;^P 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.^P

~~7.~~ 8. Reinstatement of a food employee who was excluded or restricted as specified under subdivision ~~7~~ 8 a or b of 2VAC5-585-90 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;^P

b. Has at least one negative throat specimen culture for Streptococcus pyogenes infection;^P or

c. Is otherwise determined by a health practitioner to be free of Streptococcus pyogenes infection.^P

~~8.~~ 9. Reinstatement of a food employee who was restricted as specified under subdivision ~~8~~ 9 of 2VAC5-585-90 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;^P

b. An impermeable cover on the arm if the infected wound or pustular boil is on the arm;^P or

c. A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.^P

~~9.~~ 10. Reinstatement of a food employee who was restricted as specified under subdivision ~~9~~ 10 of 2VAC5-585-90 and was exposed to one of the following pathogens as specified under 2VAC5-585-80 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;^P or

(2) More than 48 hours have passed since the food employee's household contact became asymptomatic.^P

b. Shigella spp. or ~~Enterohemorrhagic~~ or ~~Shiga toxin producing~~ 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;^P or

(2) More than three calendar days have passed since the food employee's household contact became asymptomatic.^P

c. ~~S.~~ 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;^P or

(2) More than 14 calendar days have passed since the food employee's household contact became asymptomatic.^P

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;^P

(2) The food employee is immune to Hepatitis A virus infection because of vaccination against Hepatitis A;^P

(3) The food employee is immune to Hepatitis A virus infection because of IgG administration;^P

(4) More than 30 calendar days have passed since the last day the food employee was potentially exposed;^P

(5) More than 30 calendar days have passed since the food employee's household contact became jaundiced;^P 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 subdivision ~~9~~ 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;^P

(b) Proper handwashing procedures;^P and

(c) Protecting ready-to-eat food from contamination introduced by bare hand contact.^P

2VAC5-585-125. Clean-up of vomiting and diarrheal events.

A food establishment shall 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 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.^{Pf}

Regulations

Article 3 Personal Cleanliness

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

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

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

A. Except as specified in subsection D of this section, food employees shall clean their hands and exposed portions of their arms (~~or, including~~ surrogate prosthetic devices for hands or ~~arms~~) arms for at least 20 seconds, using a cleaning compound in a ~~lavatory~~ handwashing sink that is equipped as specified under 2VAC5-585-2190 and 2VAC5-585-3020 through 2VAC5-585-3045.^P

B. Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

1. Rinse under clean, running warm water;^P
2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;^P
3. Rub together vigorously for at least 10 to 15 seconds while:
 - a. Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure;^P and
 - b. Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;^P
4. Thoroughly rinsing under clean, running warm water;^P and
5. Immediately follow the cleaning procedure with thorough drying using a method as specified under 2VAC5-585-3030.^P

C. To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.

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

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

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

1. After touching bare human body parts ~~or hair~~ other than clean hands and clean, exposed portions of arms;^P
2. After using the toilet room;^P

3. After caring for or handling ~~support service animals or aquatic animals~~ as allowed under 2VAC5-585-250 B;^P

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

5. After handling soiled equipment or utensils;^P

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

7. When switching between working with raw ~~foods~~ food and working with ready-to-eat ~~foods~~ food;^P

8. Before donning gloves ~~for to initiate a task that involves working with food;~~^P and

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

~~10. After engaging in other activities that contaminate the hands.~~^P

2VAC5-585-170. Where to wash.

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

2VAC5-585-180. 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, (U.S. Food and Drug Administration) as an approved drug based on safety and effectiveness;^{Pf} or
- b. Have active antimicrobial ingredients that are listed in the FDA tentative final monograph for over the counter (OTC) Health-Care Antiseptic Drug Products, 59 FR 31402-31452 (June 17, 1994) as an antiseptic handwash;^{Pf} and

2. ~~Comply~~ Consist only of components that the intended use of each complies with one of the following:

- a. ~~Have components that are exempted from the requirement of being listed in the federal Food Additive regulations as specified in A threshold of regulation exemption under 21 CFR 170.39 Threshold of regulation for substances used in food contact articles; or~~^{Pf}
- b. ~~Comply with and be listed in:~~

(1) 21 CFR Part 178, Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with conditions of safe use; or

~~(2) 21 CFR Part 182, Substances Generally Recognized as Safe; 21 CFR Part 184, Direct Food Substances Affirmed as Generally Recognized as Safe; or 21 CFR Part 186, Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with food; and~~

b. 21 CFR Part 178, as regulated for use as a food additive with conditions of safe use;^{Pf}

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 Part 184, or 21 CFR Part 186; and in FDA's Inventory of GRAS Notices;^{Pf}

d. A prior sanction listed under 21 CFR Part 181;^{Pf} or

e. A food contact notification that is effective;^{Pf} and

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

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

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

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

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) mg/l (ppm) chlorine or above.^{Pf}

2VAC5-585-190. Maintenance of fingernails.

A. Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.^{Pf}

B. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial nails when working with exposed food.^{Pf}

2VAC5-585-200. Prohibition of jewelry.

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

Article 4
Hygienic Practices

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

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

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

1. The employee's hands;

2. The container; and

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

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

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

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

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

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

Part III
Food
Article 1
Characteristics

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

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

Article 2

Sources, Specifications, and Original Containers and Records

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

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

B. Food prepared in a private home may not be used or offered for human consumption in a food establishment unless the home kitchen is inspected ~~by the responsible and regulated by the food~~ regulatory authority that has jurisdiction over the private home.^P

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

~~D. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in~~

Regulations

~~2VAC5-585-700 D 1 may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 2VAC5-585-730, or frozen on the premises as specified under 2VAC5-585-730, and records are retained as specified under 2VAC5-585-740.~~

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

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

1. Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them to indicate that ~~they the steaks~~ meet the definition of whole-muscle, intact beef;^{Pf} or
2. Deemed acceptable by the department based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef;^{Pf} 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;^{Pf}
 - b. Prepared so they remain intact;^{Pf} and
 - c. If packaged for undercooking in a food establishment, ~~labeled to indicate that they meet the definition of whole-muscle, intact beef as specified in subdivision 1 of this subsection or identified as specified in subdivision 2 of this subsection.~~^{Pf}

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

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

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

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

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

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

2VAC5-585-295. Juice treated.

~~Pre packaged~~ Prepackaged juice shall:

1. Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120;^{Pf} and
2. Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR 120.24; ~~or.~~^P
- ~~3. Bear a warning label as specified in 21 CFR 101.17(g).~~

2VAC5-585-300. Fish.*

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

1. Commercially and legally caught or harvested;^P or
2. Approved for sale or service by a regulatory authority.^P

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

2VAC5-585-310. Molluscan shellfish.*

A. Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the ~~U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations, Part II, Sanitation of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision (NSSP) Guide for the Control of Molluscan Shellfish, 2011 Revision, (U.S. Food and Drug Administration).~~^P

B. Molluscan shellfish received in interstate commerce shall be from sources that are listed in the "Interstate Certified Shellfish Shippers List," updated monthly (U.S. Food and Drug Administration).^P

2VAC5-585-320. Wild mushrooms.*

A. Except as specified in subsection B of this section, mushroom species picked in the wild shall ~~be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert~~ not be offered for sale or service by a food establishment unless the food establishment has been approved to do so.^P

B. This section does not apply to:

1. Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
2. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

2VAC5-585-330. Game animals.*

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

1. Commercially raised for food and: ~~a. Raised~~ raised, slaughtered, and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction; or

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

~~c. Raised, slaughtered, and processed according to:~~

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

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

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

~~3.~~ 2. As allowed by law, for wild game animals that are live-caught:

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

b. Slaughtered and processed according to:

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

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

~~4.~~ 3. As allowed by law for field-dressed wild game animals under a routine inspection program that ensures the animals:

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

b. Are field-dressed and transported according to requirements specified by the agency that has animal

health jurisdiction and the agency that conducts the inspection program;^P and

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

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

2VAC5-585-340. Temperature.*

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

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

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

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

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

F. Upon receipt, ~~potentially hazardous~~ time/temperature control for safety food shall be free of evidence of previous temperature abuse.^{Pf}

2VAC5-585-350. Additives.*

Food may 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 or prior sanctioned substances that exceed amounts ~~allowed~~ specified in 21 CFR Parts 181-186; substances that exceed amounts specified in 9 CFR, ~~Subpart C, 424.21(b), Approval of Substances for Use in the Preparation of Products; or pesticide residues that exceed provisions specified in 40 CFR Part 185, Tolerances for Pesticides in Food.~~ 180^P

2VAC5-585-360. Shell eggs Eggs.*

Shell eggs Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56, effective July 20, 2000, AMS 56.200 et seq., administered by the (Agricultural Marketing Service of USDA).^P

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

A. Egg products shall be obtained pasteurized.^P

Regulations

B. Fluid and dry milk and milk products shall:

1. Be obtained pasteurized;^P and
2. Comply with Grade A standards as specified in law.^P

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

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

2VAC5-585-380. Package integrity.[Ⓢ]

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

2VAC5-585-390. Ice.[Ⓢ]

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

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

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

1. Name, address, and certification number of the shucker, packer, or repacker of the molluscan shellfish;^{Pf} and
2. The "sell by" or "best if used by" date for packages with a capacity of less than one-half gallon (~~1.87 L~~) (1.89 L) or the date shucked for packages with a capacity of one-half gallon (~~1.87 L~~) (1.89 L) or more.^{Pf}

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

2VAC5-585-410. Shellstock identification.[Ⓢ]

A. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the ~~harvester and each~~ dealer that deperates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (~~2007~~), 2011 Revision, (U.S. Food and Drug Administration) and that list: on each dealer's tag or label the following information in the following order:^{Pf}

- ~~1. Except as specified under subsection C of this section, on the harvester's tag or label, the following information in the following order:~~
 - a. ~~The harvester's identification number that is assigned by the shellfish control authority;~~
 - b. ~~The date of harvesting;~~

~~e. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;~~

~~d. The type and quantity of shellfish; and~~

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

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

~~a. 1. The dealer's name and address, and the certification number assigned by the shellfish control authority;^{Pf}~~

~~b. 2. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;^{Pf}~~

~~e. The same information as specified for a harvester's tag under subdivisions 1 b through d of this subsection; and 3. The harvest date, or if deperated, the date of deperation processing, or if wet stored, the original harvest date and the final harvest date, which is the date removed from wet storage;^{Pf}~~

~~4. If wet stored or deperated, the wet storage or deperation cycle or lot number. The wet storage lot number shall begin with the letter "w";^{Pf}~~

~~5. The harvest area including the initials of the state of harvest;^{Pf}~~

~~6. The type and quantity of shellstock;^{Pf}~~

~~7. The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS";^{Pf} and~~

~~8. A consumer advisory as specified in 2VAC5-585-930.~~

B. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subsection A of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d); ~~Subpart D, Specific Administrative Decisions Regarding Interstate Shipments and § 28.2-801 of the Code of Virginia.~~

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

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

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

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

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

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

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

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

D. Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:

1. The labeling information for the shellfish is on each consumer self-service container as specified under 2VAC5-585-400 and 2VAC5-585-900 A and B 1 through 5;
2. The labeling information as specified under 2VAC5-585-400 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;
3. The labeling information and dates specified under subdivision 2 of this subsection are maintained for 90 days; and
4. The shellfish are protected from contamination.

2VAC5-585-440. 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.^{Pf}

B. The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.^{Pf}

C. The identity of the source of ~~shellfish~~ 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:^{Pf}

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;^{Pf} 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 1 of this subsection;^{Pf} and
- b. Ensuring that shellstock from one tagged or labeled container are not 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.^{Pf}

Article 3

Protection from Contamination after Receiving

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

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

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

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

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 2VAC5-585-700 A and B or 2VAC5-585-710; 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 operator 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; and
 - b. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and

Regulations

maintained as specified under 2VAC5-585-2230, 2VAC5-585-2280, 2VAC5-585-2310, 2VAC5-585-3020, 2VAC5-585-3030, and 2VAC5-585-3045, 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 2VAC5-585-80, 2VAC5-585-90, and 2VAC5-585-100 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 2VAC5-585-80 A;

b. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 2VAC5-585-80 E and F; and

c. Documentation that the person in charge acknowledges the responsibilities as specified under 2VAC5-585-80 B, C, and D, 2VAC5-585-90, and 2VAC5-585-100;

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 2VAC5-585-140,

c. When to wash their hands as specified under 2VAC5-585-160,

d. Where to wash their hands as specified under 2VAC5-585-170,

e. Proper fingernail maintenance as specified under 2VAC5-585-190,

f. Prohibition of jewelry as specified under 2VAC5-585-200, and

g. Good hygienic practices as specified under 2VAC5-585-220 and 2VAC5-585-230;

5. Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 2VAC5-585-130, 2VAC5-585-140, 2VAC5-585-160, and 2VAC5-585-170 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 2VAC5-585-180,

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.

2VAC5-585-460. Preventing contamination when tasting.[Ⓜ]

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

2VAC5-585-470. Packaged and unpackaged food - separation, packaging, and segregation.[Ⓜ]

A. Food shall be protected from cross contamination by:

1. ~~Separating~~ Except as specified in subdivision 1 c 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; ~~and~~^P

b. Cooked ready-to-eat food;^P and

c. 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 ~~or arranging each type of food in equipment so that cross contamination of one type with another is prevented;~~ and^P

b. Arranging each type of food in equipment so that cross contamination of one type with another is prevented;^P and

c. Preparing each type of food at different times or in separate areas;^P

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

4. Except as specified in subdivision B 2 of 2VAC5-585-810 and subsection B of this section, storing the food in packages, covered containers, or wrappings;

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

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

7. Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 2VAC5-585-3150; and
8. Separating fruits and vegetables before they are washed as specified under 2VAC5-585-510 from ready-to-eat food.

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

1. Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;
2. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
3. Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;
4. Food being cooled as specified under 2VAC5-585-810 B 2; or
5. Shellstock.

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

~~Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food (in English and the common language of the food workers) except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified. Except for containers holding food that can be readily and unmistakably recognized, such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food.~~

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

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

1. Cooked as specified under ~~subdivisions~~ subdivision A 1 or 2 of 2VAC5-585-700;^P or
2. Included in 2VAC5-585-700 D.^P

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

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

1. Unsafe or unapproved food or color additives;^P and
2. Unsafe or unapproved levels of approved food and color additives.^P

B. A food employee may not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin ~~B1~~ B1;^P or
2. Except for grapes, serve or sell food specified in subdivision 1 of this subsection that is treated with sulfiting agents before receipt by the food establishment.^P

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

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

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

C. Devices used for onsite generation of chemicals meeting the requirements specified in 21 CFR 173.315 for the washing of raw, whole fruits and vegetables shall be used in accordance with the manufacturer's instructions.^{Pf}

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

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

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

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

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

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

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

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

Food shall only contact surfaces of:

Regulations

1. Equipment and utensils that are cleaned as specified under 2VAC5-585-1770 through ~~2VAC5-585-1870~~ 2VAC5-585-1860 and sanitized as specified under ~~2VAC5-585-1890~~ 2VAC5-585-1885 through 2VAC5-585-1900; ~~or~~^P

2. Single-service and single-use articles; ~~or~~^P

3. Linens, such as cloth napkins, as specified under 2VAC5-585-560, that are laundered as specified under 2VAC5-585-1910 through 2VAC5-585-1950.^P

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

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

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

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

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

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

5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not ~~potentially hazardous~~ time/temperature control for safety food; or

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

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

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

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

A. Cloths in use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

1. Maintained dry; and
2. Used for no other purpose.

B. Cloths in use for wiping counters and other equipment surfaces shall be:

1. Held between uses in a chemical sanitizer solution at a concentration specified in ~~2VAC5-585-3380~~ 2VAC5-585-1700; and

2. Laundered daily as specified under 2VAC5-585-1920 D.

C. Cloths in use for wiping surfaces in contact with raw animal foods shall be kept separate from other cloths used for other purposes.

D. Dry wiping cloths and the chemical sanitizing solutions specified in subdivision B 1 of this section in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

E. Containers of chemical sanitizing solutions specified in subdivision B 1 of this section in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

F. Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

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

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

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

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

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

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

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

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

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

2VAC5-585-600. Refilling returnables.

~~A. A take-home food container Except as specified in subsections B through E of this section, empty containers returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.^P~~

~~B. Except as specified in subsection C of this section, a A take-home food container ~~refilled with food that is not potentially hazardous shall be cleaned as specified under 2VAC5-585-1870 B.~~ returned to a food establishment may be refilled at a food establishment with food if the food container is:~~

- ~~1. Designed and constructed for reuse and in accordance with the requirements specified under 2VAC5-585-960 through 2VAC5-585-1435;^P~~
- ~~2. One that was initially provided by the food establishment to the consumer, either empty or filled with food by the food establishment, for the purpose of being returned for reuse;~~
- ~~3. Returned to the food establishment by the consumer after use;~~
- ~~4. Subject to the following steps before being refilled with food:~~
 - ~~a. Cleaned as specified under 2VAC5-585-1770 through 2VAC5-585-1860;~~
 - ~~b. Sanitized as specified under 2VAC5-585-1885 through 2VAC5-585-1900;^P and~~
 - ~~c. Visually inspected by a food employee to verify that the container, as returned, meets the requirements specified under 2VAC5-585-960 through 2VAC5-585-1435^P.~~

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

- ~~1. The beverage is not a time/temperature control for safety food;~~
- ~~2. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;~~
- ~~3. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;~~

4. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

5. The container is refilled by:

- a. An employee of the food establishment; or
- b. The owner of the container if the beverage system includes a contamination-free transfer process as specified under subdivisions 1, 2, and 4 of 2VAC5-585-1230 that cannot be bypassed by the container owner.

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

E. Consumer-owned containers that are not food specific may be filled at a water vending machine or system.

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

Food may not be stored:

1. In locker rooms;
2. In toilet rooms ~~or their vestibules;~~
3. In dressing rooms;
4. In garbage rooms;
5. In mechanical rooms;
6. Under sewer lines that are not shielded to intercept potential drips;
7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
8. Under open stairwells; or
9. Under other sources of contamination.

2VAC5-585-630. Vended potentially hazardous time/temperature control for safety food; original container.

~~Potentially hazardous~~ Time/temperature control for safety food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

2VAC5-585-650. Food display.

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

2VAC5-585-660. Condiments; protection.

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

Regulations

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

2VAC5-585-670. Consumer self-service operations.[Ⓢ]

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

1. Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;
2. Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or
3. Raw, frozen, shell-on shrimp or lobster.

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

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

2VAC5-585-680. Returned food and reservice of food.[Ⓢ]

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

B. Except as specified in subdivision ~~8~~ 7 of 2VAC5-585-950, a container of food that is not ~~potentially hazardous~~ (time/temperature time/temperature control for safety food) may be re-served from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
2. The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

Article 4

Destruction of Organisms of Public Health Concern

2VAC5-585-700. Raw animal foods.[Ⓢ]

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

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

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

- b. Except as specified under subdivisions A 2 and 3 and subsections B and C of this section, fish and meat including game animals commercially raised for food and under a voluntary inspection program as specified under 2VAC5-585-330 A 1 ~~and game animals under a voluntary inspection program as specified under 2VAC5-585-330 A 2;~~[Ⓔ]

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

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

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

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

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

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs (4.5 kg)	10 lbs (4.5 kg) or more
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity ¹	250°F (121°C) or less	250°F (121°C) or less

¹Relative humidity greater than 90% for at least one

hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity

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

Temperature °F (°C)	Time ¹ in Minutes	Temperature °F (°C)	Time ¹ 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)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

¹Holding time may include postoven heat rise.

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

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

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

1. As specified under subdivisions 3 a and 3 b of 2VAC5-585-950, the food establishment serves a population that is not a highly susceptible population; ~~and~~
2. The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat;^{Pf} and

~~2.~~ 3. The consumer is informed as specified under 2VAC5-585-930 that to ensure its safety, the food should be cooked as specified under subsection A or B of this section; or

~~3.~~ 4. The department grants a variance from subsection A or B of this section as specified in 2VAC5-585-3540 based on a HACCP plan that:

- a. Is submitted by the operator and approved as specified under 2VAC5-585-3541;
- b. Documents scientific data or other information ~~that shows~~ showing that a lesser time and temperature regimen results in a safe food; and
- c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

2VAC5-585-710. Microwave cooking.*

Raw animal foods cooked in a microwave oven shall be:

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

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

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

2VAC5-585-725. Noncontinuous cooking of raw animal foods.

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;^P
2. Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 2VAC5-585-800 A 1;^P
3. After cooling, held frozen or cold as specified for time/temperature control for safety food under 2VAC5-585-820 A 2;^P
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 2VAC5-585-700 A through C;^P
5. Cooled according to the time and temperature parameters specified for cooked time/temperature control for safety food under 2VAC5-585-800 A if not either hot held as specified under 2VAC5-585-820 A 1, served immediately, or held using time as a public health control as specified under 2VAC5-585-850 after complete cooking;^P and

Regulations

6. Prepared and stored according to written procedures that:

- a. Have obtained prior approval from the department;^{Pf}
- b. Are maintained in the food establishment and are available to the department upon request;^{Pf}
- c. Describe how the requirements specified under subdivisions 1 through 5 of this section are to be monitored and documented by the operator and the corrective actions to be taken if the requirements are not met;^{Pf}
- 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;^{Pf} 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 2VAC5-585-470 A.^{Pf}

2VAC5-585-730. Parasite destruction.*

A. Except as specified in subsection B of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish 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;^P
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;^P 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.^P

B. Subsection A of this section does not apply to:

1. Molluscan shellfish;
2. A scallop product consisting only of the shucked abductor 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, Northern); ~~or~~
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~~

5. Fish eggs that have been removed from the skein and rinsed.

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

A. Except as specified in 2VAC5-585-730 B and subsection B of this section, if raw, marinated, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold

in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

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

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 2VAC5-585-730 B ~~3~~ 4, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 2VAC5-585-730 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.^{Pf}

2VAC5-585-755. Preparation for immediate service.

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

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

A. Except as specified under subsections B, C and E of this section, ~~potentially hazardous food (time/temperature~~ time/temperature control for safety food) ~~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.^P

B. Except as specified under subsection C of this section, ~~potentially hazardous food (time/temperature~~ time/temperature control for safety food) ~~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 for two minutes after reheating.^P

C. Ready-to-eat time/temperature control for safety food ~~taken from a that has been~~ commercially processed, ~~hermetically sealed container, or from an intact package from~~ and packaged in a food processing plant that is inspected by the ~~food~~ regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 135°F (57°C) when being reheated for hot holding.^P

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 ~~the temperature specified under 2VAC5-585-820 A 2~~ 41°F (5°C) and the temperatures specified under subsections A ~~through~~ B and C of this section may not exceed two hours.^P

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

minimum time and temperature conditions specified under 2VAC5-585-700 B.

2VAC5-585-765. Treating juice.

Juice packaged in a food establishment shall be:

1. Treated under a HACCP plan as specified in subdivisions 2 through 5 of 2VAC5-585-3610 to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance;^P or
2. Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:^{Pf}
 - a. As specified under 2VAC5-585-900;^{Pf} and
 - b. As specified in 21 CFR 101.17(g), with the phrase, following: "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."^{Pf}

2VAC5-585-780. Potentially hazardous Time/temperature control for safety food, slacking.

Frozen ~~potentially hazardous food (time/temperature time/temperature control for safety food) food~~ that is slacked to moderate the temperature shall be held:

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

2VAC5-585-790. Thawing.

A. Except as specified in subdivision 4 of this section ~~subsection, potentially hazardous food (time/temperature time/temperature control for safety food) food~~ shall be thawed:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less, ~~or at 45°F (7°C) or less as specified under 2VAC5-585-820 A 2 b;~~ or
2. Completely submerged under running water:
 - a. At a water temperature of 70°F (21°C) or below;
 - b. With sufficient water velocity to agitate and float off loose particles in an overflow; and
 - c. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C), ~~or 45°F (7°C) as specified under 2VAC5-585-820 A 2 b;~~ or
 - d. For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 2VAC5-585-700 A or B to be above 41°F (5°C), ~~or 45°F (7°C) as specified under 2VAC5-585-820 A 2 b;~~ for more than four hours including:
 - (1) The time the food is exposed to the running water and the time needed for preparation for cooking; or

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

3. As part of a cooking process if the food that is frozen is:
 - a. Cooked as specified under 2VAC5-585-700 A or B or 2VAC5-585-710; or
 - b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

B. Reduced oxygen packaged fish that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:

1. Prior to its thawing under refrigeration as specified in subdivision A 1 of this section; or
2. Prior to, or immediately upon completion of, its thawing using procedures specified in subdivision A 2 of this section.

2VAC5-585-800. Cooling.[‡]

A. Cooked ~~potentially hazardous food (time/temperature time/temperature control for safety food) food~~ shall be cooled:

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

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

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

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

2VAC5-585-810. Cooling methods.

A. Cooling shall be accomplished in accordance with the time and temperature criteria specified under 2VAC5-585-

Regulations

800 by using one or more of the following methods based on the type of food being cooled:

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

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

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

2VAC5-585-820. Potentially hazardous Time/temperature control for safety food; hot and cold holding.[Ⓜ]

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 2VAC5-585-850, ~~potentially hazardous food~~ (time/temperature and except as specified under subsections B and C of this section, time/temperature control for safety food) shall be maintained:

1. At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified in 2VAC5-585-700 B or reheated as specified in 2VAC5-585-760 E may be held at a temperature of 130°F (54°C) or above;^P or
2. ~~At a temperature specified in the following:~~
 - a. 41°F (5°C) or less; or
 - b. 45°F (7°C) or between 45°F (7°C) and 41°F (5°C) in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:

- (1) ~~The equipment is in place and in use in the food establishment; and~~
- (2) ~~Before January 1, 2012, the equipment is upgraded or replaced to maintain food at a temperature of~~ At 41°F (5°C) or less.

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

C. ~~Potentially hazardous food~~ (time/temperature Time/temperature control for safety food) food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified in subsection A of this section, while contained within specially designed equipment that complies with the design and construction

requirements as specified under subdivision 5 of 2VAC5-585-1230.

2VAC5-585-830. ~~Ready-to-eat~~ Ready-to-eat, potentially hazardous time/temperature control for safety food; date marking.[Ⓜ]

A. Except when packaging food using a reduced oxygen packaging method as specified under 2VAC5-585-870 and except as specified in subsections ~~D and E~~ and F of this section, refrigerated, ready-to-eat, ~~potentially hazardous food~~ (time/temperature 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 ~~based on the temperature and time combinations specified below. The day of preparation shall be counted as~~ Day 1.

1. 41°F (5°C) or less for a maximum of seven days; or
2. 45°F (7°C) or between 41°F (5°C) and 45°F (7°C) for a maximum of four days in existing refrigeration equipment that is not capable of maintaining the food at 41°F (5°C) or less if:

- a. ~~The equipment is in place and in use in the food establishment; and~~
- b. ~~Before January 1, 2012, the equipment is upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less. 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 one.~~^{Pf}

B. Except as specified in subsections ~~D through E, F, and G~~ of this section, refrigerated, ready-to-eat, ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) 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:^{Pf}

1. The day the original container is opened in the food establishment shall be counted as ~~Day 1~~ day one,^{Pf} and
2. The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.^{Pf}

C. A refrigerated, ready-to-eat ~~potentially hazardous food~~ (time/temperature, time/temperature control for safety food) food ingredient or a portion of a refrigerated, ready-to-eat, ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) 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.^{Pf}

D. A date marking system that meets the criteria ~~specified~~ stated 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 ~~potentially hazardous food~~ (time/temperature, time/temperature control for safety food) 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 ~~of~~ 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; ~~Current good manufacturing practice in manufacturing, packing, or holding human food;~~
2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133; ~~Cheeses and related cheese products,~~ 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; ~~Cheeses and related cheese products,~~ such as blue, edam, gorgonzola, gouda, and Monterey ~~jack~~ Jack;
4. Cultured dairy products as defined in 21 CFR Part 131; ~~Milk and cream,~~ 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; ~~Acidified foods;~~
6. Shelf stable, dry fermented sausages, such as pepperoni and Genoa ~~salami that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317, Labeling, marking devices,~~

~~and containers, and which retain the original casing on the product; and~~

7. Shelf stable salt-cured products such as prosciutto and Parma (ham) ~~that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317, Labeling, marking devices, and containers.~~

2VAC5-585-840. Ready-to-eat, ~~potentially hazardous time/temperature control for safety food~~; disposition.*

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

1. Exceeds ~~either of the temperature and time combinations combination~~ specified in 2VAC5-585-830 A, except time that the product is frozen;^P
2. Is in a container or package that does not bear a date or day;^P or
3. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 2VAC5-585-830 A.^P

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

2VAC5-585-850. 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 ~~potentially hazardous food (time/temperature time/temperature control for safety food) food before cooking,~~ or for ready-to-eat ~~potentially hazardous food (time/temperature, time/temperature control for safety food) food~~ that is displayed or held for sale or service:

1. Written procedures shall be prepared in advance, maintained in the food establishment, and made available to the ~~regulatory authority department~~ upon request that specify:^{Pf}
 - a. Methods of compliance with ~~subdivision subdivisions B 1 through 4, 2, and 3 or subsection C 1 through 5~~ of this section;^{Pf} and
 - b. Methods of compliance with 2VAC5-585-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.^{Pf}

B. If time without temperature control is used as the public health control up to a maximum of 4 hours:

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;^P
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;^{Pf}

Regulations

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;^{Pf} and

4. The food in unmarked containers or packages or marked to exceed a four-hour limit shall be discarded.^P

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;^{Pf}

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;^{Pf}

3. The food shall be marked or otherwise identified to indicate.^{Pf}

a. The time when the food is removed from 41°F (5°C) or less cold holding temperature control;^{Pf} 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;^{Pf}

4. The food shall be:

a. Discarded if the temperature of the foods exceeds 70°F (21°C);^P 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;^P and

5. The food in unmarked containers or packages, or marked with a time that exceeds the six-hour limit shall be discarded.^P

D. A food establishment that serves a highly susceptible population may not use time as specified under ~~subsections~~ subsection A, B, or C of this section as the public health control for raw eggs.

2VAC5-585-860. Variance requirement.[§]

A food establishment shall obtain a variance from the department as specified in 2VAC5-585-3540 and 2VAC5-585-3541 before.^{Pf}

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;^{Pf}

2. Curing food;^{Pf}

3. Using food additives or adding components such as vinegar;^{Pf}

a. As a method of food preservation rather than as a method of flavor enhancement;^{Pf} or

b. To render a food so that it is not ~~potentially hazardous~~ time/temperature control for safety food;^{Pf}

4. Packaging time/temperature control for safety food using a reduced oxygen packaging method except as ~~specified under 2VAC5-585-870 where a barrier to where the growth of and toxin formation by Clostridium botulinum in addition to refrigeration exists and the growth of Listeria monocytogenes are controlled as specified under 2VAC5-585-870~~;^{Pf}

5. Operating a molluscan shellfish life-support system display tank used to store ~~and or~~ display shellfish that are offered for human consumption;^{Pf}

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

7. Sprouting seeds or beans;^{Pf} or

8. Preparing food by another method that is determined by the ~~regulatory authority~~ department to require a variance.^{Pf}

2VAC5-585-870. Reduced oxygen packaging without a variance; criteria.[§]

A. Except for a food establishment that obtains a variance as specified under 2VAC5-585-860 ~~and except as specified under subsections C and E of this section~~, a food establishment that packages ~~potentially hazardous food (time/temperature time/temperature control for safety food)~~ food using a reduced oxygen packaging method shall ~~ensure that there are at least two barriers in place to control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes.~~^P

B. ~~A~~ Except as specified in subsection F of this section, a food establishment that packages ~~potentially hazardous food (time/temperature time/temperature control for safety food)~~ food using a reduced oxygen packaging method shall ~~have~~ implement a HACCP plan that contains the ~~following~~ information specified under ~~subdivision~~ subdivisions 2 and 4 of 2VAC5-585-3630 ~~and that~~;^{Pf}

1. Identifies food to be packaged;^{Pf}

2. Except as specified in subsections C ~~and, D, and E~~ 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:^{Pf}

a. Has an A_w of 0.91 or less;^{Pf}

b. Has a pH of 4.6 or less;^{Pf}

c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, ~~Use of food ingredients and sources of radiation~~, and is received in an intact package;^{Pf} or

d. Is a food with a high level of competing organisms such as raw meat, ~~or~~ raw poultry, or raw vegetables;^{Pf}

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.^{Pf}

a. Maintain the food at 41°F (5°C) or below;^{Pf} and

b. Discard the food within ~~44~~ 30 calendar days of its packaging if it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;^{Pf}

4. Limits the refrigerated shelf life to no more than ~~44~~ 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;^{Pf}

5. Includes operational procedures that:

a. Prohibit contacting ready-to-eat food with bare hands as specified under 2VAC5-585-450 B;^{Pf}

b. Identify a designated work area and the method by which:^{Pf}

(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination;^{Pf} and

(2) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation;^{Pf} and

c. Delineate cleaning and sanitization procedures for ~~food~~ contact food-contact surfaces; ~~and~~^{Pf}

6. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:^{Pf}

a. Concepts required for safe operation;^{Pf}

b. Equipment and facilities;^{Pf} and

c. Procedures specified under subdivision 5 of this subsection and ~~2VAC5-585-3630 D~~. subdivisions 2 and 4 of 2VAC5-585-3630;^{Pf} and

7. Is provided to the department prior to implementation as specified under subsection B of 2VAC5-585-3620.

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

D. Except as specified in ~~subsection~~ subsections C and F of this section, a food establishment may package that packages time/temperature control for safety food using a cook-chill or sous-vide sous-vide process ~~without obtaining a variance if shall:~~

1. ~~The food establishment implements~~ Provide to the department prior to implementation, a HACCP plan that contains the information as specified under ~~2VAC5-585-3630 D~~ subdivisions 2 and 4 of 2VAC5-585-3630;^{Pf}

2. ~~The~~ 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~~ packaged product to another business entity or the consumer;^{Pf}

b. Cooked to heat all parts of the food to a temperature and for a time as specified under 2VAC5-585-700 A, B, and C;^{Pf}

c. Protected from contamination before and after cooking as specified in 2VAC5-585-450 through ~~2VAC5-585-690~~ 2VAC5-585-765;^{Pf}

d. Placed in a package ~~or bag~~ with an oxygen barrier and sealed before cooking, or placed in a package ~~or bag~~ and sealed immediately after cooking, and before reaching a temperature below 135°F (57°C);^{Pf}

e. Cooled to 41°F (5°C) in the sealed package or bag as specified under 2VAC5-585-800; and subsequently;^{Pf}

(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 preparation packaging;^{Pf}

(2) ~~Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C), removed from refrigeration equipment that maintains a 34°F (1°C) food temperature and then held~~ Held at 41°F (5°C) or less for no more than ~~72 hours~~ seven days, at which time the food must be consumed or discarded;^{Pf} or

(3) ~~Cooled to 38°F (3°C) or less within 24 hours of reaching 41°F (5°C) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded;~~ or

(4) (3) Held frozen with no shelf-life restriction while frozen until consumed or used;^{Pf}

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;^{Pf}

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;^{Pf} and

h. Labeled with the product name and the date packaged;^{Pf} and

3. ~~The~~ 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~~ Make such records available to the ~~regulatory authority~~ department upon request;^{Pf} and

b. ~~Held~~ Hold such records for at least six months;^{Pf} and

4. ~~Written~~ 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 ~~are implemented~~.^{Pf}

E. A ~~Except as specified under subsection F of this section,~~ a food establishment may package that packages cheese using

Regulations

a reduced oxygen packaging method ~~without obtaining a variance shall~~:

1. ~~If it limits~~ 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 of Identity as specified in 21 CFR 133.150, ~~Hard Cheeses~~, 21 CFR 133.169, ~~Pasteurized process cheese~~, or 21 CFR 133.187, ~~Semi-soft cheeses~~;^P
2. ~~If it has~~ Have a HACCP plan that contains the information specified in ~~2VAC5-585-3630 D subdivisions 2 and 4 of 2VAC5-585-3630 and as specified in subdivisions B 1, B 3 a, B 5, and B 6 of this section~~;^{Pf}
3. ~~Except as specified under subdivisions B 2, B 3 b, and B 4, complies with subsection B of this section;~~
4. ~~If it labels~~ 3. Labels 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 ~~comes~~ occurs first;^{Pf} and
5. ~~If it discards~~ 4. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.^{Pf}

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.

2VAC5-585-900. Food labels.

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

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 subingredients in descending order of predominance by weight, including a declaration of artificial ~~color or flavor~~ 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;
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;^{Pf}
6. Except as exempted in the Federal Food, Drug, and Cosmetic Act ~~21 USC § 343(q) (3) through (5)~~ 21 USC

§ 403(g)(3) through (5), nutrition labeling as specified in 21 CFR Part 101, ~~Food Labeling~~, and 9 CFR Part 317, Subpart B, ~~Nutrition Labeling~~; 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 § 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.

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

A. Except as specified in 2VAC5-585-700 C and 2VAC5-585-700 D ~~§ 4~~ and under subdivision 3 of 2VAC5-585-950, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the ~~person in charge~~ operator 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.^{Pf}

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)";^{Pf} 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.^{Pf}

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;^{Pf}
2. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness;^{Pf} 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.^{Pf}

Article 7
Contaminated Food

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

- A. A food that is unsafe, adulterated, or not honestly presented as specified under 2VAC5-585-260 shall be discarded or reconditioned according to an approved procedure ~~or discarded~~.^P
- B. Food that is not from an approved source as specified under 2VAC5-585-270 through 2VAC5-585-330 shall be discarded.^P
- C. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 2VAC5-585-90 shall be discarded.^P
- D. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.^P

Article 8
Special Requirements for Highly Susceptible Populations

2VAC5-585-950. 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 ~~subdivision 1 of this section~~ subdivision 1 only, children who are age ~~9~~ nine years or ~~less~~ younger and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g), ~~Food Labeling~~, or a packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 2VAC5-585-765 may not be served or offered for sale;^P and
 - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 2VAC5-585-3630 and as specified ~~under in 21 CFR Part 120, Hazard Analysis And Critical Control Point (HACCP) Systems, Subpart B, Pathogen Reduction, 120.24, Process Controls~~.^P

2. Pasteurized ~~shell~~ eggs or egg products shall be substituted for raw ~~shell~~ eggs in the preparation of:^P
 - a. Foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages;^P 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.^P
3. The following foods may not be served or offered for sale in a ready-to-eat form:^P
 - a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;^P
 - b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw ~~shell~~ eggs, and meringue;^P and
 - c. Raw seed sprouts.^P
4. Food employees may not contact ready-to-eat food as specified in 2VAC5-585-450 B and E.^P
5. Time only, as the public health control as specified under 2VAC5-585-850 D, may not be used for raw eggs.^P
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 2VAC5-585-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;
 - b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
 - c. The preparation of the food is conducted under a HACCP plan that:
 - (1) Identifies the food to be prepared;
 - (2) Prohibits contacting ready-to-eat food with bare hands;
 - (3) Includes specifications and practices that ensure:
 - (a) Salmonella ~~enteritidis~~ Enteritidis growth is controlled before and after cooking; and
 - (b) Salmonella ~~enteritidis~~ Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 2VAC5-585-700 A 2;
 - d. Contains the information specified under subdivision 4 of 2VAC5-585-3630 including procedures that:
 - (1) Control cross contamination of ready-to-eat food with raw eggs; and
 - (2) Delineate cleaning and sanitization procedures for food-contact surfaces; and
 - e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

Regulations

7. Except as specified in subdivision 8 of this section, food may be re-served as specified under 2VAC5-585-680 B 1 and 2.

8. Foods may not be re-served under the following conditions:

1. 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.
2. Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.

Part IV

Equipment, Utensils, and Linens

Article 1

Materials for Construction and Repair

2VAC5-585-960. Multiuse, characteristics.[Ⓢ]

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

1. Safe;^P
2. Durable, corrosion-resistant, and nonabsorbent;^N
3. Sufficient in weight and thickness to withstand repeated warewashing;^N
4. Finished to have a smooth, easily cleanable surface;^N and
5. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^N

2VAC5-585-980. Lead use limitation.

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

Utensil Category	Ceramic Article Description	Maximum Lead (mg/L)
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls \geq 1.1 Liter (1.16 Quart)	1.0
Small Hollowware (excluding cups and mugs)	Bowls <1.1 Liter (1.16 Quart)	2.0
Flat Tableware	Plates, Saucers	3.0

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

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

2VAC5-585-990. Copper, use limitation.[Ⓢ]

A. Except as specified in subsections B and C of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below ~~6~~ 6.0 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.^P

B. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below ~~6~~ 6.0 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.

C. Copper and copper alloys may be used in contact with apple butter and molasses that have a pH below ~~6~~ 6.0 during the typical processing times (i.e., mixing, cooking, and cooling) for these products, as long as laboratory analysis does not reveal excessive levels of copper or other heavy metals in the finished product. Apple butter and molasses may not be held or stored in copper or copper alloys for time periods any longer than the typical processing times for these products.

2VAC5-585-1000. Galvanized metal, use limitation.[Ⓢ]

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

2VAC5-585-1070. Single-service and single-use, characteristics.[Ⓢ]

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

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

2VAC5-585-1090. Food temperature measuring devices.[Ⓢ]

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

2VAC5-585-1100. Food-contact surfaces; cleanability.[Ⓢ]

A. Multiuse food-contact surfaces shall be:

1. Smooth;^{Pf}
2. Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;^{Pf}
3. Free of sharp internal angles, corners, and crevices;^{Pf}
4. Finished to have smooth welds and joints;^{Pf} and

5. Accessible Except as specified in subsection B of this section, accessible for cleaning and inspection by one of the following methods:

- a. Without being disassembled;^{Pf}
- b. By disassembling without the use of tools;^{Pf} or
- c. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.^{Pf}

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

2VAC5-585-1110. CIP equipment.

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

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

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

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

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

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

A. Food temperature measuring devices that are scaled only in Fahrenheit or dually scaled in Fahrenheit and Celsius shall be scaled in 2°F increments and accurate to ±2°F in the intended range of use.^{Pf}

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

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

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

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

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

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

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

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

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

- a. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
- b. Available for self-service during hours when it is not under the full-time supervision of a food employee.

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

5. Dispensing equipment in which ~~potentially hazardous food (time/temperature control for safety food)~~ food in homogenous liquid form is maintained outside of the temperature control requirements as specified in 2VAC5-585-820 ~~€~~ Δ shall:

- a. Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment;^P and
- b. Conform to the requirements for this equipment as specified in NSF/ANSI ~~18-2006~~ 18-2012 Manual Food and Beverage Dispensing Equipment, 2012, (NSF International).^P

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

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

Regulations

1. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
2. Available for self-service during hours when it is not under the full-time supervision of a food employee.

2VAC5-585-1300. Molluscan shellfish tanks.

A. Except as specified under subsection B of this section, molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to consumers that the shellfish are for display only.^P

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 department as specified in 2VAC5-585-3540 and a HACCP plan that:^{Pf}

1. Is submitted by the ~~person in charge~~ operator and approved as specified under 2VAC5-585-3541,^{Pf} and
2. Ensures that:
 - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank;^{Pf}
 - b. The safety and quality of the shellfish as they were received are not compromised by the use of the tank,^{Pf} and
 - c. The identity of the source of the shellstock is retained as specified under 2VAC5-585-440.^{Pf}

2VAC5-585-1310. Vending machines, automatic shutoff.*

A. A machine vending ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) shall have an automatic control that prevents the machine from vending food:

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter;^P and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.^P

B. When the automatic shutoff within a machine vending ~~potentially hazardous food~~ (time/temperature time/temperature control for safety food) ~~food~~ is activated:

1. In a refrigerated vending machine, the ambient temperature may not exceed 41°F (5°C) ~~or 45°F (7°C) as specified under 2VAC5-585-820-A-2~~ for more than 30 minutes immediately after the machine is filled, serviced, or restocked;^P or
2. In a hot holding vending machine, the ambient temperature may not be less than 135°F (57°C) for more

than 120 minutes immediately after the machine is filled, serviced, or restocked.^P

2VAC5-585-1320. Temperature measuring devices.

A. In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

B. Except as specified in subsection C of this section, cold or hot holding equipment used for ~~potentially hazardous time/temperature control for safety~~ food shall be designed to include and shall be equipped with at least one integral or affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

C. Subsection B of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.

D. Temperature measuring devices shall be designed to be easily readable.

E. Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use.^{Pf}

2VAC5-585-1330. Warewashing machine, data plate operating specifications.

A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and ~~operating~~ operation specifications including the:

1. Temperatures required for washing, rinsing, and sanitizing;
2. Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and
3. Conveyor speed for conveyor machines or cycle time for stationary rack machines.

2VAC5-585-1350. Warewashing machines, temperature measuring devices.

A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

1. In each wash and rinse tank,^{Pf} and
2. As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.^{Pf}

2VAC5-585-1360. Manual warewashing equipment, heaters and baskets.

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

1. Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C);^{Pf} and
2. Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.^{Pf}

2VAC5-585-1370. Warewashing machines, automatic dispensing of detergents and sanitizers.

~~A. A warewashing machine that is installed after the adoption of this regulation by the board shall be equipped to:~~

1. Automatically dispense detergents and sanitizers;^{Pf} and
2. Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.^{Pf}

~~B. Before January 1, 2012, existing warewashing equipment shall be upgraded or replaced to meet the requirements of subsection A of this section.~~

2VAC5-585-1435. Food equipment, certification and classification.

Food equipment that is certified or classified for sanitation by an American National Standards Institute accredited certification program is deemed to comply with the requirements of Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part.

Article 3

Numbers and Capacities

2VAC5-585-1450. Cooling, heating, and holding capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity ~~and capable of providing to provide~~ food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter.^{Pf}

2VAC5-585-1460. Manual warewashing, sink compartment requirements.

A. Except as specified in subsection C of this section, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.^{Pf}

B. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection C of this section shall be used.^{Pf}

C. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its

use is approved. Alternative manual warewashing equipment may include:

1. High-pressure detergent sprayers;
2. Low-pressure or line-pressure spray detergent foamers;
3. Other task-specific cleaning equipment;
4. Brushes or other implements;
5. Two-compartment sinks as specified under subsections D and E of this section; or
6. Receptacles that substitute for the compartments of a multicompartment sink.

D. Before a two-compartment sink is used:

1. The operator shall have its use approved; and
2. The ~~person in charge~~ operator shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink, ~~and~~ shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:
 - a. Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and
 - b. Use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions and as specified under 2VAC5-585-1710; or
 - c. Use a hot water sanitization immersion step as specified under subdivision 3 of 2VAC5-585-1860.

E. A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

2VAC5-585-1500. Utensils, consumer self-service.

A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.^{Pf}

2VAC5-585-1510. Food temperature measuring devices.

A. Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Part III (2VAC5-585-260 et seq.) of this chapter.^{Pf}

B. A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish fillets.^{Pf}

2VAC5-585-1520. Temperature measuring devices, manual and mechanical warewashing.

A. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for

Regulations

frequently measuring the washing and sanitizing temperatures.^{Pf}

B. In hot water mechanical warewashing operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the utensil surface temperature.^{Pf}

2VAC5-585-1530. Sanitizing solutions, testing devices.

A test kit or other device that accurately measures the concentration in mg/L (ppm) of sanitizing solutions shall be provided ~~and readily accessible for use.~~^{Pf}

Article 4

Location and Installation

2VAC5-585-1540. Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.

A. Except as specified in subsection B of this section, equipment, ~~cabinets~~ a cabinet used for the storage of food, or ~~cabinets~~ a cabinet used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

1. In locker rooms;
2. In toilet rooms ~~or vestibules~~;
3. In garbage rooms;
4. In mechanical rooms;
5. Under sewer lines that are not shielded to intercept potential drips;
6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
7. Under open stairwells; or
8. Under other sources of contamination.

B. A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

C. If a mechanical clothes washer or dryer is provided, it shall be located ~~only where there is no exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; and (i)~~ so that the washer or dryer is protected from contamination and (ii) only where there is no exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

2VAC5-585-1550. Fixed equipment, spacing or sealing.

A. Equipment that is fixed because it is not easily movable shall be installed so that it is:

1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;
2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 inch or one millimeter; or
3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

B. 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 2VAC5-585-1560 D.

2VAC5-585-1560. Fixed equipment, elevation or sealing.

A. Except as specified in subsections B and C of this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six-inch ~~(15 centimeter)~~ (15 centimeter) clearance between the floor and the equipment.

B. If no part of the floor under the floor-mounted equipment is more than six inches (15 centimeters) from the point of cleaning access, the clearance space may be only four inches (10 centimeters).

C. This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

D. Except as specified in subsection E of this section, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a four-inch ~~(10 centimeter)~~ (10 centimeter) clearance between the table and the equipment.

E. The clearance space between the table and counter-mounted equipment may be:

1. Three inches (7.5 centimeters) if the horizontal distance of the table top under the equipment is no more than 20 inches (50 centimeters) from the point of access for cleaning; or
2. Two inches (5 centimeters) if the horizontal distance of the table top under the equipment is no more than three inches (7.5 centimeters) from the point of access for cleaning.

Article 5

Maintenance and Operation

2VAC5-585-1570. Good repair and proper adjustment.

A. Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part. ~~Unused or nonfunctioning equipment shall be removed from the premises.~~

B. Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

C. Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

2VAC5-585-1630. Warewashing equipment, cleaning agents.

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in 2VAC5-585-1460 C, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.^{Pf}

2VAC5-585-1650. Manual warewashing equipment, wash solution temperature.

The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.^{Pf}

2VAC5-585-1660. Mechanical warewashing equipment, wash solution temperature.

A. The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

1. For a stationary rack, single temperature machine, 165°F (74°C);^{Pf}
2. For a stationary rack, dual temperature machine, 150°F (66°C);^{Pf}
3. For a single tank, conveyor, dual temperature machine, 160°F (71°C);^{Pf} or
4. For a multitank, conveyor, multitemperature machine, 150°F (66°C).^{Pf}

B. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 120°F (49°C).^{Pf}

2VAC5-585-1670. Manual warewashing equipment, hot water sanitization temperatures.*

If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 171°F (77°C) or above.^P

2VAC5-585-1680. Mechanical warewashing equipment, hot water sanitization temperatures.

A. Except as specified in subsection B of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 194°F (90°C), or less than:^{Pf}

1. For a stationary rack, single temperature machine, 165°F (74°C);^{Pf} or
2. For all other machines, 180°F (82°C).^{Pf}

B. The maximum temperature specified under subsection A of this section does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

2VAC5-585-1700. Manual and mechanical warewashing equipment, chemical sanitization - temperature, pH, concentration, and hardness.*

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure contact times specified under subdivision 3 of 2VAC5-585-1900 shall be listed in 40 CFR 180.940, Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food Contact Surface Sanitizing Solutions), shall be used in accordance with the EPA approved manufacturer's label use instructions, meet the criteria specified under 2VAC5-585-3380, shall be used in accordance with the EPA-registered label use instructions,^P 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;^P

Minimum Concentration mg/L (ppm)	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 8.0 or less °F (°C)
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 75°F (24°C) 68°F (20°C);^P
 - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective;^P and
 - c. Concentration between 12.5 mg/L(ppm) and 25 mg/L (ppm);^P
3. A quaternary ammonium compound solution shall:
 - a. Have a minimum temperature of 75°F (24°C);^P
 - b. Have a concentration as specified under 2VAC5-585-3380 and as indicated by the manufacturer's use directions included in the labeling;^P 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~~ EPA-registered label use instructions;^P
4. If another solution of a chemical specified under subdivisions 1 through 3 of this section is used, the ~~person in charge~~ operator shall demonstrate to the department that the solution achieves sanitization and the use of the solution shall be approved;^P or
5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the ~~manufacturer's use~~

Regulations

~~directions included in the labeling.~~ EPA-registered label use instructions;^P 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 (7 USC § 136(q)(1) and 7 USC § 136j);^P

b. Complies with 40 CFR 152.500 and 40 CFR 156.10;^P

c. Displays the EPA device manufacturing facility registration number on the device;^{Pf} and

d. Is operated and maintained in accordance with manufacturer's instructions.^{Pf}

2VAC5-585-1720. Warewashing equipment, determining chemical sanitizer concentration.

Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.^{Pf}

2VAC5-585-1730. Good repair and calibration.

A. Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Articles 1 (2VAC5-585-960 et seq.) and 2 (2VAC5-585-1080 et seq.) of this part or shall be discarded.

B. Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.^{Pf}

C. Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

2VAC5-585-1740. Single-service and single-use articles, required use.[Ⓜ]

A food establishment without facilities specified under Articles 6 (2VAC5-585-1770 et seq.) and 7 (~~2VAC5-585-1880~~ (2VAC5-585-1885 et seq.)) of this part for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.^P

Article 6

Cleaning of Equipment and Utensils

2VAC5-585-1770. Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils.[Ⓜ]

A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.^{Pf}

B. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.^N

C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.^N

2VAC5-585-1780. Equipment food-contact surfaces and utensils.[Ⓜ]

A. Equipment food-contact surfaces and utensils shall be cleaned:

1. Except as specified in subsection B of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;^P

2. Each time there is a change from working with raw foods to working with ready-to-eat foods;^P

3. Between uses with raw fruits and vegetables and with ~~potentially hazardous~~ time/temperature control for safety food;^P

4. Before using or storing a food temperature measuring device;^P and

5. At any time during the operation when contamination may have occurred.^P

B. Subdivision A 1 of this section does not apply if the ~~food contact~~ food-contact surface or utensil is in contact with a succession of different ~~raw animal foods~~ types of raw meat and poultry each requiring a higher cooking temperature as specified under 2VAC5-585-700 than the previous ~~food, such as preparing raw fish followed by cutting raw poultry on the same cutting board~~ type.

C. Except as specified in subsection D of this section, if used with ~~potentially hazardous~~ time/temperature control for safety food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.^P

D. Surfaces of utensils and equipment contacting ~~potentially hazardous~~ time/temperature control for safety food may be cleaned less frequently than every four hours if:

1. In storage, containers of ~~potentially hazardous~~ time/temperature control for safety food and their contents are maintained at temperatures specified under Part III (2VAC5-585-260 et seq.) of this chapter and the containers are cleaned when they are empty;

2. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

a. The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
41°F (5.0°C) or less	24 hours
>41°F - 45°F (>5.0°C - 7.2°C)	20 hours
>45°F - 50°F (>7.2°C - 10.0°C)	16 hours
>50°F - 55°F (>10.0°C - 12.8°C)	10 hours

b. The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.

3. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat ~~potentially hazardous~~ time/temperature control for safety food that is maintained at the temperatures specified under Part III, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

4. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Part III;

5. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; ~~or~~

6. The cleaning schedule is approved based on consideration of:

- a. Characteristics of the equipment and its use;
- b. The type of food involved;
- c. The amount of food residue accumulation; and
- d. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

7. In-use utensils are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

E. Except when dry cleaning methods are used as specified under 2VAC5-585-1810, surfaces of utensils and equipment contacting food that is not ~~potentially hazardous~~ time/temperature control for safety food shall be cleaned:^N

- 1. At any time when contamination may have occurred;
- 2. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
- 3. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
- 4. ~~Equipment~~ In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:

- a. At a frequency specified by the manufacturer; or

b. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

2VAC5-585-1790. Cooking and baking equipment.

A. The food-contact surfaces of ~~in-use~~ cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in 2VAC5-585-1780 D 6.

B. The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

2VAC5-585-1810. Dry cleaning.

A. If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not ~~potentially hazardous~~ time/temperature control for safety food.

B. Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

2VAC5-585-1870. Returnables, cleaning for refilling.* (Repealed.)

~~A. Except as specified in subsections B and C of this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.~~

~~B. A food specific container for beverages may be refilled at a food establishment if:~~

- 1. Only a beverage that is not a potentially hazardous food is used as specified under 2VAC5-585-600 A;
- 2. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
- 3. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
- 4. The consumer owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
- 5. The container is refilled by:
 - a. An employee of the food establishment; or
 - b. The owner of the container if the beverage system includes a contamination free transfer process that cannot be bypassed by the container owner.

~~C. Consumer owned containers that are not food specific may be filled at a water vending machine or system.~~

Article 7

Sanitization of Equipment and Utensils

2VAC5-585-1885. Food-contact surfaces and utensils.

Equipment food-contact surfaces and utensils shall be sanitized.

Regulations

2VAC5-585-1890. Before use after cleaning.[Ⓜ]

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.^P

2VAC5-585-1900. Hot water and chemical.[Ⓜ]

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds as specified under 2VAC5-585-1670;^P
2. Hot water mechanical operations by being cycled through equipment that is set up as specified under 2VAC5-585-1610, 2VAC5-585-1680, and 2VAC5-585-1690 and achieving a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator;^P or
3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 2VAC5-585-1700. Contact times shall be consistent with those on EPA-registered label use instructions by providing:
 - a. Except as specified under subdivision 3 b of this section, ~~an exposure~~ a contact time of at least 10 seconds for a chlorine solution specified under subdivision 1 of 2VAC5-585-1700;^P
 - b. ~~An exposure~~ A contact time of at least ~~7 seven~~ seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 100°F (38°C) or a pH of ~~8 8.0~~ or less and a temperature of at least 75°F (24°C);^P
 - c. ~~An exposure~~ A contact time of at least 30 seconds for other chemical sanitizing solutions;^P or
 - d. ~~An exposure~~ A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 2VAC5-585-40.^P

2VAC5-585-1920. Specifications.

- A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.
- B. Cloth gloves used as specified in 2VAC5-585-580 D shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, ~~and fish,~~ or poultry.
- C. Linens ~~and napkins~~ that are used as specified under 2VAC5-585-560 and cloth napkins shall be laundered between each use.
- D. Wet wiping cloths shall be laundered daily.
- E. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

Article 9

Protection of Clean Items

2VAC5-585-1960. Equipment and utensils, air-drying required.

After cleaning and sanitizing, equipment and utensils:

1. Shall be air dried or used after adequate draining as specified in ~~40 CFR 180.9401~~ the first paragraph of 40 CFR 180.940 before contact with food; and
2. May not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

2VAC5-585-2000. Equipment, utensils, linens, and single-service and single-use articles.

A. Except as specified in subsection D of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

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

B. Clean equipment and utensils shall be stored as specified under subsection A of this section and shall be stored:

1. In a self-draining position that allows air drying; and
2. Covered or inverted.

C. Single-service and single-use articles shall be stored as specified under subsection A of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

D. Items that are kept in closed packages may be stored less than six inches (~~15 cm~~) centimeters) above the floor on dollies, pallets, racks, and skids that are designed as provided under 2VAC5-585-1420.

2VAC5-585-2010. Prohibitions.

A. Except as specified in subsection B of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

1. In locker rooms;
2. In toilet rooms ~~or vestibules~~;
3. In garbage rooms;
4. In mechanical rooms;
5. Under sewer lines that are not shielded to intercept potential drips;
6. Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
7. Under open stairwells; or
8. Under other sources of contamination.

B. Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

2VAC5-585-2040. Preset tableware.

A. ~~Tableware~~ Except as specified in subsection B of this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

B. ~~When tableware is preset, exposed, unused settings shall be:~~

- ~~1. Removed when a consumer is seated; or~~
- ~~2. Cleaned and sanitized before further use if the settings are not removed when a consumer is seated.~~

B. Preset tableware may be exposed if:

1. Unused settings are removed when a consumer is seated; or
2. Settings not removed when a consumer is seated are cleaned and sanitized before further use.

2VAC5-585-2045. Rinsing equipment and utensils after cleaning.

After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

1. The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under 2VAC5-585-1210 through 2VAC5-585-1430 and 2VAC5-585-1570 through 2VAC5-585-1720; and
2. The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Part V
Water, Plumbing, and Waste
Article 1
Water

2VAC5-585-2050. Approved system.*

Drinking water shall be obtained from an approved source that is:

1. A public water system;^P or
2. A nonpublic water system that is constructed, maintained, and operated according to law.^P

2VAC5-585-2060. System flushing and disinfection.*

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.^P

2VAC5-585-2070. Bottled drinking water.*

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with

21 CFR Part 129, ~~Processing and Bottling of Bottled Drinking Water.~~^P

2VAC5-585-2080. Quality standards.*

Except as specified under 2VAC5-585-2090:

1. Water from a public water system shall meet the applicable standards found in 40 CFR Part 141 and the Virginia Waterworks Regulations (12VAC5-590).^P
2. Water from a nonpublic water system shall meet ~~state drinking water quality standards~~ the bacteriological standards found in the Virginia Waterworks Regulations (12VAC5-590).^P

2VAC5-585-2090. Nondrinking water.*

A. A nondrinking water supply shall be used only if its use is approved.^P

B. Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection, ~~and irrigation.~~^P

2VAC5-585-2100. Sampling.

Except when used as specified under 2VAC5-585-2090, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.^{Pf}

2VAC5-585-2120. Capacity.*

A. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.^{Pf}

B. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.^{Pf}

2VAC5-585-2130. Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under subdivisions 1 and 2 of 2VAC5-585-2160 to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.^{Pf}

2VAC5-585-2150. Distribution, delivery, and retention system.

Water shall be received from the source through the use of:

1. An approved public water main;^{Pf} or
2. One or more of the following that shall be constructed, maintained, and operated according to law:^{Pf}
 - a. Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;^{Pf}
 - b. Water transport vehicles; ~~and~~^{Pf} or
 - c. Water containers.^{Pf}

2VAC5-585-2160. Alternative water supply.

Water meeting the requirements specified under 2VAC5-585-2050 through 2VAC5-585-2130 shall be made available for a mobile facility, for a temporary food establishment

Regulations

without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

1. A supply of containers of commercially bottled drinking water;^{Pf}
2. One or more closed portable water containers;^{Pf}
3. An enclosed vehicular water tank;^{Pf}
4. An on-premises water storage tank;^{Pf} or
5. Piping, tubing, or hoses connected to an adjacent approved source.^{Pf}

Article 2

Plumbing System

2VAC5-585-2170. Approved materials.*

A. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.^P

B. A water filter shall be made of safe materials.^P

2VAC5-585-2180. Approved system and cleanable fixtures.*

A. A plumbing system shall be designed, constructed, and installed according to law.^P

B. A plumbing fixture such as a handwashing ~~lavatory~~ sink, toilet, or urinal shall be easily cleanable.^N

2VAC5-585-2190. Handwashing sink, water temperature, and flow.

A. A handwashing sink shall be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.^{Pf}

B. A steam mixing valve may not be used at a handwashing sink.

C. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

D. If an automatic handwashing facility is installed, it shall be installed in accordance with manufacturer's instructions.

2VAC5-585-2200. Backflow prevention, air gap.*

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one inch (25 mm).^P

2VAC5-585-2210. Backflow prevention device, design standard.

A backflow or backsiphonage prevention device installed on a water supply system shall comply with the Virginia Uniform Statewide Building Code (13VAC5-63) for construction, installation, maintenance, inspection, and testing for that specific application and type of device.^P

2VAC5-585-2230. Handwashing sinks, numbers and capacities.*

A. Except as specified in subsections B and C of this section, at least one handwashing sink, or the number of handwashing sinks necessary for their convenient use by employees in areas specified under 2VAC5-585-2280, and not fewer than the number of handwashing sinks required by law shall be provided.^{Pf}

B. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.

C. If approved, when food exposure is limited and handwashing sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically-treated towelettes for handwashing.

2VAC5-585-2240. Toilets and urinals.*

At least one toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law.

2VAC5-585-2250. Service sink.

A. At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

B. Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

2VAC5-585-2260. Backflow prevention device, when required.*

A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb (~~threaded faucet~~) if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law by:

1. Providing an air gap as specified under 2VAC5-585-2200;^P or
2. Installing an approved backflow prevention device as specified under 2VAC5-585-2210.^P

2VAC5-585-2270. Backflow prevention device, carbonator.*

A. If not provided with an air gap as specified under 2VAC5-585-2200, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to one inch (100 mesh to 25.4 mm) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.^P

B. A ~~single or double~~ 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 provided as specified under subsection A of this section.

2VAC5-585-2280. Handwashing sinks, locations.*

A handwashing sink shall be located:

1. To ~~be readily accessible for~~ allow convenient use by employees in food preparation, food dispensing, and warewashing areas;^{Pf} and
2. In, or immediately adjacent to, toilet rooms.^{Pf}

2VAC5-585-2310. Using a handwashing sink.

A. A handwashing sink shall be maintained so that it is accessible at all times for employee use.^{Pf}

B. A handwashing sink may not be used for purposes other than handwashing.^{Pf}

C. An automatic handwashing sink shall be used in accordance with manufacturer's instructions.^{Pf}

2VAC5-585-2320. Prohibiting a cross connection.*

A. ~~Except as specified in 9 CFR 308.3(d) for firefighting,~~ a A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.^P

B. The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^{N Pf}

2VAC5-585-2330. Scheduling inspection and service for a water system device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.^{Pf}

2VAC5-585-2340. Water reservoir of fogging devices, cleaning.*

A. A reservoir that is used to supply water to a device such as a produce fogger shall be:

1. Maintained in accordance with manufacturer's specifications;^P and
2. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection B of this section, whichever is more stringent.^P

B. Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

1. Draining and complete disassembly of the water and aerosol contact parts;^P
2. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;^P

3. Flushing the complete system with water to remove the detergent solution and particulate accumulation;^P and

4. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L (ppm) hypochlorite solution.^P

2VAC5-585-2350. System maintained in good repair.*

A plumbing system shall be:

1. Repaired according to law;^P and
2. Maintained in good repair.^S

Article 3

Mobile Water Tank and Mobile Food Establishment Water Tank

2VAC5-585-2360. Approved materials.

Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

1. Safe;^P
2. Durable, corrosion resistant, and nonabsorbent; and
3. Finished to have a smooth, easily cleanable surface.

2VAC5-585-2420. Hose, construction and identification.

A hose used for conveying drinking water from a water tank shall be:

1. Safe;^P
2. Durable, corrosion resistant, and nonabsorbent;
3. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
4. Finished with a smooth interior surface; and
5. Clearly and durably identified as to its use if not permanently attached.

2VAC5-585-2430. Filter, compressed air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.^P

2VAC5-585-2460. System flushing and disinfection.*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.^P

2VAC5-585-2490. Tank, pump, and hoses, dedication.

A. Except as specified in subsection B of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.^P

B. Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

Regulations

2VAC5-585-2505. Establishment drainage system.

Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 2VAC5-585-2180 A.

2VAC5-585-2520. Backflow prevention.[Ⓜ]

A. Except as specified in subsections B, C, and D of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.^P

B. Subsection A of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

C. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 meters) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

D. If allowed by law, a warewashing or culinary sink may have a direct connection.

2VAC5-585-2540. Conveying sewage.[Ⓜ]

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.^P

2VAC5-585-2550. Removing mobile food establishment wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.^{Pf}

2VAC5-585-2570. Approved sewage disposal system.[Ⓜ]

Sewage shall be disposed through an approved facility that is:

1. A public sewage treatment plant;^P or
2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to law in accordance with the regulations promulgated pursuant to Chapter 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia.^P

2VAC5-585-2595. Indoor storage area.

If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 2VAC5-585-2790, 2VAC5-585-2810 through 2VAC5-585-2880, 2VAC5-585-2930, and 2VAC5-585-2940.

2VAC5-585-2840. Floor carpeting, restrictions and installation.

A. A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room

areas where handwashing ~~lavatories~~ sinks, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

B. If carpeting is installed as a floor covering in areas other than those specified under subsection A of this section, it shall be:

1. Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
2. Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

2VAC5-585-2930. Outer openings, protected.

A. Except as specified in subsections B through E of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

1. Filling or closing holes and other gaps along floors, walls and ceilings;
2. Closed, tight-fitting windows; and
3. Solid self-closing, tight-fitting doors.

B. Subsection A of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

C. Exterior doors used as exits need not be self-closing if they are:

1. Solid and tight-fitting;
2. Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
3. ~~Restricted~~ Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

D. Except as specified in subsections B and E of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes, or a temporary food establishment is not provided with windows and doors as specified in subsection A of this section, the openings shall be protected against the entry of insects and rodents by:

1. 16 mesh to one-inch (16 mesh to 25.4-mm) screens;
2. Properly designed and installed air curtains to control flying insects; or
3. Other effective means.

E. Subsection D of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

2VAC5-585-2990. Private homes and living or sleeping quarters, use prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.^{Pf}

2VAC5-585-3000. Living or sleeping quarters, separation.

Sleeping Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

2VAC5-585-3020. Handwashing cleanser, availability.

Each handwashing sink or group of two adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.^{Pf}

2VAC5-585-3030. Hand drying provision.

Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

1. Individual, disposable towels;^{Pf}
2. A continuous towel system that supplies the user with a clean towel; ~~or~~^{Pf}
3. A heated-air hand drying device;^{Pf} or
4. A hand-drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.^{Pf}

2VAC5-585-3040. 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 may not be provided with the handwashing aids and devices required for a handwashing sink as specified under 2VAC5-585-2650 C, 2VAC5-585-3020, and 2VAC5-585-3030 and 2VAC5-585-2650 C.

2VAC5-585-3047. Disposable towels, waste receptacle.

A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under 2VAC5-585-2650 C.

2VAC5-585-3070. Toilet tissue, availability.

A supply of toilet tissue shall be available at each toilet.^{Pf}

2VAC5-585-3130. Toilet rooms, convenience and accessibility.

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation. ~~Toilet rooms intended for use by customers shall not necessitate travel through food preparation or handling areas.~~

2VAC5-585-3150. Distressed merchandise, segregation and location.

Products that are held by the ~~person in charge~~ operator for credit, redemption, or return to the distributor, such as

damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.^{Pf}

2VAC5-585-3210. Cleaning maintenance tools, preventing contamination.*

Food preparation sinks, handwashing ~~lavatories~~ sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.^{Pf}

2VAC5-585-3240. Cleaning of plumbing fixtures.

Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean ~~and maintained and used as specified under 2VAC5-585-2310.~~

2VAC5-585-3250. Closing toilet room doors.

~~Toilet room doors as specified under 2VAC5-585-2920 shall be kept closed except during cleaning and maintenance operations unless otherwise required by other regulations or law.~~ Except during cleaning and maintenance operations, toilet room doors as specified under 2VAC5-585-2920 shall be kept closed.

2VAC5-585-3270. Controlling pests.*

The ~~presence~~ premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to minimize eliminate their presence on the premises by:

1. Routinely inspecting incoming shipments of food and supplies;^N
2. Routinely inspecting the premises for evidence of pests;^N
3. Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 2VAC5-585-3360, 2VAC5-585-3440, and 2VAC5-585-3450;^{Pf} and
4. Eliminating harborage conditions.^N

2VAC5-585-3310. Prohibiting animals.*

A. Except as specified in subsections B and C of this section, live animals may not be allowed on the premises of a food establishment.^{Pf}

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;

Regulations

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly ~~restricted~~ confined, such as in a variety store that sells pets or a tourist park that displays animals.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

Part VII

Poisonous or Toxic Materials

Article 1

Labeling and Identification

2VAC5-585-3320. Original containers - identifying information, prominence.*

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.^{Pf}

2VAC5-585-3330. Working containers - common name.*

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.^{Pf}

Article 2

Operational Supplies and Applications

2VAC5-585-3340. Storage, separation.*

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;^{S P} and

2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This subsection does not apply to equipment and utensil cleaners and sanitizers that

are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles;^P and^P

~~3. Detergents, sanitizers, related cleaning or drying agents and caustics, acids, polishes and other chemicals shall be stored separately from insecticides and rodenticides.~~

2VAC5-585-3350. Presence and use restriction.*

A. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.^{S Pf}

B. Subsection A of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

2VAC5-585-3360. Conditions of use.*

A. Poisonous or toxic materials shall be:

1. Used according to:

a. Law and this chapter;

b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;^P

c. The conditions of certification, if certification is required, for use of the pest control materials;^P and

d. Additional conditions that may be established by the department; and

2. Applied so that:

a. A hazard to employees or other persons is not constituted;^P and

b. Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:^P

(1) Removing the items;^P

(2) Covering the items with impermeable covers;^P or

(3) Taking other appropriate preventive actions;^P and

(4) Cleaning and sanitizing equipment and utensils after the application.^P

B. A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC § 136(e); §§ 3.2-3929, 3.2-3930, and 3.2-3931 of the Code of Virginia (Virginia Pesticide Control Act); or a person under the direct supervision of a certified applicator.^{Pf}

2VAC5-585-3370. Poisonous or toxic material containers.*

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.^P

2VAC5-585-3380. Sanitizers, criteria.Ⓜ

Chemical sanitizers, including chemical sanitizing solutions generated on site, and other chemical antimicrobials applied to food-contact surfaces shall ~~meet the requirements specified in 40 CFR 180.940.;~~

1. Meet the requirements specified in 40 CFR 180.940.;^P or
2. Meet the requirements as specified in 40 CFR 180.2020.^P

2VAC5-585-3390. Chemicals for washing fruits and vegetables, criteria.Ⓜ

A. Chemicals, including those generated on site, used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in ~~21 CFR 173.315~~ 40 CFR Part 156 and shall.;^P

1. Be an approved food additive listed for this intended use in 21 CFR Part 173.;^P
2. Be generally recognized as safe for this intended use.;^P 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).^P

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.^P

2VAC5-585-3400. Boiler water additives, criteria.Ⓜ

Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310.^P

2VAC5-585-3410. Drying agents, criteria.Ⓜ

Drying agents used in conjunction with sanitization shall:

1. Contain only components that are listed as one of the following:
 - a. Generally recognized as safe for use in food as specified in 21 CFR Part 182, ~~Substances Generally Recognized as Safe~~, or 21 CFR Part 184, ~~Direct Food Substances Affirmed as Generally Recognized as Safe~~.;^P
 - b. Generally recognized as safe for the intended use as specified in 21 CFR Part 186, ~~Indirect Food Substances Affirmed as Generally Recognized as Safe~~.;^P
 - c. Generally recognized as safe 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.;^P
 - d. Subject of an effective food contact notification as described in § 409(h) of the Federal Food, Drug, and Cosmetic Act (21 USC § 348(h)).;^P
 - e. Approved for use as a drying agent under a prior sanction specified in 21 CFR Part 181, ~~Prior Sanctioned Food Ingredients~~ as described in § 201 (s)(4) of the Federal Food, Drug, and Cosmetic Act (21 USC § 321(s)(4)).;^P

~~d. f. Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178 174-178.;~~^P or

~~e. g. Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39, ~~Threshold of Regulation for Substances Used in Food-Contact Articles~~.;~~^P and

2. When sanitization is with chemicals, the approval required under ~~subdivisions 1 e or subdivision 1 e or 1 g~~ of this section or the ~~regulation chapter~~ as an indirect food additive required under subdivision 1 ~~d f~~ of this section, shall be specifically for use with chemical sanitizing solutions.^P

2VAC5-585-3420. Lubricants - incidental food contact, criteria.Ⓜ

Lubricants shall meet the requirements specified in 21 CFR 178.3570 if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.^P

2VAC5-585-3430. Restricted use pesticides, criteria.Ⓜ

Restricted use pesticides specified under subsection B of 2VAC5-585-3360 shall meet the requirements specified in 40 CFR Part 152, Subpart I, ~~Classification of Pesticides~~.^P

2VAC5-585-3440. Rodent bait stations.Ⓜ

Rodent bait shall be contained in a covered, tamper-resistant bait station.^P

2VAC5-585-3450. Tracking powders, pest control and monitoring.Ⓜ

A. A ~~Except as specified in subsection B of this section~~, a tracking powder pesticide may not be used in a food establishment.^P

B. If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.^N

2VAC5-585-3460. Medicines - restriction and storage.Ⓜ

A. Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.^{Pt}

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 2VAC5-585-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.^P

2VAC5-585-3470. Refrigerated medicines, storage.Ⓜ

Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

Regulations

1. Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines;^P and
2. Located so they are inaccessible to children.^P

2VAC5-585-3480. First aid supplies, storage.*

First aid supplies that are in a food establishment for the employees' use shall be:

1. Labeled as specified under 2VAC5-585-3320;^{S, Pf} and
2. Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.^{S, P}

Article 3 Stock and Retail Sale

2VAC5-585-3500. Storage and display, separation.*

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;^{S, P} and
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.^P

Part VIII Compliance and Enforcement

Article 1 Applicability of Chapter

2VAC5-585-3510. Public health protection.

A. The department shall apply this ~~regulation chapter~~ to promote its underlying purpose, as specified in 2VAC5-585-20, 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 chapter~~, the department shall assess existing facilities or equipment that were in use before the effective date of this ~~regulation chapter~~ based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
2. Whether food-contact surfaces comply with 2VAC5-585-960 through 2VAC5-585-1060;
3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 2VAC5-585-1450; and
4. The existence of a documented agreement with the establishment operator that the facilities or equipment will be replaced or upgraded as specified in ~~the following~~ subdivision 6 of 2VAC5-585-3660.
 - a. ~~Except as specified under subdivision B 4 b of this section, replace existing facilities and equipment~~

~~specified in this section with facilities and equipment that comply with this regulation if:~~

- ~~(1) The department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;~~
 - ~~(2) The department directs the replacement of the facilities and equipment because of a change of ownership; or~~
 - ~~(3) The facilities and equipment are replaced in the normal course of operation;~~
- b. ~~Upgrade or replace refrigeration equipment as specified under 2VAC5 585 820 A 2 b, if the circumstances specified under subdivision B 4 a of this section do not occur first.~~

2VAC5-585-3541. Documentation of proposed variance and justification.

Before a variance from a requirement of this ~~regulation chapter~~ is approved, the information that shall be provided by the person requesting the variance and retained in the department's file on the food establishment includes:

1. A statement of the proposed variance of the regulation requirement citing relevant regulation section numbers;^{Pf}
2. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant regulation sections will be alternatively addressed by the proposal;^{Pf} and
3. A HACCP plan if required as specified under 2VAC5-585-3620 A that includes the information specified under 2VAC5-585-3630 as it is relevant to the variance requested.^{Pf}

2VAC5-585-3542. Conformance with approved procedures.*

If the department grants a variance as specified in 2VAC5-585-3540, or a HACCP plan is otherwise required as specified under 2VAC5-585-3620, the operator shall:

1. Comply with the HACCP plans and procedures that are submitted as specified under 2VAC5-585-3630 and approved as a basis for the modification or waiver;^P and
2. Maintain and provide to the department, upon request, records specified under subdivisions 4 and 5 of 2VAC5-585-3630 that demonstrate that the following are routinely employed:
 - a. Procedures for monitoring critical control points;^{Pf}
 - b. Monitoring of the critical control points;^{Pf}
 - c. Verification of the effectiveness of an operation or process;^{Pf} and
 - d. Necessary corrective actions if there is failure at a critical control point.^{Pf}

Article 2

Plan Submission and Approval

2VAC5-585-3600. Facility and operating plans - when plans are required.

An operator shall submit to the department properly prepared plans and specifications for review and approval ~~when appropriate or when requested by the department. Such instances shall include before:~~

1. The construction of a food establishment;^{Pf}
2. The conversion of an existing structure for use as a food establishment;^{Pf} or
3. The remodeling of a food establishment or a change of type of food establishment or food operation if the department determines that plans and specifications are necessary to ensure compliance with this ~~regulation chapter.~~^{Pf}

2VAC5-585-3620. When a HACCP plan is required.

A. Before engaging in an activity that requires a HACCP plan, an operator shall submit to the department for approval a properly prepared HACCP plan as specified under 2VAC5-585-3630 and the relevant provisions of this chapter if:

1. Submission of a HACCP plan is required according to law;
2. A variance is required as specified under ~~2VAC5-585-700 D 4, 2VAC5-585-860, or 2VAC5-585-1300 B, or subdivision 2VAC5-585-700 D 3;~~ or
3. The department determines that a food preparation or processing method requires a variance based on a plan submittal specified under 2VAC5-585-3610, an inspectional finding, or a variance request.

~~B. An operator shall have a properly prepared HACCP plan. Before engaging in reduced oxygen packaging without a variance as specified under 2VAC5-585-870, an operator shall submit a properly prepared HACCP plan to the department.~~

2VAC5-585-3630. Contents of a HACCP plan.

For a food establishment that is required under 2VAC5-585-3620 to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of ~~potentially hazardous time/temperature control for safety~~ foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;^{Pf}
2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
 - a. Ingredients, materials, and equipment used in the preparation of that food;^{Pf} and

b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;^{Pf}

3. Food employee and supervisory training plan that addresses the food safety issues of concern;^{Pf}
4. A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - a. Each critical control point;^{Pf}
 - b. The critical limits for each critical control point;^{Pf}
 - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;^{Pf}
 - 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;^{Pf}
 - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met;^{Pf} and
 - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed;^{Pf} and
5. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.^{Pf}

2VAC5-585-3655. Responsibilities of the department.

A. At the time of the initial inspection, the department shall provide to the operator a copy of this chapter so that the operator is notified of the compliance requirements and the conditions of retention, as specified under 2VAC5-585-3660, that are applicable to the food establishment.

B. Failure to provide the information specified in subsection A of this section does not prevent the department from taking authorized action or seeking remedies if the operator fails to comply with this chapter or an order, warning, or directive of the department.

2VAC5-585-3660. Responsibilities of the operator.

The operator shall:

1. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 2VAC5-585-3542 and approved plans as specified under 2VAC5-585-3610;
2. If a food establishment is required under 2VAC5-585-3620 to operate under a HACCP plan, comply with the plan as specified under 2VAC5-585-3542;
3. Immediately contact the department to report an illness of a food employee or conditional employee as specified under 2VAC5-585-80 B;
4. Immediately discontinue operations and notify the department if an imminent health hazard may exist as specified under 2VAC5-585-3910;

Regulations

5. Allow authorized representatives of the commissioner access to the food establishment as specified under 2VAC5-585-3820;

6. Replace existing facilities and equipment specified in 2VAC5-585-3510 with facilities and equipment that comply with this chapter if:

a. The department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

b. The 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;

7. Comply with directives of the department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the department in regard to the operator's food establishment or in response to community emergencies;

8. Accept notices issued and served by the department according to law;

9. 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 department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

10. Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the department.

Article 4

Inspection and Correction of Violations

2VAC5-585-3800. Frequency, establishing inspection interval.

~~Food establishments shall be inspected by the designee of the commissioner. Inspections of food establishments shall be performed as often as necessary for the enforcement of this part in accordance with the following:~~

~~1. A. Except as specified in subdivisions 2 and 3 subsections B and C of this section, the department shall inspect a food establishment at least once every six months.~~

~~2. B. The department may increase the interval between inspections beyond six months if:~~

~~a. 1. The food establishment is fully operating under an approved and validated HACCP plan as specified under 2VAC5-585-3630 and subdivisions 1 and 2 of 2VAC5-585-3542 and 2VAC5-585-3630.~~

~~b. 2. The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction.~~

~~e. 3. The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.~~

~~3. C. The department shall periodically inspect a temporary food establishment that prepares, sells, or serves unpackaged potentially hazardous time/temperature control for safety food and that:~~

~~a. 1. Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or~~

~~b. 2. Has inexperienced food employees.~~

2VAC5-585-3810. Performance-based and risk-based inspections.

Within the parameters specified in 2VAC5-585-3800, the department shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

1. Past performance for nonconformance with this chapter or HACCP plan requirements that are critical priority items or priority foundation items;

2. Past performance for numerous or repeat violations of this chapter or HACCP plan requirements that are noncritical 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.

2VAC5-585-3820. Access allowed at reasonable times.

After the authorized representative of the commissioner presents official credentials and ~~identifies~~ provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the authorized representative to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the department is entitled according to law, during the food establishment's hours of operation and other reasonable times.

2VAC5-585-3830. Refusal, notification of right to access, and final request for access.

If a person denies access to the authorized representative of the commissioner, the authorized representative shall:

1. Inform the person that:
 - a. The person is required to allow access to the authorized representative as specified under 2VAC5-585-3820;
 - b. ~~If access is denied, the~~ The department will refer the matter to the Commonwealth's Attorney for handling in accordance with applicable sections of the Code of Virginia; and

2. Make a final request for access.

2VAC5-585-3840. Refusal, reporting.

If after the authorized representative of the commissioner presents credentials and ~~identifies the purpose of and the intent to conduct an inspection~~ provides notice as specified under 2VAC5-585-3820, explains the authority upon which access is requested, and makes a final request for access as specified in 2VAC5-585-3830, the person in charge continues to refuse access, the authorized representative shall provide details of the denial of access on an inspection report form.

2VAC5-585-3860. Documenting information and observations.

The authorized representative of the commissioner shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, and other information such as type of water supply and sewage disposal, and personnel certificates that may be required; and
2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the establishment operator including:
 - a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 2VAC5-585-60;
 - b. Failure of food employees, conditional employees, and the person in charge ~~to demonstrate their knowledge of their responsibility~~ to report a disease or medical condition as specified under 2VAC5-585-80 B and D;
 - c. Nonconformance with ~~critical items~~ priority items and priority foundation items of this chapter;
 - d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified under ~~2VAC5-585-60~~ 2VAC5-585-3542;

e. Failure of the person in charge to provide records required by the department for determining conformance with a HACCP plan as specified under subdivision 4 f of 2VAC5-585-3630; and

f. Nonconformance with critical limits of a HACCP plan.

2VAC5-585-3910. Imminent health hazard, ceasing operations and reporting.

A. Except as specified in subsection B of this section, an operator shall immediately discontinue operations and notify the department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.^P

B. An operator need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

2VAC5-585-3930. ~~Critical violation~~ Priority or priority foundation item, timely correction.

A. Except as specified in subsection B of this section, an operator or person in charge shall at the time of inspection correct a ~~critical~~ violation of a priority item or priority foundation item of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.^{Pf}

B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the department may agree to or specify a longer time frame, not to exceed ~~10 calendar days after the inspection, for the operator or person in charge to correct critical violations or HACCP plan deviations.~~

1. 72 hours after the inspection, for the operator to correct violations of a priority item; or

2. 10 calendar days after the inspection, for the operator to correct violations of a priority foundation item or HACCP plan deviations.

2VAC5-585-3940. Verification and documentation of correction.

A. After observing at the time of inspection a correction of a ~~critical~~ violation ~~or~~ of a priority item or priority foundation item or a HACCP plan deviation, the authorized representative of the commissioner shall enter the violation and information about the corrective action on the inspection report.

B. As specified under 2VAC5-585-3930 B, after receiving notification that the operator has corrected a violation of a priority item or priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the authorized representative shall verify correction of the ~~critical~~ violation or deviation during the next scheduled inspection of

Regulations

the establishment and shall document the information on an inspection report, and enter the report in the department's records.

2VAC5-585-3950. ~~Noncritical violation~~ Core items, time frame for timely correction.

A. Except as specified in subsection B of this section, the operator or person in charge shall correct ~~noncritical violations~~ core items by a date and time agreed to or specified by the department but no later than 90 calendar days after the inspection.

B. The department may approve a compliance schedule that extends beyond the time limits specified under subsection A of this section if a written schedule of compliance is submitted by the operator and no health hazard exists or will result from allowing an extended schedule for compliance.

Article 5

Prevention of Foodborne Disease Transmission by Employees

2VAC5-585-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.

The department shall act when it has reasonable cause to believe that a food employee 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 food employee or conditional 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.

2VAC5-585-4050. Restriction or exclusion of food employee.

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the department may ~~request that~~ issue an order to the suspected food employee, ~~or~~ conditional employee, or operator ~~institute instituting~~ one or more of the following control measures:

1. Restricting the food employee or conditional employee; ~~or~~
2. Excluding the food employee or conditional employee; ~~or~~
3. Closing the food establishment in accordance with law.

2VAC5-585-4060. Restriction or exclusion request: information required.

Based on the findings of the investigation as specified in 2VAC5-585-4040 and to control disease transmission, the department may ~~make a request~~ issue an order of restriction or exclusion to the suspected food employee or the operator ~~regarding restriction or exclusion if the request~~ without prior warning, notice of hearing, or a hearing if the order:

1. States the reasons for the restriction or exclusion that is ~~requested~~ ordered;
2. States the evidence that the food employee or operator shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
3. States that the suspected food employee or the operator may request an appeal hearing by submitting a timely request as provided in law; and
4. Provides the name and address of the authorized representative of the commissioner to whom a request for appeal hearing be made.

NOTICE: The following forms used in administering the regulation were 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, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-585)

- ~~Food Safety and Security Program, Inspection Report~~
- ~~Food Safety and Security Program, Record of Complaint~~
- ~~Food Safety and Security Program, Record of Complaint, FBI~~
- ~~Food Safety and Security Program, Sample Collection Report~~
- [Food Safety and Security Program, Retail Inspection Report, ODF-FSSP-10001 \(rev. 9/14\)](#)
- [Food Safety and Security Program, Complaint Report, ODF-FSSP-10004 \(rev. 12/13\)](#)
- [Food Safety and Security Program, Foodborne Illness Complaint Report, ODF-FSSP-10003 \(rev. 12/13\)](#)
- [Food Safety and Security Program, Sample Collection Report, ODF-FSSP-10002 \(rev. 12/13\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-585)

~~Approved Drug Products with Therapeutic Equivalence Evaluations (updated daily), 25th Edition, available from the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Pharmaceutical Science, Office of Generic Drugs at <http://www.fda.gov/cder/ob/default.htm>.~~

~~Grade "A" Pasteurized Milk Ordinance, 2003 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~Grade "A" Condensed and Dry Milk Ordinance, 1995 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835~~

[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](http://www.fda.gov/cder/ob/default.htm)

~~Grade "A" Pasteurized Milk Ordinance, 2013 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835~~

~~Interstate Certified Shellfish Shippers List (updated monthly), published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (2007), 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.~~

~~NSF/ANSI 18-2006 Manual Food and Beverage Dispensing Equipment, American National Standard, published by NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, Michigan 48113-0140.~~

~~National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, 2011 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835~~

~~NSF/ANSI 18-2012 Manual Food and Beverage Dispensing Equipment, 2012, NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, www.nsf.org~~

~~Standards for Accreditation of Food Protection Manager Certification Programs, April 2012, Conference for Food Protection, 30 Elliott Court, Martinsville, IN 46151-1331~~

~~United States Standards, Grades, and Weight Classes for Shell Eggs, AMS-56, effective July 20, 2000, U.S. Department of Agriculture, Agricultural Marketing Service,~~

[Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW, Washington, DC 20250-0259](http://www.poultryprograms.com)

VA.R. Doc. No. R15-4032; Filed September 22, 2014, 9:35 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-42).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

Amendments (i) increase the spiny dogfish possession limit from 4,000 to 5,000 pounds per vessel per day and (ii) change the definitions of small-mesh and large-mesh gill nets so that stretched mesh equal to five-inches is a small-mesh instead of a large-mesh gill net.

4VAC20-490-20. Definitions.

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

"Agent" means any person who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

"COLREGS Line" means the COLREGS Demarcation Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Commercial shark fisherman" means any commercial fisherman permitted to land or possess sharks (excluding spiny dogfish) that has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

Regulations

"Commercially permitted aggregated large coastal shark" means any of the following species:

Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Silky, *Carcharhinus falciformis*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

"Commercially permitted blacknose shark" means any of the following species:

Blacknose, *Carcharhinus acronotus*

"Commercially permitted hammerhead shark" means any of the following species:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*

"Commercially permitted nonblacknose small coastal shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

"Commercially permitted pelagic shark" means any of the following species:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*

"Commercially prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*

Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

"Large mesh gill net" means any gill net ~~having~~ with a stretched mesh ~~equal to or~~ of greater than five inches.

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Movable gill net" means any gill net other than a staked gill net.

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Blacktip, *Carcharhinus limbatus*
Blue, *Prionace glauca*
Bonnethead, *Sphyrna tiburo*
Bull, *Carcharhinus leucas*
Finetooth, *Carcharhinus isodon*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Oceanic whitetip, *Carcharhinus longimanus*

Porbeagle, *Lamna nasus*
 Scalloped hammerhead, *Sphyrna lewini*
 Shortfin mako, *Isurus oxyrinchus*
 Smooth dogfish, *Mustelus canis*
 Smooth hammerhead, *Sphyrna zygaena*
 Spinner, *Carcharhinus brevipinna*
 Thresher, *Alopias vulpinus*
 Tiger, *Galeocerdo cuvier*

"Recreationally prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*
 Basking, *Cetorhinus maximus*
 Bigeye sand tiger, *Odontaspis noronhai*
 Bigeye sixgill, *Hexanchus nakamurai*
 Bigeye thresher, *Alopias superciliosus*
 Bignose, *Carcharhinus altimus*
 Caribbean reef, *Carcharhinus perezii*
 Caribbean sharpnose, *Rhizoprionodon porosus*
 Dusky, *Carcharhinus obscurus*
 Galapagos, *Carcharhinus galapagensis*
 Longfin mako, *Isurus paucus*
 Narrowtooth, *Carcharhinus brachyurus*
 Night, *Carcharhinus signatus*
 Sand tiger, *Carcharias taurus*
 Sandbar, *Carcharhinus plumbeus*
 Sevengill, *Heptranchias perlo*
 Silky, *Carcharhinus falciformis*
 Sixgill, *Hexanchus griseus*
 Smalltail, *Carcharhinus porosus*
 Whale, *Rhincodon typus*
 White, *Carcharodon carcharias*

"Research only shark" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net ~~having a stretched mesh less than five inches~~ with a stretched mesh of equal to or less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of May 1, 2014, through April 30, 2015, the spiny dogfish commercial landings quota shall be limited to 5,329,492 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than ~~4,000~~ 5,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

V.A.R. Doc. No. R15-4174; Filed September 27, 2014, 11:19 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4VAC20-751-20).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: September 27, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) remove tending requirements for small-mesh gill nets on the ocean side of Northampton and Accomack Counties from August 15 through October 15 and (ii) prohibit the use of agents within the Assateague Island Small-Mesh Gill Net Area but provide the commissioner the discretionary authority to permit such use.

Regulations

4VAC20-751-20. Gill net mesh sizes, restricted areas, and season.

A. From January 1 through March 25 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3-3/4 inches and six inches within the restricted areas as set forth below, except that from January 16 through the end of February any legally licensed fisherman may place, set, or fish any gill net with a stretched mesh size from five inches to six inches within the restricted areas described in this subsection. From March 26 through June 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches within the restricted areas set forth below, except as described in 4VAC20-252-135:

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;
2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;
3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;
4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;
5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;
6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;
7. In Piank tank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and
8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

B. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish more than 8,400 feet of gill net.

C. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net in the Chesapeake Bay or in Virginia's portion of the Territorial Sea, that is made, set or fished in a tied-down manner, by connecting the net's head rope and foot rope with lines, which cause the net to form a pocket of webbing.

D. During the period June 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net with a stretched mesh greater than six inches in the Virginia portion of the Territorial Sea, south of a line connecting Smith Island Light and the three-mile limit line.

E. From June 1 through ~~October 15~~ August 14, it shall be unlawful for any person to place any unattended small-mesh gill net within 500 yards of the mean ~~high-water~~ low-water mark, on the ocean side of Northampton and Accomack ~~counties~~ Counties, north of a line, beginning at the southern

most point of Smith Island and thence extending due east to the three-mile limit line.

F. It shall be unlawful for any person to use any agent to place, set, or fish any gill net within 500 yards of the mean low-water mark within the Assateague Island Small-Mesh Gill Net Area from August 15 through October 31. The commissioner, or his designee, may approve the use of an agent if the legally licensed person can document a significant hardship on the basis of health that impedes the retrieval of any gill nets within the Assateague Island Small-Mesh Gill Net Area.

VA.R. Doc. No. R15-4173; Filed September 27, 2014, 11:09 a.m.

TITLE 8. EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).**

Statutory Authority: §§ 23-9.2:3 and 23-122 of the Code of Virginia.

Effective Date: October 7, 2014.

Agency Contact: Sheila Collins, Policy Specialist, Office of the President, 210 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-1358, FAX (540) 231-4265, or email shcolli4@vt.edu.

Summary:

The amendment updates the university's parking regulations to reflect revised parking procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the Parking and Traffic Procedures, Virginia Tech Parking Services, effective ~~October 15, 2013~~ July 1, 2014.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE
(8VAC105-11)

~~Parking and Traffic Procedures, Virginia Tech Parking Services (eff. 10/2013)~~

[Parking and Traffic Procedures, Virginia Tech Parking Services \(rev. 7/14\)](#)

VA.R. Doc. No. R15-4182; Filed October 7, 2014, 10:21 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-170. Regulation for General Administration (Rev. F14) (amending 9VAC5-170-20; adding 9VAC5-170-210).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 110 of the Clean Air Act; 40 CFR Part 51.

Effective Date: November 19, 2014.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments conform the regulation to §§ 110(a)(2)(E)(ii) and 128(a)(2) of the federal Clean Air Act, which require that potential conflicts of interest by members of a board or body that approves permits or enforcement orders under the Act, or the head of an executive agency with similar powers, be adequately disclosed. Because there are no provisions in the Virginia statutes or the board's regulations that directly address § 128(a)(2), the Virginia State Implementation Plan must be amended.

9VAC5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances ~~which that~~ are or may be harmful or injurious to human health, welfare, or safety; to animal or plant life; or to property; or ~~which that~~ unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board or its designated representative.

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.

"Confidential information" means secret formulae, secret processes, secret methods, or other trade secrets ~~which that~~ are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information ~~which that~~ is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or another person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with the regulations of the board, by mutual agreement of the owner or another person and the board.

"Consent order" means a consent agreement issued as an order. Consent orders may be issued without a formal hearing.

"Department" means an employee or other representative of the Virginia Department of Environmental Quality as designated by the director.

"Director" means the ~~director~~ Director of the Virginia Department of Environmental Quality or a designated representative.

"Disclosure form" means the financial statement required by § 2.2-3114 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

Regulations

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.

"Emergency special order" means an order of the board issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding ~~which~~ that provides opportunity for interested persons to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Administrative Process Act in connection with the making of regulations. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 2.2-4007.01 B of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding ~~which~~ that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Locality" means a city, town, county, or other public body created by or pursuant to state law.

"Order" means a decision or directive of the board, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

"Owner" means a person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees, and committees, as well as individuals, who owns, leases, operates, controls, or supervises a source.

"Party" means, for the purposes of Part VIII (9VAC5-170-190 et seq.) of this chapter, a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or another legal entity.

"Pollutant" means a substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare, or safety; to animal or plant life; or to property; or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential conflict of interest" means a personal interest as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.01 B of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing, or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

"Source" means one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances ~~which~~ that contribute, or may contribute, either directly or indirectly to air pollution. An activity by a person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means an order of the board issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:
 - a. To owners who are permitting or causing air pollution to cease and desist from the pollution;
 - b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct facilities in accordance with or otherwise comply with the approved plan;

- c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the board to comply with the terms and provisions;
- d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and
- e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the board; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the board a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Virginia Register Act" means Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

PART IX
CONFLICT OF INTEREST

9VAC5-170-210. General.

A. Pursuant to § 128(a)(2) of the federal Clean Air Act, the board and the director, in their capacity of approving permits or enforcement orders, shall adequately disclose any potential conflicts of interest. Such disclosure shall be made annually through the applicable disclosure forms set forth in § 2.2-3117 or 2.2-3118 of the State and Local Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia) as required in § 2.2-3114 of the State and Local Conflict of Interests Act. All terms used in the disclosure forms shall have the meaning as set forth in the State and Local Conflict of Interests Act.

B. Conduct concerning personal interest in transactions shall be governed by § 2.2-3112 of the State and Local Conflict of Interests Act. All terms used regarding personal interest in transactions shall have the meaning as set forth in the State and Local Conflict of Interests Act.

VA.R. Doc. No. R15-4088; Filed September 23, 2014; 2:11 p.m.



TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 10VAC5-120. Money Order Sellers and Money Transmitters (amending 10VAC5-120-10, 10VAC5-120-40, 10VAC5-120-50; adding 10VAC5-120-60 through 10VAC5-120-100).

Statutory Authority: §§ 6.2-1913 and 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: November 20, 2014.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

The proposed amendments (i) define various terms and clarify the scope of the term "money transmission"; (ii) require additional reporting requirements for licensees; (iii) clarify permissible investments; (iv) prohibit licensees from providing false, misleading, or deceptive information to the Bureau of Financial Institutions or a Virginia resident; (v) clarify that the acts and omissions of a licensee's authorized delegates constitute acts and omissions of the licensee; (vi) require licensees and former licensees to maintain contact information with the bureau; (vii) add certain receivables from depository institutions as permissible investments and limit receivables under § 6.2-1919 A 5 of the Code of Virginia as permissible investments; (viii) require licensees and their authorized delegates to dispose of records containing consumers' personal financial information in a secure manner; (ix) specify additional events that require licensees to file a written report with the Commissioner of Financial Institutions; (x) prescribe an application fee for any person submitting an application to acquire 25% or more of the ownership of a licensee; and (xi) prohibit licensees from allowing an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business.

Regulations

AT RICHMOND, SEPTEMBER 24, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2014-00009

Ex Parte: In re: Money Order Sellers
and Money Transmitters

ORDER TO TAKE NOTICE

Section 6.2-1913 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The Commission's regulations governing licensed money order sellers and money transmitters ("licensees") are set forth in Chapter 120 of Title 10 of the Virginia Administrative Code ("Chapter 120").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 120. The proposed regulations: (i) define various terms including "generally accepted accounting principles," "merchant or service provider," and "senior officer"; (ii) clarify the scope of the term "money transmission"; (iii) require licensees to file a quarterly report of outstanding and permissible investments; (iv) clarify that permissible investments must be unencumbered and held solely in the name of the licensee; (v) prohibit licensees from providing false, misleading, or deceptive information to the Bureau or a Virginia resident; (vi) clarify that the acts and omissions of a licensee's authorized delegates constitute acts and omissions of the licensee; (vii) require licensees and former licensees to maintain their contact information with the Bureau until they have no outstanding money orders and money transmission transactions; (viii) add certain receivables from depository institutions as permissible investments and limit receivables under § 6.2-1919 A 5 of the Code of Virginia as permissible investments; (ix) require licensees and their authorized delegates to dispose of records containing consumers' personal financial information in a secure manner; (x) specify additional events that require licensees to file a written report with the Commissioner of Financial Institutions; (xi) prescribe an application fee for any person submitting an application to acquire 25% or more of the ownership of a licensee; and (xii) prohibit licensees from allowing an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business. Various technical and other clarifying amendments also have been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of January 1, 2015.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before November 20, 2014. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2014-00009. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at: <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed money order sellers and money transmitters, and such other interested parties as he may designate.

10VAC5-120-10. Definitions.

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

"Money "Authorized delegate," "licensee," "monetary value," "money order," "~~money transmission," and "licensee"~~" "outstanding" shall have the ~~meaning~~ meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Bureau," "commission," and "commissioner" shall have the ~~meaning~~ meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 19" means Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

"Generally accepted accounting principles" for purposes of Chapter 19 and this chapter means standard accounting guidelines as established and administered by the American Institute of Certified Public Accountants (AICPA) and the United States Financial Accounting Standards Board (FASB).

"Merchant or service provider" means a person engaged in the business of selling goods or services, but excluding a person licensed or required to be licensed under Chapter 19.

"Money transmission" for purposes of Chapter 19 and this chapter shall have the meaning ascribed to it in § 6.2-1900 of the Code of Virginia. However, the term shall not include the actions of an agent who collects funds on behalf of a

merchant or service provider, provided that (i) the agent has been explicitly designated in a written agreement as an agent of the merchant or service provider; (ii) any funds collected by the agent shall be deemed for all purposes to be received by the merchant or service provider, regardless of whether the agent actually remits such funds to the merchant or service provider; (iii) the agent provides the Virginia resident with a dated receipt indicating that payment to the agent constitutes payment to the merchant or service provider; and (iv) there is no risk of loss to the Virginia resident if the agent fails to remit such resident's funds to the merchant or service provider. This definition shall not be construed to prohibit the merchant or service provider from seeking indemnification from its agent for any direct losses incurred due to the agent's failure to remit funds in accordance with its agreement.

"Reporting period" means a calendar quarter, the first six months of a calendar year, or the last six months of a calendar year, as the case may be.

"Senior officer" for purposes of Chapter 19 means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

10VAC5-120-40. Reporting requirements.

A. 1. Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of each calendar quarter.

2. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.

3. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees ~~which~~ that acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.

B. Licensees shall file a report of outstandings and permissible investments with the commissioner within 45 days after the end of each calendar quarter.

C. Within one business day following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact, if any, on the activities of the licensee in Virginia:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.
2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's money order seller

license, money transmitter license, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its money order sales, money transmission, or similar business; or (iii) takes any other action against the licensee relating to its money order sales, money transmission, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed money order sales, money transmission, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

5. The licensee surrenders its money order seller license, money transmitter license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.

6. The licensee is denied a money order seller license, money transmitter license, or other license for a similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, employees, or authorized delegates is indicted or convicted of a felony.

D. The reports required by this section shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.

10VAC5-120-50. Assessment schedule for the examination and supervision of money order sellers and money transmitters.

Pursuant to subsection B of § 6.2-1905 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter 19 (~~§ 6.2-1900 et seq.~~) of Title 6.2 of the Code of ~~Virginia~~. The assessment defrays the costs of the examination and supervision of licensees by the ~~Bureau of Financial Institutions~~ bureau.

The annual assessment shall be \$0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter 19 (~~§ 6.2-1900 et seq.~~) of Title 6.2 of the Code of ~~Virginia~~. The assessment shall be based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Regulations

Fees shall be assessed on or before August 1 for the current calendar year. The assessment shall be paid by licensees on or before September 1.

The annual report, due April 15 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and April 15 of the year of the assessment, the licensee's initial annual assessment shall be \$0.

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the following: (i) the annual license renewal fee of \$750 authorized by subsection A of § 6.2-1905 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § 6.2-1905 of the Code of Virginia.

10VAC5-120-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee or its authorized delegate in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws and regulations, the licensee or authorized delegate shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee or its authorized delegate to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1910 of the Code of Virginia.

B. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

10VAC5-120-70. Acquisitions; additional business requirements and restrictions; operating rules.

A. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 19 shall pay a nonrefundable application fee of \$500.

B. A licensee shall not permit an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business.

C. The audited financial statements filed by a licensee pursuant to § 6.2-1905 D of the Code of Virginia shall cover

the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.

D. Quarterly financial statements filed by a licensee pursuant to § 6.2-1917 B of the Code of Virginia shall be consolidated and prepared in accordance with generally accepted accounting principles.

E. A licensee shall comply with Chapter 19, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business. For purposes of Chapter 19 and this chapter, the acts and omissions of a licensee's authorized delegates shall be deemed acts and omissions of such licensee.

F. In addition to the records specified in § 6.2-1916 B of the Code of Virginia, a licensee shall maintain in its principal place of business such other books, accounts, and records as the commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of Chapter 19, this chapter, and other laws and regulations applicable to the conduct of its business.

G. If a licensee, authorized delegate, or former licensee disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee, authorized delegate, or former licensee may arrange for service from a business record destruction vendor.

H. A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person and the person who consumers may contact regarding outstanding money orders or money transmission transactions; (ii) the location of the licensee's or former licensee's money order and money transmission records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding money orders and money transmission transactions.

I. A person shall remain subject to the provisions of Chapter 19 and this chapter applicable to licensees in connection with all money orders sold and money or monetary value received for transmission while licensed under Chapter 19 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered or revoked; or
2. The person ceases selling money orders or transmitting money or monetary value.

J. A licensee shall not provide any information to a Virginia resident that is false, misleading, or deceptive.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-260. Rules Governing Insurance Holding Companies (amending 14VAC5-260-40, 14VAC5-260-50, 14VAC5-260-60, 14VAC5-260-80, 14VAC5-260-90, 14VAC5-260-110; adding 14VAC5-260-55, 14VAC5-260-85).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: November 20, 2014.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

Chapter 309 of the 2014 Acts of Assembly incorporated revisions made to the National Association of Insurance Commissioners' Insurance Holding Company System Regulatory Act into the Code of Virginia. The proposed amendments address changes resulting from Chapter 309, including the State Corporation Commission's authority to (i) require the ultimate controlling person of an insurance holding company system to submit a confidential enterprise risk filing utilizing new Form F, (ii) require the parent company seeking to divest its interest in an insurance company subsidiary to provide notice to the domestic regulator prior to the divestiture, (iii) require the insurer's board of directors to make statements regarding the corporate governance and internal control responsibilities within the annual holding company registration statement, (iv) subject the cost-sharing services and management agreements among affiliated entities to minimum reporting requirements to eliminate the potential for capital to flow out of the insurer through these types of agreements, and (v) participate in supervisory colleges.

K. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 19 or this chapter.

L. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1906 of the Code of Virginia.

10VAC5-120-80. Permissible investments.

A. Permissible investments maintained by a licensee pursuant to § 6.2-1918 of the Code of Virginia shall be unencumbered and held solely in the name of the licensee.

B. In addition to the investments specified in § 6.2-1919 of the Code of Virginia, the following investments shall be considered permissible under § 6.2-1918 of the Code of Virginia: any receivables that are (i) payable to a licensee from any bank, savings institution, or credit union that is chartered under the laws of the United States or any state thereof; (ii) comprised of funds that have been tendered by residents of the United States for money transmission transactions; and (iii) no more than seven days old.

C. The receivables specified in § 6.2-1919 A 5 of the Code of Virginia shall be limited to funds that have been collected by a licensee's authorized delegates directly from residents of the United States for money transmission transactions.

10VAC5-120-90. Enforcement.

A. Failure to comply with any provision of Chapter 19 or this chapter may result in civil penalties, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-1920 of the Code of Virginia, a person required to be licensed under Chapter 19 shall be subject to a civil penalty of up to \$2,500 for every violation of Chapter 19, this chapter, or other law or regulation applicable to the conduct of the person's business. Furthermore, if a person violates any provision of Chapter 19, this chapter, or other law or regulation applicable to the conduct of the person's business in connection with multiple money order sales or money transmission transactions, the person shall be subject to a separate civil penalty for each money order sale or money transmission transaction. For example, if a person sells five money orders and the person violates two provisions of this chapter in connection with each of the five money order sales, there would be a total of 10 violations and the person would be subject to a maximum civil penalty of \$25,000.

10VAC5-120-100. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R15-4161; Filed September 29, 2014, 11:21 a.m.



Regulations

AT RICHMOND, SEPTEMBER 29, 2014
COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
CASE NO. INS-2014-00203

Ex Parte: In the matter of
Amending the Rules Governing
Insurance Holding Companies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Insurance Holding Companies, 14 VAC 5-260-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-50, 14 VAC 5-260-60, 14 VAC 5-260-80, 14 VAC 5-260-90, and 14 VAC 5-260-110; adds new Rules at 14 VAC 5-260-55 and 14 VAC 5-260-85; revises current Forms A through F as proposed Forms A through E and G; and adds new Form F.

The proposed amendments to Chapter 260 are necessary due to the passage of House Bill 109 during the 2014 General Assembly Session. The proposed amendments address, among other things, the Commission's authority to: 1) require the ultimate controlling person of an insurer to submit a confidential enterprise risk report; 2) require a parent company seeking to divest its interest in a domestic insurance company to provide notice to the Commission prior to the divestiture; 3) require an insurer's board of directors to make statements regarding corporate governance and internal control responsibilities within the annual holding company registration statement; 4) subject cost-sharing services and management agreements among affiliated entities to minimum reporting requirements; and 5) participate in supervisory colleges.

The proposed effective date of the amendments to the Rules is January 1, 2015.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-50, 14 VAC 5-260-60, 14 VAC 5-260-80, 14 VAC 5-260-90, and 14 VAC 5-260-110; add new Rules at 14 VAC 5-260-55 and 14 VAC

5-260-85; revise current Forms A through F as proposed Forms A through E and G; and add new Form F, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Insurance Holding Companies, which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-50, 14 VAC 5-260-60, 14 VAC 5-260-80, 14 VAC 5-260-90, and 14 VAC 5-260-110; add new Rules at 14 VAC 5-260-55 and 14 VAC 5-260-85; revise current Forms A through F as proposed Forms A through E and G; and add new Form F, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending Chapter 260 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before November 20, 2014, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2014-00203.

(3) If no written request for a hearing on the proposal to amend Chapter 260 of Title 14 of the Virginia Administrative Code is received on or before November 20, 2014, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to all life insurers, burial societies, fraternal benefit societies and qualified reinsurers, as well as to all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

14VAC5-260-40. Acquisition of control; approval of applications.

A. A person filing an application or statement pursuant to § 38.2-1323 A, or any related provision of §§ 38.2-1324 through 38.2-1328, of the Act shall furnish the required information designated on Form A ~~of this chapter~~. A failure to file complete and accurate information as required by this chapter is grounds for a denial by the commission pursuant to § 38.2-1326.

~~4. B.~~ Where applicable and required by Form A, Form E shall also be filed.

~~2.~~ Whenever an application includes information in the format required by Form E, the commission may require an opinion of an economist as to the competitive impact of the proposed acquisition.

~~B. C.~~ When the person being acquired controls a domestic insurer, the person shall, for purposes of completing a Form A application, be deemed to be a "domestic insurer."

1. The name of the domestic subsidiary insurer should be indicated on the cover page as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company"; and

2. References to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

~~C. D.~~ The applicant shall promptly advise the commission of any material changes in the information so furnished on Form A, or any attachments thereto, arising subsequent to the date upon which the information was furnished, but prior to the commission's disposition of the application and consummation of the acquisition of control.

~~4.~~ Within two business days after the person filing the application learns of the change, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commission. The filing shall be made with the clerk of the commission. Except where the applicant is also the insurer, the applicant shall show on each such filing that a copy has also been sent to the insurer.

~~2. A failure to file complete and accurate information as required by this chapter is grounds for a denial by the commission pursuant to § 38.2-1326.~~

~~3. As used in this section and for purposes of all Form A filings, "material change" includes any change in the identity of executive officers or any party to a merger or a liquidating transaction.~~

~~D. E.~~ Where "control" is derived from a management agreement, including any other agreement between a domestic insurer and another person other than a contract for goods or nonmanagement services, any termination of the agreement or any substitution of persons under the agreement shall be deemed a change of control requiring notice and

application to the commission pursuant to § 38.2-1323 of the Act.

~~E. F.~~ A person seeking to merge with or acquire a domestic insurer may apply to the commission for an order exempting the person from the provisions of §§ 38.2-1323 through 38.2-1327 if the merger or acquisition meets the standards for exemption provided in § 38.2-1328.

1. The application shall be in writing and shall be filed with the clerk of the commission. Filing instructions are the same as for a Form A filing. See Section III of the Form A Instructions for information regarding number of copies, signature requirements, and electronic filing. The applicant shall identify the parties to the merger or acquisition and shall state (i) the purpose of the merger or acquisition, (ii) the method of merger or acquisition, and (iii) why the person believes the exemption criteria of § 38.2-1328 will be met.

2. Within 30 days after the application for exemption is filed with the clerk of the commission, the commission shall enter an order granting the exemption or giving notice of a hearing to determine the merits of the application.

~~F. G.~~ Any hearing held to consider an application filed pursuant to the provisions of this section and § 38.2-1323 of the Act shall be held pursuant to § 38.2-1326 and shall begin, unless waived by the insurer, within 40 days of the date the application is filed with the commission. An application shall be deemed filed upon receipt by the commission of all material required by this section or § 38.2-1324 of the Act.

14VAC5-260-50. Acquisitions involving insurers not otherwise covered.

A. An acquisition covered by § 38.2-1323 B of the Act may be subject to orders pursuant to § 38.2-1323 B and C of the ~~Code of Virginia Act~~ unless the acquiring party files a pre-acquisition notification or an acquisition statement in the format prescribed by Form E ~~of this chapter~~. The person being acquired may file the statement. If a nondomiciliary insurer licensed to do business in this Commonwealth is proposing a merger or acquisition pursuant to § 38.2-1323 A of the Act, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of § 38.2-1323 A as set forth in subdivision B 2 of this section.

In addition to the information required by Form E, the commission may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

~~1. The commission may enter an order suspending B. 1. Except as exempted in subdivision 2 of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this Commonwealth.~~

2. This section shall not apply to the following:

a. A purchase of securities solely for investment purposes so long as the securities are not used to cause or attempt

Regulations

to cause the substantial lessening of competition in any insurance market in this Commonwealth. If a purchase of securities results in a presumption of control, as defined in § 38.2-1322 of the Act, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary insurance commissioner, director, or superintendent to the commission;

b. The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commission in accordance with subdivision C 1 of this section 30 days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other provision in this subdivision B 2;

c. The acquisition of already affiliated persons; or

d. An acquisition if, as an immediate result of the acquisition:

(1) In no market would the combined market share of the involved insurers exceed 5.0% of the total market;

(2) There would be no increase in any market share; or

(3) In no market would the combined market share of the involved insurers exceed 12% of the total market, and the market share increase by more than 2.0% of the total market.

For the purpose of this subdivision, a market means direct written insurance premium in this Commonwealth for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this Commonwealth.

C. An acquisition covered by subsection B of this section may be subject to an order pursuant to subsection E of this section unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commission shall give confidential treatment to information submitted under this subsection in the same manner as provided in § 38.2-1333 of the Act.

1. The pre-acquisition notification shall be in such form and contain such information as prescribed by the NAIC relating to those markets that, under subdivision B 2 d of this section, cause the acquisition not to be exempted from the provisions of this section. The commission may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection D of this section. The required information may include an opinion of an economist as to the competitive

impact of the acquisition in this Commonwealth accompanied by a summary of the education and experience of the economist indicating his ability to render an informed opinion.

2. The waiting period required shall begin on the date of receipt by the commission of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt or termination of the waiting period by the commission. Prior to the end of the waiting period, the commission may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the commission or termination of the waiting period by the commission.

D. 1. The commission may enter an order under subdivision E 1 of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this Commonwealth or tend to create a monopoly or if the insurer fails to file adequate information in compliance with subsection C of this section.

2. In determining whether competition may be detrimental, the commission shall consider, among other things, whether applicable competitive standards promulgated by the NAIC have or may be violated as a consequence of the acquisition. The standards may include any indicators of competition identified or enumerated by the NAIC in any model laws or portions of practice and procedure or instructional manuals developed to provide guidance in regulatory oversight of holding company systems, mergers and acquisitions, or competitive practices within the marketplace. The standards include the definitions, guidelines, or standards embodied in any model holding company act or model holding company regulation adopted by the NAIC. In addition, the commission may request and consider the opinion of an economist as to the competitive impact of the acquisition whenever pre-acquisition notification is submitted pursuant to § 38.2-1323 B of the Act.

E. 1. a. If an acquisition violates the standards of this section, the commission may enter an order:

(1) Requiring an involved insurer to cease and desist from doing business in this Commonwealth with respect to the line or lines of insurance involved in the violation.

(2) Denying the application of an acquired or acquiring insurer for a license to do business in this Commonwealth.

(3) Suspending the license of an insurer involved in an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this Commonwealth or tend to create a monopoly therein, and is detrimental to policyholders or the public in general.

~~2. An order suspending~~ (4) Suspending the license may also be entered if the insurer fails to file adequate information sufficient to rebut a reasonable belief that the merger or acquisition causes or tends to cause a substantial lessening of competition in any line of insurance, and also is detrimental to policyholders or the public.

~~3. In determining whether competition may be detrimental, the commission shall consider, among other things, whether applicable competitive standards promulgated by the NAIC have or may be violated as a consequence of the acquisition. The standards may include any indicators of competition identified or enumerated by the NAIC in any model laws or portions of practice and procedure or instructional manuals developed to provide guidance in regulatory oversight of holding company systems, mergers and acquisitions, or competitive practices within the marketplace. The standards include the definitions, guidelines or standards embodied in any model holding company act or model holding company regulation adopted by the NAIC. In addition, the commission may request and consider the opinion of an economist as to the competitive impact of the acquisition whenever pre-acquisition notification is submitted pursuant to § 38.2-1323 B of the Act.~~

4. b. An order suspending the license shall not be entered under § 38.2-1323 B of the Act unless the involved insurer has received 10 days' notice and an opportunity to be heard. The notice of hearing shall be accompanied by a request for information as required by § 38.2-1324 of the Act; it may include also a request for an opinion of an economist as to the competitive impact of the acquisition.

a. (1) Requested information shall be filed as an acquisition statement in the format of Form E ~~of this chapter.~~

b. (2) If the commission determines that the acquisition or merger causes or tends to cause a substantial lessening of competition in any line of insurance, the commission may request the insurer to furnish the additional information required by § 38.2-1324, in order to rebut the reasonable belief that the lessening of competition is detrimental to policyholders or the public in general.

~~5. c.~~ An order suspending the license shall not be entered under § 38.2-1323 B of the ~~Code of Virginia Act~~ and this section if:

a. (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from the economies exceed the public benefits which would arise from not lessening competition; or

b. (2) The acquisition will substantially increase the availability of insurance, and the public benefits of the

increase exceed the public benefits which would arise from not lessening competition.

~~6. d.~~ The commission's order suspending the license entered under this section shall not become final earlier than 21 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commission shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the applicable competitive standards announced by the commission would be remedied and the order vacated or modified.

e. An order pursuant to this subsection shall not apply if the acquisition is not consummated.

2. Any person who violates a cease and desist order of the commission under subdivision 1 of this subsection and while the order is in effect may, after notice and hearing and upon order of the commission, be subject at the discretion of the commission to one or more of the following:

a. A monetary penalty pursuant to § 38.2-218 of the Code of Virginia; or

b. Suspension or revocation of the person's license.

3. Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a monetary penalty pursuant to § 38.2-218.

~~B. E.~~ Any hearing held pursuant to the provisions of this section shall begin, unless waived by the insurer, within 40 days of the date of receipt by the commission of all material required by § 38.2-1323 of the Act.

~~C. G.~~ For the purposes of this section and § 38.2-1323 B of the Act, "acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers. "Involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

H. Section 38.2-1334.1 A and C and Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia do not apply to acquisitions covered under subsection B of this section.

14VAC5-260-55. Subsidiaries of insurers.

Investments in insurance subsidiaries are exempt from § 38.2-1330 B 6 of the Act to the extent they do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders. The authority to invest in subsidiaries under this section is in addition to any

Regulations

authority to invest in subsidiaries that may be contained in any other provision of Title 38.2 of the Code of Virginia.

14VAC5-260-60. Annual registration of insurers; registration statement filings and amendments.

A. An insurer required to file a registration statement pursuant to § 38.2-1329 of the Act shall furnish the required information in the format designated on Form B.

1. The initial registration statement shall be filed with the commission within 15 days after the insurer becomes subject to registration under § 38.2-1329 of the Act.

2. Annually thereafter by April 30 of each year, for the previous calendar year, the registrant shall file a completely restated up-to-date registration statement in the format designated on Form B, with amendments consolidated therein. Each registration statement shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement. The summary shall be prepared in the format designated on Form C, as specified in the instructions of that form, which is a part of this chapter.

~~B. An insurer shall file a copy of its most current registration statement and the Form C filing, also known as a Summary of Registration Filing, in each state in which the insurer is authorized to do business, if requested by the insurance commissioner of that state.~~

~~C. B.~~ Amendments to Form B.

1. An amendment to Form B shall be filed under the following conditions:

a. Within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement;

b. Within 15 days after the end of any month in which the registrant or insurer learns there is a change in control of the registrant, in which case all of Form B and Form C shall be made current;

c. Within 15 days after the end of any month in which the registrant or insurer learns there is a material change in information given in Item 5 of Form B;

d. Within 30 days after the investment in any one corporation, if the total investment in that corporation, by the insurance holding company system, exceeds 10% of that corporation's voting securities;

e. Within 15 days after the end of any month in which there is a material change in any portion of the information given in Item 6 of Form B;

f. Within 15 days after the end of any month in which there is a change of the chief executive officer, president, or more than 1/3 of the directors reported in Item 4 of Form B;

g. Within five business days following the declaration of any dividend or other distribution to an insurer's shareholder or shareholders; and

h. Within 120 days after the end of each fiscal year of the ultimate controlling person of the insurance holding company system.

2. Amendments shall be filed in the Form B format. Subject to the provisions of subdivision A 2 of this section, only those items which are being amended need be reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Registrant Statement, brought current from (insert year)" and shall indicate as its "Date," the date of the change and not the date of the original filings. Filings made in the format of Forms A, D, E, or ~~F G~~ may be deemed amendments filed in the Form B format when accompanied by certification under oath or affirmation that the transaction reported on Form A, D, E, or ~~F G~~ has been consummated. If the commission's approval of the transaction is required by the Act, the certification shall state also that consummation was pursuant to terms and agreements approved by the commission.

3. As used in this section, "material transaction" has the meaning set forth in § 38.2-1322 of the Act except that, unless the commission by rule, order, or regulation prescribes otherwise, no sale, purchase, exchange, loan, or extension of credit or investment shall be considered "material" unless it involves at least 0.5% of an insurer's admitted assets or 5.0% of the insurer's surplus to policyholders, as of the immediately preceding December 31. Any sale or other transaction which is one of a series of transactions occurring within a 12-month period that are sufficiently similar in nature as to be reasonably construed as a single transaction and that in the aggregate exceed the minimum limits herein provided shall be deemed a material transaction.

~~D. C.~~ Exemptions and alternative and consolidated registrations.

1. Any insurer which is authorized to do business in this Commonwealth may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under § 38.2-1329 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this Commonwealth. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

a. The statement or report contains substantially similar information required to be furnished on Form B; and

b. The filing insurer is the principal insurance company in the insurance holding company system.

2. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf

of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

3. With the prior approval of the commission, an insurer not licensed to transact the business of insurance in this Commonwealth may follow any of the procedures which could be done by an authorized insurer under subdivision 1 of this subsection.

4. Any insurer may take advantage of the provisions of § 38.2-1329 ~~G H~~ or § ~~38.2-1329 H I~~ of the Act without obtaining the prior approval of the commission. The commission, however, reserves the right to require individual filings if it deems the filings necessary in the interest of clarity, ease of administration, or the public good.

5. The state of entry of an alien insurer shall be deemed to be its state of domicile for the purpose of this chapter.

6. Any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in § 38.2-1329 of the Act, shall be exempted and excepted from registration in this Commonwealth pursuant to this section and § 38.2-1329 A of the Act; however, if requested by the commission, the insurer shall furnish to the commission a copy of the registration statement or other information filed with its state of domicile. The information shall be filed with the commission within 15 days after the commission makes its request.

7. Any insurer not otherwise exempt or excepted from § 38.2-1329 of the ~~Code of Virginia Act~~ may apply for an exemption from the requirements of § 38.2-1329 of the ~~Code of Virginia Act~~ by submitting a statement to the commission setting forth its reasons for being exempt.

14VAC5-260-80. Transactions subject to prior notice filing.

A. An insurer required to give notice of a proposed transaction pursuant to § ~~38.2-1331~~ 38.2-1330 B of the Act shall furnish the required information in the format designated on Form D, as specified in the instructions of that form, which is a part of this chapter.

B. Agreements for cost-sharing services and management services shall at a minimum and as applicable:

1. Identify the person providing services and the nature of such services;
2. Set forth the methods to allocate costs;
3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, As of March 2014;

4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

6. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer;

9. Include standards for termination of the agreement with and without cause;

10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

11. Specify that, if the insurer is placed in receivership or seized by the commission under the Rehabilitation and Liquidation of Insurers statute (Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia):

- a. All of the rights of the insurer under the agreement extend to the receiver or commission; and
- b. All books and records will immediately be made available to the receiver or the commission, and shall be turned over to the receiver or commission immediately upon the receiver or the commission's request;

12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia; and

13. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commission under Chapter 15 of Title 38.2 of the Code of Virginia, and will make them available to the receiver for so long as the affiliate continues to receive timely payment for services rendered.

C. The approval of any material transactions pursuant to § ~~38.2-1331~~ 38.2-1330 B of the Act shall be deemed an amendment to an insurer's registration statement under § 38.2-1329 C 4 ~~6~~ of the Act without further filing other than written confirmation under oath or affirmation by registrant that the transaction as approved by the commission has been consummated. The confirmation shall be filed within two business days following consummation of the approved transaction.

Regulations

14VAC5-260-85. Enterprise risk report.

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to § 38.2-1329 L of the Act shall furnish the required information on Form F.

14VAC5-260-90. Dividends and other distributions.

A. Each registered insurer shall report to the commission as required under § ~~38.2-1329~~ 38.2-1330.1 of the Act, all dividends and other distributions to shareholders within five business days following declaration. An insurer shall not pay a dividend or other distribution until 30 days after the commission has received written notice of the declaration thereof and has not within such period disapproved such payment. The commission may approve the payment of such dividend or other distribution prior to the 30 days. Such dividends and other distributions are to be paid out of earned surplus unless the commission has provided prior written approval for such dividends or other distributions to be paid from another source. Except as provided in subsection B of this section, the report shall be filed in the format prescribed by Form ~~F~~ G and shall include at least the following:

1. A statement stating whether the dividend or distribution is extraordinary. If the dividend or distribution is extraordinary, the insurer also shall state the date of approval, if any, obtained pursuant to § 38.2-1330.1 A of the Act, or the earliest date on which approval may be deemed;
2. Earned surplus as of the immediately preceding December 31;
3. The amount of the proposed dividend;
4. The date of declaration, date of record, and date established for payment of the dividend;
5. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
6. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
7. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and
8. A statement identifying any and all revaluations of assets.

B. If payment of an extraordinary dividend or distribution has been approved prior to its declaration, the insurer may comply with the requirements of § 38.2-1329 ~~E~~ F of the Act

by filing written confirmation under oath or affirmation that the extraordinary dividend or distribution, as approved by the commission, has been declared. Confirmation shall be filed within five business days following declaration.

C. An insurer may obtain prior approval of an extraordinary dividend or distribution, as required by § 38.2-1330.1 A of the Act, by filing a request for approval with the commission. The request for approval shall be filed in the format prescribed by Form ~~F~~ G and shall include at least the following:

1. All the information required in subsection A of this section;
2. Statements of financial condition and earnings for the period intervening from the last annual statement filed with the commission and the end of the month preceding the month in which the request for dividend approval is submitted; and, if the date of payment or distribution is more than 60 days removed from the date of the most current financial statement submitted by the insurer, the insurer shall include also a pro forma statement as of the day after the distribution or payment of the dividend showing its effect and other known and reasonably projected adjustments to the financial condition and earnings of the insurer; and
3. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
 - a. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought, and commencing on the day after the same day of the same month in the last preceding year;
 - b. Surplus as regards to policyholders (total capital and surplus) as of the immediately preceding December 31;
 - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the immediately preceding December 31; ~~and~~
 - d. If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the ~~immediately preceding December 31, but shall not include pro rata distributions of any class of the insurer's own securities. 31st day of December next preceding and the two preceding 12-month periods; and~~
 - e. If the insurer is not a life insurer, the dividends paid to shareholders excluding distributions of the insurer's own securities in the preceding two calendar years.

4. Statements on each factor set forth in § 38.2-1330 ~~B~~ D of the Act must be submitted in support of the request for approval of an extraordinary dividend or distribution, although these factors are not intended to be an exhaustive

list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is controlling. The commission, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commission will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commission will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

5. In addition, in order to determine the possibility of any financial effect on the insurer, the commission may request the means of funding and the purpose of the extraordinary dividend or distribution.

D. No declaration of an extraordinary dividend or distribution shall confer any rights on shareholders without the prior approval thereof pursuant to § 38.2-1330.1 ~~E~~ D of the Act. However, an insurer may declare an extraordinary dividend or distribution which is conditioned upon the commission's approval, and the declaration shall confer no rights upon shareholders until (i) the commission has approved the payment of the dividend or distribution or (ii) the commission has not disapproved the payment within the 30-day period provided by § 38.2-1330.1 A of the Act.

14VAC5-260-110. Severability clause.

If any provision ~~of~~ in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

NOTICE: The following forms used in administering the regulation were 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, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (14VAC5-260)

~~Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia (rev. 9/09)~~

~~Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia (rev. 9/09)~~

~~Form C, Instructions for Summary of Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia (rev. 7/06)~~

~~Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1331 of the Code of Virginia (rev. 7/06)~~

~~Form E, Instructions for an Acquisition Statement Reporting Competitive Impact Data Pursuant to § 38.2-1323 of the Code of Virginia (rev. 7/06)~~

~~Form F, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 E and 38.2-1330.1 of the Code of Virginia (rev. 9/09)~~

[Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application \(rev. 1/15\)](#)

[Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Statement \(rev. 1/15\)](#)

[Form C, Instructions for Summary of Changes to Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Summary \(rev. 1/15\)](#)

[Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1330 B of the Code of Virginia, and Notice and Application \(rev. 1/15\)](#)

[Form E, Instructions for Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this Commonwealth or by a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Notification \(rev. 1/15\)](#)

[Form F, Instructions for Enterprise Risk Report Pursuant to § 38.2-1329 L of the Code of Virginia, and Report \(eff. 1/15\)](#)

[Form G, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 F and 38.2-1330.1 of the Code of Virginia, and Notice \(rev. 1/15\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-260)

[Accounting Practices & Procedures Manual, As of March 2014, National Association of Insurance Commissioners, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106, www.naic.org](#)

VA.R. Doc. No. R15-4045; Filed September 29, 2014, 6:18 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law

Regulations

or the appropriation act where no agency discretion is involved. The Department of Health Professions will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-20, 18VAC76-20-60).

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: November 19, 2014.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

Summary:

The amendments conform to changes to the Code of Virginia, including changes (i) relating to the designation and reporting of drugs of concern (Chapter 664, 2014 Acts of Assembly), (ii) allowing a recipient requesting a report of his own Prescription Monitoring Program (PMP) information to specify the street or mailing address to which the report is to be sent (Chapters 12 and 97, 2014 Acts of Assembly), (iii) allowing dispensers to delegate queries to the PMP under the same provisions previously allowed for prescribers (Chapter 72, 2014 Acts of Assembly), and (iv) relating to disclosure of information obtained from the PMP by prescribers and dispensers to other prescribers or dispensers.

18VAC76-20-20. General provisions.

In accordance with Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia and this chapter, the Director of the Department of Health Professions shall establish and administer a program for monitoring the dispensing of Schedules II, III, and IV controlled substances and any other drugs of concern identified by the Board of Pharmacy pursuant to § 54.1-3456.1 of the Code of Virginia.

18VAC76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in a format designated by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the street or mailing address on the license or delivered to the recipient at the department indicated on the recipient request form.

2. The prescriber for the purpose of establishing a treatment history for a patient or prospective patient or for the purpose of obtaining a record of prescriptions issued by that prescriber, provided the request is accompanied by the prescriber's registration number with the United States Drug Enforcement Administration (DEA) and attestation that the prescriber is in compliance with patient notice requirements of 18VAC76-20-70. The prescriber may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the prescriber has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber, or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority and an attestation that the dispenser is in compliance with patient notice requirements of 18VAC76-20-70. The dispenser may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the dispenser has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient, ~~and/or~~ or dispenser.

D. Except as provided in subdivision B 1 of this section and § 54.1-2525 C of the Code of Virginia, the request form shall include an attestation that the prescription data will not be further disclosed and will only be used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of

Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.
2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

VA.R. Doc. No. R15-4116; Filed September 22, 2014, 9:45 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 28 (2014)

Establishment of the Governor's Commission on Integrity and Public Confidence in State Government

Importance of the Initiative

The fundamental strength of Virginia's government derives from an engaged citizenry and the utmost dedication from its public servants. Ethical and effective governance requires elected and appointed officers to take every appropriate action for the proper use of public resources and transparency in public endeavors.

My administration is committed to identifying the highest standards for comprehensive governmental reform. Virginia's reputation as one of the outstanding states for business depends upon trusted institutions, public confidence in government, and principled leadership in the Commonwealth. To forge an ethos of trust, it is crucial to continually review operational procedures and systems to ensure the Commonwealth accountability and efficiency.

Establishment of the Commission

Therefore, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility, I hereby establish the Governor's Commission on Integrity and Public Confidence in State Government ("Commission").

Key Reform Issues

I am directing the Commission to review and make recommendations for legislation or policies that address the following reform issues:

1. Comprehensive Government Ethics

- The benefits of a more independent Ethics Commission for oversight of conflicts of interest matters.
- A cap or ban on gifts for legislators, including "intangible" gifts of meals and travel.
- Rules regarding personal loans, or any loans other than those from commercial financial institutions at rates available to the general public, to legislators and their family members from personal friends or business associates.
- Rules regarding grants, deliberations, or decisions by members of public boards and commissions that could provide a direct financial benefit to such members, members' family, personal friends, or close business associates.

- Rules regarding post-governmental employment and an appropriate waiting period prior to beginning such employment.
- Policies regarding lawyer-legislators representing clients before state agencies during their term in office.
- Rules related to legislators holding executive branch employment during their term in office.

2. Campaign Finance

- Rules related to the amount of contributions to campaigns by individuals, corporations, PACs, lobbyists, and others.
- Rules regarding campaign contributions during special sessions of the General Assembly.
- Policies on the personal use of candidate campaign funds.
- The disclosure of independent expenditures and advertising in support of or opposition to political candidates prior to an election.

3. Disclosure Oversight and Enforcement

- Independent investigation and audit of campaign disclosures.
- Independent administration and audit of lobbyist disclosure forms.

4. Selection and Service of Judges and Other Public Officials

- Procedures for improving the selection of judges and other candidates for public service.

5. Second Consecutive Term for Virginia's Governor

- Frequency of gubernatorial transitions and the impact on providing services to citizens as well as the daily operations of executive branch agencies.

6. Various Other Governmental Reforms

- Procedures for legislative and congressional redistricting.
- Alterations in the state budget cycle as it relates to gubernatorial terms.

The Commission may, at its discretion or the discretion of the Governor, examine other issues consistent with the purposes of this Executive Order.

Composition of the Commission

Former Congressman Rick Boucher and former Lieutenant Governor Bill Bolling will serve as Co-Chairs of the Commission. The Commission will be comprised of no more than ten (10) members appointed by the Governor and will

serve at his pleasure. The Governor may appoint additional persons to the Commission at his discretion.

Staff support

Staff support as necessary to support the Commission will be furnished by the Office of the Governor, and the Governor may designate further support by any other executive branch agencies. An estimated 300 hours of staff time will be required to support the work of the Commission. The Commission may consult with any experts it deems necessary for the requisite information to provide a full and complete report.

Funding needed to support the Commission will be provided by state and other appropriate funds. Direct costs for this Commission are estimated at no more than \$15,000. Members of the Commission will serve without compensation, but may receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission will meet at least once monthly upon the call of the Co-Chairs beginning in October, 2014. The Commission will present an interim report pertaining to comprehensive government ethics reform to the Governor on or before December 1, 2014. The Commission will also issue other reports and recommendations as it deems necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in force and effect for a year or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 25th day of September, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 29 (2014)

Establishing the Governor's Task Force on Prescription Drug and Heroin Abuse

Nationally, prescription drug and heroin abuse has reached epidemic proportions. Since 2000, deaths from prescription drug overdoses in Virginia have more than doubled, while deaths from heroin overdoses have doubled in the past two years. Though prescription drugs are generally safe when used as prescribed, the misuse and abuse of prescription painkillers (opioids) can lead to addiction, and even death. In addition, individuals that are addicted to opioids are shifting to heroin, as prescription drugs become less available.

Prescription opioid and heroin abuse has also led to an increased burden on law enforcement and elevated health care costs from drug-related emergency department visits and

treatment admissions. While the numbers of Virginians requiring treatment for addiction to drugs are substantial, resources for treating those who are addicted are limited. It is vital to the Commonwealth's interests to take immediate steps to reverse this dangerous trend of abuse. Therefore, I am directing relevant state and local agencies, health and behavioral health care professionals and organizations, law enforcement, and other stakeholders to work together toward reducing prescription opioid and heroin addiction, curtailing related criminal activity, and enhancing the health, safety, and well-being of all Virginians.

Establishment of the Task Force

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including, but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Task Force on Prescription Drug and Heroin Abuse ("Task Force").

The Task Force will serve in an advisory role, in accordance with § 2.2-2100 of the Code of Virginia, and will be responsible for recommending short-term and long-term measures that can be taken to tackle prescription drug and heroin abuse and addiction, using best practices and evidence-based strategies.

Composition of the Task Force

The Secretary of Health and Human Resources and Secretary of Public Safety and Homeland Security will serve as Co-Chairs. The Task Force will be composed of representatives from the Office of the Attorney General, legislature, and judiciary, as well as relevant state and local agencies, law enforcement, health and behavioral health care professionals, providers, community advocates, and individuals with personal experience, as appointed by the Governor. The Governor may appoint any other person(s) deemed necessary and proper to carry out the assigned functions.

Key Objectives

The Task Force will offer recommendations to meet the Commonwealth's objectives listed under the following five major areas: 1) education, 2) treatment, 3) data and monitoring, 4) drug storage and disposal, and 5) enforcement.

The Task Force will also recommend specific metrics to be used to track progress in each of these five areas, and will suggest a target for each area with a date by which the goals should be met.

Overall, the Task Force will seek measures for the reduction in deaths from prescription drug and heroin abuse within 5 years.

1. Education

- Raise public awareness about the dangers of misuse and abuse of prescription drugs
- Distribute information about appropriate use, secure storage, and disposal of prescription drugs
- Train health care providers regarding best practices for opioid prescribing, pain management, the use of the Prescription Monitoring Program (PMP), and identification and treatment of individuals at risk of substance abuse through screening, intervention, and referral tools
- Train first responders to more effectively respond to calls involving overdose, and use evidence-based interventions to reduce overdose deaths

2. Treatment

- Improve access to and availability of treatment services
- Foster best practices and adherence to standards for treatment of individuals addicted to opioids
- Strengthen and expand the capacity of Virginia's health workforce to respond to substance abuse treatment needs, including encouraging health professions schools and continuing education programs to provide more education about how to identify and treat substance abuse

3. Data and Monitoring

- Share and integrate data among relevant licensing boards, state and local agencies, law enforcement, courts, health care providers and organizations, and programs such as the PMP, in order to clarify and address public safety and public health concerns, understand emerging trends, and utilize data-driven decision-making to mitigate harm

4. Storage and Disposal

- Advance effective solutions that lead to safe storage and proper disposal of potentially dangerous prescription drugs

5. Enforcement

- Identify and promote evidence-based best practices and strategies across the criminal justice system to address public safety risks and treatment needs of individuals with opioid addiction, training in the use of life saving interventions, expanded alternatives to incarceration, including drug courts, and cross-system collaboration to improve access to and the availability of treatment

Staffing

Staff support for the Task Force will be furnished by the Office of the Secretary of Health and Human Resources and the Office of the Secretary of Public Safety and Homeland Security, and such other agencies and offices as designated by the Governor. The Task Force will meet upon the call of the Chair at least four times per year. The Task Force will provide initial recommendations to the Governor on or before December 31, 2014, a comprehensive implementation plan by June 30, 2015, and any additional reports as necessary.

Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing or until superseded or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 26th day of September, 2014.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

BOARD OF COUNSELING

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling is currently reviewing each of the regulations listed below to determine whether it should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine 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.

18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling

18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers

The comment period begins October 20, 2014, and ends November 19, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

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

DEPARTMENT OF STATE POLICE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of State Police is currently reviewing each of the regulations listed below to determine whether it should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. Each regulation will be reviewed to determine 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.

19VAC30-11, Public Participation Guidelines

Agency Contact: Major Tracy Russillo, BASS Deputy Director, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2066, FAX (804) 674-2936, or email bassdiri@vsp.virginia.gov.

19VAC30-20, Motor Carrier Safety Regulations

19VAC30-40, Standards and Specifications for the Stickers or Decals Used by Cities, Counties and Towns in Lieu of License Plates

19VAC30-130, Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles

19VAC30-140, Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals

19VAC30-150, Regulations Relating to Standards and Specifications for Overdimensional Warning Lights

19VAC30-160, Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width

19VAC30-165, Regulations Relating to Standards and Specifications for Purple Warning Lights Used by Vehicles Leading or Escorting Funeral Processions

19VAC30-200, Approved Helmets for All-Terrain Vehicles and Mopeds

Agency Contact: Captain F. Daniel Glick, Safety Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-6774, FAX (804) 674-2916, or email safety@vsp.virginia.gov.

19VAC30-80, Regulations Relating to Specifications of the Description to be Obtained by Pawnbrokers of Persons Pawning or Pledging Goods

19VAC30-110, Regulations Governing the Creation of a Criminal Firearms Clearinghouse

19VAC30-170, Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry

19VAC30-190, Regulations Relating to the Issuance of Nonresident Concealed Handgun Carry Permits

Agency Contact: Captain Thomas Turner, CJIS Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804)

General Notices/Errata

674-2147, FAX (804) 674-2918, or email cjis@vsp.virginia.gov.

19VAC30-180, Regulations Governing the Establishment and Maintenance of the Witness Protection Program

Agency Contact: Lieutenant Verlan Hall, BCI Staff Lieutenant, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2108, FAX (804) 674-2936, or email vspbci@vsp.virginia.gov.

The comment period begins November 1, 2014, and ends December 1, 2014.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to agency contacts listed above.

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

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Smithfield Farmland Corp.

An enforcement action has been proposed for Smithfield Farmland Corp. for alleged violations of the State Water Control Law in Smithfield, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Mr. Robin Schuhmann will accept comments by email at robin.schuhmann@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 20, 2014, through November 19, 2014.

Proposed Enforcement Action for City of Virginia Beach

An enforcement action has been proposed for City of Virginia Beach for violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 20, 2014, through November 19, 2014.

Proposed Consent Order for White Post Dairy, L.L.C.

An enforcement action has been proposed for White Post Dairy, L.L.C. for violations at the White Post Dairy, L.L.C. facility in White Post, Virginia. The State Water Control Board proposes to issue a consent order to White Post Dairy, L.L.C. to address noncompliance with the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Karen Hensley will accept comments by email at karen.hensley@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from October 20, 2014, through November 19, 2014.

Total Maximum Daily Load Implementation Plan for the Buffalo (North and South Forks), Cedar Creek, and Colliers Creek Watersheds in Rockbridge County

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on a draft total maximum daily load (TMDL) implementation plan for the Buffalo (North and South Forks), Cedar Creek, and Colliers Creek watersheds in Rockbridge County. These creeks were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2002 (Cedar Creek), 2004 (Buffalo Creek, mainstem), 2006 (Colliers Creek), 2010 (South Fork Buffalo Creek) and 2012 (North Fork Buffalo Creek). The creeks have remained on the § 303(d) list for these impairments since then. In addition, Colliers Creek was listed as impaired due to water quality violations of the general aquatic life (benthic) standard in 2010.

The impaired segments of the North and South Forks of Buffalo Creek and Colliers Creek extend from their headwaters down to their confluence with the mainstem of Buffalo Creek, 7.28, 13.24, and 13.77 miles, respectively. The impaired segment of Buffalo Creek extends 15.51 miles downstream to its confluence with the Maury River. The impaired segment of Cedar Creek extends 11.49 miles from the headwaters to its confluence with the James River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. Bacteria TMDLs were completed by DEQ for all of the

creeks, and a benthic TMDL addressing sediment was completed for Colliers Creek. The TMDLs were submitted to the U.S. Environmental Protection Agency for approval on January 2, 2014. The TMDL report is available on the DEQ website at www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Development of the TMDL implementation plan began in May 2014.

The second and final public meeting on the development of this TMDL implementation plan will be held on October 28, 2014, from 6 p.m. until 8 p.m. at the Natural Bridge Park and Historic Hotel, 15 Appledore Lane, Natural Bridge, Virginia. The meeting will include a community supper sponsored by the Upper James Resource Conservation and Development Council. Attendees are encouraged to RSVP to Nesha McRae by telephone or email (contact information provided below). The implementation plan will be available on the DEQ website the day after the meeting for public comment:

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLRports.aspx>.

The public comment period for the implementation plan will end on November 27, 2014. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, or email nesha.mcrae@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: 13VAC5-51. *Virginia Statewide Fire Prevention Code*.

Publication: 30:16 VA.R. 2027-2071 April 7, 2014.

Correction to Final Regulation:

Page 2055, column 2, 13VAC5-51-135 L, Section 907.8.5: Following "Figure" replace "10.6.2.3" with "~~10.6.2.3~~ 14.6.2.2"

VA.R. Doc. No. R12-3161; Filed September 25, 2014, 3:32 p.m.

