



# Virginia Register of Regulations

VOL. 26 ISS. 7

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

DECEMBER 7, 2009

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

The Joint Commission 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.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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 12 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

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

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

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### December 2009 through August 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>FINAL INDEX Volume 25</b>		<b>October 2009</b>
26:7	November 17, 2009 ( <b>Tuesday</b> )	December 7, 2009
<b>INDEX 1 Volume 26</b>		<b>January 2010</b>
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 ( <b>Tuesday</b> )	January 4, 2010
26:10	December 29, 2009 ( <b>Tuesday</b> )	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
<b>INDEX 2 Volume 26</b>		<b>April 2010</b>
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
<b>INDEX 3 Volume 26</b>		<b>July 2010</b>
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010
26:24	July 14, 2010	August 2, 2010
26:25	July 28, 2010	August 16, 2010
26:26	August 11, 2010	August 30, 2010

\*Filing deadlines are Wednesdays unless otherwise specified.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 2. AGRICULTURE

### PESTICIDE 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 Pesticide Control Board intends to consider promulgating the following regulations: **2VAC20-60, Regulations Governing Pesticide Containers and Containment Under Authority of the Virginia Pesticide Control Act**. The purpose of the proposed action is to create new Virginia regulations that will be equivalent to 40 CFR Part 165 regarding pesticide management and disposal. The regulations will establish standards for container design and residue removal in nonrefillable pesticide containers, container design in refillable pesticide containers, repackaging pesticide products into refillable containers, and pesticide containment structures. The promulgation of Virginia's own regulations will allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions.

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

Statutory Authority: § 3.2-3906 of the Code of Virginia; 40 CFR Part 165.

Public Comment Deadline: Public comments may be submitted until January 6, 2010.

Agency Contact: Liza Fleeson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 372-6371 ext: 559, FAX (804) 786-9149, or email [liza.fleeson@vdacs.virginia.gov](mailto:liza.fleeson@vdacs.virginia.gov).

VA.R. Doc. No. R10-2121; Filed November 6, 2009, 11:18 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending the following regulations: **18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers**. The purpose of the proposed action is to establish standards for refrigeration, transportation and storage of human remains.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Comment Deadline: January 6, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

VA.R. Doc. No. R10-2118; Filed November 5, 2009, 9:21 a.m.

## BOARD OF PSYCHOLOGY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Psychology intends to consider amending the following regulations: **18VAC125-20, Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to remove unnecessary requirements for licensure by endorsement, such as 20 years of experience as a licensee in another state; accept pre-internship supervised professional experience in lieu of all or part of the postdoctoral residency currently required; be consistent in requirements for a jurisprudence examination; extend the prohibition on sexual intimacies with clients from two years to five years following termination; and clarify existing regulations.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Public Comment Deadline: January 6, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R10-2226; Filed November 4, 2009, 4:24 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The State 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 State Board of Agriculture and Consumer Services when promulgating regulations pursuant to § 3.2-5121, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code. Pursuant to § 3.2-5121 C of the Code of Virginia, this regulatory action is exempt from portions of the Administrative Process Act provided the State Board of Health adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that goal.

**Title of Regulation:** **2VAC5-585. Retail Food Establishment Regulations (amending 2VAC5-585-40, 2VAC5-585-60, 2VAC5-585-70, 2VAC5-585-80, 2VAC5-585-90, 2VAC5-585-100, 2VAC5-585-140, 2VAC5-585-180, 2VAC5-585-360, 2VAC5-585-370, 2VAC5-585-400, 2VAC5-585-410, 2VAC5-585-430, 2VAC5-585-440, 2VAC5-585-450, 2VAC5-585-490, 2VAC5-585-500, 2VAC5-585-540, 2VAC5-585-570, 2VAC5-585-680, 2VAC5-585-700, 2VAC5-585-730, 2VAC5-585-740, 2VAC5-585-760, 2VAC5-585-780, 2VAC5-585-790, 2VAC5-585-800, 2VAC5-585-820, 2VAC5-585-830, 2VAC5-585-850, 2VAC5-585-860, 2VAC5-585-870, 2VAC5-585-900, 2VAC5-585-950, 2VAC5-585-980, 2VAC5-585-1200, 2VAC5-585-1230, 2VAC5-585-1260, 2VAC5-585-1310, 2VAC5-585-1420, 2VAC5-585-1550, 2VAC5-585-1560, 2VAC5-585-1690, 2VAC5-585-1980, 2VAC5-585-2040, 2VAC5-585-2190, 2VAC5-585-2230, 2VAC5-585-2280, 2VAC5-585-2310, 2VAC5-585-2520, 2VAC5-585-2630, 2VAC5-585-2790, 2VAC5-585-2810, 2VAC5-585-2920, 2VAC5-585-2950, 2VAC5-585-2960, 2VAC5-585-3020, 2VAC5-585-3030, 2VAC5-585-3040, 2VAC5-585-3045, 2VAC5-585-3080, 2VAC5-585-3180, 2VAC5-585-3240, 2VAC5-585-3360, 2VAC5-585-3460, 2VAC5-585-3860, 2VAC5-585-4040, 2VAC5-585-4050, 2VAC5-585-4070; repealing 2VAC5-585-110, 2VAC5-585-120, 2VAC5-585-150, 2VAC5-585-750, 2VAC5-585-1020, 2VAC5-585-1030, 2VAC5-585-1440, 2VAC5-585-1880, 2VAC5-585-2510, 2VAC5-585-2590, 2VAC5-585-3010,**

**2VAC5-585-3050, 2VAC5-585-3060, 2VAC5-585-3110, 2VAC5-585-3120, 2VAC5-585-3160).**

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

Effective Date: January 1, 2010.

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.

#### Summary:

*The Retail Food Establishment Regulations establish minimum sanitary standards for retail food establishments such as supermarkets, grocery stores, and convenience stores. The 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; procedures for vector and pest control; requirements for toilet and handwashing facilities for employees, appropriate lighting and ventilation, and 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 amendments update the regulations to provide consistency with the current 2005 FDA Food Code and the 2007 Food Code Supplement. Significant changes include:*

- 1. Revising the definition of "potentially hazardous foods" to make it more inclusive by including any food product that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation;*
- 2. Defining "food allergen" for consistency with the Food Allergen Labeling and Consumer Protection Act of 2004;*
- 3. Including the viral pathogen Norovirus in the list of diseases that require a food employee to be excluded from a food establishment as well as including Norovirus in the list of employee diseases that food establishment managers or owners must report to the regulatory authority;*
- 4. Amending handwashing procedures to include new protocols relative to the washing of hands and protocols to avoid recontamination of the hands after handwashing, which will provide consistency with the recommended handwashing procedures in the Center for Disease*

*Control's Hygienic Practice Guidelines for Health Care Workers;*

5. *Amending the date-marking provisions on foods that present a higher risk of contamination, and exempting deli salads (e.g., ham, chicken, egg, seafood, pasta, potato and macaroni) prepared and packaged in a food processing plant, as well as cultured dairy products and certain types of hard and semi-soft cheeses, from date marking;*

6. *Amending procedures for reduced oxygen packaging (ROP) by adding requirements relative to specific temperature controls for cook-chill and sous vide packaging;*

7. *Expanding the labeling requirements for food products packaged in a food establishment to require such labels to include the name of each major food allergen contained in the food, unless it is already part of the common name or ingredients;*

8. *Adding options for freezing to control parasites as well as exemptions for certain fish that are aquacultured;*

9. *Allowing time to be used as a food safety control measure for six hours if certain requirements are met; and*

10. *Adding sprouted beans or seeds to the list of products that require a HACCP plan if the products are sprouted at the retail establishment.*

Article 2  
Definitions

**2VAC5-585-40. Definitions.**

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

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

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

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

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

"Asymptomatic" means without obvious symptoms; not showing or producing indication 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<sub>w</sub>" 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<sub>w</sub>.

"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.

"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

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# Regulations

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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 fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

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

"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 and epidemiological analysis implicates the food as the source of the illness.

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

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

"Counter-mounted equipment" means equipment that is not easily movable 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.

"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.

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

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

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

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

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

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

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or

2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

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

"Egg" means the shell egg of ~~the domesticated chicken, turkey, duck, goose, or guinea~~ 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 person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"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 used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks and skids.

"Exclude" means to prevent a person from working as a food employee in a food establishment or entering a food establishment ~~except for those areas open to the general public 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 a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

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

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

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

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

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



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

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

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

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and ~~does not provide food directly to a consumer~~ 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.

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

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

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance (2003)" and "Grade A Condensed and Dry Milk Ordinance (1995)" with which certain fluid and dry milk and milk products comply.

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

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handwashing sink includes an automatic handwashing facility.

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

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical profession.

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

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

~~"Juice," when used in the context of food safety,~~ "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 includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

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

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

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient

that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil; or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P. L. 108-282, Title II, Sec. 201).

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

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

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

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

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

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

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

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

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

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

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of

water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

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

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

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

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

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

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

~~"Potentially hazardous food" does not include:~~

- ~~1. An air-cooled hard-boiled egg with shell intact or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae;~~
- ~~2. A food with an aw value of 0.85 or less;~~
- ~~3. A food with a pH level of 4.6 or below when measured at 75°F (24°C);~~
- ~~4. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain~~

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commercial sterility under conditions of nonrefrigerated storage and distribution;

5. A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of *Salmonella enteritidis* in eggs or *Clostridium botulinum* cannot occur, such as a food that has an  $A_w$  and a pH that are above the levels specified in this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

6. A food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

"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.			
$A_w$ 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.

$A_w$ 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;

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-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

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

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

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

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

"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 2VAC5-585-710 or 2VAC5-585-730; (ii) is a raw or partially cooked animal food and the consumer is advised as specified under subdivisions D 1 and D 2 of 2VAC5-585-700; or (iii) is prepared in accordance with a variance that is granted as specified under subdivisions D 1 and D 3 of 2VAC5-585-700; and
2. May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 2VAC5-585-700 or 2VAC5-585-710, or frozen as specified under 2VAC5-585-730;
2. Raw fruits and vegetables that are washed as specified under 2VAC5-585-510;
3. Fruits and vegetables that are cooked for hot holding, as specified under 2VAC5-585-720;

4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under Article 4 (2VAC5-585-700 et seq.) of Part III of this regulation and cooled as specified in 2VAC5-585-800;

5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

6. Substances derived from plants such as spices, seasonings, and sugar;

7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and

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

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

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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 psychotropic pathogens; or

5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic 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 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 unwrapped single-service or single-use articles.

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

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 (pesticides classified for restricted use) and that is limited to use by or under the direct supervision of a certified applicator.

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

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

used in conformity with applicable regulations of the Food and Drug Administration.

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

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

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

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

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

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

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

"Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). ~~This includes, but is not limited to, *E. coli* reported as serotype O157:H7, O157:NM, and O157:H-~~ Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see *Enterohemorrhagic Escherichia coli*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2VAC5-585-60. Demonstration.\***

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

1. Complying with this regulation by having no violations during the current inspection;
2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or
3. Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
  - a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
  - b. Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;
  - c. Describing the symptoms associated with the diseases that are transmissible through food;
  - d. Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food (time/temperature control for safety food) and the prevention of foodborne illness;
  - e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
  - f. Stating the required food temperatures and times for safe cooking of potentially hazardous food (time/temperature control for safety food) including meat, poultry, eggs, and fish;
  - g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food (time/temperature control for safety food);
  - h. Describing the relationship between the prevention of foodborne illness and the management and control of the following:
    - (1) Cross contamination;

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- (2) Hand contact with ready-to-eat foods;
- (3) Handwashing; and
- (4) Maintaining the food establishment in a clean condition and in good repair;

i. 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:

~~h.~~ j. Explaining the relationship between food safety and providing equipment that is:

- (1) Sufficient in number and capacity; and
- (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

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

~~k.~~ 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;

~~l.~~ 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;

~~m.~~ 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;

~~n.~~ 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, or an agreement between the department and the establishment; and

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

- (1) Food employee;
- (2) Person in charge; and
- (3) Department.

q. Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and the exclusion or restriction of food employees.

## **2VAC5-585-70. Person 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;

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

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

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

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

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

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

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

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

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

11. Except when otherwise approved as specified in 2VAC5-585-450 B, employees are preventing cross-

contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and

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

13. Food employees and conditional employees are informed 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.

Article 2  
Employee Health

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

A. The person in charge shall require food employee applicants to whom a conditional offer of employment is made and 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 applicant conditional employee shall report the information in a manner that allows the person in charge to prevent the likelihood reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of jaundice or of symptoms and an illness specified in subdivision 3 of this section, or of a diagnosis without symptoms, if the food employee or applicant conditional employee:

1. ~~Is diagnosed with an illness due to:~~
  - a. ~~Salmonella typhi;~~
  - b. ~~Shigella spp.;~~
  - c. ~~Shiga toxin-producing Escherichia coli; or~~
  - d. ~~Hepatitis A virus;~~
2. ~~Has a symptom caused by illness, infection, or other source that is:~~
  - a. ~~Associated with an acute gastrointestinal illness such as:~~
    - (1) ~~Diarrhea;~~
    - (2) ~~Fever;~~
    - (3) ~~Vomiting;~~
    - (4) ~~Jaundice; or~~
    - (5) ~~Sore throat with fever; or~~

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

- (1) ~~On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;~~
- (2) ~~On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or~~
- (3) ~~On other parts of the body, unless the lesion is covered by a dry, durable, tight fitting bandage;~~

3. ~~Had a past illness from:~~
  - a. ~~S. typhi within the past three months;~~
  - b. ~~Shigella spp. within the past month;~~
  - c. ~~Shiga Toxin Producing Escherichia coli, within the past month; or~~
  - d. ~~Hepatitis A virus;~~

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

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

- (1) ~~Prepared food implicated in the outbreak;~~
- (2) ~~Consumed food implicated in the outbreak; or~~
- (3) ~~Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent;~~
- b. ~~Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., Shiga Toxin Producing Escherichia coli, or hepatitis A virus; or~~
- c. ~~Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., Shiga toxin-producing Escherichia coli, or hepatitis A virus.~~

1. Has any of the following symptoms:
  - a. Vomiting;
  - b. Diarrhea;
  - c. Jaundice;
  - d. Sore throat with fever; or
  - e. A lesion containing pus such as a boil or infected wound that is open or draining and is:



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

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

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

2. Has an illness diagnosed by a health practitioner due to:

a. Norovirus;

b. Hepatitis A virus;

c. Shigella spp.;

d. Enterohemorrhagic or Shiga-toxin producing Escherichia coli; or

e. Salmonella Typhi;

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;

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;

b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;

c. Salmonella Typhi within the past 14 days of the last exposure; or

d. Hepatitis A virus within the past 30 days of the last exposure; 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 exposure;

b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;

c. Salmonella Typhi within the past 14 days of the last exposure; or

d. Hepatitis A virus within the past 30 days of the last exposure.

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

1. Jaundiced; or

2. Diagnosed with an illness due to a pathogen as specified under subdivisions A 2 a through e of this section.

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 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; 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 of 2VAC5-585-100.

D. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or history of exposure as specified under subdivision A 1 through 5 of this section is:

1. Excluded as specified under subdivisions 1 through 3 and 4 a, 5 a, 6 a, or 7 a of 2VAC5-585-90 and in compliance with the provisions specified under subdivisions 1 through 7 of 2VAC5-585-100; or

2. Restricted as specified under subdivisions 4 b, 5 b, 6 b, 7 b, 8, or 9 of 2VAC5-585-90 and in compliance with the provisions specified under subdivisions 4 through 9 of 2VAC5-585-100.

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

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 a of 2VAC5-585-90, and with the provisions specified under subdivisions 1 through 7 of 2VAC5-585-100; or

2. Comply with a restriction as specified under subdivisions 4 b, 5 b, 6 b, 7 b, 8, or 9 of 2VAC5-585-90 and comply with the provisions specified under subdivisions 4 through 9 of 2VAC5-585-100.

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

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

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

- ~~1. Suffering from a symptom specified under subdivision 2 a (1), (2), (3) or (5) of 2VAC5-585-80; or~~
- ~~2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 2VAC5-585-80, but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or Shiga toxin producing Escherichia coli.~~

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

- ~~1. Is experiencing a symptom of acute gastrointestinal illness specified under subdivisions 2 a (1), (2), (3) or (5) of 2VAC5-585-80 and meets a high risk condition specified in subdivision 4 of 2VAC5-585-80;~~
- ~~2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 2VAC5-585-80, but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or Shiga toxin producing Escherichia coli;~~
- ~~3. Had a past illness from S. typhi within the last three months; or~~
- ~~4. Had a past illness from Shigella spp. or Shiga toxin-producing Escherichia coli within the last month.~~

~~D. For a food employee who is jaundiced:~~

- ~~1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment; or~~
- ~~2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:
 
  - ~~a. Exclude the food employee from a food establishment that serves a highly susceptible population; or~~
  - ~~b. Restrict the food employee from activities specified in subsection B of this section, if the food establishment does not serve a highly susceptible population.~~~~

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; or
- b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga-toxin producing Escherichia coli.

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;
- 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; or
- c. Diagnosed with an infection from Hepatitis A virus without developing symptoms.

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.

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; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

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; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

6. If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing E. coli, and is asymptomatic:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

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7. 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; or

b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

8. 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.

9. 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.

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

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

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

2. The person excluded as specified under 2VAC5 585 90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in 2VAC5 585-4070.

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

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

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

b. Is suspected of causing foodborne illness but:

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

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

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

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

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

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

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

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

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

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

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; or

(2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.

b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under 2VAC5-585-90 1 b:

(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; 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.

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; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b, or 5 a and c (1) of this section are met.

d. If a food employee was diagnosed with an infection from Enterohemorrhagic or 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; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.

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 and one of the following conditions is met:

a. The food employee has been jaundiced for more than seven calendar days;

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

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; and

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

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 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;

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; 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.

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 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; and

(2) At least 24 hours apart;

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; or

c. The food employee was excluded or restricted and did not develop symptoms and more than seven calendar

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days have passed since the food employee was diagnosed.

6. Reinstate 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 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 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; and

(2) At least 24 hours apart;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the employee became asymptomatic; or

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

7. Reinstate a food employee who was excluded or restricted as specified under subdivision 7 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;

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

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

8. Reinstate a food employee who was restricted as specified under subdivision 8 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;

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

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

9. Reinstate a food employee who was restricted as specified under subdivision 9 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; or

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

b. Shigella spp. or Enterohemorrhagic or Shiga-toxin producing Escherichia coli and one of the following conditions is met:

(1) More than three calendar days have passed since the last day the food employee was potentially exposed; or

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

c. S. 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; or

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

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;

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

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

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

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

(b) Proper handwashing procedures; and

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

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

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

1. ~~In a manner specified under 2VAC5-585-80, report to the person in charge the information specified under subdivisions 1 through 4 of 2VAC5-585-80; and~~
2. ~~Comply with exclusions and restrictions that are specified under subsections A through D of 2VAC5-585-90.~~

**2VAC5-585-120. Reporting by the person in charge.\* (Repealed.)**

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

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

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

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

1. ~~Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands or arms) for at least 10 to 15 seconds, followed by;~~
2. ~~Thorough rinsing under clean, running warm water; and~~
3. ~~Immediately follow the cleaning procedure with thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 2VAC5-585-3030.~~

1. Rinse under clean, running warm water;
2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;
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; 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;

4. Thoroughly rinsing under clean, running warm water; and
5. Immediately follow the cleaning procedure with thorough drying using a method as specified under 2VAC5-585-3030.

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

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.

**2VAC5-585-150. (Reserved.) (Repealed.)**

**2VAC5-585-180. Hand sanitizers antiseptics.**

~~A. A hand sanitizer and a chemical hand sanitizing solution 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 as an approved drug based on safety and effectiveness; 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; and
2. Consist of components that are Comply with one of the following:
  - a. ~~Listed for such use in contact with food in 21 CFR Part 178, Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; or~~
  - b. ~~Exempt from regulation as food additives under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Contact Articles; or~~
  - c. ~~Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or~~
  - d. ~~Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of~~

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~~the FFDCAs and listed in FDA's Inventory of Effective Premarket Notifications for Food Contact Substances; and~~

~~a. Have components that are exempted from the requirement of being listed in the federal Food Additive regulations as specified in 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; or~~

~~b. Comply with and be listed in:~~

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

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

B. If a hand ~~sanitizer or a chemical hand sanitizing 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; or
2. Limited to situations that involve no direct contact with food by the bare hands.

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

## **2VAC5-585-360. Shell eggs.\***

Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in ~~7 CFR Part 56, Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs, and 7 CFR Part 59, Regulations Governing the Inspection of Eggs and Egg Products United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.~~

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

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

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

1. Be obtained pasteurized; and

2. Comply with Grade A standards as specified in law.

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

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

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

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

1. Name, address, and certification number of the ~~shucker-packer~~ shucker, packer, or repacker of the molluscan shellfish; 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) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

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

## **2VAC5-585-410. Shellstock identification.\***

A. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program ~~Manual of Operations, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision, Guide for the Control of Molluscan Shellfish (2007)~~ and that list:

1. Except as specified under subsection C of this section, on the harvester's tag or label, the following information in the following order:
  - a. The harvester's identification number that is assigned by the shellfish control authority;
  - b. The date of harvesting;
  - c. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;
  - d. The type and quantity of shellfish; and

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

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

a. The dealer's name and address, and the certification number assigned by the shellfish control authority;

b. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;

c. The same information as specified for a harvester's tag under subdivisions 1 b through d of this subsection; and

d. The following statement in bold, capitalized type: ~~"This tag is required to be attached until container is empty and thereafter kept on file for 90 days."~~ **"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."**

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

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

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

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

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

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

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

2. The shellstock are protected from contamination.

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

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

2. The shellfish are protected from contamination.

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 ~~B~~ 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.

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

~~B. C.~~ The identity of the source of shellstock shellfish that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied that is recorded on the tag or label as specified in subsection B of this section by:

1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served that is recorded on the tag or label, as specified under subsection B of this section; and

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

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

b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with certification numbers; different



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harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.

## Article 3

### Protection from Contamination after Receiving

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

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

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

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

~~D. C.~~ Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.<sup>S</sup>

D. 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;

2. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include:

a. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands.

b. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 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; and

7. Documentation that corrective action is taken when subdivisions 1 through 6 of this subsection are not followed.

**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, and egg-fortified beverages that are not:

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

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

A. ~~As specified in 2VAC5-585-350, food~~ 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; and
2. Unsafe or unapproved levels of approved food and color additives.

B. A food employee may not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or
2. ~~Serve~~ 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, ~~except that grapes need not meet the provisions of this subsection.~~

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

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

1. Equipment and utensils that are cleaned as specified under 2VAC5-585-1770 through 2VAC5-595-1870 and sanitized as specified under 2VAC5-585-1890 through 2VAC5-585-1900; or
2. Single-service and single-use articles.

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

A. ~~Cloths that are in use for wiping food spills shall be used for no other purpose~~ 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 used in use for wiping food spills shall be counters and other equipment surfaces shall be:

1. ~~Dry and used for wiping food spills from tableware and carry-out containers; or Held between uses in a chemical sanitizer solution at a concentration specified in 2VAC5-585-3380; and~~

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

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

D. ~~Wet~~ Dry wiping cloths ~~used with a freshly made sanitizing solution and 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. ~~Working containers of sanitizing solutions for storage of in-use wiping cloths may be placed above the floor and used in a manner to prevent 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.

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

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

B. A Except as specified in subdivision 8 of 2VAC5-585-950, a container of food that is not potentially hazardous (time/temperature control for safety food) may be transferred 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 maintained in sound condition.

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## Article 4

### Destruction of Organisms of Public Health Concern

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

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

1. 145°F (63°C) or above for 15 seconds for:
  - a. Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and
  - b. Except as specified under subdivisions A 2 and 3 and ~~subsection~~ subsections B and C of this section, fish and meat including game animals commercially raised for food as specified under 2VAC5-585-330 A 1 and game animals under a voluntary inspection program as specified under 2VAC5-585-330 A 2;

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

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

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

B. Whole ~~beef roasts and corned beef roasts, pork roasts, 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 <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less

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

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

Temperature °F (°C)	Time <sup>1</sup> in Minute s	Temperature °F (°C)	Time <sup>1</sup> in Second s
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		

<sup>1</sup>Holding time may include postoven heat rise.

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

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

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

1. As specified under subdivisions 3 a and 3 b of 2VAC5-585-950, the food establishment serves a population that is not a highly susceptible population; and
2. The consumer is informed as specified under 2VAC5-585-930 that to ensure its safety, the food should be cooked as specified under subsection A or B of this section; or
3. The department grants a variance from subsection A or B of this section as specified in 2VAC5-585-3540 based on a HACCP plan that:
  - a. Is submitted by the operator and approved as specified under 2VAC5-585-3541;
  - b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and
  - c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

**2VAC5-585-730. Parasite destruction.\***

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

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

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

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

1. Molluscan shellfish.
2. 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

3. 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.

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

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

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

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, 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 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.

**2VAC5-585-750. Reheating; preparation for immediate service. (Repealed.)**

~~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 control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach at least 165°F (74°C) for 15 seconds.

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

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

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

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.

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

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

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

## **2VAC5-585-790. Thawing.**

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

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

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

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

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

## **2VAC5-585-800. Cooling.\***

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

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

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

C. Except as specified in subsection D of this section, a potentially hazardous food (time/temperature control for safety 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 2VAC5-585-820 A 2 b.

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

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

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 2VAC5-585-850, potentially hazardous food (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; or
2. At a temperature specified in the following:

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

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

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

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

C. Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside 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, potentially hazardous 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 subsection subsections D and E of this section, refrigerated, ready-to-eat, potentially hazardous food (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.

B. Except as specified in subsections ~~D and E~~ through F of this section, refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the

temperature and time combinations specified in subsection A of this section and:

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

C. A refrigerated, ready-to-eat potentially hazardous food ~~that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine,~~ may be marked as specified in subsection A or B of this section, or by an alternative method acceptable to the department (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

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

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

- ~~1. Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and that retain the original casing on the product;~~
- ~~2. Shelf stable, dry, fermented sausages; and~~
- ~~3. Shelf stable salt cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated."~~

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

D. A date marking system that meets the criteria specified in subsections A and B of this section may include:

- 1. Using a method approved by the regulatory authority for refrigerated, ready-to-eat potentially hazardous food (time/temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;

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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 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 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. 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;

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.

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

A. Except as specified under subsection ~~B~~ D of this section, if ~~time only, rather than time in conjunction with temperature, without temperature control~~ is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking, or for ready-to-eat potentially hazardous food (~~time/temperature control for safety food~~) that is displayed or held for ~~sale or service for immediate consumption~~:

1. Written procedures shall be prepared in advance, maintained in the food establishment, and made available to the regulatory authority upon request that specify:

a. Methods of compliance with subdivision B 1 through 4 or C 1 through 5 of this section; 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.

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;

~~1.~~ 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;

~~2.~~ 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; and

~~3.~~ 4. The food in unmarked containers or packages or marked to exceed a four-hour limit shall be discarded; and

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

a. Subdivisions 1 through 4 of this subsection; and

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

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

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;

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;

3. The food shall be marked or otherwise identified to indicate:

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

4. The food shall be:

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

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

D. A food establishment that serves a highly susceptible population may not use time as specified under subsections 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:

- 1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
- 2. Curing food;
- 3. Using food additives or adding components such as vinegar:
  - a. As a method of food preservation rather than as a method of flavor enhancement; or
  - b. To render a food so that it is not potentially hazardous;
- 4. Packaging food using a reduced oxygen packaging method except as specified under 2VAC5-585-870 where a barrier to Clostridium botulinum in addition to refrigeration exists;

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

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

7. Sprouting seeds or beans; or

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

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

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

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

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



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~~time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;~~

~~6. Includes operational procedures that:~~

~~a. Prohibit contacting food with bare hands;~~

~~b. Identify a designated area and the method by which:~~

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

~~(2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and~~

~~c. Delineate cleaning and sanitization procedures for food contact surfaces; and~~

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

~~a. Concepts required for a safe operation;~~

~~b. Equipment and facilities; and~~

~~c. Procedures specified under subdivision 6 of this subsection and subdivision 4 of 2VAC5-585-3630.~~

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

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 control for safety 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*.

B. A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen method shall have a HACCP plan that contains the following information specified under subdivision 4 of 2VAC5-585-3630:

1. Identifies food to be packaged;

2. Except as specified in subsections C 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:

a. Has an  $A_w$  of 0.91 or less,

b. Has a pH of 4.6 or less,

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

d. Is a food with a high level of competing organisms such as raw meat or raw poultry;

3. 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:

a. Maintain food at 41°F (5°C) or below, and

b. Discard the food within 14 calendar days of its packaging if it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

4. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

5. Includes operational procedures that:

a. Prohibit contacting food with bare hands;

b. Identify a designated work area and the method by which:

(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

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

c. Delineate cleaning and sanitization procedures for food contact surfaces; and

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

a. Concepts required for safe operation;

b. Equipment and facilities; and

c. Procedures specified under subdivision 5 of this subsection and 2VAC5-585-3630 D.

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.

D. Except as specified in subsection C of this section, a food establishment may package food using a cook-chill or sous-vide process without obtaining a variance if:

1. The food establishment implements a HACCP plan that contains the information as specified under 2VAC5-585-3630 D;

2. The food is:

a. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer;

b. Cooked to heat all parts of the food to a temperature and for a time as specified under 2VAC5-585-700;

c. Protected from contamination after cooking as specified in 2VAC5-585-450 through 2VAC5-585-690;

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);

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

(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;

(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 at 41°F (5°C) or less for no more than 72 hours, at which time the food must be consumed or discarded;

(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) Held frozen with no shelf-life restriction while frozen until consumed or used;

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;

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; and

h. Labeled with the product name and the date packaged; and

3. The records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan, are maintained and are:

a. Made available to the regulatory authority upon request; and

b. Held for six months; and

4. 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.

E. A food establishment may package cheese using a reduced oxygen packaging method without obtaining a variance:

1. If it limits 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;

2. If it has a HACCP plan that contains the information specified in 2VAC5-585-3630 D;

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 the package on the principal display panel with a "use by" date that does not exceed 30 days or the original manufacturer's "sell by" or "use by" date, whichever comes first; and

5. If it discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its 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 in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

3. An accurate declaration of the quantity of contents;

4. The name and place of business of the manufacturer, packer, or distributor; and

5. 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.

~~5.~~ 6. Except as exempted in the Federal Food, Drug, and Cosmetic Act 21 USC § 343(q) (3) through (5), nutrition

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labeling as specified in 21 CFR Part 101, Food Labeling, and 9 CFR Part 317, Subpart B, Nutrition Labeling.

~~6.~~ 7. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

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

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

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

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

## Article 8

### Special Requirements for Highly Susceptible Populations

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

In a food establishment that serves a highly susceptible population:

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

Subpart B, Pathogen Reduction, 120.24, Process Controls.

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

- a. Foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and
- b. Except as specified in subdivision ~~5~~ 6 of this section, recipes in which more than one egg is broken and the eggs are combined.

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

- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
- b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and
- c. Raw seed sprouts.

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

5. Time only, as the public health control as specified under 2VAC5-585-850, may not be used for raw eggs.

~~5.~~ 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;

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

- (a) (1) Control cross contamination of ready-to-eat food with raw eggs; and
- (b) (2) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- (5) e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

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

8. Foods may not be [ reserved 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 [ reserved re-served ] to others outside.
- 2. Packages of food from any patients, clients, or other consumers should not be [ reserved re-served ] to persons in protective environment isolation.

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

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

Utensil Category	<u>Ceramic Article Description</u>	Maximum Lead (mg/L)
<del>Hot Beverage Mugs, Cups, Pitchers</del>	Coffee Mugs	0.5
<u>Large Hollowware (excluding pitchers)</u>	<u>Bowls ≥1.1 L</u> <del>Liter (1.16 qt)</del> <u>Quart</u>	1.0
<u>Small Hollowware (excluding cups and mugs)</u>	<u>Bowls &lt;1.1 L</u> <del>Liter (1.16 qt)</del> <u>Quart</u>	2.0
<u>Flat Utensils Tableware</u>	Plates, Saucers	3.0

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

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

**2VAC5-585-1020. ~~Lead in pewter alloys, use limitation. (Repealed.)~~**

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

**2VAC5-585-1030. ~~Lead in solder and flux, use limitation. (Repealed.)~~**

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

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

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of one pound per square inch (seven kilopascals) or smaller and shall be accurate to ± ~~two~~ 2 pounds per square inch (± 14 kilopascals) ~~in the 15-25 pounds per square inch (100-170 kilopascals) range~~ in the range indicated on the manufacturer's data plate.

**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; and
- 2. The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed; and
- 3. The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
  - a. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
  - b. Available for self-service during hours when it is not under the full-time supervision of a food employee; and
- 4. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.
- 5. Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in

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homogenous liquid form is maintained outside of the temperature control requirements as specified in 2VAC5-585-820 C 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; and
- b. Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 Manual Food and Beverage Dispensing Equipment.

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

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

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

A. A machine vending potentially hazardous food (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; and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

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

1. In a refrigerated vending machine, the ambient temperature may not exceed 41°F (5°C) or 45°F (7°C) as specified under 2VAC5-585-820 A 2 for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or
2. In a hot holding vending machine, the ambient temperature may not be less than 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

## **2VAC5-585-1420. Case lot handling equipment apparatuses, movability.**

~~Equipment~~ Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

## **2VAC5-585-1440. Food equipment, certification and classification. (Repealed.)**

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

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

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

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

B. ~~Table-mounted~~ 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 ~~subsection~~ 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) clearance between the floor and the equipment.

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

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

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

E. The clearance space between the table and ~~table-mounted~~ 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.

**2VAC5-585-1690. Mechanical warewashing equipment, sanitization pressure.**

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine ~~may not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve,~~ as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than 30 pounds per square inch (200 kilopascals).

Article 7

Sanitization of Equipment and Utensils

**2VAC5-585-1880. ~~Food-contact surfaces and utensils. (Repealed.)~~**

~~Equipment food-contact surfaces and utensils shall be sanitized.~~

**2VAC5-585-1980. Food-contact surfaces.**

Lubricants as specified in 2VAC5-585-3420 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

**2VAC5-585-2040. Preset tableware.**

If tableware is preset:

- ~~1. It shall be protected from contamination by being wrapped, covered, or inverted;~~
- ~~2. Exposed, unused settings shall be removed when a consumer is seated; or~~
- ~~3. Exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.~~

A. 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.

**2VAC5-585-2190. Handwashing facility, installation sink, water temperature, and flow.**

A. A handwashing ~~lavatory~~ sink shall be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

B. A steam mixing valve may not be used at a handwashing ~~lavatory~~ 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.

**2VAC5-585-2230. Handwashing facilities sinks, numbers and capacities.\***

A. Except as specified in subsections B and C of this section, at least one handwashing ~~lavatory~~ sink, or the number of handwashing ~~lavatories~~ sinks necessary for their convenient use by employees in areas specified under 2VAC5-585-2280, and not fewer than the number of handwashing ~~lavatories~~ sinks required by law shall be provided.

B. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing ~~lavatories~~ sinks in a food establishment that has at least one handwashing ~~lavatory~~ sink.

C. If approved, when food exposure is limited and handwashing ~~lavatories~~ 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.

**2VAC5-585-2280. Handwashing facilities sinks, locations.\***

A handwashing ~~facility~~ sink shall be located:

1. To be readily accessible for use by employees in food preparation, food dispensing, and warewashing areas; and
2. In, or immediately adjacent to, toilet rooms.

**2VAC5-585-2310. Using a handwashing facility sink.**

A. A handwashing ~~facility~~ sink shall be maintained so that it is accessible at all times for employee use.

B. A handwashing ~~facility~~ sink may not be used for purposes other than handwashing.

C. An automatic handwashing ~~facility~~ sink shall be used in accordance with manufacturer's instructions.

**2VAC5-585-2510. ~~Establishment drainage system. (Repealed.)~~**

~~Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 2VAC5-585-2180 A.~~

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## **2VAC5-585-2520. Backflow prevention.\***

A. Except as specified in subsections ~~B and 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.

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.

~~B. 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 ~~(4.5 m)~~ (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.

~~C. D.~~ If allowed by law, a warewashing or culinary sink may have a direct connection.

### Article 5

#### Refuse, Recyclables, and Returnables

## **2VAC5-585-2590. Indoor storage area. (Repealed.)**

~~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.~~

## **2VAC5-585-2630. Receptacles in vending machines.**

A. Except for a receptacle for a beverage bottle crown closures, a refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

### Part VI

#### Physical Facilities

### Article 1

#### Materials for Construction and Repair

## **2VAC5-585-2790. Indoor areas; surface characteristics.**

A. Except as specified in subsection B of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and

2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

### Article 2

#### Design, Construction, and Installation

## **2VAC5-585-2810. Floors, walls, and ceilings - cleanability.**

~~Except as specified under 2VAC5-585-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that and except for~~ antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

## **2VAC5-585-2920. Toilet rooms, enclosed.**

~~A toilet room located on the premises shall be completely enclosed and provided with a tight fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.~~

Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

## **2VAC5-585-2950. Outdoor food vending areas, overhead protection.**

~~If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.~~

Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

## **2VAC5-585-2960. Outdoor servicing areas, overhead protection.**

~~Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.~~

Except for areas used only for the loading of water or the discharge of sewage or other liquid waste, through the use of

a closed system of hoses, servicing areas shall be provided with overhead protection.

Article 3  
Numbers and Capacities

**2VAC5-585-3010. ~~Handwashing lavatories, minimum number. (Repealed.)~~**

~~Handwashing lavatories shall be provided as specified under 2VAC5-585-2230.~~

**2VAC5-585-3020. Handwashing cleanser, availability.**

Each handwashing ~~lavatory sink~~ or group of two adjacent ~~lavatories~~ handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

**2VAC5-585-3030. Hand drying provision.**

Each handwashing ~~lavatory sink~~ or group of adjacent ~~lavatories~~ handwashing sinks shall be provided with:

1. Individual, disposable towels;
2. A continuous towel system that supplies the user with a clean towel; or
3. A heated-air hand drying device.

**2VAC5-585-3040. Handwashing aids and devices, use restrictions.**

A sink used for food preparation or utensil washing may not be provided with the handwashing aids and devices required for a handwashing ~~lavatory sink~~ as specified under 2VAC5-585-3020 and 2VAC5-585-3030 and 2VAC5-585-2650 C.

**2VAC5-585-3045. Handwashing signage.**

A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing ~~lavatories~~ sinks used by food employees and shall be clearly visible to food employees.

**2VAC5-585-3050. ~~Disposable towels, waste receptacle. (Repealed.)~~**

~~A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 2VAC5-585-2650 C.~~

**2VAC5-585-3060. ~~Toilets and urinals, minimum number. (Repealed.)~~**

~~Toilets and urinals shall be provided as specified under 2VAC5-585-2240.~~

**2VAC5-585-3080. Lighting, intensity.**

The light intensity shall be:

1. At least 10 foot candles (~~110 lux~~) (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

2. At least 20 foot candles (~~220 lux~~) (215 lux):

- a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;
- b. Inside equipment such as reach-in and under-counter refrigerators;
- c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

**2VAC5-585-3110. ~~Service sinks, availability. (Repealed.)~~**

~~A service sink or curbed cleaning facility shall be provided as specified under 2VAC5-585-2250.~~

Article 4  
Location and Placement

**2VAC5-585-3120. ~~Handwashing lavatories, conveniently located. (Repealed.)~~**

~~Handwashing lavatories shall be conveniently located as specified under 2VAC5-585-2280.~~

**2VAC5-585-3160. ~~Refuse, recyclables, and returnables—receptacles, waste handling units, and designated storage areas. (Repealed.)~~**

~~Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 2VAC5-585-2680.~~

**2VAC5-585-3180. Cleaning, frequency and restrictions.**

A. The physical facilities shall be cleaned as often as necessary to keep them clean.

B. Cleaning Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.

**2VAC5-585-3240. ~~Maintaining and using handwashing lavatories. Cleaning of plumbing fixtures.~~**

~~Handwashing lavatories shall be kept 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.~~

**2VAC5-585-3360. Conditions of use.\***

A. Poisonous or toxic materials shall be:

1. Used according to:



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- a. Law and this chapter;
- b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
- c. The conditions of certification, if certification is required, for use of the pest control materials; and
- d. Additional conditions that may be established by the department; and

## 2. Applied so that:

- a. A hazard to employees or other persons is not constituted; and
- b. Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:
  - (1) Removing the items;
  - (2) Covering the items with impermeable covers; or
  - (3) Taking other appropriate preventive actions; and
  - (4) Cleaning and sanitizing equipment and utensils after the application.

B. A restricted use pesticide shall be applied only by an applicator certified as defined in §§ ~~3.1-249.51, 3.1-249.52, and 3.1-249.53~~ 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.

### **2VAC5-585-3460. Medicines - restriction and storage.\***

A. ~~Only~~ 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. ~~This section does not apply to medicines that are stored or displayed for retail sale.~~

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 2VAC5-585-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

### **2VAC5-585-3860. Documenting information and observations.**

The authorized representative of the commissioner shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, and other information such as type of water supply and sewage disposal, and personnel certificates that may be required; and

2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the establishment operator including:

- a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 2VAC5-585-60;
- b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under ~~2VAC5-585-110 and 2VAC5-585-120~~ 2VAC5-585-80 B and D;
- c. Nonconformance with critical items of this chapter;
- d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified under 2VAC5-585-60;
- e. Failure of the person in charge to provide records required by the department for determining conformance with a HACCP plan as specified under subdivision 4 f of 2VAC5-585-3630; and
- f. Nonconformance with critical limits of a HACCP plan.

## 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 employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

#### **2VAC5-585-4050. Restriction or exclusion of food employee.**

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the department may request that the suspected food employee, or conditional employee, or operator institute one of the following control measures:

1. Restricting the food employee or conditional employee; or
2. Excluding the food employee or conditional employee.

**2VAC5-585-4070. Release of food employee from restriction or exclusion.**

The department shall release a food employee or conditional employee from restriction or exclusion according to law and the following conditions: conditions specified under 2VAC5-585-100.

- ~~1. A food employee who was infected with Salmonella typhi if the food employee's stools are negative for S. typhi based on testing of at least three consecutive stool specimen cultures that are taken:
 
  - a. Not earlier than one month after onset;
  - b. At least 48 hours after discontinuance of antibiotics; and
  - e. At least 24 hours apart; and~~
- ~~2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.~~
- ~~3. A food employee who was infected with Shigella spp. or Shiga toxin producing Escherichia coli if the employee's stools are negative for Shigella spp. or Shiga toxin-producing Escherichia coli based on testing of two consecutive stool specimen cultures that are taken:
 
  - a. Not earlier than 48 hours after discontinuance of antibiotics; and
  - b. At least 24 hours apart.~~
- ~~4. A food employee who was infected with hepatitis A virus if:
 
  - a. Symptoms cease; or
  - b. At least two blood tests show falling liver enzymes.~~

**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>.

~~7 CFR Parts 56 and 59, January 2006, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~9 CFR Parts 301, 308, 317, 319, 352, 354, 362, 381, 424, and 590, January 2006, published by the U.S. Government~~

~~Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~21 CFR Parts 70, 101, 113, 114, 120, 129, 186, 21 CFR 1030.10, and 1240.60(d), April 2006, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~40 CFR Parts 141, 152 and 40 CFR 180.940, and 185 and 40 CFR, July 2005, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~50 CFR Part 17, October 2005, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~Federal Food, Drug and Cosmetic Act, as amended through December 31, 2004, 21 USC §§ 321, 342, 343, 348 and 376, published by the U.S. Government Printing Office, 732 North Capitol St., NW, Washington, DC 20401.~~

~~Grade "A" Pasteurized Milk Ordinance, 2003 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~Grade "A" Condensed and Dry Milk Ordinance, 1995 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~Interstate Certified Shellfish Shippers List, (updated monthly), published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~National Shellfish Sanitation Program Manual of Operations, 1995 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Seafood (HFS-417), 5100 Paint Branch Parkway, College Park, MD 20740-3835.~~

~~Virginia Waterworks Regulations, 12VAC5-590, May 2006, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219.~~

~~Virginia Statewide Building Code, 13VAC5-63, November 2005, Virginia Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219.~~

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.

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# Regulations

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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.

V.A.R. Doc. No. R09-1653; Filed November 16, 2009, 1:53 p.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Proposed Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-10, 12VAC5-90-30, 12VAC5-90-80, 12VAC5-90-90, 12VAC5-90-100, 12VAC5-90-103, 12VAC5-90-107, 12VAC5-90-110, 12VAC5-90-130, 12VAC5-90-140, 12VAC5-90-225, 12VAC5-90-370).**

Statutory Authority: § 32.1-35 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 5, 2010.

Agency Contact: Diane Woolard, Ph.D., Director, Disease Surveillance, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-8124, or email [diane.woolard@vdh.virginia.gov](mailto:diane.woolard@vdh.virginia.gov).

Basis: Section 32.1-35 of the Code of Virginia directs the Board of Health to promulgate regulations specifying which diseases occurring in the Commonwealth are to be reportable and the method by which they are to be reported.

Purpose: The amendment is necessary to make the regulations comply with changes in the Code of Virginia. The proposed changes improve the ability of the Virginia Department of Health to conduct surveillance and implement disease control for conditions of public health concern, including some that may indicate bioterrorism events. The changes will position the agency to better detect and respond to these illnesses to protect the health of the public.

Substance: Amendments to current regulations will update: (i) language to ensure that it complies with the Code of Virginia and reflects current public health, medical and scientific terminology; (ii) disease reporting requirements, including reportable diseases and those required to report; (iii) language regarding laboratory reporting requirements; (iv) tuberculosis reporting and control requirements and definitions; (v) provisions regarding the reporting of toxic substance-related illness; (vi) requirements related to HIV prenatal testing and gamete donation; (vii) and other disease reporting and control provisions necessary to protect the health of the people of the Commonwealth.

Issues: The proposed changes improve the ability of the Virginia Department of Health to conduct surveillance and implement disease control for conditions of public health concern, including some that may indicate bioterrorism events. The changes will position the agency to better detect and respond to these illnesses to protect the health of the public.

Except as noted below, changes are alterations in language and terminology to reflect current scientific use and to provide clarification. For example, the phrase "interrupt the transmission of disease" is replaced by "reduce the occurrence of disease," names of conditions on the Reportable Disease List are modified to comply with scientific usage, and definitions that were in a subsection are moved to the Definitions section. These changes improve the clarity of the regulations but are not substantive.

Updates to disease reporting requirements include:

1. Conditions requiring rapid communication will be reported "by the most rapid means available," rather than "within 24 hours" to clarify that immediate action is expected for these high priority conditions.
2. The change in terminology from "poliomyelitis" to "poliovirus infection" clarifies that all poliovirus infections are reportable, not only those resulting in paralysis.
3. Toxic Shock Syndrome is removed from the list of reportable conditions, but is added as a reportable Group A Streptococcal infection. Toxic shock may result from streptococcal or staphylococcal organisms. The number of staphylococcal toxic shock syndrome cases has been minimal over the past 10 years (averaging 1.2 cases per year) and clinical management is effective to limit spread. Streptococcal infections are still of public health concern and will remain reportable.
4. Kawasaki syndrome is removed from the list of reportable conditions. The conditional was initially added as a reportable condition due to a national research effort to identify the causal agents. However, no cause has been identified and there is no public health intervention to reduce the occurrence of disease. Over the past five years, an average of 17 Kawasaki cases was reported each year in Virginia.
5. Changes in reporting requirements for laboratory directors pertain to Lyme disease and heavy metals. Lyme disease is added to the list of conditions reportable by laboratories because laboratory findings are essential for identification and confirmation of cases. Because the major reference laboratories currently submit Lyme disease findings, the impact is expected to be minimal. When reporting elevated levels of heavy metal exposure, the amendment proposes requiring laboratories to provide speciation, indicating whether the metal is

organic or inorganic, when this information is available. This assists in determining whether public health action is needed to follow up on reports, which applies only to inorganic metals.

6. To comply with changes in § 32.1-37 of the Code of Virginia, new wording is added to specify that persons in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth must report outbreaks. The change in Code of Virginia, which was made during the 2008 legislative session, addressed a gap in the requirement for persons in charge of schools, child care centers, and summer camps to report outbreaks. Earlier involvement by public health minimizes the number of individuals who become ill and assists the facility in implementing changes to reduce future outbreaks.

**Submission of tuberculosis specimens:** To comply with changes in § 32.1-50 of the Code of Virginia, the updated regulations remove the exception that previously allowed a laboratory to submit drug susceptibility findings for tuberculosis specimens in place of a viable sample. Submission of positive cultures for a member of the *M. tuberculosis* complex to the Division of Consolidated Laboratory Services (DCLS) or other approved laboratory guarantees the availability of drug susceptibility results for public health and treating clinicians. These results are important to ensure the appropriate treatment of individuals impacted by tuberculosis disease. In addition, genetic fingerprinting of the organism by public health laboratories provides insights into disease transmission patterns and identifies points where public health intervention can prevent further transmission.

**Submission of specimens for additional confirmation:** Laboratories identifying evidence of 14 conditions in addition to tuberculosis have been required to submit specimens to DCLS. In this action the requirement is expanded to include four additional conditions. Two are potential bioterrorism conditions not currently included on the list (brucellosis and Q fever). The third is novel influenza A viruses, which could herald the arrival of a new strain of influenza that could potentially lead to a large-scale epidemic or pandemic. The fourth is vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus*. VDH receives less than 24 reports per year of these four conditions combined. Resistance to vancomycin in *Staphylococcus aureus* is an emerging health concern; however, most preliminary findings of resistance are ruled out with confirmatory testing. The other changes in this section offer clarifications. Typhoid fever is caused by *Salmonella typhi*, and was intended to be covered in the requirement for evidence identifying salmonellosis, but specific mention of the organism will ensure specimen submission. For *E. coli* O157, the new requirement specifies that when EIA testing is done without culture, the positive broth may be submitted; previously the regulations referred

only to the submission of specimens for further testing. Additional testing performed at the state laboratory for these 17 conditions is essential for identifying and delineating outbreaks. On a national level, the ability to obtain and act on this type of analysis is expected of state health departments.

**Isolation and quarantine:** Changes to the regulations specify that if the risk of infection or transmission continues at the end of the confinement, new orders may be issued to extend the confinement. The procedures for extending orders protect the individual while minimizing health risks to the public. These changes make isolation and quarantine orders more practical to implement and enforce.

**Immunization requirements:** The regulations are updated to be in conformance with changes in § 32.1-46 of the Code of Virginia, which updated the immunization requirements for children. Additionally, the immunization requirements for school entry in 12VAC5-110-70 are referenced, rather than repeated. This section makes reference to the changes in immunization requirements in § 32.1-46 and those in 12VAC5-110-70, which is under separate review, but does not modify the requirements themselves nor incur any additional costs. The changes reduce duplication in regulations and eliminate the need to modify both sets of regulations when immunization requirements are updated.

**Prenatal testing for HIV infection:** The regulations are updated to be in conformance with changes in § 54.1-2403.01 of the Code of Virginia, which was amended in the 2008 Session of the General Assembly, and with current guidelines of the Centers for Disease Control and Prevention (CDC). HIV testing during pregnancy is a standard of medical care, and universal screening with an opt-out provision is supported by the American College of Obstetricians and Gynecologists. The change in regulation language would change HIV testing during pregnancy from opt-in to opt-out, and increase from one to two the number of HIV tests to be performed on pregnant women. This change would potentially benefit women by identifying HIV infection, and benefit their newborns through identifying those who would require HIV preventive treatment. The change would ultimately benefit society by decreasing the number of children with HIV infection. This regulation would bring Virginia in line with CDC guidance as well as the Code of Virginia, which makes prenatal HIV testing a routine opt-out procedure. In guidance released in 2006, the CDC identified states where two HIV tests should be performed during pregnancy, because those states have an elevated incidence of HIV or AIDS among women 15 – 45 years of age. Virginia was one of the identified states, and the Association of Maternal and Child Health Programs, to which the Title V Maternal and Child Health Block Grant recipients belong, recommends that state and national policymakers take steps to implement universal opt-out screening, which includes the second HIV test during the third trimester in the jurisdictions

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identified by CDC. The only disadvantage to the public or the Commonwealth is the cost of the HIV testing.

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

Summary of the Proposed Amendments to Regulation. The State Board of Health proposes to update the regulations to conform to recent changes in the Code of Virginia, to add to or subtract diseases from the list of reportable diseases, to expand the list of conditions for which laboratories are required to submit specimens, and to clarify some of the current requirements and definitions.

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

Estimated Economic Impact. The proposed changes update the regulations to conform to recent changes in the Code of Virginia pertaining to the reporting of outbreaks (§ 32.1-37), prenatal testing for HIV infection (§ 54.1-2403.01), immunization requirements (§ 32.1-46), and tuberculosis reporting and control requirements (§ 32.1-50). While these changes are substantial, no significant economic effect is expected upon promulgation as they have already been in effect under the statute.

The board also proposes 1) to remove Toxic Shock Syndrome from the list of reportable conditions, but add it to the list of reportable Group A Streptococcal infections as the number of cases reported have been minimal over the last decade averaging 1.2 cases per year, 2) to remove Kawasaki syndrome from the list of reportable conditions since it was originally added to collect information that may have helped to identify its causes and no cause has been identified as well as there is being no public health intervention to reduce the occurrence of this disease, 3) to add Lyme disease to the list of conditions reportable by laboratories since laboratory findings are essential for identification and confirmation of cases, and 4) to require the laboratories to indicate if available whether the metal is organic or inorganic in cases of elevated levels of heavy metal exposure.

Virginia Department of Health (VDH) does not anticipate any significant economic costs from these changes because Toxic Shock Syndrome and Kawasaki diseases rarely occur, most laboratories are already submitting Lyme disease findings, and the information requested in heavy metal exposure cases is to be submitted only if it is readily available.

The proposed regulations will also expand the list of conditions for which laboratories are required to submit specimens to include two bio terrorism conditions (brucellosis and Q fever), novel influenza viruses, and vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus*. Similarly VDH does not expect significant costs as a result of these added conditions as only 24 cases reported for all four conditions combined in year.

However, the benefits may be significant in terms of avoided public health costs in case of an epidemic.

Finally, the proposed regulations change the reporting requirement from "within 24 hours" to "will be reported by the most rapid means available" to clarify that immediate action is expected for high priority conditions; clarify the requirements on the list of specimens to be submitted for additional confirmation with regard to Typhoid fever, and *E. coli* O157; amend the regulation concerning isolation and quarantine to specify that if the risk of infection or transmission continues at the end of the confinement, new orders may be issued to extend the confinement; and clarify numerous definitions. All of the changes under this group are for clarification purposes and are not anticipated to create any significant economic effect.

Businesses and Entities Affected. The requirement to submit additional specimens could affect up to 50 laboratories doing business in Virginia. Insurance companies and health care providers in Virginia are expected to be affected by increased HIV testing.

Localities Particularly Affected. Regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant effect is expected on employment.

Effects on the Use and Value of Private Property. No significant effect is expected on the use and value of private property.

Small Businesses: Costs and Other Effects. No significant costs and other effects are expected on employment.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse effect is expected on small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected

reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*The proposed amendments update the regulation to conform to recent changes in the Code of Virginia, add or remove diseases from the list of reportable diseases, expand the list of conditions for which laboratories are required to submit specimens, and clarify current requirements and definitions.*

Part I  
Definitions

**12VAC5-90-10. Definitions.**

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

"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

"Adult intensive care unit" means a nursing care area that provides intensive observation, diagnosis, and therapeutic procedures for persons 18 years of age or more who are critically ill. Such units may also provide intensive care to pediatric patients. An intensive care unit excludes nursing areas that provide step-down, intermediate care, or telemetry only.

"Affected area" means any part or the whole of the Commonwealth ~~that~~ which has been identified as where ~~individuals~~ persons reside, or may be located, who are known to have been exposed to or infected with, or who are reasonably suspected to have been exposed to or infected with, a communicable disease of public health threat ~~reside or may be located~~. "Affected area" shall include, but not be limited to, cities, counties, towns, and subsections of such areas, public and private property, buildings, and other structures.

"Arboviral infection" means a viral illness that is transmitted by a mosquito, tick, or other arthropod. This includes, but is not limited to, chikungunya, dengue, eastern equine

encephalitis (EEE), LaCrosse encephalitis (LAC), St. Louis encephalitis (SLE), and West Nile virus (WNV) infection.

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Child care center" means a child day center, ~~child day center system~~, child day program, family day home, family day system, or registered family day home as defined by § 63.2-100 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Commissioner" means the State Health Commissioner or his duly designated officer or agent, unless stated in a provision of these regulations that it applies to the State Health Commissioner in his sole discretion.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes but is not limited to infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.

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"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this regulation.

"Condition" means any adverse health event, such as a disease, an infection, a syndrome, or as indicated by a procedure (including but not limited to the results of a physical exam, laboratory test, or imaging interpretation) suggesting that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact services" means a broad array of services that are offered to persons with infectious diseases and their contacts. Contact services include contact tracing, providing information about current infections, developing risk reduction plans to reduce the chances of future infections, and connecting to appropriate medical care and other services.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy hazardous substances or organisms from a person, surface, or item to the point that such substances or organisms are no longer capable of causing adverse health effects and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the State Department of Health.

"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Ehrlichiosis/anaplasmosis" means human infections caused by Ehrlichia chaffeensis (formerly included in the category "human monocytic ehrlichiosis" or "HME"), Ehrlichia ewingii or Anaplasma phagocytophilum (formerly included in the category "human granulocytic ehrlichiosis" or "HGE").

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Essential needs" means basic human needs for sustenance including but not limited to food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment.

"Exceptional circumstances" means the presence, as determined by the commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include but are not limited to: (i) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; (ii) known or suspected risk factors for infection; (iii) the potential magnitude of the effect of the disease on the health and welfare of the public; and (iv) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.

"Foodborne outbreak" means two or more cases of a similar illness acquired through the consumption of food contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to heavy metal intoxication, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 infection.

"Healthcare-associated infection" (also known as nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent or agents or its toxin or toxins that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.

"Hepatitis C, acute" means the following clinical characteristics are met: (i) discrete onset of symptoms indicative of viral hepatitis and (ii) jaundice or elevated serum aminotransferase levels and the following laboratory criteria are met: (a) serum alanine aminotransferase levels (ALT)

greater than 400 IU/L; (b) IgM anti-HAV negative (if done); (c) IgM anti-HBc negative (if done); and (d) hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test.

"Hepatitis C, chronic" means that the laboratory criteria specified in clauses (b), (c) and (d) listed above for an acute case are met but clinical signs or symptoms of acute viral hepatitis are not present and serum alanine aminotransferase (ALT) levels do not exceed 400 IU/L. This category will include cases that may be acutely infected but not symptomatic.

"Immunization" means a procedure that increases the protective response of an individual's immune system to specified pathogens.

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow specimen examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Individual" means a person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.

"Infection" means the entry and multiplication or persistence of a disease-causing organism (prion, virus, bacteria, fungus, parasite, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).

"Influenza A, novel virus" means infection of a human with an influenza A virus subtype that is different from currently circulating human influenza H1 and H3 viruses. Novel subtypes include H2, H5, H7, and H9 subtypes or influenza H1 and H3 subtypes originating from a nonhuman species.

"Invasive" means the organism is affecting a normally sterile site, including but not limited to blood or cerebrospinal fluid.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a disease occurrence.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected with, a communicable disease ~~of public health threat~~ in order to prevent or limit the transmission of the communicable disease ~~of public health threat~~ to uninfected and unexposed individuals.

"Isolation, complete" means the full-time confinement or restriction of movement of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.

"Isolation, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease. Modified isolation is designed to meet particular situations and includes but is not limited to the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Isolation, protective" means the physical separation of a susceptible individual or individuals not infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease.

"Laboratory" as used herein means a clinical laboratory that examines materials derived from the human body for the purpose of providing information on the diagnosis, prevention, or treatment of disease.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

~~"Lead elevated blood levels"~~ "Lead, elevated blood levels" means a confirmed blood level greater than or equal to 10 micrograms of lead per deciliter ( $\mu\text{g}/\text{dL}$ ) of whole blood in a child or children 15 years of age and younger, a venous blood lead level greater than or equal to 25  $\mu\text{g}/\text{dL}$  in a person older than 15 years of age, or such lower blood lead level as may be recommended for individual intervention by the department or the Centers for Disease Control and Prevention.

"Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.



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"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who ~~possesses a midwife permit issued by the State Health Commissioner~~ is licensed by the Board of Medicine as a certified professional midwife.

"National Healthcare Safety Network (NHSN)" means a surveillance system created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

~~"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.~~

"Nucleic acid detection" means laboratory testing of a clinical specimen to determine the presence of deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) specific for an infectious agent using any method, including hybridization, sequencing, or amplification such as polymerase chain reaction.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of a work-related exposure. Such conditions include but are not limited to silicosis, asbestosis, byssinosis, pneumoconiosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease ~~of public health threat~~ and who do not yet show signs or symptoms of infection with the communicable disease ~~of public health threat~~ in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals.

"Quarantine, complete" means the full-time confinement or restriction of movement of an individual or individuals who

do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat in order to prevent the transmission of the communicable disease of public health threat to uninfected individuals.

"Quarantine, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable disease of public health threat. Modified quarantine may be designed to meet particular situations and includes but is not limited to limiting movement to the home, work, and/or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"SARS" means severe acute respiratory syndrome (SARS)-associated coronavirus (SARS-CoV) disease.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicap classes or Head Start classes.

"Serology" means the testing of blood, serum, or other body fluids for the presence of antibodies or other markers of an infection or disease process.

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include but are not limited to physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization history, or use of medications.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a

commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tubercle bacilli" means disease-causing organisms belonging to the Mycobacterium tuberculosis complex and includes Mycobacterium tuberculosis, Mycobacterium bovis, and Mycobacterium africanum or other members as may be established by the commissioner.

"Tuberculin skin test (TST)" means a test for demonstrating infection with tubercle bacilli, performed according to the Mantoux method, in which 0.1 ml of 5 TU strength tuberculin purified protein derivative (PPD) is injected intradermally on the volar surface of the arm. Any reaction is observed 48-72 hours after placement and palpable induration is measured across the diameter transverse to the long axis of the arm. The measurement of the indurated area is recorded in millimeters and the significance of the measured induration is based on existing national and department guidelines.

"Tuberculosis" means a disease caused by tubercle bacilli.

"Tuberculosis, active disease" (also "active tuberculosis disease" and "active TB disease"), as defined by § 32.1-49.1 of the Code of Virginia, means a disease caused by an airborne microorganism and characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or nucleic acid amplification, including preliminary identification by rapid methodologies; (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to contain tubercle bacilli as evidenced by smear, and where sufficient clinical and radiographic evidence of active tuberculosis disease is present as determined by a physician licensed to practice medicine in Virginia; or (iii) sufficient clinical and radiographic evidence of active tuberculosis disease as determined by the commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing, or suspected of containing, tubercle bacilli is unobtainable.

"Tuberculosis infection in children age less than 4 years" means a significant reaction resulting from a tuberculin skin test (TST) or other approved test for latent infection without clinical or radiographic evidence of active tuberculosis disease, in children from birth up to their fourth birthday.

"Vaccinia, disease or adverse event" means vaccinia infection or serious or unexpected events in persons who received the smallpox vaccine or their contacts, including but not limited to bacterial infections, eczema vaccinatum, erythema multiforme, generalized vaccinia, progressive vaccinia, inadvertent inoculation, post-vaccinial

encephalopathy or encephalomyelitis, ocular vaccinia, and fetal vaccinia.

"Waterborne outbreak" means two or more cases of a similar illness acquired through the ingestion of or other exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.

**12VAC5-90-30. Purpose.**

This chapter is designed to provide for the uniform reporting of diseases of public health importance occurring within the Commonwealth in order that appropriate control measures may be instituted to ~~interrupt the transmission~~ reduce the occurrence of disease.

Part III  
Reporting of Disease

**12VAC5-90-80. Reportable disease list.**

A. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (\*) require ~~rapid~~ immediate communication to the local health department ~~within 24 hours of~~ by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

- Acquired immunodeficiency syndrome (AIDS)
- Amebiasis
- \*Anthrax
- Arboviral infections (e.g., dengue, EEE, LAC, SLE, WNV)
- \*Botulism
- \*Brucellosis
- Campylobacteriosis
- Chancroid
- Chickenpox (Varicella)
- Chlamydia trachomatis infection
- \*Cholera
- Creutzfeldt-Jakob disease if <55 years of age
- Cryptosporidiosis
- Cyclosporiasis
- \*Diphtheria

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\*Disease caused by an agent that may have been used as a weapon

~~Ehrlichiosis~~ Ehrlichiosis/Anaplasmosis

Escherichia coli infection, Shiga toxin-producing

Giardiasis

Gonorrhea

Granuloma inguinale

\*Haemophilus influenzae infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

\*Hepatitis A

Hepatitis B<sub>e</sub> (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza

\*Influenza-associated deaths in children <18 years of age

~~Kawasaki syndrome~~

~~Lead-elevated blood levels~~ Lead, elevated blood levels

Legionellosis

Leprosy (~~Hansen's~~ Hansen disease)

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

\*Measles (Rubeola)

\*Meningococcal disease

\*Monkeypox

Mumps

Ophthalmia neonatorum

\*Outbreaks, all (including but not limited to foodborne, nosocomial, healthcare-associated, occupational, toxic substance-related, and waterborne)

\*Pertussis

\*Plague

~~\*Polio~~ \*Poliovirus infection, including poliomyelitis

\*Psittacosis

\*Q fever

\*Rabies, human and animal

Rabies treatment, post-exposure

Rocky Mountain spotted fever

\*Rubella, including congenital rubella syndrome

Salmonellosis

\*Severe acute respiratory syndrome (SARS)

Shigellosis

\*Smallpox (Variola)

Streptococcal disease, Group A, invasive or toxic shock

Streptococcus pneumoniae infection, invasive, in children <5 years of age

Syphilis (report \*primary and \*secondary syphilis by rapid means)

Tetanus

~~Toxic shock syndrome~~

Toxic substance-related illness

Trichinosis (Trichinellosis)

\*Tuberculosis, active disease

Tuberculosis infection in children <4 years of age

\*Tularemia

~~\*Typhoid~~ \*Typhoid/paratyphoid fever

\*Unusual occurrence of disease of public health concern

\*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

\*Vibrio infection

\*Viral hemorrhagic fever

\*Yellow fever

Yersiniosis

B. Conditions reportable by directors of laboratories.

Conditions identified by an asterisk (\*) require ~~rapid~~ rapid immediate communication to the local health department ~~within 24 hours of~~ by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis—by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Anthrax—by culture, antigen detection or nucleic acid detection

Arboviral infection—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Botulism—by culture or identification of toxin in a clinical specimen

\*Brucellosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Campylobacteriosis—by culture

Chancroid—by culture, antigen detection, or nucleic acid detection

Chickenpox (varicella)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Chlamydia trachomatis infection—by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection

\*Cholera—by culture or serologic results consistent with recent infection

Creutzfeldt-Jakob disease if <55 years of age - ~~presumptive diagnosis~~— by histopathology in patients under the age of 55 years

Cryptosporidiosis—by microscopic examination, antigen detection, or nucleic acid detection

Cyclosporiasis—by microscopic examination or nucleic acid detection

\*Diphtheria—by culture

~~Ehrlichiosis~~—by Ehrlichiosis/Anaplasmosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

Escherichia coli infection, Shiga toxin-producing—by culture of E. coli O157 or other Shiga toxin-producing E. coli, Shiga toxin detection (e.g., by EIA), or nucleic acid detection

Giardiasis—by microscopic examination or antigen detection

Gonorrhea—by microscopic examination of a urethral smear specimen (males only), culture, antigen detection, or nucleic acid detection

\*Haemophilus influenzae infection, invasive—by culture, antigen detection, or nucleic acid detection from a normally sterile site

Hantavirus pulmonary syndrome—by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection

\*Hepatitis A—by detection of IgM antibodies

Hepatitis B (acute and chronic)—by detection of HBsAg or IgM antibodies

Hepatitis C (acute and chronic)—by hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test. For all hepatitis C patients, also report available results of serum alanine aminotransferase (ALT), anti-HAV IgM, anti-HBc IgM, and HBsAg

Human immunodeficiency virus infection—by culture, antigen detection, nucleic acid detection, or detection of antibody confirmed with a supplemental test. For HIV-infected patients, report all results of CD4 and HIV viral load tests

Influenza—by culture, antigen detection by direct fluorescent antibody (DFA)<sub>2</sub> or nucleic acid detection

~~Lead-elevated~~ Lead, elevated blood levels—by blood lead level greater than or equal to 10 µg/dL in children ages 0-15 years, or greater than or equal to 25 µg/dL in persons older than 15 years of age

Legionellosis—by culture, antigen detection (including urinary antigen), nucleic acid detection, or serologic results consistent with recent infection

Listeriosis—by culture

Lyme disease—by culture, antigen detection, or detection of antibody confirmed with a supplemental test

Malaria—by microscopic examination, antigen detection, or nucleic acid detection

\*Measles (rubeola)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Meningococcal disease—by culture or antigen detection from a normally sterile site

\*Monkeypox—by culture or nucleic acid detection

Mumps—by culture, nucleic acid detection, or serologic results consistent with recent infection

\*Mycobacterial diseases—(See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli by microscopic examination;
2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;

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## 3. Drug susceptibility test results for *M. tuberculosis*.

\*Pertussis—by culture, antigen detection, or nucleic acid detection

\*Plague—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

~~\*Polio~~myelitis—by \*Poliovirus infection—by culture

\*Psittacosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Q fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Rabies, human and animal—by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection, or, for humans only, serologic results consistent with recent infection

Rocky Mountain spotted fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Rubella—by culture, nucleic acid detection, or serologic results consistent with recent infection

Salmonellosis—by culture

\*Severe acute respiratory syndrome—by culture, nucleic acid detection, or serologic results consistent with recent infection

Shigellosis—by culture

\*Smallpox (variola)—by culture or nucleic acid detection

*Staphylococcus aureus* infection, resistant, as defined below.

1. Methicillin-resistant - by antimicrobial susceptibility testing of a *Staphylococcus aureus* isolate, with a susceptibility result indicating methicillin resistance, cultured from a normally sterile site

2. Vancomycin-intermediate or vancomycin-resistant *Staphylococcus aureus* infection - by antimicrobial susceptibility testing of a *Staphylococcus aureus* isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen

Streptococcal disease, Group A, ~~invasive~~—by invasive or toxic shock—by culture from a normally sterile site

*Streptococcus pneumoniae* infection, invasive, in children <5 years of age—by culture from a normally sterile site in a child under the age of five years

\*Syphilis—by microscopic examination (including dark field), antigen detection (including direct fluorescent antibody), or serology by either treponemal or nontreponemal methods

Toxic substance-related illness—by blood or urine laboratory findings above the normal range, including but not limited to heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (trichinellosis)—by microscopic examination of a muscle biopsy or serologic results consistent with recent infection

\*Tularemia—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

~~\*Typhoid~~ \*Typhoid/paratyphoid fever—by culture

\*Vaccinia, disease or adverse event—by culture or nucleic acid detection

\*Vibrio infection—by culture

\*Viral hemorrhagic fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Yellow fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Yersiniosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below, shall be made ~~within 24 hours~~ immediately by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, pagers, etc.) to the local health director or other professional employee of the department. (These same diseases are also identified by an asterisk (\*) in subsection A and subsection B, where applicable, of this section.)

Anthrax

Botulism

Brucellosis

Cholera

Diphtheria

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

~~Influenza~~ Influenza-associated deaths in children <18 years of age

Influenza A, novel virus

Measles (Rubeola)

Meningococcal disease

Monkeypox

Outbreaks, all

Pertussis

Plague

~~Polio~~myelitis Poliovirus infection, including poliomyelitis

Psittacosis

Q fever

Rabies, human and animal

Rubella, including congenital rubella syndrome

Severe acute respiratory syndrome (SARS)

Smallpox (Variola)

Syphilis, primary and secondary

Tuberculosis, active disease

Tularemia

~~Typhoid~~ Typhoid/paratyphoid fever

Unusual occurrence of disease of public health concern

Vaccinia, disease or adverse event

Vibrio infection

Viral hemorrhagic fever

Yellow ~~Fever~~ fever

D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be by rapid communication as in subsection C of this section.

E. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness

which may be of public health concern shall be reported to the local health department by the most rapid means available.

F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

**12VAC5-90-90. Those required to report.**

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease or condition shall report that person's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease diagnosed or suspected; the date of onset of illness; and the name, address, and telephone number of the physician and medical facility where the examination was made, except that influenza should be reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. A physician may designate someone to report on his behalf, but the physician remains responsible for ensuring that the appropriate report is made. Any physician, designee, or organization making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department (Form Epi-1), a computer generated printout containing the data items requested on Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information and shall be made within three days of the suspicion or confirmation of disease unless the disease in question requires rapid reporting under 12VAC5-90-80 C. Reporting may be done by means of secure electronic transmission upon agreement of the physician and the department.

Pursuant to § 32.1-49.1 of the Code of Virginia, additional elements are required to be reported for individuals with confirmed or suspected active tuberculosis disease. Refer to Part X for details on these requirements.

B. Directors of laboratories. Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any clinical specimen,

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whether performed in-house or referred to an out-of-state laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of a disease listed in 12VAC5-90-80 B.

Each report shall give the source of the specimen and the laboratory method and result; the name, address, age, date of birth, race, sex, and pregnancy status for females (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician and medical facility for whom the examination was made. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within three days of identification of evidence of disease, except that those identified by an asterisk shall be reported ~~within 24 hours~~ by the most rapid means available, to the local health department serving the jurisdiction in which the laboratory is located. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Reporting may be done by means of secure electronic transmission upon agreement of the laboratory director and the department. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

~~A laboratory identifying evidence of anthrax, cholera, diphtheria, E. coli O157 infection, invasive H. influenzae infection, listeriosis, meningococcal disease, pertussis, plague, poliomyelitis, salmonellosis, shigellosis, invasive Group A streptococcal disease, yersiniosis, and other diseases as may be requested by the health department, shall notify the health department of the positive culture and submit the initial isolate to the Virginia Division of Consolidated Laboratory Services (DCLS). Stool specimens that test positive for Shiga toxin shall be submitted to DCLS for organism identification. A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to DCLS or other laboratory designated by the board to receive such specimen. any of the following conditions shall notify the health department of the positive culture and submit the initial isolate to the Virginia Division of Consolidated Laboratory Services (DCLS). All specimens must be identified with the patient and physician information required in this subsection.~~

Anthrax

Brucellosis

Cholera

Diphtheria

E. coli infection, Shiga toxin-producing. (Laboratories that use a Shiga toxin EIA methodology but do not perform simultaneous culture for Shiga toxin-producing E. coli should forward all positive stool specimens or positive

broth cultures to DCLS for confirmation and further characterization.)

Haemophilus influenzae infection, invasive

Influenza A, novel virus

Listeriosis

Meningococcal disease

Pertussis

Plague

Poliovirus infection

Q fever

Salmonellosis

Shigellosis

Streptococcal disease, Group A, invasive

Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to DCLS or other laboratory designated by the board to receive such specimen.)

Typhoid fever

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

Yersiniosis

Other diseases as may be requested by the health department

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to notify the health department when the director of that medical care facility assumes the reporting responsibility; however, laboratories are still required to submit isolates to DCLS or other designated laboratory as noted above.

C. Persons in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12VAC5-90-80 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease being reported; the date of admission; hospital chart number; date expired (when applicable); and attending physician. Influenza should be reported by number

of cases only (and type of influenza, if available). Reports shall be made within three days of the suspicion or confirmation of disease unless the disease in question requires rapid reporting under 12VAC5-90-80 C and shall be made on Form Epi-1, a computer generated printout containing the data items requested on Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information. Reporting may be done by means of secure electronic transmission upon agreement of the medical care facility and the department.

A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.

D. Persons in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp. Any person in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp as defined in § 35.1-1 of the Code of Virginia shall report immediately to the local health department the presence or suspected presence in his program, service, facility, school, child care center, or summer camp of children persons who have common symptoms suggesting an ~~epidemic or outbreak~~ situation. Such persons may ~~notify the local health department of~~ report additional information, including individual cases of communicable diseases that occur in their facilities. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction to the Office of Epidemiology within three days of receipt. This report shall be submitted immediately by ~~telecommunication~~ the most rapid means available if the disease is one requiring rapid communication, as required in 12VAC5-90-80 C. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within three days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction or to the Office of Epidemiology on individuals residing outside Virginia.

F. Persons in charge of hospitals, nursing facilities or nursing homes, assisted living facilities, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing facility or nursing home, assisted living facility, or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through

exposure to any bodily fluids. These include any of the following infectious diseases:

- Creutzfeldt-Jakob disease
- Human immunodeficiency virus infection
- Hepatitis B
- Hepatitis C
- Monkeypox
- Rabies
- Smallpox
- Syphilis, infectious
- Tuberculosis, active disease
- Vaccinia, disease or adverse event
- Viral hemorrhagic fever

G. Employees, applicants, and persons in charge of food establishments. 12VAC5-421-80 of the Food Regulations requires a food employee or applicant to notify the person in charge of the food establishment when diagnosed with certain diseases that are transmissible through food. 12VAC5-421-120 requires the person in charge of the food establishment to notify the health department. Refer to the appropriate sections of the Virginia Administrative Code for further guidance and clarification regarding these reporting requirements.

Part IV  
Control of Disease

**12VAC5-90-100. Methods.**

The board and commissioner shall use appropriate disease control measures to manage the diseases listed in 12VAC5-90-80 A, including but not limited to those described in the "Methods of Control" sections of the 18th Edition of the Control of Communicable Diseases Manual (2004) published by the American Public Health Association. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

When notified about a disease specified in 12VAC5-90-80, the local health director or his designee shall have the authority and responsibility to perform contact tracing/contact services for HIV infection, infectious syphilis, and active tuberculosis disease and may perform contact ~~tracing~~ services for the other diseases if deemed necessary to protect the public health. All contacts of HIV infection shall be afforded the opportunity for appropriate counseling, testing, and individual face-to-face disclosure of their test results. In no case shall names of informants or infected individuals be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.

The local health director or his designee shall review reports of diseases received from his jurisdiction and follow up such



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reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. The local health director or his designee may recommend to any individual or group of individuals appropriate public health control measures, including but not limited to quarantine, isolation, immunization, decontamination, or treatment. He shall determine in consultation with the Office of Epidemiology and the commissioner if further investigation is required and if one or more forms of quarantine and/or isolation will be necessary.

Complete isolation shall apply to situations where an individual is infected with a communicable disease of public health significance (including but not limited to active tuberculosis disease or HIV infection) and is engaging in behavior that places others at risk for infection with the communicable disease of public health significance, in accordance with the provisions of Article 3.01 (§ 32.1-48.02 et seq.) of the Code of Virginia.

Modified isolation shall apply to situations in which the local health director determines that modifications of activity are necessary to prevent disease transmission. Such situations shall include but are not limited to the temporary exclusion of a child with a communicable disease from school, ~~or the temporary prohibition or restriction of any individual or individuals with a communicable disease from engaging in activities that may pose a risk to the health of others, such as using public transportation or performing an occupation such as foodhandling or providing healthcare~~ the temporary exclusion of an individual with a communicable disease from food handling or patient care, the temporary prohibition or restriction of an individual with a communicable disease from using public transportation, the requirement that a person with a communicable disease use certain personal protective equipment, or restrictions of other activities that may pose a risk to the health of others.

Protective isolation shall apply to situations such as the exclusion, under § 32.1-47 of the Code of Virginia, of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified.

To the extent permitted by the Code of Virginia, the local health director may be authorized as the commissioner's designee to implement the forms of isolation described in this section. When these forms of isolation are deemed to be insufficient, the local health director may use the provisions of Article 3.01 (§ 32.1-48.01 et seq.) of the Code of Virginia for the control of communicable diseases of public health significance or, in consultation with the Office of Epidemiology, shall provide sufficient information to enable the commissioner to prepare an order or orders of isolation and/or quarantine under Article 3.02 (§ 32.1-48.05 et seq.) of the Code of Virginia for the control of communicable diseases of public health threat.

### **12VAC5-90-103. Isolation for communicable disease of public health threat.**

A. Application. The commissioner, in his sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia and may declare the isolation of any individual or individuals upon a determination that:

1. Such individual or individuals are known to have been infected with or are reasonably suspected to have been infected with a communicable disease of public health threat;
2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the individual or individuals have failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable disease of public health threat; and
3. Isolation is the necessary means to contain a communicable disease of public health threat, to ensure that such isolated individual or individuals receive appropriate medical treatment subject to the provisions of § 32.1-44 of the Code of Virginia, or to protect health care providers and others who may come into contact with such infected individual or individuals.

The commissioner, in his sole discretion, may also order the isolation of an affected area if, in addition to the above, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For isolation for a communicable disease of public health threat, information about the infection or suspected infection, the individual, individuals, and/or affected area, and the nature or suspected nature of the exposure shall be duly recorded by the local health department in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and to enable the commissioner to prepare the order of isolation, including the information required in § 32.1-48.12 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local health department to enable appropriate follow-up of individuals for health status evaluation and treatment as well as compliance with the order of isolation.

The commissioner shall ensure that the protected health information of any individual or individuals subject to the order of isolation is disclosed only in compliance with state and federal law.

C. Means of isolation. The local health department shall assess the situation, and in consultation with the Office of Epidemiology, identify the least restrictive means of isolation that effectively protects unexposed and susceptible

individuals. The place of isolation selected shall allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to other individuals and shall allow the appropriate level of medical care needed by isolated individuals to the extent practicable. The commissioner, in his sole discretion, may order the isolated individual or individuals to remain in their residences ~~when possible~~, to remain in another place where they are present, or to report to a place or places designated by the commissioner for the duration of their isolation.

The commissioner's order of isolation shall be for a duration consistent with the known period of communicability of the communicable disease of public health threat or, if the course of the disease is unknown or uncertain, for a period anticipated as being consistent with the period of communicability of other similar infectious agents. In the situation where an area is under isolation, the duration of isolation shall take into account the transmission characteristics and known or suspected period of communicability.

D. Delivery. The local health department shall deliver the order of isolation, or ensure its delivery by an appropriate party such as a law-enforcement officer or health department employee, to the affected individual or individuals in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the capacity of the local health department to ensure individual notification in a timely manner, then print, radio, television, Internet, and/or other available means shall be used to inform those affected.

E. Enforcement. Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of isolation may fail or refuse to comply with such order, the commissioner in his sole discretion may ~~issue an emergency detention order requiring~~ include in the order a requirement that such individual or individuals are to be taken immediately into custody by law-enforcement agencies and detained for the duration of the order of isolation or until the commissioner determines that the risk of noncompliance is no longer present. For any individual or individuals identified as, or for whom probable cause exists that he may be, in violation of any order of isolation, or for whom probable cause exists that he may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies shall include but need not be limited to the power to detain or arrest.

Any individual or individuals so detained shall be held in the least restrictive environment that can provide any required health care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order or orders of isolation are informed of appropriate measures to take to protect

themselves from contracting the disease of public health threat.

F. Health status monitoring. The local health department shall monitor the health of those under isolation either by regular telephone calls, visits, self-reports, or by reports of caregivers or healthcare providers or by other means.

G. Essential needs. Upon issuance of an order of isolation to an individual or individuals by the commissioner, the local health department shall manage the isolation, in conjunction with local emergency management resources, such that individual essential needs can be met to the extent practicable. Upon issuance of an order of isolation by the commissioner ~~to~~ for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual or individuals subject to an order of isolation or a court-ordered confirmation or extension of any such order may file an appeal of the order of isolation in accordance with the provisions of § 32.1-48.13 of the Code of Virginia. An appeal shall not stay any order of isolation.

I. Release from isolation. Once the commissioner determines that an individual or individuals no longer pose a threat to the public health, the order of isolation has expired, or the order of isolation has been vacated by the court, the individual or individuals under the order of isolation shall be released immediately. If the risk of an infected individual transmitting the communicable disease of public health threat to other individuals continues to exist, an order of isolation may be developed to extend the restriction prior to release from isolation.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order isolation for the affected area during the known or suspected time of exposure. In order for an affected area to be isolated, the Governor must declare a state of emergency for the affected area.

If an order of isolation is issued for an affected area during the known or suspected time of exposure, the commissioner shall cause the order of isolation to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including but not limited to radio, television, internet, and/or other available means, may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of isolation, enforcement, health status monitoring, essential needs, and release from ~~isolation/quarantine~~ isolation described above

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will apply to the isolation of affected areas. Appropriate management of a disease of public health threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under isolation, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and time frame of the exposure may not be possible, or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

## 12VAC5-90-107. Quarantine.

A. Application. The commissioner, in his sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia and may order a complete or modified quarantine of any individual or individuals upon a determination that:

1. Such individual or individuals are known to have been exposed to or are reasonably suspected to have been exposed to a communicable disease of public health threat;
2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the individual or individuals have failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable disease of public health threat; and
3. Quarantine is the necessary means to contain a communicable disease of public health threat to which an individual or individuals have been or may have been exposed and thus may become infected.

The commissioner, in his sole discretion, may also order the quarantine of an affected area if, in addition to the above, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For quarantine for a communicable disease of public health threat, information about the infection or suspected infection; the individual, individuals, and/or affected area; and the nature or suspected nature of the exposure shall be duly recorded by the local health department, in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and enable the commissioner to prepare a written order of quarantine, including the information required in § 32.1-48.09 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local health department to enable appropriate follow-up of individuals for health status evaluation and treatment as well as compliance with the order of quarantine.

The commissioner shall ensure that the protected health information of any individual or individuals subject to the order of quarantine is disclosed only in compliance with state and federal law.

C. Means of quarantine. The local health department shall assess the situation, and in consultation with the Office of Epidemiology, shall recommend to the commissioner the least restrictive means of quarantine that effectively protects unexposed and susceptible individuals. The place of quarantine selected shall allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to others.

The commissioner, in his sole discretion, may order the quarantined individual or individuals to remain in their residences ~~when possible~~, to remain in another place where they are present, or to report to a place or places designated by the commissioner for the duration of their quarantine.

The commissioner's order of quarantine shall be for a duration consistent with the known incubation period of the communicable disease of public health threat or, if the incubation period is unknown or uncertain, for a period anticipated as being consistent with the incubation period for other similar infectious agents. In the situation where an area is under quarantine, the duration of quarantine shall take into account the transmission characteristics and known or suspected incubation period.

D. Delivery. The local health department shall deliver the order of quarantine, or ensure its delivery by an appropriate party ~~such as a law-enforcement officer or health department employee~~, to the affected individual or individuals in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the capacity of the local health department to ensure notification in a timely manner, then print, radio, television, Internet, and/or other available means shall be used to inform those affected.

E. Enforcement. Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of quarantine may fail or refuse to comply with such order, the commissioner in his sole discretion may ~~issue an emergency detention order requiring~~ include in the order a requirement that such individual or individuals are to be taken immediately into custody by law-enforcement agencies and detained for the duration of the order of quarantine or until the commissioner determines that the risk of and from noncompliance is no longer present. For any individual or individuals identified as, or for whom probable cause exists that he may be, in violation of any order of quarantine, or for whom probable cause exists that he may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies

shall include but need not be limited to the power to detain or arrest.

Any individual or individuals so detained shall be held in the least restrictive environment that can provide any required health care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order or orders of quarantine are informed of appropriate measures to take to protect themselves from contracting the disease of public health threat.

F. Health status monitoring. The local health department shall monitor the health of those under quarantine either by regular telephone calls, visits, self-reports, or by reports of caregivers or healthcare providers or by other means. If an individual or individuals develop symptoms compatible with the communicable disease of public health threat, then 12VAC5-90-103 would apply to the individual or individuals.

G. Essential needs. Upon issuance of an order of quarantine to an individual or individuals by the commissioner, the local health department shall manage the quarantine, in conjunction with local emergency management resources, such that individual essential needs can be met to the extent practicable. Upon issuance of an order of quarantine by the commissioner ~~to~~ for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual or individuals subject to an order of quarantine or a court-ordered confirmation or extension of any such order may file an appeal of the order of quarantine in accordance with the provisions of § 32.1-48.10 of the Code of Virginia. An appeal shall not stay any order of quarantine.

I. Release from quarantine. Once the commissioner determines that an individual or individuals are ~~determined to~~ no longer be at risk of becoming infected and pose no risk of transmitting the communicable disease of public health threat to other individuals, the order of quarantine has expired, or the order of quarantine has been vacated by the court, the individuals under the order of quarantine shall be released immediately. If the risk of an individual becoming infected and transmitting the communicable disease of public health threat to other individuals continues to exist, an order of quarantine may be developed to extend the restriction prior to release from quarantine.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order quarantine for the affected area. In order for an affected area to be quarantined, the

Governor must declare a state of emergency for the affected area.

If an order of quarantine is issued for an affected area, the commissioner shall cause the order of quarantine to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including but not limited to radio, television, Internet, and/or other available means, may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of ~~isolation~~ quarantine, enforcement, health status monitoring, essential needs, and release from quarantine described above will apply to the quarantine of affected areas. Appropriate management of a disease of public health threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under quarantine, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and time frame of the exposure may not be possible, or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

## Part V

### Immunization of ~~Children~~ Persons Less Than 18 Years of Age

#### **12VAC5-90-110. Dosage and age requirements for immunizations; obtaining immunizations.**

A. Every ~~child person~~ person in Virginia less than 18 years of age shall be immunized ~~against the following diseases by receiving the specified number of doses of vaccine by the specified ages, unless replaced by a revised schedule of the U.S. Public Health Service: in accordance with the most recent Immunization Schedule developed and published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP). Requirements for school and day care attendance are addressed in 12VAC5-110.~~

~~1. Diphtheria, Tetanus, and Pertussis Vaccine—three doses by one year of age of toxoids of diphtheria and tetanus, combined with pertussis vaccine with the remaining two doses administered in accordance with the most recent schedule of the American Academy of Pediatrics or the U.S. Public Health Service.~~

~~2. Poliomyelitis Vaccine, trivalent type—three doses of inactivated poliomyelitis vaccine, preferably by one year of age and no later than 18 months of age. Attenuated (live~~

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virus) oral polio vaccine may be used if the attending physician feels it is clinically appropriate for a given patient.

~~3. Measles (Rubeola) Vaccine one dose of further attenuated (live virus) measles vaccine between 12-15 months of age and no later than two years of age. A second dose shall also be required at the time of initial entry to school. For those children who did not receive a second dose at initial school entry, a second dose shall be required at the time of entry to grade six.~~

~~4. Rubella Vaccine one dose of attenuated (live virus) rubella vaccine between 12-15 months of age and no later than two years of age.~~

~~5. Mumps Vaccine one dose of attenuated (live virus) mumps vaccine between 12-15 months of age and no later than two years of age.~~

~~6. Haemophilus influenzae type b (Hib) Vaccine a maximum of four doses of Hib vaccine for children up to 30 months of age as appropriate for the child's age and in accordance with current recommendations of either the American Academy of Pediatrics or the U.S. Public Health Service.~~

~~7. Hepatitis B Vaccine three doses by 12 months of age and no later than 18 months of age. For children not receiving three doses by 18 months of age, three doses will be required at initial school entry for all children born on or after January 1, 1994. Since July 1 2001, all children who have not received a complete series of hepatitis B vaccine are required to receive such immunization prior to entering the sixth grade.~~

~~8. Varicella (Chickenpox) Vaccine one dose of varicella vaccine between 12-18 months of age. For those children who did not receive a dose of vaccine between 12-18 months of age, a dose will be required at initial school entry.~~

B. The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

## Part VI Venereal Disease

### 12VAC5-90-130. Prenatal testing.

Every physician attending a pregnant patient during gestation shall examine and test such patient for syphilis, and hepatitis B surface antigen (HBsAg), and any other sexually transmitted disease as clinically indicated within 15 days after beginning such attendance. A second prenatal test for syphilis and HBsAg shall be conducted at the beginning of the third trimester (28 weeks) for patients who are at higher risk for these diseases. Persons at higher risk for syphilis include those who have had multiple sexual partners within the

previous year ~~and~~ those with any prior history of a sexually transmitted disease, and those living in communities and populations in which the prevalence of syphilis is high. Persons at higher risk for hepatitis B virus infection include injecting drug users and those with personal contact with a hepatitis B patient, multiple sexual partners, and/or occupational exposure to blood. If the patient first seeks care during the third trimester, only one test shall be required. As a routine component of prenatal care, every licensed practitioner who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall ~~advise every pregnant patient of the value of testing for human immunodeficiency virus (HIV) infection and shall request of each pregnant patient consent to such testing~~ inform every pregnant patient that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines (opt-out screening). The practitioner shall offer the pregnant patient oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results. The confidentiality provisions of § 32.1-36.1 of the Code of Virginia, ~~the informed consent stipulations, and the test result disclosure conditions;~~ and appropriate counseling requirements of § 32.1-37.2 of the Code of Virginia shall apply to any HIV testing conducted pursuant to this section. The Centers for Disease Control and Prevention (CDC) recommends a second HIV test for patients who receive health care in jurisdictions with elevated incidence of HIV or AIDS among women aged 15 through 45 years, which includes Virginia. Practitioners should offer a second HIV test during the third trimester to all pregnant patients. Practitioners shall counsel all pregnant patients with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current ~~Centers for Disease Control and Prevention CDC~~ recommendations for HIV-positive pregnant patients. Any pregnant patient shall have the right to refuse ~~consent to~~ testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record. ~~Every physician should also examine and test a pregnant patient for any sexually transmitted disease as clinically indicated.~~

## Part VII Prevention of Blindness from Ophthalmia Neonatorum

### 12VAC5-90-140. Procedure for preventing ophthalmia neonatorum.

The physician, ~~nurse~~ or midwife in charge of the infant's care after delivery of a baby shall install ensure that one of the following is administered in each eye of that newborn baby as soon as possible after birth ~~one of the following:~~ (i) two drops of a 1.0% silver nitrate solution; (ii) ~~two drops of a~~

~~1.0% tetracycline ophthalmic solution; (iii) one quarter inch or an excessive amount a 1-cm ribbon~~ of 1.0% tetracycline ophthalmic ointment; or ~~(iv) one quarter inch or an excessive amount~~ (iii) a 1-cm ribbon of 0.5% erythromycin ophthalmic ointment. This treatment shall be recorded in the medical record of the infant.

Part X  
Tuberculosis Control

**12VAC5-90-225. Additional data to be reported related to persons with active tuberculosis disease (confirmed or suspected).**

A. Physicians and directors of medical care facilities are required to submit all of the following:

1. An initial report to be completed when there are reasonable grounds to suspect that a person has active TB disease, but no later than when antituberculosis drug therapy is initiated. The reports must include the following: the affected person's name; age; date of birth; gender; address; pertinent clinical, radiographic, microbiologic and pathologic reports, whether pending or final; such other information as may be needed to locate the patient for follow-up; and name, address, and telephone number of the treating physician.
2. A secondary report to be completed simultaneously or within one to two weeks following the initial report. The report must include: the date and results of tuberculin skin test (TST); the date and results of the initial and any follow-up chest radiographs; the dates and results of bacteriologic or pathologic testing, the antituberculosis drug regimen, including names of the drugs, dosages and frequencies of administration, and start date; the date and results of drug susceptibility testing; HIV status; contact screening information; and name, address, and telephone number of treating physician.
3. Subsequent reports are to be made when updated information is available. Subsequent reports are required when: clinical status changes, the treatment regimen changes; treatment ceases for any reason; or there are any updates to laboratory results, treatment adherence, name, address, and telephone number of current provider, patient location or contact information, or other additional clinical information.
4. Physicians and/or directors of medical care facilities responsible for the care of a patient with active tuberculosis disease are required to develop and maintain a written treatment plan. This plan must be in place no later than the time when antituberculosis drug therapy is initiated. Patient adherence to this treatment plan must be documented. The treatment plan and adherence record are subject to review by the local health director or his designee at any time during the course of treatment.

5. The treatment plan for the following categories of patients must be submitted to the local health director or his designee for approval no later than the time when antituberculosis drug therapy is started or modified:

a. For individuals who are inpatients or incarcerated, the responsible provider or facility must submit the treatment plan for approval prior to discharge or transfer.

b. Individuals, whether inpatient, incarcerated, or outpatient, who also have one of the following conditions:

- (1) HIV infection.
- (2) Known or suspected active TB disease resistant to rifampin, rifabutin, rifapentine or other rifamycin with or without resistance to any other drug.
- (3) A history of prior treated or untreated active TB disease, or a history of relapsed active TB disease.
- (4) A demonstrated history of nonadherence to any medical treatment regimen.

B. Laboratories are required to submit the following:

1. Results of smears that are positive for acid fast bacilli.
2. Results of cultures positive for any member of the ~~M.~~ Mycobacterium tuberculosis complex (i.e., M. tuberculosis, M. bovis, M. africanum) or any other mycobacteria.
3. Results of rapid methodologies, including acid hybridization or nucleic acid amplification, which are indicative of M. tuberculosis complex or any other mycobacteria.
4. ~~In order to ensure susceptibility testing, laboratories~~ Results of tests for antimicrobial susceptibility performed on cultures positive for tubercle bacilli.
5. ~~Laboratories, whether testing is done in-house or referred to an out-of-state laboratory, shall submit a representative and viable sample of the initial culture positive for any member of the M. tuberculosis complex to the Virginia Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen. This requirement may be fulfilled by the submission of a report of antimicrobial drug susceptibility testing performed on the specimen. The intention to file a written report in lieu of sample submission shall be communicated by the laboratory at the time the finding of a positive culture is initially communicated.~~
5. ~~Laboratories that submit a written susceptibility report in lieu of sample submission are still strongly encouraged to submit a viable, representative sample for each patient in whom one or more cultures are positive for any member of the M. tuberculosis complex for additional testing, if needed.~~

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## Part XIII

### Report of Healthcare-Associated Infections

#### **12VAC5-90-370. Reporting of healthcare-associated infections.**

~~A. Definitions. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.~~

~~"Adult" means a person 18 years of age or more.~~

~~"Central line associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory confirmed primary bloodstream infection.~~

~~"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.~~

~~"Healthcare associated infection" (or nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.~~

~~"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.~~

~~B. A. Reportable infections and method and timing of reporting.~~

~~1. Acute care hospitals shall collect data on the following healthcare-associated infection in the specified patient population: central line-associated bloodstream infections in adult intensive care units, including the number of central-line days in each population at risk, expressed per 1,000 catheter-days.~~

~~2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare Safety Network by July 1, 2008, (ii) submit data on the above~~

~~named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) enter data ensure accurate and complete data are available quarterly thereafter according to a schedule established by the department.~~

~~3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.~~

~~C. B. Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.~~

V.A.R. Doc. No. R09-1657; Filed November 17, 2009, 9:57 a.m.

### Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 23 of the Code of Virginia, which excludes the State Board of Health when promulgating regulations pursuant to § 35.1-14, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code. Pursuant to § 35.1-14 E of the Code of Virginia, this regulatory action is exempt from portions of the Administrative Process Act provided the State Board of Agriculture and Consumer Services adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that goal.

**Title of Regulation: 12VAC5-421. Food Regulations (amending 12VAC5-421-10, 12VAC5-421-50, 12VAC5-421-60, 12VAC5-421-70, 12VAC5-421-80, 12VAC5-421-90, 12VAC5-421-100, 12VAC5-421-140, 12VAC5-421-180, 12VAC5-421-360, 12VAC5-421-370, 12VAC5-421-400, 12VAC5-421-410, 12VAC5-421-430, 12VAC5-421-440, 12VAC5-421-450, 12VAC5-421-490, 12VAC5-421-500, 12VAC5-421-540, 12VAC5-421-570, 12VAC5-421-680, 12VAC5-421-700, 12VAC5-421-730, 12VAC5-421-740, 12VAC5-421-760, 12VAC5-421-780, 12VAC5-421-790, 12VAC5-421-800, 12VAC5-421-820, 12VAC5-421-830, 12VAC5-421-850, 12VAC5-421-860, 12VAC5-421-870, 12VAC5-421-900, 12VAC5-421-950, 12VAC5-421-980, 12VAC5-421-1200, 12VAC5-421-1230, 12VAC5-421-1260, 12VAC5-421-1310, 12VAC5-421-1420, 12VAC5-421-1550, 12VAC5-421-1560, 12VAC5-421-1690, 12VAC5-421-1890, 12VAC5-421-1980, 12VAC5-421-2040, 12VAC5-421-2190, 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-2520, 12VAC5-421-2600, 12VAC5-421-2630, 12VAC5-421-2790, 12VAC5-421-2810, 12VAC5-421-2920, 12VAC5-421-2950, 12VAC5-421-2960, 12VAC5-421-3020, 12VAC5-421-3030, 12VAC5-421-3040, 12VAC5-421-3045, 12VAC5-421-3080, 12VAC5-421-3130, 12VAC5-421-3180,**

12VAC5-421-3240, 12VAC5-421-3460, 12VAC5-421-3750, 12VAC5-421-3815, 12VAC5-421-3860, 12VAC5-421-4040, 12VAC5-421-4050, 12VAC5-421-4070; repealing 12VAC5-421-110, 12VAC5-421-120, 12VAC5-421-150, 12VAC5-421-750, 12VAC5-421-1020, 12VAC5-421-1030, 12VAC5-421-1440, 12VAC5-421-1880, 12VAC5-421-2510, 12VAC5-421-2590, 12VAC5-421-3010, 12VAC5-421-3050, 12VAC5-421-3060, 12VAC5-421-3110, 12VAC5-421-3120, 12VAC5-421-3160).

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

Effective Date: January 1, 2010.

Agency Contact: Gary L. Hagy, Director of Food and General Environmental Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7455, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

Summary:

*The Food Regulations establish minimum sanitary standards for operating restaurants. The 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; procedures for vector and pest control; requirements for toilet and cleansing facilities for employees and customers; requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; requirements for an approved water supply and sewage disposal system; personal hygiene standards for employees, particularly those engaged in food handling; and the appropriate use of precautions to prevent the transmission of communicable diseases. The regulations also inform potential restaurant owners or operators how to obtain a permit to operate a restaurant from the department. The regulations are amended to be consistent with the current 2007 supplement to the 2005 Food and Drug Administration's (FDA) Food Code. These changes are adopted concurrently with the Virginia Department of Agriculture and Consumer Services (VDACS) adoption of the 2007 Supplement to the 2005 FDA Food Code. Pursuant to § 35.1-14C and E of the Code of Virginia, this action is exempt from portions of the Administrative Process Act (APA), provided VDACS adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that end. Both VDH and VDACS previously adopted the 2003 supplement to the 2001 FDA Food Code with an effective date of October 16, 2007.*

Part I

Definitions, Purpose and Administration

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

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

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

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR Part 170 or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR Part 70.

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

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

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

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

"Approved water supply" means a waterworks which has a valid waterworks operation permit from the department or a nonpublic water supply which is evaluated, tested and if found in reasonable compliance with the construction standards of the Private Well Regulations (12VAC5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12VAC5-590), accepted and approved by the director or the director's designee.

"Asymptomatic" means without obvious symptoms; not showing or producing indication 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<sub>w</sub>" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure



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of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $a_w$ .

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

"Bed and breakfast" means a tourist home that serves meals.

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

"Board" means the State Board of Health.

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

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

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

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

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

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

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

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

"Commingle" means:

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

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

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

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

"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 and epidemiological analysis implicates the food as the source of the illness.

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

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

"Counter-mounted equipment" means equipment that is not easily movable 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 these regulations that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

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

"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.

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

"Department" means the State Health Department.

"Director" means the district or local health director.

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

"Drinking water" means water that meets the water quality standards for bacteria 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 "non drinking" water.

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

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

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

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

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

"Easily movable" means:

1. Portable (weighing 30 pounds or less); mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of ~~the domesticated chicken, turkey, duck, goose, or guinea-~~ 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 permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"Enterohemorrhagic *Escherichia coli* (EHEC)" means *E.coli* that 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 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.

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

"°F" means degrees Fahrenheit.

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

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

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

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

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

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

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

"Food establishment" includes (a) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; (b) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food; and (c) a facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a facility that meets the exemption requirements but chooses to be regulated under these regulations.

"Food establishment" does not include:

1. An establishment that offers only prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;

3. A food processing plant; including those that are located on the premises of a food establishment;

4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

5. An area where food that is prepared as specified in subdivision 4 above is sold or offered for human consumption;

6. A kitchen in a private home, such as, but not limited to, a family day-care provider or a home for adults, serving 12 or fewer recipients; or a bed-and-breakfast operation that prepares and offers food only to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is, by these regulations, exempt from this chapter; or

7. A private home that receives catered or home-delivered food.

For the purpose of implementing this chapter, the following are also exempt from the definition of a "food establishment" in this chapter, as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:

1. Boarding houses that do not accommodate transients;
2. Cafeterias operated by industrial plants for employees only;
3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;
4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;
5. Churches that serve meals for their members as a regular part of their religious observance; and
6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the

premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and ~~does not provide food directly to a consumer~~ provides food for sale or distribution to other business entities such as food processing plants or food establishments. Food processing plant does not include a food establishment.

"Game animal" means an animal, the products of which are food, that is not classified as: cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Part 301 Definitions, as poultry in 9 CFR Part 381 Poultry Products Inspection Regulations, or as Fish as defined in this section.

"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.

"Game animal" does not include ratites such as ostrich, emu, and rhea.

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

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

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

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handwashing sink includes an automatic handwashing facility.

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

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical profession.

"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:

1. Immunocompromised, preschool age children, or older adults; and
2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Hot water" means water at a temperature of 100°F or higher unless otherwise stated.

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

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

"Juice;" ~~when used in the context of food safety,~~ means the aqueous liquid expressed or extracted from one or more fruits or vegetables, ~~purées purées~~ of the edible portions of one or more fruits or vegetables, [~~purées of the edible portions of one or more fruits or vegetables,~~] or any concentrate of such liquid or purée. Juice includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage. Juice does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

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

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

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil; or any ingredient that is exempt under the petition or notification

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process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P. L. 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 3 and 4.

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

"Mobile food unit" means a food establishment that is mounted on wheels that is readily moveable from place to place and shall include pushcarts, trailers, trucks, or vans. There is no size limit to mobile food units but they must be mobile at all times during operation and must be on wheels (excluding boats in the water) at all times. The unit, all operations, and all equipment must be integral to and be within or attached to the unit.

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

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Organization" means any one of the following:

1. A volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.2-955 of the Code of Virginia by an ordinance or resolution of the political subdivision where the volunteer fire department or rescue squad is located as being a part of the safety program of such political subdivision;
2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States;
4. A fraternal association or corporation operating under the lodge system;
5. A local chamber of commerce; or
6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

"Permit" means a license issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that is legally responsible for the operation of the food establishment such as the owner,

the owner's agent, or other person, and possesses a valid permit to operate a food establishment.

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

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

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

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

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

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

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

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

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

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

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

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

Potentially hazardous food does not include:

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

"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.

$A_w$ 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.

$A_w$ 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

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\*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;

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-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

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

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or

operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

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

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

"Pushcart" means any wheeled vehicle or device other than a motor vehicle or trailer that may be moved with or without the assistance of a motor and that does not require registration by the department of motor vehicles. A pushcart is limited to the sale and/or service of hot dogs and frankfurter-like foods.

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

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

1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A through C, 12VAC5-421-710, or 12VAC5-421-730;
2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421-700 D 1 and 2; or
3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 1 and 2.

Ready-to-eat food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or frozen as specified under 12VAC5-421-730;
2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;
3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;
4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under 12VAC5-421-700 and cooled as specified in 12VAC5-421-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;

7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;

8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogen: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto, 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 the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the ~~surrounding 21% oxygen atmosphere~~ atmosphere (approximately 21% at sea level); and a process as specified in this definition that involves a food for which ~~Clostridium botulinum is identified as a microbiological hazard in the final packaged form.~~ the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. Reduced oxygen packaging includes:

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

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

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

5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag,

cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

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

"Regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.

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

"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 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 shall not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in § 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

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

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

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

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns



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regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

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

"Shellfish control authority" means a state, federal, foreign, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce such as the Virginia Department of Health Division of Shellfish Sanitation.

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

"Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). ~~This includes, but is not limited to, *E. coli* reported as serotype O157:H7, O157:NM, and O157:H.~~ Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see [Enterohemorrhagic \*Escherichia coli\*](#).

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

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

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

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

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

"Substantial compliance" shall mean that details of equipment or structure design or construction and/or food preparation, handling, storage, transportation and/or cleaning procedures will not substantially affect health consideration or performance of the facility or its employees.

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

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

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

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

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

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

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

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

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

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

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

Part II  
Management and Personnel

Article 1  
Supervision

**12VAC5-421-50. Assignment of responsibility.**

~~The 1. Except as specified in subdivision 2 of this section, the permit holder 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.~~

2. In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder 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 permitted food establishment on the premises.

**12VAC5-421-60. Demonstration of knowledge.**

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, and the requirements of these regulations. The person in charge shall demonstrate this knowledge by: ~~being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, or by responding correctly to the environmental health specialist's questions as they relate to the specific food operation. The areas of knowledge may include:~~

1. Complying with the Food Regulations by having no violations of critical items during the current inspection;

2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or

3. Responding correctly to the environmental specialist's questions as they relate to the specific food operation. The areas of operation may include:

~~1- a.~~ Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

~~2- 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;

~~3- c.~~ Describing the symptoms associated with the diseases that are transmissible through food;

~~4- d.~~ Explaining the significance of the relationship between maintaining the time and temperature of

potentially hazardous food (time/temperature control for safety food) and the prevention of foodborne illness;

~~5- e.~~ Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

~~6- f.~~ Stating the required food temperatures and times for safe cooking of potentially hazardous food (time/temperature control for safety food) including meat, poultry, eggs, and fish;

~~7- g.~~ Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food (time/temperature control for safety food);

~~8- h.~~ Describing the relationship between the prevention of foodborne illness and the management and control of the following:

~~a- (1)~~ Cross contamination,

~~b- (2)~~ Hand contact with ready-to-eat foods,

~~e- (3)~~ Handwashing, and

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

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;

~~9- j.~~ Explaining the relationship between food safety and providing equipment that is:

~~a- (1)~~ Sufficient in number and capacity, and

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

~~10- k.~~ Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

~~11- 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;

~~12- 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;

~~13- n.~~ Identifying control points in the operation from purchasing through sale or service that may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

~~14- o.~~ Explaining the details of how the person in charge and food employees comply with a HACCP plan if such

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a plan is a voluntary agreement between the regulatory authority and the establishment; and

~~15-~~ p. Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

~~a-~~ (1) Food employee,

~~b-~~ (2) Person in charge, and

~~e-~~ (3) Regulatory authority; 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.

## 12VAC5-421-70. Person Duties of person in charge.

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 12VAC5-421-2990;

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

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

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

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

6. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

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

8. ~~(Reserved);~~ Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as

specified under 12VAC5-421-930 that the food is not cooked sufficiently to ensure its safety;

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

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

11. ~~Employees~~ Except when approval is obtained from the regulatory authority as specified in 12VAC5-421-450 B, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and

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

13. Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under 12VAC5-421-80.

## Article 2

### Employee Health

## 12VAC5-421-80. Responsibility of the permit holder, person in charge to require reporting by food employees and applicants, and conditional employees.

~~The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subdivision 2 of this section, if the food employee or applicant:~~

~~1. Is diagnosed with an illness due to:~~

~~a. Salmonella typhi;~~

~~b. Shigella spp.;~~

~~e. Escherichia coli O157:H7, or~~

~~d. Hepatitis A virus;~~

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

a. ~~Associated with an acute gastrointestinal illness such as (i) diarrhea; (ii) fever; (iii) vomiting; (iv) jaundice; or (v) sore throat with fever; or~~

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

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

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

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

~~3. Had a past illness from an infectious agent specified in subsection A of this section; or~~

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

~~a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant:~~

~~(1) Prepared food implicated in the outbreak;~~

~~(2) Consumed food implicated in the outbreak; or~~

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

~~b. Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus; or~~

~~c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., E. coli O157:H7, or hepatitis A virus.~~

A. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

1. Has any of the following symptoms:

a. Vomiting;

b. Diarrhea;

c. Jaundice;

d. Sore throat with fever; 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;

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

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

2. Has an illness diagnosed by a health practitioner due to:

a. Norovirus;

b. Hepatitis A virus;

c. Shigella spp.;

d. Enterohemorrhagic or Shiga-toxin producing Escherichia coli; or

e. Salmonella Typhi;

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;

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;

b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;

c. Salmonella Typhi within the past 14 days of the last exposure; or

d. Hepatitis A virus within the past 30 days of the last exposure; or

5. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, and individual diagnosed with an illness caused by:

a. Norovirus within the past 48 hours of exposure;

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b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli or Shigella spp. within the past three days of the last exposure;

c. Salmonella Typhi within the past 14 days of the last exposure; or

d. Hepatitis A virus within the past 30 days of the last exposure.

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

1. Jaundiced; or

2. Diagnosed with an illness due to a pathogen as specified under subdivision A 2 a through e of this section.

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 subdivision A 2 a through e of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under 12VAC5-421-100; 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 subdivision A 4 through 5 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria specified under subdivision 9 of 12VAC5-421-100.

D. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or history of exposure as specified under subdivision A 1 through 5 of this section is:

1. Excluded as specified under subdivisions 1 through 3 of 12VAC5-421-90, and subdivisions D 1, E 1, F 1, or G 1 of 12VAC5-421-90 and in compliance with the provisions specified under subdivision 1 through 7 of 12VAC5-421-100; or

2. Restricted as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and in compliance with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

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

F. A food employee shall:

1. Comply with an exclusion as specified under subdivisions 1 through 3 of 12VAC5-421-90 and subdivisions 4 a, 5 a, 6 a, or 7 a of 12VAC5-421-90 and

with the provisions specified under subdivisions 1 through 7 of 12VAC5-421-100; or

2. Comply with a restriction as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and comply with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

## **12VAC5-421-90. Exclusions and restrictions.**

~~A. The person in charge shall exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subdivision 1 of 12VAC5-421-80;~~

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

~~1. Suffering from a symptom specified in 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) or subdivision 2 b; or~~

~~2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or E. coli O157:H7.~~

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

~~1. Is experiencing a symptom of acute gastrointestinal illness specified in 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and meets a high risk condition specified in subdivision 4 of 12VAC5-421-80;~~

~~2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or E. coli O157:H7;~~

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

~~4. Had a past illness from Shigella spp. or E. coli O157:H7 within the last month.~~

~~D. For a food employee who is jaundiced:~~

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

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

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

~~b. Restrict the food employee from activities specified in subdivision 2 of 12VAC5-421-90, if the food establishment does not serve a highly susceptible population.~~

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; or
- b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga-toxin producing Escherichia coli.

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;
- 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; or
- c. Diagnosed with an infection from Hepatitis A virus without developing symptoms.

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 12VAC5-421-80 A 3.

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; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

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; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

6. If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing E.coli, and is asymptomatic:

- a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

7. 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; or
- b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under 12VAC5-421-80 A 1 e, restrict the food employee.

9. If a food employee is exposed to a foodborne pathogen as specified under 12VAC5-421-80 A 4 or 5, restrict the food employee who works in a food establishment serving a highly susceptible population.

## **12VAC5-421-100. Removal, adjustment, or retention of exclusions and restrictions.**

A. The person in charge may remove an exclusion specified under 12VAC5-421-90 A if:

- 1. The person in charge obtains approval from the regulatory authority; and
- 2. The person excluded as specified under 12VAC5-421-90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.

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

- 1. 12VAC5-421-90 B 1 if the restricted person:
  - a. Is free of the symptoms specified under 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and no foodborne illness occurs that may have been caused by the restricted person;
  - b. Is suspected of causing foodborne illness but (i) is free of the symptoms specified under 12VAC5-421-80

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~~subdivision 2 a (1), (2), (3) or (5) and (ii) provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 12VAC5-421-4070; or~~

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

~~2. 12VAC5-421-90 B 2 if the restricted person provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by law, a nurse practitioner or physician assistant, according to the criteria specified in 12VAC5-421-4070 that indicates the stools are free of Salmonella typhi, Shigella spp., or E. coli O157:H7, whichever is the infectious agent of concern.~~

~~C. The person in charge may remove an exclusion specified under 12VAC5-421-90 C if the excluded person provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant:~~

~~1. That specifies that the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.~~

~~2. If the person is excluded under 12VAC5-421-90 C 1, that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.~~

~~D. The person in charge may remove an exclusion specified under 12VAC5-421-90 D 1 and 12VAC5-421-90 D 2 a and a restriction specified in 12VAC5-421-90 D 2 b if:~~

~~1. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that specifies that the person is free of hepatitis A virus as specified in subdivision 4 a of 12VAC5-421-4070; or~~

~~2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision 4 a and 4 b of 12VAC5-421-4070.~~

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 12VAC5-421-90 if the food employee:

(1) Is asymptomatic for at least 24 hours; or

(2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.

b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met; 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.

c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic, for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b of this section are met; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b, or 5 a and 1 c (1) of this section are met.

d. If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing Escherichia coli and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.

2. Reinstate a food employee who was excluded as specified under subdivision 2 of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

- a. The food employee has been jaundiced for more than seven calendar days;
- b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; 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.

3. Reinstate a food employee who was excluded as specified under subdivision 3 of 12VAC5-421-90 if:

- a. The person in charge obtains approval from the regulatory authority; and
- b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the employee is free from S. Typhi infection.

4. Reinstate a food employee who was excluded as specified under subdivision 1 b or 4 a of 12VAC5-421-90, who was restricted under subdivision 4 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority 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;
- 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; 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.

5. Reinstate a food employee who was excluded as specified under subdivision 1 b or 5 a of 12VAC5-421-90 or who was restricted under subdivision 5 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority 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, and

(2) At least 24 hours apart;

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; 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.

6. Reinstate a food employee who was excluded or restricted as specified under subdivision 1 b or 6 a of 12VAC5-421-90 or who was restricted under subdivision 6 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority 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 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; and

(2) At least 24 hours apart;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the employee became asymptomatic; or

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

7. Reinstate a food employee who was excluded or restricted as specified under subdivision 7 a or b of 12VAC5-421-90 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

a. Has received antibiotic therapy for Streptococcus pyogenes infection for more than 24 hours;

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

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

8. Reinstate a food employee who was restricted as specified under subdivision 8 of 12VAC5-421-90 if the



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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;

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

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

9. Reinstate a food employee who was restricted as specified under subdivision 9 of 12VAC5-421-90 and was exposed to one of the following pathogens as specified under 12VAC5-421-80 A 4 or 5:

a. Norovirus and one of the following conditions is met:

(1) More than 48 hours have passed since the last day the food employee was potentially exposed; or

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

b. Shigella spp. or Enterohemorrhagic or Shiga-toxin producing Escherichia coli and one of the following conditions is met:

(1) More than three calendar days have passed since the last day the food employee was potentially exposed; or

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

c. S. 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; or

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

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;

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

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

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

(5) More than 30 calendar days have passed since the food employee's household contact became jaundiced; or

(6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subdivisions 9 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;

(b) Proper handwashing procedures; and

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

**~~12VAC5-421-110. Responsibility of a food employee or an applicant to report to the person in charge. (Repealed.)~~**

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

~~1. In a manner specified in 12VAC5-421-80, report to the person in charge the information specified in 12VAC5-421-80; and~~

~~2. Comply with exclusions and restrictions that are specified in 12VAC5-421-90.~~

**~~12VAC5-421-120. Reporting by the person in charge. (Repealed.)~~**

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

**12VAC5-421-140. Cleaning procedure of hands and arms.**

A. Except as specified in subsection ~~B~~ D of this section, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds, using a cleaning compound in a lavatory that is equipped as specified under 12VAC5-421-2190 A.

~~B. Food employees shall use the following cleaning procedure:~~

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

~~2. Immediately follow the cleaning procedure, thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 12VAC5-421-3030.~~

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;
2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;
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; 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;
4. Thoroughly rinsing under clean, running warm water; and
5. Immediately follow the cleaning procedure with thorough drying using a method as specified under 12VAC5-421-3030.

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

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.

**12VAC5-421-150. ~~Reserved~~ (Repealed.)**

**12VAC5-421-180. Hand sanitizers Antiseptics.**

A. ~~A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall~~ 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 FDA approved drug based on safety and effectiveness~~ approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness; or
  - b. ~~Have active antimicrobial ingredients that are approved by FDA as an OTC (over the counter) health-care antiseptic drug product that is safe and effective for application to human skin listed in the FDA monograph for OTC (over the counter) Health-Care Antiseptic Drug Products as an antiseptic handwash; and~~
2. ~~Consist of components that are~~ Comply with one of the following:

- a. ~~Listed for such use in contact with food in 21 CFR Part 178 — Indirect Food Additives: Adjuvants, Production Aids, and Sanitizer;~~
- b. ~~Exempt from regulation as food additives under 21 CFR 170.39 — Threshold of regulation for substances used in food contact articles;~~
- c. ~~Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or~~
- d. ~~Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of the FFDCA and listed in the FDA's Inventory of Effective Premarket Notifications for Food Contact Substances; and~~

a. Have components that are exempted from the requirement of being listed in the federal Food Additive regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles; or

b. Comply with and be listed in:

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

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

3. Be applied only to hands that are cleaned as specified under 12VAC5-421-140.

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

1. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
2. Limited to situations that involve no direct contact with food by the bare hands.

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

**12VAC5-421-360. Shell eggs.**

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

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~~Regulations Governing the Inspection of Eggs and Egg Products as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.~~

## **12VAC5-421-370. Eggs and milk products, pasteurized.**

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

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

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

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

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

## **12VAC5-421-400. Shucked shellfish, packaging and identification.**

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

1. Name, address, and certification number of the ~~shucker-packer~~ shucker, packer, or repacker of the molluscan shellfish; 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) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

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

## **12VAC5-421-410. 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 depurates, ships, or reships the shellstock, as specified in the ~~National Shellfish Sanitation Program Manual of Operations~~ Guide for the Control of Molluscan Shellfish, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision, and that list:

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

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

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

- a. The dealer's name and address, and the certification number assigned by the shellfish control authority,
- b. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested,
- c. The same information as specified for a harvester's tag under subdivisions 1 b through d of this subsection, and
- d. The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

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

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

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

## **12VAC5-421-430. Molluscan shellfish; original container.**

A. Except as specified in subsections B and C of this section, molluscan shellfish shall not be removed from the

container in which they were received other than immediately before sale or preparation for service.

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

1. The source of the shellstock on display is identified as specified under 12VAC5-421-410 and recorded as specified under 12VAC5-421-440; and
2. The shellstock are protected from contamination.

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

1. The labeling information for the shellfish on display as specified under 12VAC5-421-400 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
2. The shellfish are protected from contamination.

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 12VAC5-421-400 and 12VAC5-421-900 A and B 1 through 5;
2. The labeling information as specified under 12VAC5-421-400 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 D 2 of this section are maintained for 90 days; and
4. The shellfish are protected from contamination.

**12VAC5-421-440. Shellstock; maintaining identification.**

A. Except as specified under subdivision ~~B~~ 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.

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

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

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

- ~~a. Preserving source identification by using a recordkeeping system as specified under subdivision 1 of this subsection;~~
- ~~b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.~~

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

C. The identity of the source of shellfish 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:

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; and

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

- a. Preserving source identification by using a recordkeeping system as specified under subdivision C 1 of this section, and
- b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer.

Article 3

Protection from Contamination after Receiving

**12VAC5-421-450. Preventing contamination.**

A. Food employees shall wash their hands as specified under 12VAC5-421-140.

B. Except when washing fruits and vegetables as specified under 12VAC5-421-510 or as specified in subsection ~~C~~ D of this section, food employees shall not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

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

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

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

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D. Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

1. The permit holder obtains prior approval from the regulatory authority;

2. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include:

a. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands.

b. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-3020, 12VAC5-421-3030, and 12VAC5-421-3045 are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;

3. A written employee health policy that details how the food establishment complies with 12VAC5-421-80, 12VAC5-421-90, and 12VAC5-421-100 including:

a. Documentation that the food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 12VAC5-421-80 A,

b. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 12VAC5-421-80 E and F, and

c. Documentation that the person in charge acknowledges the responsibilities as specified under 12VAC5-421-80 B, C, and D, and 12VAC5-421-90 and 12VAC5-421-100;

4. Documentation that the food employees acknowledge that they have received training in:

a. The risks of contacting the specific ready-to-eat foods with their bare hands.

b. Proper handwashing as specified under 12VAC5-421-140,

c. When to wash their hands as specified under 12VAC5-421-160,

d. Where to wash their hands as specified under 12VAC5-421-170,

e. Proper fingernail maintenance as specified under 12VAC5-421-190,

f. Prohibition of jewelry as specified under 12VAC5-421-200, and

g. Good hygienic practices as specified under 12VAC5-421-220 and 12VAC5-421-230;

5. Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 12VAC5-421-130, 12VAC5-421-140, 12VAC5-421-160, and 12VAC5-421-170 during all hours of operation when the specific ready-to-eat foods are prepared;

6. Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

a. Double handwashing,

b. Nail brushes,

c. A hand antiseptic after handwashing as specified under 12VAC5-421-180,

d. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill, or

e. Other control measures approved by the regulatory authority; and

7. Documentation that corrective action is taken when subdivision D 1 through 6 of this section are not followed.

## **12VAC5-421-490. Pasteurized eggs; substitute for 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 bearnaise sauce, mayonnaise, meringue, and egg-fortified beverages that are not:

1. Cooked as specified in 12VAC5-421-700 A 1 or 2; or

2. Included in 12VAC5-421-700 D. ~~The eggs are held before service following cooking.~~

## **12VAC5-421-500. Protection from unapproved additives.**

A. ~~As Food,~~ as specified in 12VAC5-421-350, ~~food~~ shall be protected from contamination that may result from the addition of:

1. Unsafe or unapproved food or color additives; and

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

B. A food employee shall not:

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

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

2. Except for grapes, serve or sell food specified under subdivision B 1 of this section that is treated with sulfiting agents before receipt by the food establishment.

**12VAC5-421-540. Food contact with equipment and utensils.**

~~Food shall only contact surfaces of equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through 12VAC5-421-1870 and sanitized as specified under 12VAC5-421-1880 through 12VAC5-421-1900.;~~

1. Equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through 12VAC5-421-1870, and sanitized as specified under 12VAC5-421-1880 through 12VAC5-421-1900; or

2. Single-service and single-use articles.

**12VAC5-421-570. Wiping cloths; used for one purpose.**

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

- ~~1. Dry and used for wiping food spills from tableware and carry-out containers; or~~
- ~~2. Wet and cleaned as specified under 12VAC5-421-1920 D, stored in a chemical sanitizer at a concentration specified in 12VAC5-421-3380, and used for wiping spills from food contact and nonfood contact surfaces of equipment.~~

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

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

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

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 12VAC5-421-3380; and

2. Laundered daily as specified under 12VAC5-421-1920 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.

**12VAC5-421-680. Returned food and reservice of food.**

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

B. ~~A~~ Except as specified in subdivision 8 of 12VAC5-421-950, a container of food that is not potentially hazardous (time/temperature control for safety food) may be transferred [ reserved 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 maintained in sound condition.

Article 4

Destruction of Organisms of Public Health Concern

**12VAC5-421-700. Raw animal foods.**

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

1. 145°F (63°C) or above for 15 seconds for:
  - a. Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

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b. Except as specified under subdivisions A 2 and 3 and subsection B and C of this section, fish, and meat, and ~~pork~~ including game animals commercially raised for food as specified under 12VAC5-421-330 A 1 and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2;

2. 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 12VAC5-421-330 A 1, and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2; and raw eggs that are not prepared as specified under subdivision 1 a of this subsection:

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

3. 165°F (74°C) or above for 15 seconds for poultry, wild game animals as specified under 12VAC5-421-330 A 3, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

B. Whole ~~beef roasts and corned beef roasts, pork roasts,~~ 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 <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less

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

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

Temperature °F (°C)	Time <sup>1</sup> in Minute s	Temperature °F (°C)	Time <sup>1</sup> in Second s
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		

<sup>1</sup>Holding time may include postoven heat rise

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

1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 12VAC5-421-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and
3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

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

1. (i) As specified under subdivisions 3 a and b of 12VAC5-421-950 the food establishment serves a population that is not a highly susceptible population and (ii) the consumer is informed as specified under 12VAC5-421-930 that to ensure its safety, the food should be cooked as specified under subsections A or B of this section; or
2. The regulatory authority grants a variance from subsection A or B of this section as specified in 12VAC5-421-3570 based on a HACCP plan that:

- a. Is submitted by the permit holder and approved as specified under 12VAC5-421-3570;
- b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and
- c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions.

**12VAC5-421-730. Parasite destruction.**

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

1. ~~4°F (-20°C) or below for 168 hours (seven days) in a freezer; or~~
2. ~~35°C (-31°F) or below for 15 hours in a blast freezer.~~
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;
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; 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.

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

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

1. Molluscan shellfish;
2. 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
3. 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.

**12VAC5-421-740. Records, creation and retention.**

A. Except as specified in 12VAC5-421-730 B and subsection B of this section, if raw, marinated, raw-

marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 12VAC5-421-730 may substitute for the records specified under subsection A of this section.

C. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 12VAC5-421-730 B 3, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 12VAC5-421-730 B 3 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.

**12VAC5-421-750. Reheating for immediate service. (Repealed.)**

~~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.~~

**12VAC5-421-760. Reheating for hot holding.**

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

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

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

~~D. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under subdivision 2 of 12VAC5-421-820 and 165°F (74°C) shall not exceed two hours as specified under subsections A through C of this section shall be done rapidly and the time the food is between 41°F (5°C) and the temperatures~~



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specified under subsections A through C of this section may not exceed two hours.

E. Remaining unsliced portions of meat roasts that are cooked as specified under 12VAC5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12VAC5-421-700 B.

## **12VAC5-421-780. Potentially hazardous food, slacking.**

Frozen potentially hazardous food (time/temperature control for safety 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
2. At any temperature if the food remains frozen.

## **12VAC5-421-790. Thawing.**

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

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; 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
  - d. For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 12VAC5-421-700 A or B to be above 41°F (5°C) 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);
3. As part of a cooking process if the food that is frozen is:
  - a. Cooked as specified under 12VAC5-421-700 A or B or 12VAC5-421-710; or
  - b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

## **12VAC5-421-800. Cooling.**

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

1. Within two hours, from 135°F (57°C) to 70°F (21°C); and
- ~~2. Within an additional four hours, from 70°F (21°C) to 41°F (5°C) or less.~~
2. Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less.

B. Potentially hazardous food (time/temperature control for safety food) shall be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

C. Except as specified in subsection D of this section, a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 12VAC5-421-340 B, shall be cooled within four hours to 41°F (5°C) or less.

D. Raw shell eggs shall be received as specified under 12VAC5-421-340 C and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

## **12VAC5-421-820. Potentially hazardous food; hot and cold holding.**

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 12VAC5-421-850, potentially hazardous food (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 under 12VAC5-421-700 B or reheated as specified in 12VAC5-421-760 E may be held at a temperature of 130°F (54°C) or above; or
2. At 41°F (5°C) or less.

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

C. Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside 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 12VAC5-421-1230.

## 12VAC5-421-830. Ready-to-eat, potentially hazardous food, date marking.

A. Except as specified in subsection D of this section, refrigerated, ready to eat, potentially hazardous food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the food shall be consumed on the premises, sold, or discarded within seven calendar days or less from the day the food is prepared. The day of preparation shall be counted as day 1 when packaging food using a reduced oxygen packaging method as specified under 12VAC5-421-870, and except as specified in subsections D and E of this section, refrigerated ready-to-eat potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days.

B. Except as specified in subsections ~~D and E~~ D through F of this section, refrigerated ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection A of this section and:

1. The day the original container is opened in the food establishment shall be counted as day 1; and
2. The day or date marked by the food establishment shall not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

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

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

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

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

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

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

C. A refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

D. A date marking system that meets the criteria specified in subsections A and B of this section may include:

1. Using a method approved by the regulatory authority for refrigerated, ready-to-eat potentially hazardous food (time/temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;

2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in subsection A of this section;

3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date of 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 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. 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 food;

2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133 Cheeses and related cheese

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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 cheese related products, such as blue, edam, gorgonzola, gouda, and monterey 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 that 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.

## **12VAC5-421-850. Time as a public health control.**

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

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

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

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

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

~~a. Subdivisions 1, 2 and 3 of this section; and~~

~~b. 12VAC5 421 800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.~~

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

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 control for safety food) before cooking or for ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the food establishment, and made available to the regulatory authority upon request that specify:

1. Methods of compliance with subdivisions B 1 through 3 or C 1 through 5 of this section; and

2. Methods of compliance with 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

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

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

2. The food shall be cooked and served, served 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; and

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

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;

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;

3. The food shall be marked or otherwise identified to indicate:

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

4. The food shall be:

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

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

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

**12VAC5-421-860. Variance requirement.**

A food establishment shall obtain a variance from the regulatory authority as specified in 12VAC5-421-3570 and 12VAC5-421-3580 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
2. Curing food;
3. Using food additives or adding components such as vinegar:
  - a. As a method of food preservation rather than as a method of flavor enhancement; or
  - b. To render a food so that it is not potentially hazardous;
4. Packaging food using a reduced oxygen packaging method except as specified under 12VAC5-421-870 where a barrier to Clostridium botulinum in addition to refrigeration exists;
5. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;
6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or
7. ~~Preparing food by another method that is determined by the regulatory authority to require a variance. Sprouting seeds or beans; or~~
8. Preparing food by another method that is determined by the regulatory authority to require a variance.

**12VAC5-421-870. Reduced oxygen packaging; criteria.**

~~A. Except for a food establishment that obtains a variance as specified under 12VAC5 421 860, a food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of Clostridium botulinum.~~

~~B. A food establishment that packages food using a reduced oxygen packaging method and Clostridium botulinum is identified as a microbiological hazard in the final packaged~~

~~form shall have a HACCP plan that contains the information specified under subdivision 4 of 12VAC5-421-3630 and that:~~

- ~~1. Identifies the food to be packaged;~~
- ~~2. Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it complies with one of the following:
 
  - a. Has an a<sub>w</sub> of 0.91 or less;
  - b. Has a pH of 4.6 or less;
  - c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package; or
  - d. Is a food with a high level of competing organisms such as raw meat or raw poultry;~~
- ~~3. Specifies methods for maintaining food at 41°F (5°C) or below;~~
- ~~4. Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 
  - a. Maintain the food at 41°F (5°C) or below; and
  - b. Discard the food if within 14 calendar days of its packaging it is not served for on premises consumption, or consumed if served or sold for off premises consumption;~~
- ~~5. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;~~
- ~~6. Includes operational procedures that:
 
  - a. Prohibit contacting food with bare hands;
  - b. Identify a designated area and the method by which:
    - (1) Physical barriers or methods of separation of raw foods and ready to eat foods minimize cross contamination; and
    - (2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and
  - c. Delineate cleaning and sanitization procedures for food contact surfaces; and~~
- ~~7. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:
 
  - a. Concepts required for a safe operation;~~

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~~b. Equipment and facilities; and~~

~~e. Procedures specified under subdivision 6 of this subsection and subdivision 4 of 12VAC5-421-3630.~~

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

A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860 and except as specified under subsections C and E of this section, a food establishment that packages potentially hazardous food (time/temperature control for safety 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.

B. A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen method shall have a HACCP plan that contains the following information specified under 12VAC5-421-3630 D:

1. Identifies food to be packaged;

2. Except as specified in subsections C 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:

a. Has an  $A_w$  of 0.91 or less,

b. Has a pH of 4.6 or less,

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

d. Is a food with a high level of competing organisms such as raw meat or raw poultry;

3. 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:

a. Maintain food at 41°F (5°C) or below, and

b. Discard the food within 14 calendar days of its packaging if it not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

4. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

5. Includes operational procedures that:

a. Prohibit contacting food with bare hands,

b. Identify a designated work area and the method by which:

(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

(2) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, and

c. Delineate cleaning and sanitization procedures for food contact surfaces; and

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

a. Concepts required for safe operation,

b. Equipment and facilities, and

c. Procedures specified under subdivision B 5 of this section and 12VAC5-421-3630 D.

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.

D. Except as specified in subsection C of this section, a food establishment may package food using a cook-chill or sous-vide process without obtaining a variance if:

1. The food establishment implements a HACCP plan that contains the information as specified under 12VAC5-421-3630 D:

2. The food is:

a. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer,

b. Cooked to heat all parts of the food to a temperature and for a time as specified under 12VAC5-421-700,

c. Protected from contamination after cooking as specified in 12VAC5-421-450 through 12VAC5-421-690,

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),

e. Cooled to 41°F (5°C) in the sealed package or bag as specified under 12VAC5-421-800, and subsequently:

(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;

(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 at 41°F (5°C) or less for no more than 72 hours, at which time the food must be consumed or discarded;

(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) Held frozen with no shelf-life restriction while frozen until consumed or used.

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,

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, and

h. Labeled with the product name and the date packaged; and

3. The records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan, are maintained and are:

a. Made available to the regulatory authority upon request, and

b. Held for six months; and

4. 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.

E. A food establishment may package cheese using a reduced oxygen packaging method without obtaining a variance if it:

1. Limits 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;

2. Has a HACCP plan that contains the information specified in 12VAC5-421-3630 D;

3. Except as specified under subdivision B 2, B 3 b, and B 4, complies with subsection B of this section;

4. Labels the package on the principal display panel with a "use by" date that does not exceed 30 days or the original

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

5. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.

## **12VAC5-421-900. Food labels.**

A. Food packaged in a food establishment, shall be labeled as specified in accordance with all applicable laws and regulations, including 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 - Labeling, Marking Devices, and Containers.

B. Label information shall include:

1. The common name of the food, or absent a common name, an adequately descriptive identity statement;

2. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

3. An accurate declaration of the quantity of contents;

4. The name and place of business of the manufacturer, packer, or distributor; ~~and~~

~~5. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling;~~

~~6. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.~~

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;

6. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling; and

7. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

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

1. The manufacturer's or processor's label that was provided with the food; or

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2. A card, sign, or other method of notification that includes the information specified under subdivisions B 1, 2 and 5 of this section.

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

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

## Article 8

### Special Requirements for Highly Susceptible Populations

#### **12VAC5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.**

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g) Food Labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 12VAC5-421-765 shall not be served or offered for sale; and
  - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 12VAC5-421-3630 and as specified under 21 CFR 120.24, Process controls.
2. Pasteurized shell eggs ~~or pasteurized liquid, frozen, or dry eggs~~ or egg products shall be substituted for raw shell eggs in the preparation of:
  - a. Foods such as Caesar salad, hollandaise or biarnaïse sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and
  - b. Except as specified in subdivision ~~5~~ 6 of this section, recipes in which more than one egg is broken and the eggs are combined.
3. The following foods shall not be served or offered for sale in a ready-to-eat form:

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

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

c. Raw seed sprouts.

4. Food employees shall not contact ready-to-eat food as specified in 12VAC5-421-450 B.

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

~~a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;~~

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

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

~~(1) Identifies the food to be prepared;~~

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

~~(3) Includes specifications and practices that ensure:~~

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

~~(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;~~

~~d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 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.~~

5. Time only, as the public health control as specified under 12VAC5-421-850, may not be used for raw eggs.

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

a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;

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

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

(1) Identifies the food to be prepared;

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

(3) Includes specifications and practices that ensure:

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

(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;

d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 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.

7. Except as specified in subdivision 8 of this section, food may be [ ~~reserved~~ re-served ] as specified under 12VAC5-421-680 B 1 and 2.

8. Foods may not be [ ~~reserved~~ 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 [ ~~reserved~~ re-served ] to others outside.

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

**12VAC5-421-980. ~~Lead in ceramic, china, and crystal utensils, use limitation.~~**

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

Utensil Category	Description	
Hot beverage mugs	coffee mugs	0.5 mg/l
Large hollowware	bowls 1.16 qt. (1.1 liter)	1.0 mg/l
Small hollowware	bowls < 1.16 qt. (1.1 liter)	2.0 mg/l
Flat utensils	plates, saucers	3.0 mg/l

Utensil Category	Ceramic Article Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls > 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 surface.

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

**12VAC5-421-1020. ~~Lead in pewter alloys, use limitation. (Repealed.)~~**

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

**12VAC5-421-1030. ~~Lead in solder and flux, use limitation. (Repealed.)~~**

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

**12VAC5-421-1200. Pressure measuring devices, mechanical warewashing equipment.**

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pounds per square inch (7 kilopascals) or smaller and shall be accurate to ±2 pounds per square inch (±14 kilopascals) in the 1525 pounds per square inch (100170 kilopascals) range in the range indicated on the manufacturer's data plate.



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# Regulations

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## **12VAC5-421-1230. Dispensing equipment, protection of equipment and food.**

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

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

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

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

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

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

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

5. Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in homogenous liquid form is maintained outside of the temperature control requirements as specified in 12VAC5-421-820 C 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; and

b. Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 Manual Food and Beverage Dispensing Equipment.

## **12VAC5-421-1260. Beverage tubing, separation.**

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

Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage

cooling devices may not be installed in contact with stored ice.

## **12VAC5-421-1310. Vending machines, automatic shutoff.**

A. A machine vending potentially hazardous food (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 can not maintain food temperatures as specified under Part III (12VAC5-421-260 et seq.) of this chapter; and

2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

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

1. In a refrigerated vending machine, the ambient temperature shall not exceed 41°F (5°C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

2. In a hot holding vending machine, the ambient temperature shall not be less than 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

## **12VAC5-421-1420. Case lot handling equipment apparatuses, movability.**

~~Equipment Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.~~

## **12VAC5-421-1440. Food equipment, certification and classification. (Repealed.)**

~~Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Articles 1 (12VAC5-421-960 et seq.) and 2 (12VAC5-421-1080 et seq.) of this part.~~

## **12VAC5-421-1550. Fixed equipment, spacing or sealing.**

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

1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;

2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 inch or 1 millimeter; or

3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

B. ~~Table-mounted~~ Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

1. Sealed to the table; or
2. Elevated on legs as specified under 12VAC5-421-1560 D.

**12VAC5-421-1560. 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 6 inch (15 centimeter) clearance between the floor and the equipment.

B. If no part of the floor under the floor-mounted equipment is more than 6 inches (15 centimeters) from the point of cleaning access, the clearance space may be only 4 inches (10 centimeters).

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

D. Except as specified in subsection E of this section, ~~table-mounted~~ counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 4-inch (10 centimeter) clearance between the table and the equipment.

E. The clearance space between the table and ~~table-mounted~~ 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 3 inches (7.5 centimeters) from the point of access for cleaning.

**12VAC5-421-1690. Mechanical warewashing equipment, sanitization pressure.**

~~The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine shall not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.~~

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot

water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than 30 pounds per square inch (200 kilopascals).

Article 7  
Sanitization of Equipment and Utensils

**12VAC5-421-1880. Food-contact surfaces and utensils. (Repealed.)**

~~Equipment food-contact surfaces and utensils shall be sanitized.~~

Article 7  
Sanitization of Equipment and Utensils

**12VAC5-421-1890. Before use after cleaning.**

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

**12VAC5-421-1980. Food-contact surfaces.**

Lubricants as specified in 12VAC5-421-3420 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

**12VAC5-421-2040. Preset tableware.**

~~If tableware is preset:~~

- ~~1. It shall be protected from contamination by being wrapped, covered, or inverted;~~
- ~~2. Exposed, unused settings shall be removed when a consumer is seated; or~~
- ~~3. Exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.~~

A. 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.

**12VAC5-421-2190. Handwashing lavatory sink, water temperature, and flow.**

A. A handwashing lavatory sink shall be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

B. A steam mixing valve shall not be used at a handwashing lavatory 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.

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## **12VAC5-421-2230. Handwashing lavatory sinks, numbers, and capacities.**

A. Except as specified in subsection B of this section, at least one handwashing lavatory sink, or the number of handwashing lavatories sinks necessary for their convenient use by employees in areas specified under 12VAC5-421-2280, and not fewer than the number of handwashing lavatories sinks required by law shall be provided.

B. If approved, when food exposure is limited and handwashing lavatories 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.

## **12VAC5-421-2280. Handwashing lavatory sinks, location.**

A handwashing lavatory sink shall be located:

1. To be readily accessible for use by employees in food preparation, food dispensing, and warewashing areas; and
2. In, or immediately adjacent to, toilet rooms.

## **12VAC5-421-2310. Using a handwashing lavatory sink.**

A. A handwashing lavatory sink shall be maintained so that it is accessible at all times for employee use.

B. A handwashing lavatory sink shall not be used for purposes other than handwashing.

## **12VAC5-421-2510. Establishment drainage system. (Repealed.)**

~~Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 12VAC5 421 2180 A.~~

## **12VAC5-421-2520. Backflow prevention.**

~~A. Except as specified in subsections B and C of this section, a direct connection shall not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.~~

~~B. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.~~

~~C. If allowed by law, a warewashing or culinary sink may have a direct connection.~~

~~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.~~

~~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.

### Article 5

#### Refuse, Recyclables, and Returnables

## **12VAC5-421-2590. Indoor storage area. (Repealed.)**

~~If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 12VAC5 421 2790, 12VAC5-421 2810 through 12VAC5 421 2880, 12VAC5 421 2930, and 12VAC5 421 2940.~~

### Article 5

#### Refuse, Recyclables, and Returnables

## **12VAC5-421-2600. Outdoor storage surface.**

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

## **12VAC5-421-2630. Receptacles in vending machines.**

~~A refuse receptacle shall not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.~~

Except for a receptacle for a beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.

### Part VI

#### Physical Facilities

### Article 1

#### Materials for Construction and Repair

## **12VAC5-421-2790. Indoor areas; surface characteristics.**

A. Except as specified in subsection B of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

Article 2  
Design, Construction, and Installation

**12VAC5-421-2810. Floors, walls, and ceilings -- cleanability.**

~~Except as specified under 12VAC5-421-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.~~

Except as specified under 12VAC5-421-2840 and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

**12VAC5-421-2920. Toilet rooms, enclosed.**

~~A toilet room located on the premises shall be completely enclosed and provided with a tight fitting and self-closing door except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.~~

Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

**12VAC5-421-2950. Outdoor food vending areas, overhead protection.**

~~If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.~~

Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

**12VAC5-421-2960. Outdoor servicing areas, overhead protection.**

~~Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the~~

~~discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.~~

Except for areas used only for the loading of water or the discharge of sewage or other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

Article 3  
Numbers and Capacities

**12VAC5-421-3010. Handwashing lavatories, minimum number. (Repealed.)**

~~Handwashing lavatories shall be provided as specified under 12VAC5-421-2230.~~

Article 3  
Numbers and Capacities

**12VAC5-421-3020. Handwashing cleanser, availability.**

Each handwashing lavatory sink or group of two adjacent lavatories handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

**12VAC5-421-3030. Hand drying provision.**

Each handwashing lavatory sink or group of adjacent lavatories handwashing sinks shall be provided with:

1. Individual, disposable towels;
2. A continuous towel system that supplies the user with a clean towel; or
3. A heated-air hand drying device.

**12VAC5-421-3040. Handwashing aids and devices, use restrictions.**

A sink used for food preparation or utensil washing shall not be provided with the handwashing aids and devices required for a handwashing lavatory sink as specified under 12VAC5-421-3020 and 12VAC5-421-3030 and 12VAC5-421-2650 C.

**12VAC5-421-3045. Handwashing signage.**

A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing lavatories sinks used by food employees and shall be clearly visible to food employees.

**12VAC5-421-3050. Disposable towels, waste receptacle. (Repealed.)**

~~A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 12VAC5-421-2650 C.~~

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# Regulations

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## **12VAC5-421-3060. Toilets and urinals, minimum number. (Repealed.)**

~~Toilets and urinals shall be provided as specified under 12VAC5-421-2240.~~

## **12VAC5-421-3080. Lighting, intensity.**

The light intensity shall be:

1. At least 10 foot candles (~~110 lux~~) (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;
2. At least 20 foot candles (~~220 lux~~): (215 lux):
  - a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;
  - b. Inside equipment such as reach-in and under-counter refrigerators;
  - c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and
3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

## **12VAC5-421-3110. Service sinks, availability. (Repealed.)**

~~A service sink or curbed cleaning facility shall be provided as specified under 12VAC5-421-2250.~~

~~Article 4  
Location and Placement~~

## **12VAC5-421-3120. Handwashing lavatories, conveniently located. (Repealed.)**

~~Handwashing lavatories shall be conveniently located as specified under 12VAC5-421-2280.~~

~~Article 4  
Location and Placement~~

## **12VAC5-421-3130. 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.

## **12VAC5-421-3160. Refuse, recyclables, and returnables--receptacles, waste handling units, and designated storage areas. (Repealed.)**

~~Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 12VAC5-421-2680.~~

## **12VAC5-421-3180. Cleaning, frequency and restrictions.**

A. The physical facilities shall be cleaned as often as necessary to keep them clean.

~~B. Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.~~

B. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

## **12VAC5-421-3240. Maintaining and using handwashing lavatories Cleaning of Plumbing Fixtures.**

~~Handwashing lavatories shall be kept clean, and maintained and used as specified under 12VAC5-421-2310. 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 12VAC5-421-2310.~~

## **12VAC5-421-3460. Medicines -- restriction and storage.**

A. Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

~~B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single service and single use articles.~~

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.

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

## **12VAC5-421-3750. Responsibilities of the permit holder.**

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

1. Post the permit in a location in the food establishment that is conspicuous to consumers;

2. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 12VAC5-421-3590, and approved plans as specified under 12VAC5-421-3610;

3. If a food establishment is required under 12VAC5-421-3620 to operate under a HACCP plan, comply with the plan as specified under 12VAC5-421-3590;

4. Immediately contact the regulatory authority to report an illness of a food employee as specified under ~~12VAC5-421-120~~ 12VAC5-421-80 B;

5. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 12VAC5-421-3910;

6. Allow representatives of the regulatory authority access to the food establishment as specified under 12VAC5-421-3820;

7. Replace existing facilities and equipment specified in 12VAC5-421-3510 with facilities and equipment that comply with this chapter if:

a. The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

b. The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

c. The facilities and equipment are replaced in the normal course of operation;

8. Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

9. Accept notices issued and served by the regulatory authority according to law; and

10. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

### **12VAC5-421-3815. Competency of environmental health specialists.**

An authorized representative of the commissioner who inspects a food establishment or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

### **12VAC5-421-3860. Documenting information and observations.**

The regulatory authority shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 12VAC5-421-3700, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and

2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:

a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 12VAC5-421-60;

b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under ~~12VAC5-421-110 and 12VAC5-421-120~~ 12VAC5-421-80 B and D;

c. Nonconformance with critical items of this chapter;

d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 12VAC5-421-60;

e. Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under subdivision 4 f of 12VAC5-421-3630; and

f. Nonconformance with critical limits of a HACCP plan.

### **12VAC5-421-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.**

~~The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:~~

The regulatory authority 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

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a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

## **12VAC5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.**

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

1. Restricting the food employee or conditional employee;
2. Excluding the food employee or conditional employee; or
3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

## **12VAC5-421-4070. Release of food employee from restriction or exclusion.**

~~The regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:~~

- ~~1. A food employee who was infected with *Salmonella typhi* if the food employee's stools are negative for *S. typhi* based on testing of at least three consecutive stool specimen cultures that are taken:
  - ~~a. Not earlier than one month after onset;~~
  - ~~b. At least 48 hours after discontinuance of antibiotics; and~~
  - ~~c. At least 24 hours apart; and~~~~
- ~~2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.~~
- ~~3. A food employee who was infected with *Shigella* spp. or Shiga toxin producing *Escherichia coli* if the employee's stools are negative for *Shigella* spp. or Shiga toxin producing *Escherichia coli* based on testing of two consecutive stool specimen cultures that are taken:
  - ~~a. Not earlier than 48 hours after discontinuance of antibiotics; and~~
  - ~~b. At least 24 hours apart.~~~~

~~4. A food employee who was infected with hepatitis A virus if:~~

- ~~a. Symptoms cease; or~~
- ~~b. At least two blood tests show falling liver enzymes.~~

~~The regulatory authority shall release a food employee, or conditional employee from restriction or exclusion according to law and the conditions specified under 12VAC5-421-100.~~

VA.R. Doc. No. R09-1079; Filed November 17, 2009, 9:50 a.m.



## **TITLE 14. INSURANCE**

### **STATE CORPORATION COMMISSION**

#### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-30, 14VAC5-395-40).**

**Statutory Authority:** §§ 6.1-2.25 and 12.1-13 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** December 21, 2009.

**Agency Contact:** Scott White, Senior Counsel, Office of General Counsel, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email [scott.white@scc.virginia.gov](mailto:scott.white@scc.virginia.gov).

**Summary:**

*The amendments incorporate statutory changes made to § 6.1-2.26 of the Code of Virginia that shift the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authority. The proposed amendments incorporate these statutory changes by making the Bureau of Insurance responsible for registering title insurance agents and title insurance companies that conduct settlements.*

AT RICHMOND, NOVEMBER 12, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00249

Ex Parte: In the matter of Adopting  
Amendments to the Rules Governing  
Settlement Agents

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 6.1-2.25 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 6.1 of the Code of Virginia. The regulations issued by the Commission pursuant to § 6.1-2.25 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission a request to amend the rules set forth in Chapter 395 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Settlement Agents." The proposed amendments to 14 VAC 5-395-30 and 14 VAC 5-395-40 are necessary because of changes by the General Assembly to § 6.1-2.26 of the Code of Virginia that shift the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authority. The proposed amendments incorporate these statutory changes by making the Bureau of Insurance responsible for registering title insurance agents and title insurance companies that conduct settlements.

The Commission is of the opinion that the proposed amendments submitted by the Bureau of Insurance should be considered for adoption with an effective date of January 10, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Rules Governing Settlement Agents," which amends 14 VAC 5-395-30 and 14 VAC 5-395-40, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before December 21, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219 and shall refer to Case No. INS-2009-00249. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring

to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed regulation is filed on or before December 21, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau of Insurance.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose, who shall mail a copy of this Order, together with the proposed regulation, to all licensed title insurance companies and other interested parties designated by the Bureau.

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

### **14VAC5-395-30. Registration.**

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent shall be required to be registered with the ~~Virginia State Bar~~ bureau in accordance with the provisions of § 6.1-2.26 of the Code of Virginia.

### **14VAC5-395-40. Insurance and bonding requirements.**

A. At the time of registration ~~with the Virginia State Bar~~, every title insurance agent and title insurance agency acting as a settlement agent shall file ~~with the bureau~~ a certification on a form prescribed by the bureau, that the settlement agent has, and thereafter shall keep in force for as long as they are acting as a settlement agent, the following:

1. An errors and omissions insurance policy providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia.

2. A blanket fidelity bond or employee dishonesty insurance policy providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may



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request a waiver of this requirement on their certification form.

B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia ~~or is registered with the Virginia State Bar~~ shall file ~~with the bureau~~ ~~a an original~~ surety bond in an amount not less than \$200,000 on a form prescribed by the bureau. ~~The original surety bond shall be filed with the bureau~~ at the time of registration ~~with the Virginia State Bar~~ and, if such bond is canceled, at the time a replacement bond is issued.

## DOCUMENTS INCORPORATED BY REFERENCE

Statement on Auditing Standards, Special Reports, July 1, 1989, American Institute of Certified Public Accountants.

~~Securities Act Regulations (SEC970016).~~

VA.R. Doc. No. R10-2219; Filed November 16, 2009, 10:05 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Final Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-10, 18VAC90-20-210).**

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

Effective Date: January 6, 2010.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

#### Summary:

*The Board of Nursing has amended its requirements for foreign-trained nurses to eliminate the qualifying examination requirement for registered nurses but retain the educational and licensure review for comparability and the requirement for a test of English proficiency. For practical nurses educated in other countries, the credentials review is retained and a test of English proficiency is included in regulations as it is now required for an occupational visa into the United States. For both professions, the Commission on Graduate of Foreign Nursing Schools is recognized in federal law and in Virginia regulation as the body that is approved to certify comparability and eligibility. However, the board may accept other agencies that provide a similar level of assurance and thoroughness in reviewing documents and tests for English proficiency.*

*No changes were made to the regulation from publication of the proposed to the final regulation.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### Part I

#### General Provisions

#### **18VAC90-20-10. Definitions.**

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the National League for Nursing Accrediting Commission (NLNAC) or by the Commission on Collegiate Nursing Education (CCNE).

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 (18VAC90-20-70 et seq.) of Part II of this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"NCLEX" means the National Council Licensing Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area and is accredited by a national body recognized by NCSBN.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia State Board of Education or the appropriate governmental credentialing agency.

"Preceptor" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

## **18VAC90-20-210. Licensure of applicants from other countries.**

A. With the exception of applicants from Canada who are eligible to be licensed by endorsement, applicants whose basic nursing education was received in, and who are duly licensed under the laws of, another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in ~~subsections~~ subsection B and D or C of this section.

B. Such applicants for registered nurse licensure shall:

1. ~~Submit evidence of passing from the Commission on Graduates of Foreign Nursing Schools Qualifying Examination~~ CGFNS that the secondary education, nursing education, and license are comparable to those required for registered nurses in the Commonwealth; and

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

~~2.~~ 3. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education, nursing education, and license are comparable to those required for practical nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

D. An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.

1. Applicants who practice nursing as provided in this subsection shall use the designation "foreign nurse graduate" on nametags or when signing official records.

2. During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.

3. Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day

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period may not thereafter practice nursing until he passes the licensing examination.

**~~D. Such applicants for practical nurse licensure shall:~~**

~~1. Submit evidence from a recognized agency that reviews credentials of foreign-educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;~~

~~2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and~~

~~3. Submit the required application and fee for licensure by examination.~~

E. In addition to CGFNS, the board may accept credentials from other recognized agencies that review credentials of foreign-educated nurses if such agencies have been approved by the board.

VA.R. Doc. No. R08-04; Filed November 17, 2009, 9:07 a.m.

## BOARD OF SOCIAL WORK

### Proposed Regulation

**Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-40, 18VAC140-20-45, 18VAC140-20-50; adding 18VAC140-20-49).**

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

**Public Hearing Information:**

December 10, 2009 - 10 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

**Public Comment Deadline: February 5, 2010.**

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

**Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system.**

**Purpose: The board has adopted amendments to further define a clinical course of study in the educational requirements for licensure as a clinical social worker. Currently the board's regulations require that an applicant for licensure as a clinical social worker be (i) a graduate of a degree program that includes a graduate clinical course of study or (ii) provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study. Current regulations define a clinical course of study as "graduate course work which**

includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment service."

Since someone licensed as a clinical social worker is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment, it is imperative for the health and safety of future clients that the board ensure that an applicant has minimal competencies leading to an autonomous clinical practice. Through promulgation of regulations, the board intends to specify the content of an educational program that would be considered a clinical course of study to provide additional guidance to programs and applicants on coursework acceptable for clinical licensure.

**Substance:** A new section is proposed to set out the educational requirements for licensed clinical social workers. It consists of the minimum course requirements in explanatory theory (12 semester hours), practice theory (12 semester hours), psychopathology (3 semester hours), social work practice research (3 semester hours) and elective hours in diversity issues, social justice, culture, and at-risk populations as part of a Master of Social Work educational program. Additionally, there is a 600-hour requirement for a practicum or field placement supervised by a qualified clinical social worker. Regulations allow for certain hours earned in a bachelor of social work program to be counted toward clinical course requirements and for any deficit in the field placement hours to be made up in the postgraduate supervised experience. Finally, the master of social work program must be accredited by the Council on Social Work Education.

**Issues:** There are no disadvantages to the public. An advantage of the public is that the specificity of a clinical course of study helps ensure that persons licensed as clinical social workers are appropriately educated and trained to do diagnosis and treatment. There is also an advantage to persons interested in licensure as a clinical social worker because they will have a clear educational standard to follow rather than waiting for review of their educational credentials at the time of applying for registration to begin supervision. Currently, applicants who have completed a masters of social work program may not have pursued a "clinical course of study" and therefore do not qualify for a clinical license.

The primary advantage to the agency is greater clarity in the regulations and provision of a regulatory framework now addressed only in a guidance document. There are no advantages or disadvantages to the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to specify the clinical course requirements for the clinical social worker license.

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

Estimated Economic Impact. Under Virginia Code § 54.1-3700, a clinical social worker is defined as "a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment."

The current regulations state the following as the education requirements for the clinical social worker license:

A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.

1. The degree program shall have included a graduate clinical course of study; or
2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.

The Board proposes to specify the content of educational programs that would be considered as clinical courses of study. This proposal is being implemented to provide additional guidance to programs and applicants on the acceptable coursework for clinical licensure. The specific content would include clinical course requirements by general categories, the minimum number of required field placement/practicum hours, and accreditation standards for master's level clinical programs. This information is generally contained in recently adopted Guidance Document 140-6, which became effective April 17, 2009.

Prior to the development of these requirements, the Department of Health Professions (DHP) invited all of the accredited schools of social work with master's programs in Virginia to participate in a discussion about the minimal coursework necessary to be considered a clinical concentration. According to DHP, the curricula for all of the accredited social work programs in Virginia conform to the proposed requirements for these regulations. So in practice, the implementation of the specified language in the regulations will not have a large impact beyond providing beneficial clarity for individuals seeking licensure concerning what would be acceptable by the Board.

Businesses and Entities Affected. The proposed amendments affect the accredited schools of social work with master's programs in Virginia (George Mason University, Norfolk State University, Radford University, and Virginia Commonwealth University) as well out-of-state programs that wish to place students in Virginia, and future potential programs.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are not expected to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposal amendments are not expected to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposal amendments are not expected to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are not expected to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Social

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Work concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC140-20, Regulations Governing the Practice of Social Work, relating to a clinical course of study for licensed clinical social workers.

## Summary:

*The proposed regulatory action specifies the educational requirements necessary to qualify a candidate to sit for the licensed clinical social work examination in Virginia and incorporates language currently adopted as Guidance Document 140-6, effective April 17, 2009. It specifies the specific clinical course requirements by general categories, the minimum number of field placement/practicum hours, and the accreditation standard for master's level clinical programs.*

## Part II Requirements for Licensure

### **18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.**

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.
2. Submit in one package to the board office:
  - a. A completed notarized application;
  - b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
  - c. The application fee prescribed in 18VAC140-20-30;
  - d. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant; and
  - e. Documentation of applicant's out-of-state licensure where applicable.

### **18VAC140-20-45. Requirements for licensure by endorsement.**

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.
2. Documentation of social work licensure in good standing obtained by standards substantially equivalent to those outlined in 18VAC140-20-49 and 18VAC140-20-50 and for a licensed clinical social worker or 18VAC140-20-60 for a licensed social worker, as verified by the out-of-state licensing agency on a board-approved form.
3. Verification of a passing score as established by the board on a board-approved national exam.
4. Official transcript or transcripts in the school's original sealed envelope.
5. Verification of active practice in another jurisdiction for 36 out of the past 60 months.
6. Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

### **18VAC140-20-49. Educational requirements for a licensed clinical social worker.**

A. The applicant shall be a graduate of a Master or Doctor of Social Work Program in a clinical course of study. An applicant with a nonclinical concentration shall complete additional graduate level academic course work and field placement/practicum to meet all requirements for a clinical course of study.

B. The minimum course requirements for a clinical course of study shall include graduate level courses consisting of:

1. Twelve credit hours of explanatory theory;
2. Twelve credit hours of practice theory;
3. Three credit hours of psychopathology including assessment, diagnosis, and treatment;
4. Three credit hours of social work practice research; and
5. Coursework in diversity issues, social justice, culture, and at-risk populations.

C. The requirement for a supervised field placement/practicum in clinical social work services shall be a minimum of 600 hours, which shall be integrated with clinical course of study coursework and supervised by a person who is a licensed clinical social worker or who holds a master's or doctor's degree in social work and has a minimum of three years of experience in clinical social work services after earning the graduate degree. An applicant who has otherwise met the requirements for a clinical course of study

but who did not have a minimum of 600 hours in a supervised field placement/practicum in clinical social work services may meet the requirement by obtaining an equivalent number of hours of supervised practice in clinical social work services in addition to the experience required in 18VAC140-20-50.

D. Graduates of a bachelor of social work program who earn advanced standing in the masters program shall meet all minimum course requirements for a clinical course of study, except advanced standing students may count up to six hours of explanatory theory and up to six hours of practice theory completed during the bachelor degree program towards meeting the requirements.

E. A master of social work program shall (i) include foundation course work common for all social work students, (ii) include advanced course work for student specialization, and (iii) be accredited by the Council on Social Work Education. A doctor of social work program shall at a minimum: (i) meet all requirements for the advanced course requirements for a clinical course of study, and (ii) be accredited by the appropriate regional academic accrediting body (e.g., Southern Association of Colleges and Schools).

**18VAC140-20-50. ~~Education and experience~~ Experience requirements for a licensed clinical social worker.**

~~A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.~~

- ~~1. The degree program shall have included a graduate clinical course of study; or~~
- ~~2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.~~

~~B. A. Supervised experience. Supervised experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.~~

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:
  - a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and
  - b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services. A minimum of one hour of face-to-face supervision shall be provided each week for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

- a. Experience shall be acquired in no less than two nor more than four years.
- b. Supervisees shall average no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary duties and activities supporting the delivery of clinical services.

3. An individual who does not complete the supervision requirement after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

~~C. B.~~ Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least three years of postlicensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a member of his immediate family or provide supervision for anyone with whom he has a dual relationship.

~~D. C.~~ Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;
2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of

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gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;
4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;
5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients;
6. Be available to the applicant on a regularly scheduled basis for supervision; and
7. Maintain documentation, for five years postsupervision, of which clients were the subject of supervision.

V.A.R. Doc. No. R08-1192; Filed November 17, 2009, 9:07 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

#### Proposed Regulation

**Title of Regulation:** 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-10, 20VAC5-315-20, 20VAC5-315-40, 20VAC5-315-50, 20VAC5-315-70).

**Statutory Authority:** §§ 12.1-13 and 56-594 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** December 21, 2009.

**Agency Contact:** Kelli Gravely, Utility Analyst-Energy Division, State Corporation Commission, P.O. Box 1197,

Richmond, VA 23218, telephone (804) 371-9765, FAX (804) 371-9350, or email [kelli.gravely@scc.virginia.gov](mailto:kelli.gravely@scc.virginia.gov).

#### Summary:

*Pursuant to Chapter 804 of the 2009 Acts of Assembly, § 56-594 of the Code of Virginia was amended to (i) authorize utilities to elect a capacity limit for participation by nonresidential customers in the net energy metering program that exceeds the existing limit of 500 kW; (ii) permit customers who are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariff to participate as customer-generators; and (iii) provide that a participating customer-generator owns any renewable energy certificate associated with its generation of electricity, and provides for a one-time option to sell the certificates to its supplier at a rate established by the State Corporation Commission, with the utility's costs of acquiring the certificates recoverable under the Renewable Energy Portfolio Standard rate adjustment clause or through the supplier's fuel adjustment clause. The proposed amendments reflect the statutory increase of allowable total capacity of net metering customers, permit certain time-of-use customers to participate as customer-generators, and establish a mechanism for eligible customer-generators to sell renewable energy certificates to their electric distribution company at rates established by the State Corporation Commission.*

AT RICHMOND, NOVEMBER 16, 2009

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00105

Ex Parte: In the matter of amending regulations governing net energy metering

#### ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 *et seq.* ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act ("Restructuring Act"), Chapter 23 (§ 56-576 *et seq.*) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth of Virginia ("Commonwealth"). The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.<sup>1</sup>

Chapter 804 of the 2009 Acts of Assembly amended § 56-594 of the Code to: (1) authorize utilities to elect a capacity limit for participation by nonresidential customers in the net

energy metering program that exceeds the existing limit of 500 kW; (2) permit customers who are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariff to participate as customer-generators; and (3) provide that a participating customer-generator owns any renewable energy certificates associated with its generation of electricity, and provides for a one-time option to sell the certificates to its supplier at a rate established by the Commission, with the utility's costs of acquiring the certificates recoverable under the Renewable Energy Portfolio Standard rate adjustment clause or through the supplier's fuel adjustment clause. The current Net Energy Metering Rules thus must be revised to reflect the permitted increase in the nonresidential capacity limit, to permit certain time-of-use customers to participate as customer-generators and to establish a mechanism for eligible customer-generators to sell renewable energy certificates to their electric distribution company at rates established by the Commission.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to reflect the permitted increase in the nonresidential capacity limit, to permit certain time-of-use customers to participate as customer-generators, and to establish a mechanism for eligible customer-generators to sell renewable energy certificates to their electric distribution company at rates established by the Commission. To initiate this proceeding, the Commission Staff has prepared proposed rules ("Proposed Rules") which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We will further direct that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20 serve a copy of this Order upon each of their respective net metering customers and file a certificate of service. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 804 of the 2009 Acts of Assembly. We will not consider issues outside the scope of these amendments or technical corrections in this proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00105.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.
- (3) On or before November 30, 2009, the Commission's Division of Information Resources shall publish the following

notice as classified advertising in newspapers of general circulation throughout the Commonwealth:

NOTICE TO THE PUBLIC OF A PROCEEDING TO  
AMEND REGULATIONS FOR NET ENERGY  
METERING PURSUANT TO § 56-594 OF THE CODE OF  
VIRGINIA  
CASE NO. PUE-2009-00105

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act ("Restructuring Act"), Chapter 23 (§ 56 576 et seq.) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth of Virginia ("Commonwealth"). The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

Chapter 804 of the 2009 Acts of Assembly amended § 56-594 of the Code to: (1) authorize utilities to elect a capacity limit for participation by nonresidential customers in the net energy metering program that exceeds the existing limit of 500 kW; (2) permit customers who are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariff to participate as customer-generators; and (3) provide that a participating customer-generator owns any renewable energy certificates associated with its generation of electricity, and provides for a one-time option to sell the certificates to its supplier at a rate established by the Commission, with the utility's costs of acquiring the certificates recoverable under the Renewable Energy Portfolio Standard rate adjustment clause or through the supplier's fuel adjustment clause. The current Net Energy Metering Rules thus must be revised to reflect the permitted increase in the nonresidential capacity limit, to permit certain time-of-use customers to participate as customer-generators and to establish a mechanism for eligible customer-generators to sell renewable energy certificates to their electric distribution company at rates established by the Commission.

The Commission has established a proceeding and published Staff's proposed amendments to the Net Energy Metering Rules to reflect the changes required by the revision of § 56-594 of the Code ("Proposed Rules"). Interested persons are encouraged to obtain a copy of the Commission Order and the proposed amendments in this proceeding. Copies are available for public inspection at the Commission's Document Control Center, Tyler



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Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., or may be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>. On or before December 21, 2009, any interested person may file an original and fifteen (15) copies of any written comments on or propose modifications or supplements to the Proposed Rules with the Clerk of the Commission at the address set forth below.

Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of Va. Code § 56-594 pursuant to Chapter 804 of the 2009 Acts of Assembly. The Commission will not consider issues outside the scope of this amendment in this proceeding.

On or before December 21, 2009, any interested person may file an original and fifteen (15) copies of any requests for hearing with the Clerk of the Commission at the address set forth below. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may enter an order based upon the papers filed.

Persons expecting to participate as a respondent in any hearing that may be scheduled shall include with their request for hearing an original and fifteen (15) copies of a notice of participation in accordance with 5 VAC 5-20-80 of the Commission Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

All filings in this proceeding shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE-2009-00105.

## STATE CORPORATION COMMISSION

(4) On or before November 30, 2009, each Virginia electric distribution company shall serve a copy of this Order upon each of their respective net metering customers and file a certificate of service no later than December 7, 2009, consistent with the findings above.

(5) On or before December 21, 2009, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules

and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 804 of the 2009 Acts of Assembly. The Commission will not consider issues outside the scope of this amendment in this proceeding. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested parties shall refer in their comments or requests to Case No. PUE-2009-00105. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all electric distribution companies licensed in Virginia as shown on Appendix A, hereto; and a copy shall also be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance.

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<sup>1</sup> On August 7, 2008, the Commission amended the Commission's Net Energy Metering Rules to increase the allowable total aggregate generation capacity of net metering customers and to establish the framework for eligible customer-generators to contract with their electric distribution company for the sale of generation exceeding their usage. These amendments reflect the statutory changes enacted by Chapters 877, 888, and 933 of the 2007 Acts of Assembly, which amended § 56-594 of the Restructuring Act (Case No. PUE-2008-00008, Order Adopting Final Regulations).

### **20VAC5-315-10. Applicability and scope.**

These regulations are promulgated pursuant to the provisions of § 56-594 of the Virginia Electric Utility ~~Restructuring~~ Regulation Act (§ 56-576 et seq. of the Code of Virginia). They establish requirements intended to facilitate net energy metering for customers owning and operating, or contracting with persons to own or operate, or both, an electrical generator that uses renewable energy, as defined by § 56-576 of the Code of Virginia as its total fuel source. These regulations will standardize the interconnection requirements for such facilities and will govern the metering, billing, payment and contract requirements between net metering customers, electric distribution companies and energy service providers.

### **20VAC5-315-20. Definitions.**

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

"Billing period" means, as to a particular customer, the time period between the ~~dates on~~ two meter readings upon which the electric distribution company ~~or~~ and the energy service

provider, ~~as the case may be, issues~~ calculate the customer's bills.

"Billing period credit" means, for a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.

"Energy service provider (supplier)" means the entity providing ~~electric energy~~ electricity supply to a net metering customer, either as a tariffed, or competitive, or default service pursuant to § 56-585 of the Code of Virginia.

"Excess generation" means the amount ~~by which of~~ electricity generated by the renewable fuel generator exceeds in excess of the electricity consumed by the ~~net metering customer for~~ over the course of the net metering period. For time-of-use net metering customers, excess generation is determined separately for each time-of-use tier.

"Net metering customer (customer)" means a customer owning and operating, or contracting with other persons to own or operate, or both, a renewable fuel generator under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.

"Net metering service" means providing retail electric service to a customer operating a renewable fuel generator and measuring the difference, over the net metering period, between electricity supplied to a net metering the customer from the electric grid and the electricity generated and fed back to the electric grid by the net metering customer, using a single meter or, as provided in 20VAC5-315-70, additional meters.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity and the Commonwealth or any municipality.

"Renewable Energy Certificate (REC)" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy generated by a renewable fuel generator.

"Renewable fuel generator" means an electrical generating facility that:

1. Has an alternating current capacity of not more than 10 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers unless the electric distribution company has chosen a higher capacity limit in its net metering tariff;
2. Uses renewable energy, as defined by § 56-576 of the Code of Virginia, as its total fuel source;
3. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
4. Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;
5. Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's facilities; and
6. Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

"Time-of-use net metering customer (time-of-use customer)" means a net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier (tier)" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

## **20VAC5-315-40. Conditions of interconnection.**

A. A prospective net metering customer may begin operation of his renewable fuel generator on an interconnected basis when:

1. The net metering customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of his intent to interconnect;
2. If required by the electric distribution company's net metering tariff, the net metering customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch;
3. A licensed electrician has certified, by signing the commission-approved notification form, that any required manual disconnect switch has been installed properly and that the renewable fuel generator has been installed in

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accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;

4. The vendor has certified, by signing the commission-approved notification form, that the renewable fuel generator being installed is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003;

5. In the case of static inverter-connected renewable fuel generators with an alternating current capacity in excess of 10 kilowatts, the net metering customer has had the inverter settings inspected by the electric distribution company. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection;

6. In the case of nonstatic inverter-connected renewable fuel generators, the net metering customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection.

7. In the case of renewable fuel generators with an alternating current capacity greater than 25 kilowatts, the following requirements shall be met before interconnection may occur:

a. Electric distribution facilities and customer impact limitations. A renewable fuel generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

b. Secondary, service, and service entrance limitations. The capacity of the renewable fuel generator shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

c. Transformer loading limitations. The renewable fuel generator shall not have the ability to overload the electric distribution company transformer, or any transformer winding, beyond manufacturer or nameplate

ratings, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

d. Integration with electric distribution company facilities grounding. The grounding scheme of the renewable fuel generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective net metering customer, the electric distribution company shall assist the prospective net metering customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The renewable fuel generator shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

B. A prospective net metering customer shall not be allowed to interconnect a renewable fuel generator if doing so will cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that customer's electric distribution company's Virginia service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective net metering customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that electric distribution company's service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to such prospective net metering customer and to the commission's Division of Energy Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594 D of the Code of Virginia.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a net metering customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5 and 6 of this section, and 20VAC5-315-50 as related to ~~off-site~~ additional metering.

D. The net energy metering customer shall immediately notify the electric distribution company of any changes in the

ownership of, operational responsibility for, or contact information for the generator.

**20VAC5-315-50. Metering, billing, payment and contract or tariff considerations.**

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a net metering customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer was not a net metering customer with the exception that ~~time of use~~ time-of-use metering under an electricity supply tariff having no demand charges is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where ~~a~~ net metering ~~customers'~~ customer's metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the net metering customer. In instances where a net metering customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment ~~which~~ that is intended to be read off site, the electric distribution company may charge the net metering customer its actual cost of installing any additional equipment necessary to implement net metering service. A time-of-use net metering customer shall bear the incremental metering costs associated with net metering. Any incremental metering expense associated with measuring the output of the renewable fuel generator for the purposes of receiving renewable energy certificates shall be installed at the customer's expense unless otherwise negotiated between the customer and the REC purchaser.

~~If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the grid during a net metering period, the~~ A net metering customer shall receive no compensation ~~from the electric distribution company nor the energy service provider for excess generation unless that the~~ net metering customer has entered into a power purchase agreement with ~~the electric distribution company and/or the energy service provider~~ its supplier.

~~If the electric distribution company is also the energy service provider of the net metering customer, the electric distribution company, upon~~ Upon the written request of the net metering customer, the customer's supplier shall enter into a power purchase agreement for the excess generation for one or more net metering periods, as requested by the net

~~metering customer, that begin on or after July 1, 2007. For net metering periods beginning during the time period July 1, 2007, through December 31, 2008, the written request of the net metering customer shall be submitted prior to the end of the net metering period. For net metering periods beginning on or after January 1, 2009, the~~ The written request of the net metering customer shall be submitted prior to the beginning of the first net metering period covered by the power purchase agreement. The power purchase agreement shall be consistent with this chapter ~~and obligate the~~. If the customer's supplier is an investor-owned electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the PJM Interconnection, L.L.C. (PJM) zonal day-ahead annual, simple average LMP (locational marginal price) for the PJM load zone in which the electric distribution company's Virginia retail service territory resides (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

~~The~~ If the customer's supplier is a member-owned electric cooperative electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase excess generation for the requested net metering periods at a price equal to the simple average (by tiers for time-of-use customers) of the cooperative electric distribution company's cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a competitive supplier, the supplier shall be obligated by the power purchase agreement

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to purchase the excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the supplier and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

The ~~electric distribution company~~ customer's supplier shall make full payment annually to the net metering customer within 30 days following the latter of the end of the net metering period or, if applicable, the date of the PJM Market Monitoring Unit's publication of the previous calendar-year's applicable zonal or systemwide PJM day-ahead annual, simple average LMP (locational marginal price), or hourly LMP, as appropriate. The ~~electric distribution company~~ supplier may offer the net metering customer the choice of an account credit in lieu of a direct payment. The option of a net metering customer to request payment from its supplier for excess generation for the net metering period and the corresponding price or pricing formula applicable to such excess generation and the price or pricing formula shall be clearly delineated in the net metering tariff of the electric distribution company or timely provided by the customer's competitive supplier, as applicable. A copy of such tariff, or an Internet link to such tariff, at the option of the customer, shall be provided to each customer requesting interconnection of a renewable fuel generator. A competitive supplier shall provide in its contract with the net metering customer the price or pricing formula for excess generation.

~~If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the grid during any billing period (billing period credit),~~ For a nontime-of use net metering customer, in any billing period in which there is a billing period credit, the net metering customer shall be required to pay only the nonusage sensitive charges for that billing period. ~~Such~~ For a time-of-use net metering customer, in any billing period for which there are billing period credits in all tiers, the customer shall be required to pay only the demand charge or charges and nonusage sensitive charges for that billing period. Any billing period credits shall be accumulated, carried forward, and applied at the first opportunity to any billing periods having positive net consumptions (by tiers, in the case of time-of-use customers). However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the net metering customer's billed consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and

applied from the previous net metering period (recognizing tiers for time-of-use customers).

A net metering customer owns any renewable energy certificates associated with its renewable fuel generator and may sell those RECs to any willing buyer at any time at a mutually agreeable price. The net metering customer has a one-time option at the time of signing a power purchase agreement with its supplier to include a provision requiring the purchase by the supplier of all generated RECs over the duration of the power purchase agreement. Payment for all whole RECs generated during a net metering period covered by the purchase power agreement shall be made at the same time as the payment for any excess generation. The supplier will post a credit to the customer's account, or the customer may elect a direct payment. Any fractional REC remaining shall not receive immediate payment, but may be carried forward to subsequent net metering periods for the duration of the power purchase agreement.

The rate of the payment by the supplier for a customer's RECs shall be the daily unweighted average of the "CR" component of Virginia Electric and Power Company's Virginia jurisdiction Rider G tariff in effect over the period for which the rate of payment for the excess generation is determined, unless the customer's supplier is not Virginia Electric and Power Company, and that supplier has an applicable Virginia retail renewable energy tariff containing a comparable REC commodity price component, in which case that price component shall be the basis of the rate of payment. The commission may, with notice and opportunity for hearing, set another rate of payment or methodology for setting the rate of payment for RECs.

### **20VAC5-315-70. Additional controls and tests.**

Except as provided in 20VAC5-315-40 A 5 and 6 and 20VAC5-315-50 as related to ~~off-site~~ additional metering, no net metering customer shall be required to pay for additional metering, testing or controls in order to interconnect with the electric distribution company or energy service provider. However, this chapter shall not preclude a net metering customer, an electric distribution company or an energy service provider from installing additional controls or meters, or from conducting additional tests. The expenses associated with these additional meters, tests or equipment shall be borne by the party desiring the additional meters, tests or equipment.

### **DOCUMENTS INCORPORATED BY REFERENCE**

1547, IEEE Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, The Institute of Electrical and Electronics Engineers, Inc.

Rider G, Renewable Energy Program, Virginia Electric and Power Company, January 1, 2009.

VA.R. Doc. No. R10-2151; Filed November 17, 2009, 9:27 a.m.

**Final Regulation**

**Title of Regulation:** 20VAC5-316. Regulations Governing Exemptions for Large General Services Customers Under § 56-585.1 A 5 c of the Code of Virginia (adding 20VAC5-316-10 through 20VAC5-316-50).

**Statutory Authority:** §§ 12.1-13 and 56-585.1 of the Code of Virginia.

**Effective Date:** December 1, 2009.

**Agency Contact:** Cody Walker, Assistant Director, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9611, FAX (804) 371-9350, or email cody.walker@sc.virginia.gov.

**Summary:**

*The rules set forth (i) administrative procedures for notices of nonparticipation to be provided by large general service customers to electric utilities, (ii) standard criteria for such notices of nonparticipation, and (iii) dispute resolution procedures governing all disputes arising out of the exemption process. The rules add a new Chapter 316 (20VAC5-316) within Title 20 of the Virginia Administrative Code.*

*Modifications to the initial, proposed rules now incorporated into the rules adopted by the commission include (i) new language in 20VAC5-316-10 defining "customer" as comprising all of the individual electric utility accounts owned by a single entity, located on a single site, and that are engaged in the same business; (ii) modifications to subsection B of 20VAC5-316-30 permitting customers to furnish affidavits regarding customers' investments in energy efficiency programs instead of providing investment documentation, as required in the initial, proposed rules; and (iii) modifications to subsection E of 20VAC5-316-30 now requiring, as a basis for customer exemption from utility energy efficiency RACs, that customers have or expect to have measurable, verifiable and significant energy efficiency savings consistent with § 56-585.1 A 5 c of the Code of Virginia.*

AT RICHMOND, NOVEMBER 13, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00071

Ex Parte: In the matter of establishing rules of the State Corporation Commission governing exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia

**ORDER PROMULGATING REGULATIONS**

This Order concludes a State Corporation Commission ("Commission") rulemaking required by HB 2506 as enacted by the 2009 Session of the Virginia General Assembly (Chapter 824 of the 2009 Acts of Assembly). As the Commission noted in its July 28, 2009 Order for Notice and Comment ("July 28, 2009 Order") establishing this docket, HB 2506 authorizes Virginia's electric utilities to seek rate adjustment clause treatment of the "projected and actual costs . . . to design, implement and operate energy efficiency programs, including a margin to be recovered on operating expenses. . . ." Va. Code § 56-585.1 A 5 c. However, as also stated in the July 28, 2009 Order, the legislation prohibits the utilities from recovering the costs of these programs from "any customer that has a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery." *Id.*

HB 2506 further prohibits program cost recovery from any large general service ("LGS") customer that has, at its own expense, "implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in [§ 56-585.1 A 5 c of the Code]." *Id.* For purposes of this legislation, LGS customers are customers that have "a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery." *Id.*

HB 2506 also directed the Commission to promulgate rules and regulations not later than November 15, 2009, "to accommodate the process under which such LGS customers shall file notice for such an exemption, and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility." § 56-585.1 A 5 c of the Code.<sup>1</sup> This statute does not, however, direct the Commission to establish rules governing the statutory exemption outlined above for customers that have a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery. Consequently, neither this order, nor the rules and regulations promulgated hereunder, address that exemption.

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## Regulations

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The July 28, 2009 Order included proposed rules prepared by the Commission Staff ("Staff"), to implement the exemption process outlined above ("Proposed Rules"). The Proposed Rules, *inter alia*, set forth (i) administrative procedures for notices of non-participation to be provided by LGS customers to electric utilities, (ii) standard criteria for such notices of non-participation, and (iii) dispute resolution procedures governing all disputes arising out of the exemption process.<sup>2</sup> Additionally, the Commission directed in such order that notice of the Proposed Rules be given to the public and, further, that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on these Proposed Rules on or before September 3, 2009. The Staff was also permitted to file a report concerning these comments on or before September 24, 2009.

Initial comments were filed in this rulemaking by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power," "Dominion" or "DVP"); The Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power"); Appalachian Power Company ("Appalachian"); the Virginia Manufacturers Association ("VMA"); MeadWestvaco Corporation ("MeadWestvaco"); Northrop Grumman Shipbuilding, Inc., Newport News Operation ("Northrop Grumman"); and the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates ("Committees"), filing jointly. No requests for hearing were received by the Commission. Thereafter, the Staff filed a report concerning these comments on September 24, 2009 ("Staff Report" or "Report").

The Commission, by Order dated October 2, 2009, permitted interested parties in this docket to file additional comments addressing (i) the Staff Report, and (ii) comments previously filed by other interested persons in this proceeding. These additional comments were to be filed with the Clerk of the Commission, on or before October 9, 2009. The following parties filed additional comments: Dominion Virginia Power; Appalachian; MeadWestvaco, and the Committees.

NOW UPON CONSIDERATION of the initial and additional comments filed herein, together with the Staff Report filed in this docket, we find that we should adopt and promulgate the rules appended hereto as Attachment A, governing exemptions for LGS customers under § 56-585.1 A 5 c of the Code of Virginia, all as directed by the Virginia General Assembly in HB 2506. Such rules shall become effective on December 1, 2009.

The Commission notes that the Staff Report proposed several significant revisions to the Proposed Rules (i) addressing key concerns or issues raised by the parties in their initial comments, and (ii) incorporating suggestions from the parties for editorial improvement or clarification.

The additional comments suggest that these revisions reduced the number of key issues in controversy within this rulemaking. Consequently, in this Order we will address primarily several issues raised, or reiterated, by parties in their additional comments.

First, we will address the issue of defining an LGS customer for purposes of these rules. The Staff proposes that a customer under these rules ("Customer") comprise all facilities represented by a single electric utility account. This definition of Customer, proposed in revised 20 VAC 5-316-10 set forth in the Staff Report (Appendix at 1), is also supported by Appalachian in its Additional Comments. Northrop Grumman, MeadWestvaco and the Committees, on the other hand, propose that a Customer should comprise all of the individual electric utility accounts owned by a single entity served by the same electric utility. Finally, the VMA advances a customer definition that would comprise "single meters aggregated serving a single site and a single business." VMA Initial Comments at 2.

We have adopted the definition of Customer as proposed, in substance, by the VMA. The Commission concludes that for purposes of exempting LGS customers from an energy efficiency rate adjustment clause ("RAC"), a Customer should comprise all of the individual electric utility accounts owned by a single entity, located on a single site, and that are engaged in the same business.<sup>3</sup> This Customer definition, as adopted herein, should promote proper alignment between RAC exemptions and LGS facilities with actual energy efficiency programs. In contrast, the "single entity" Customer definition advanced by Northrop Grumman and the Committees (aggregating the individual customer accounts of a single entity for purposes of these rules) could potentially misalign the benefits of RAC exemptions afforded through these rules, and the energy efficiency programs contemplated by this statute.

We will also adopt MeadWestvaco's suggestion that 20 VAC 5-316-10 provide that where LGS customers lack three calendar years of billing history to establish demands in excess of 500 kilowatts, these LGS customers may nevertheless seek to qualify for exemption pursuant to this regulation if their highest measured demand from a single metering point is more than 500 kilowatts in a single month. This is a reasonable clarification, and we will adopt it.

Next, we will address issues raised concerning 20 VAC 5-316-30. We note, first of all, that the Staff in its Report proposes to eliminate language in the initial Proposed Rules requiring "copies of all receipts and invoices documenting the Customer's investment in any Program." The Staff now proposes to substitute for that language a requirement that the Customer's president or other corporate officer sign an affidavit attesting "to the validity of information submitted in support of the Customer's notice of nonparticipation." In their Additional Comments filed in this docket, the Committees

suggest that despite the Staff's proposed revisions discussed above, a simple notice requirement would nevertheless be preferable "as being consistent with the statutory provisions." Committees Additional Comments at 3-4. We conclude, however, that the Staff's proposal to substitute attestation for documentation strikes a reasonable balance between eliminating a requirement viewed as burdensome by some, while concurrently ensuring meaningful Customer verification consistent with the provisions of § 56-585.1 A 5 c and eliminating some risk for dispute, as underscored by Appalachian in its Additional Comments. Appalachian Additional Comments at 2. We will, therefore, adopt the Staff's proposed revisions to Subsection B of 20 VAC 5-316-30 as described above.

A fundamental issue in this rulemaking, highlighted by commenting parties' responses to 20 VAC 5-316-30 in the Proposed Rules, is whether § 56-585.1 A 5 c contemplates that the energy savings produced by LGS Customers' energy efficiency programs must, as a prerequisite to exemption under these rules, be equivalent<sup>4</sup> to their utilities' expected energy reductions under energy efficiency programs for which RACs have been approved by this Commission.

The view on this topic expressed by Dominion Virginia Power, the Committees, and others is that to qualify for exempt status under this statute and these rules, Customers' energy efficiency programs should produce results that are "consistent with industry standards for the Customer's type of business." Dominion Virginia Power Initial Comments at 11. Dominion states that such a standard "follows the requirement of the statute and allows the LGS customer the flexibility to meet energy efficiency standards similar to those faced by its competitors." *Id.* at 13. The Committees also endorse an "industry standard" as the basis for Customer energy efficiency achievement sufficient to justify exemption. Committees Initial Comments at 4-6.

Northrup Grumman similarly endorses an "industry standard" benchmark,<sup>5</sup> although that company states that even by January 2010 there will be no officially adopted standards and goals for industrial, commercial or even residential customers. Northrup Grumman Initial Comments at 3. MeadWestvaco proposes, however, that "applications by [Customers] proposing projects or having implemented projects that meet established energy efficiency standards such as LEED or Green Globes should be automatically accepted by the utility." MeadWestvaco Initial Comments at 4.<sup>6</sup> MeadWestvaco also asserts that "[a] new or retrofitted building which qualifies for and receives LEED or Green Globes certification by definition contains exactly the caliber of energy efficiency measures contemplated by the General Assembly when it created the exemption codified in HB 2506." *Id.* at 5-6. In order to adapt LEED or Green Globes certification to this rulemaking, MeadWestvaco suggests that the Commission "adopt by rule a list of types of projects or

energy efficiency standards which would result in automatic exemption request approvals by the utility." *Id.* at 6.

The VMA responded to Proposed Rule 20 VAC 5-316-30 by asserting that the equivalency requirement is outside the bounds of the statute. Specifically, the VMA stated in its Initial Comments that this requirement "adds a new requirement for [nonparticipating] customers, requiring additional energy reductions equivalent to the reductions expected by the utility energy efficiency program." VMA Initial Comments at 2. The VMA asserts that "[m]any existing systems in industry already operate at a higher energy efficiency rate than any of the utilities." *Id.*

The Staff Report responds to these comments, asserting, *inter alia*, that requiring equivalence or comparability between the exempt LGS Customers' energy efficiency programs and those of their utilities introduces parity between exempt and non-exempt LGS customers. Staff Report at 18. The Staff further asserts that "a standard based solely on a reference to industry standards provides little guidance with respect to the level of energy efficiency gains needed to qualify for the statutory exemption in that Staff is unaware of any industry standard that sets forth specific energy efficiency targets." *Id.* at 20. Moreover, the Staff emphasizes that it is "not aware of any commonly accepted industry standards regarding the level of energy efficiency improvements expected of large general service customers." *Id.* at 21. Thus, the Staff suggests, "[a]bsent further specification by the Commission, customers could qualify for an exemption by undertaking minimal energy efficiency improvements." *Id.* at 20.

Addressing MeadWestvaco's proposed LEED and Green Globes standards, the Staff questions the practical feasibility of employing standards requiring additional quantifications of

required energy efficiency improvements that would be required to be developed in conjunction with these types of certifications.<sup>7</sup>

The Commission has considered the views of the commenting parties and the Staff concerning this important issue. Our analysis begins with the General Assembly's directive to the Commission to undertake this rulemaking for the purpose of establishing not only procedures for LGS Customer notification of non-participation to their utilities, but also for the express purpose of "defin[ing] the standard criteria that must be established by an applicant in order to notify the utility." § 56-585.1 A 5 c of the Code.

As discussed above, some of the parties—such as Dominion and the Committees—recommend that "industry standards" should govern the sufficiency of these Customer savings to warrant an exemption. However, no commenting party offered specific industry standards for energy efficiency that are at this time sufficiently advanced in their development to guide the exemption process established under HB 2506.



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## Regulations

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Instead, based upon the comments of both Northrup Grumman and the Staff discussed above, it would appear that, at this time, no such industry standards exist.<sup>8</sup> We note also that with respect to the LEED and Globes standards advanced by MeadWestvaco, neither (as described by MeadWestvaco) requires a specific amount of energy savings, nor do they speak in terms of energy consumption reductions. Thus, such standards, too, would seem insufficient to the task of determining Customers' energy efficiency achievement in this rulemaking.

We conclude, therefore, that requiring Customers seeking exemption from their utilities' energy efficiency RACs to have or expect to have measurable, verifiable and significant energy efficiency savings consistent with § 56-585.1 A 5 c, provides a regulatory standard that is uniform in its application and consistent with the statute. It is this standard that we adopt in these regulations. Section 56-585.1 A 5 c of the Code requires that Customers' energy efficiency programs furnishing the basis for RAC exemptions must produce "*measured and verified* results consistent with industry standards and other regulatory criteria. . ." Emphasis added. The term "measured and verified" is defined in § 56-576 of the Code as "a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings." The parties' Initial Comments and Additional Comments, considered together with the Staff Report, thus lead us to conclude that the standard we adopt herein, as outlined above, provides a reasonable process for implementing § 56-585.1 A 5 c.

Related to Customers' energy efficiency program benchmarks, § 56-585.1 A 5 c of the Code requires the Commission, among other things, "to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement." Additionally, Appalachian has recommended in its Additional Comments that the Proposed Rules be clarified to address "how to determine if the customer's expected level of energy efficiency savings, if used to qualify for an exemption, was ever achieved." Appalachian Additional Comments at 2. Appalachian has suggested that the Commission "require that customers provide proof of such savings in an affidavit or similar form after the savings have been realized." *Id.* at 3. We will adopt this suggestion. In the rules we promulgate herein, we have amended Subsection E in 20 VAC 5-316-30 to require Customers furnishing notices of nonparticipation to their utilities to provide yearly reports to the Commission's Division of Energy Regulation concerning the energy savings achieved via the Customer's program during the preceding 12 months. These reports will be required throughout the life of the Customer's energy efficiency improvements described in the Customer's notice of nonparticipation. Inasmuch as a Customer's exemption

from its utility's energy efficiency RAC, once established, can continue, by statute, for the life of the Customer's energy efficiency improvements,<sup>9</sup> an annual reporting requirement is both necessary and appropriate.

However, to ensure relevant information flows in both directions, we have also added a new Subsection G to 20 VAC 5-316-30. This provision responds, in part, to concerns expressed by MeadWestvaco in its Additional Comments that "the proposed rules do not include a procedure for each utility to notify its customers of what the expected percentage of savings will be [under the utilities' energy efficiency program for which an RAC has been approved by the Commission]. It would not be burdensome for utilities to provide this information, without which customers cannot submit a notice of participation." MeadWestvaco Additional Comments at 4-5. Thus, MeadWestvaco has proposed adding language in these rules establishing an annual notification requirement and deadline (December 31) for each such utility. This is a reasonable suggestion that will advance the Commission's administration of this statute, and we have adopted it in the rules we promulgate herein.

Finally, we have modified the language in Subsection C of 20 VAC 5-316-20 governing required Customer notifications to its utility and the Commission if the conditions of the Customer's notice of nonparticipation change. Our modification adds a materiality requirement, so as to require such notifications only under circumstances in which the change in conditions associated with notices of nonparticipation is sufficiently material to warrant such notice.

The rules we adopt herein also incorporate clarifying language in 20 VAC 5-316-40 requested by MeadWestvaco concerning cost sharing associated with the engagement of a dispute resolution service. The language requested by MeadWestvaco would modify Subsection C of 20 VAC 5-316-40 to make clear that equal cost sharing is limited to the services provided by the dispute resolution service, and that each party bears its own legal fees and other costs associated with the dispute resolution process. This is a helpful clarification, and we have incorporated it into the rules adopted herein.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt and promulgate the Commission's Rules Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia to be set forth in a new Chapter 316 (20 VAC 5-316-10, *et seq.*) in Title 20 of the Virginia Administrative Code, appended hereto as Attachment A, all to become effective on December 1, 2009.

(2) A copy of this Order and the rules adopted herein shall be promptly forwarded for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance.

<sup>1</sup> The legislation also specifies that a "notice of nonparticipation by a large general service customer, to be given by March 1 of a given year, shall be for the duration of the service life of the customer's energy efficiency program." § 56-585.1 A 5 c of the Code. HB 2506 further directs that the Commission's implementing regulations specify when the utility must accept and act on any such notice "taking into consideration the utility's integrated resource planning process as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission." *Id.*

Pertinent to this rulemaking, HB 2506 also provides that the Commission "on its own motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement." § 56-585.1 A 5 c of the Code. Finally, the Virginia General Assembly directs in HB 2506 that "[I]n all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth." *Id.*

<sup>2</sup> The Proposed Rules establish a new Chapter 316 in Title 20 of the Virginia Administrative Code, consisting of sections 20 VAC 5-316-10 through 20 VAC 5-316-50.

<sup>3</sup> We note, for purposes of clarification—and as stated earlier in this order—that § 56-585.1 A 5 c's threshold requirement for LGS Customers seeking RAC exemption under this statute is a requirement that these Customers have "a verifiable history of having used more than 500 kilowatts of demand *from a single meter of delivery*." Emphasis added. This requirement parallels this statute's express exemption for customers that have "a verifiable history of having used more than 10 megawatts of demand *from a single meter of delivery*." Emphasis added. Consequently, Customers subject to the regulations we adopt herein must establish their threshold exemption eligibility of 500 kilowatts of demand at a single meter of delivery; they may not do so by aggregating demand from multiple meters to achieve this minimum demand requirement (500 kW).

<sup>4</sup> The pertinent provisions of Subsection E of 20 VAC 5-316-30 in the Proposed Rules initially required Customers to establish that their programs produced energy savings "equal to or greater than" the percentage reductions expected from their utilities' energy efficiency programs. However, modifications to 20 VAC 5-316-30 proposed in the Staff Report amended Subsection E to substitute the phrase "equivalent to" for "equal to." While the Staff Report does not state this directly, it is evident that this modification is associated with a discussion on pp. 24-25 of the Report providing Staff's view that energy savings associated with Customers' energy efficiency programs need not result solely from Customers' reductions in electricity consumption.

<sup>5</sup> Specifically, Northrup Grumman in its Initial Comments states that "[a]s we read the statute, the only standard that the Commission should apply to an

applicant for exemption is 1) does it have or plan to have an energy efficiency program with measured and verifiable results; and 2) will those results meet industry standards. There is no authorization in the statute to apply any other regulatory requirement, despite the reference to 'other regulatory criteria' stated in the section." Northrup Grumman Initial Comments at 2.

<sup>6</sup> MeadWestvaco explains in its Initial Comments that "LEED is an internationally recognized green building certification system, providing third-party verification that a building or community was designed or built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO2 emissions reductions, improved environmental quality, and stewardship of resources and sensitivity to their impacts." MeadWestvaco Initial Comments at 4. MeadWestvaco also states that the LEED program was developed by the U.S. Green Building Council. *Id.* at 4-5. The Company further explains that "the Green Building Initiative's Green Globes system is an accepted green management tool that includes an assessment protocol, rating system and guide for integrating environmentally friendly design into commercial buildings." *Id.* at 5.

<sup>7</sup> Responding to Staff's assessment of LEEDS and Green Globes in this context, MeadWestvaco stated in its Additional Comments that it disagreed "with Staff's assertion that it would be impractical for the Commission to develop a list of energy efficiency standards such as LEED or Green Globes as qualifying for exemption under HB 2506. Such certifications recognized as demonstrating that the certified project has been built using state-of-the-art energy efficiency measures, although neither program requires applicants to demonstrate a specific amount of energy savings. Because these certifications apply to new construction as well as major retrofits, they do not speak in terms of percentages of energy consumption reductions. Nevertheless, projects built to these standards nevertheless involve 'energy efficiency programs that . . . will produce measured and verified results consistent with industry standards and other regulatory criteria' as defined in HB 2506." MeadWestvaco Additional Comments at 3.

<sup>8</sup> In this regard, we note, however, that Subsection F of 20 VAC 5-316-30 requires Customers to include in their notice of non-participation a Measurement and Verification Plan "conforming to the protocol set forth in the definition of 'measured and verified' as provided in § 56-576 of the Code of Virginia." Inasmuch as that definition makes reference to methodology accepted for use by utilities and industry, Customers can potentially utilize their Measurement and Verification Plans to advance any applicable industry energy efficiency standards then available for purposes of supporting their proposed notices of non-participation.

<sup>9</sup> In this regard, we have also streamlined Subsection D of 20 VAC 5-316-30 in the final rules we adopt herein, concerning the information required in a Customer's notice of non-participation as such notice concerns anticipated changes in operations that may affect the Customer's achieved or expected energy efficiency savings. This requirement is now expressed more broadly and identifies "the life expectancy of the [Customer's] energy efficiency measures undertaken" as the sole item of specific information sought from the Customer under this subsection.

**CHAPTER 316**

**[ RULES GOVERNING ] EXEMPTIONS FOR LARGE  
GENERAL SERVICES CUSTOMERS UNDER § 56-585.1  
A 5 c OF THE CODE OF VIRGINIA**

**20VAC5-316-10. Applicability and scope.**

This chapter is promulgated pursuant to the provisions of § 56-585.1 A 5 c of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. This chapter is specifically applicable to the large general service customers (customers or customer) of Virginia's electric utilities (utilities or utility) subject to the provisions of § 56-585.1 A 5 c [ ~~if the customers that~~ ] have verifiable histories of using more than 500 kilowatts but [ ~~less~~

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# Regulations

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no more ] than 10 megawatts of demand from a single metering point. ~~[ Customers are~~ As used in this chapter, a customer comprises all of the individual electric utility accounts owned by a single entity, located on a single site, and that are engaged in the same business. This chapter is also applicable to customers with highest measured demands from a single metering point of more than 500 kilowatts in any single month if such customers do not have three calendar years of history. A customer is ] eligible for an exemption from any rate adjustment clause approved for a utility by the State Corporation Commission (commission) pursuant to § 56-585.1 A 5 c of the Code of Virginia, if any customer can demonstrate that it has implemented an energy efficiency program (program), at the customer's expense, that has produced or will produce measured and verified results.

## **20VAC5-316-20. Administrative procedures for notice to utility [ and commission ].**

A. Any customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the year in which an exemption is sought. The notice of nonparticipation shall be concurrently filed by the customer with the commission's Division of Energy Regulation.

B. Upon receipt of the notice of nonparticipation, a utility shall, within 60 days thereof, ~~[ review the same, and verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. The utility ] shall accept [ or deny ] the exemption request [ if the customer has a highest measured usage in excess of 500 kilowatts and has submitted the information required by 20VAC5-316-30 ]. In the event the utility fails to [ accept or deny the exemption request within that~~ notify the customer of any deficiency in its notice of nonparticipation within the ] 60-day period, the exemption shall be deemed accepted by the utility. The utility's acceptance or denial of any exemption request shall ~~[ be ]~~ concurrently ~~[ be sent to the customer and ]~~ filed by the utility with the commission's Division of Energy Regulation.

[ C. Once a utility has accepted a customer's exemption request, that customer shall be exempt from any rate adjustment clause approved for the utility by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia, beginning with the billing month following the date of acceptance of the exemption request and continuing throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation. A customer shall notify the utility and the commission if the conditions of the customer's notice of nonparticipation change in any material respect. ]

## **20VAC5-316-30. Standard criteria for notice to utility.**

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and utility account number, and the location of the specific facility and metering point for which any such exemption is being sought.

B. The notice of nonparticipation shall also contain ~~[ copies of all receipts and invoices documenting the customer's investment in any program~~ an affidavit signed by the customer's president, corporate secretary, or other officer of the customer concerning the program or programs. Such affidavit shall attest to the validity of information submitted in support of the customer's notice of nonparticipation ].

C. The notice of nonparticipation shall describe the energy efficiency savings achieved or expected to be achieved from its investment in its program and the specific measures undertaken to achieve those savings.

D. The notice of nonparticipation shall include information concerning any anticipated change in operations that may affect achieved or expected energy efficiency savings, including ~~[ (i) changes in operating hours or equipment efficiency; (ii) any changes required to comply with new or existing standards, a partial facility closure, a modification of a production shift, or improved quality of maintenance; (iii) ]~~ the life expectancy of the energy efficiency measures undertaken ~~[ ; and (iv) ongoing maintenance activities necessary to maintain energy efficiency improvements ]~~.

E. To qualify for the exemption, each customer shall ~~[ demonstrate energy efficiency savings equal to or greater than the percentage energy efficiency reductions expected to be achieved by its utility's energy efficiency programs for which the commission has approved a rate adjustment clause pursuant to~~ have or expect to have measurable, verifiable, and significant energy efficiency savings consistent with ] § 56-585.1 A 5 c of the Code of Virginia. ~~[ Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter shall subsequently furnish yearly reports to the commission's Division of Energy Regulation describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is in effect. Such reports shall be filed on or about March 1 of the year following such customer's filing of its notice of nonparticipation, with such March 1 filings continuing thereafter throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation. ]~~

F. Each notice of nonparticipation shall also include a measurement and verification plan conforming to the protocol set forth in the definition of "measured and verified" as provided in § 56-576 of the Code of Virginia.

[ G. Not later than December 31 of each year, each utility shall notify its customers of the percentage energy efficiency reductions expected to be achieved by the utility's energy

efficiency programs for which the commission has approved rate adjustment clauses pursuant to § 56-585.1 A 5 c of the Code of Virginia. ]

**20VAC5-316-40. Dispute resolution.**

A. Customers and utilities shall seek to resolve all disputes arising out of the exemption process established under this chapter pursuant to the provisions of this section.

B. In the event of any such dispute, either party shall furnish the other a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make good faith efforts to resolve the dispute informally within 10 business days of the receipt of such notice.

C. If any such dispute has not been resolved within 10 business days following receipt of the notice, either party may seek resolution assistance from the commission's Division of Energy Regulation where such matter will be treated as an informal complaint under the commission's Rules of Practice and Procedure (5VAC5-20).

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service for the purpose of assisting the parties in (i) resolving the dispute, or (ii) selecting an appropriate dispute resolution method or mechanism (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. In any such dispute resolution proceeding, each party shall conduct all negotiations in good faith and shall be responsible for 1/2 of any charges for [such services the dispute resolution provider, but each party shall bear its own legal fees and other costs incurred as a result of the dispute resolution process ].

D. If any such dispute remains unresolved following the parties' good faith exercise of the dispute resolution alternatives set forth in this section, either party may file a formal complaint with the commission pursuant to the commission's Rules of Practice and Procedure [ (5VAC5-20) ].

**[ 20VAC5-316-50. Waiver and enforcement.**

A. The commission may waive any or all parts of this chapter for good cause shown.

B. The commission on its own motion may initiate steps necessary to verify a nonparticipating customer's achievement of energy efficiency if the commission has a body of evidence that the nonparticipating customer has knowingly misrepresented its energy efficiency achievement. Such proceedings shall be governed by the commission's Rules of Practice and Procedure (5VAC5-20). ]

VA.R. Doc. No. R09-2071; Filed November 17, 2009, 9:29 a.m.

**TITLE 22. SOCIAL SERVICES**

**STATE BOARD OF SOCIAL SERVICES**

**Final Regulation**

**Titles of Regulations: 22VAC40-110. Minimum Standards for Licensed Family Day Homes (repealing 22VAC40-110-10 through 22VAC40-110-1400).**

**22VAC40-111. Standards for Licensed Family Day Homes (adding 22VAC40-111-10 through 22VAC40-111-1020).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Effective Date: July 1, 2010.

Agency Contact: Karen Cullen, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

Summary:

*This regulatory action repeals the existing regulation, 22VAC40-110, and establishes a new regulation, 22VAC40-111, for licensed family day homes. The new regulation includes additional requirements in the following areas: care and services for children; staff qualifications, training, and responsibilities; management of the family day home; physical plant features; disclosure of information to parents; and emergency preparedness. Since the proposed stage, changes were made for clarity or to decrease requirements for licensed family day home operators based on public comment. Changes from the proposed include (i) deleting the provider's responsibility to supervise children 13 years of age or older from the criteria for establishing capacity; (ii) adding a child identification card issued by the Virginia Department of Motor Vehicles to the list of acceptable documents to verify a child's age and identity; (iii) deleting the specific requirements for immunization for children attending a family day home; (iv) adding the timeframe for and acceptable documentation of the physical exam for a school age child; (v) changing language to specify that identifying information and references are required for an assistant or substitute provider, but references are not required for a substitute or assistant who is the parent, spouse, sibling, or child of the provider; (vi) expanding the list of acceptable training organizations for first aid and CPR certification; (vii) amending requirements so that only adult assistants who are left alone with children are required to have first aid and CPR certification; (viii) changing language so that the attributes for household members applies to individuals 14 years of age and older who reside in the family day home; (ix) adding emergency preparedness training as a part of annual training; (x)*

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changing the training source for providers who administer nonprescription medication from a department-approved training to a Virginia Board of Nursing-approved training; (xi) amending the list of unsafe conditions and hanging, suffocation, and strangulation hazards; (xii) adding a requirement that certain machinery when in operation must be inaccessible to children; (xiii) deleting the requirement that unused small appliances be placed in an area inaccessible to children; (xiv) changing language so that the requirement for use of electrical outlet safety covers applies to unused outlets and surge protectors accessible to children under five years of age; (xv) changing language to clarify that children must be able to open closet doors with latches from inside and that bathroom doors with locks must permit opening from the outside; (xvi) deleting certain animals from and adding others to the list of animals prohibited from areas accessible to children; (xvii) changing language to state that certain animal care items must not be accessible to children; (xviii) rewording the requirement for sight and sound supervision of infants and toddlers when awake to make compliance more feasible for providers; (xix) changing language to clarify that written permission from the parent of a child who participates in swimming or wading activities is required once each year; (xx) changing language to require that children's hands are washed at certain times, including after diapering; (xxi) changing language to require that medications not picked up by the parent be taken to a pharmacy for proper disposal; (xxii) rewording the section regarding topical skin products to include diaper lotion and oral teething medication, require the child's name be on the product container only if supplied by the parent, and require that sunscreen have a minimum sunburn protection factor (SPF) of 15; (xxiii) deleting the requirement for a first aid kit to contain activated charcoal preparation except for homes located more than one hour's travel time from a health care facility; (xxiv) changing language to require that the emergency preparedness and response plan addresses fire, severe storms, flooding, tornados, and loss of utilities; (xxv) changing language so that required documentation of emergency evacuation drills matches the documentation required by the Virginia Fire Prevention Code; (xxvi) amending language to clarify when meals and snacks are served; and (xxvii) adding a requirement for food to be served in a sanitary manner.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## CHAPTER 111

### STANDARDS FOR LICENSED FAMILY DAY HOMES

#### 22VAC40-111-10. Definitions.

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age-appropriate" means suitable to the chronological age and individual needs of a child.

"Assistant" means an individual who helps the provider or substitute provider in the care, protection, supervision [ . ] and guidance to children in the home.

"Body fluids" means urine, feces, vomit, blood, saliva, nasal discharge, and tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision [ . ] and guidance to children in the home and includes the provider, substitute provider [ . ] and assistant.

"Child" means an individual under 18 years of age.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child with special needs" means a child with developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the

children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, and truthfulness; and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth up to 16 months of age.

"Nighttime care" means care provided between 7 p.m. and 6 a.m.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any individual with responsibility for, or custody of a child enrolled in or in the process of being enrolled in a family day home.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Preschool" means children from two years up to the age of eligibility to attend public school, age five by September 30 of that same year.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include, but not be limited to, a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Provider" means an individual who is issued the family day home license by the Department of Social Services and who has primary responsibility in providing care, protection, supervision, and guidance of children in the family home.

"Relocation" means movement of occupants of the building to a safe location away from the vicinity of the building.

"Residence" means principal legal dwelling or abode that is occupied for living purposes by the provider and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a [ ~~disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat)~~ solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. ] The surface of the item is sprayed or dipped into the [ ~~disinfectant sanitizing~~ ] solution and then allowed to air dry.

"School age" means eligible to attend public school, age five or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; and a foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Substitute provider" means an individual who meets the qualifications of a provider; is designated by the provider; and who provides care, protection, supervision [ , ] and guidance for children in the family day home when the provider is absent from the home for more than two hours.

"Time out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children in the group to allow the child who is losing self-control to regain composure.

"Toddler" means a child from 16 months of age up to 24 months of age.

## **22VAC40-111-20. (Reserved.)**

## **22VAC40-111-30. Operational responsibilities.**

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by 22VAC-40-111-70.

C. The provider shall give evidence of financial responsibility.

D. The provider shall be of good character and reputation. Character and reputation investigation includes, but is not

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limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

E. The provider shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

F. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

G. The provider shall be responsible for the home's day-to-day operation.

H. The provider shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

I. The provider shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

## **22VAC40-111-40. Capacity.**

A. The provider shall ensure that the total number of children receiving care at any one time does not exceed the maximum licensed capacity of the home.

B. When at least one child receives care for compensation, all children, exclusive of the provider's own children and children who reside in the home, who are in the care and supervision of a provider, count in the licensed capacity.

C. The department [ ~~may restrict the number and ages of children who may be in care at one time in a family day home to less than the maximum group size of 12 children, if the department determines that the maximum is unsuitable for that home~~ will establish the home's maximum capacity ] based on the following factors:

[ ~~1. The provider's responsibility to supervise children 13 years of age or older who are not the provider's own children or who do not reside in the home;~~

~~2. 1.] The availability of adequate space to allow each child free movement and active play indoors and outdoors as required by 22VAC40-111-380;~~

[ ~~3. 2.] The provider's responsibility to care for another individual who may require special attention or care, including but not limited to an elderly resident or a child with a serious physical, emotional, or behavioral condition;~~  
or

[ ~~4. 3.] The issuance of a special order to limit capacity pursuant to § 63.2-1709.2 of the Code of Virginia.~~

## **22VAC40-111-50. General [ ~~record—keeping~~ recordkeeping ].**

A. The family day home shall keep a written record of children in attendance each day.

B. The provider's records shall be maintained in the home and made accessible to the department's representative.

C. Information contained in a child's record shall be privileged and confidential. The provider shall not distribute or release information in a child's record to any unauthorized person without the written consent of the child's parent.

D. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

E. Records and reports on children, caregivers, and household members required by this chapter shall be maintained and made accessible to the department's representative for two years from the date of termination of services for a child, date of separation from employment for caregivers, or date of termination of residence for a household member, or unless specified otherwise.

## **22VAC40-111-60. Children's records.**

A. The provider shall maintain an up-to-date record at the family day home for each enrolled child.

B. A child's record shall contain the following information:

1. Child's full name, nickname (if any), sex, address, and birth date;

2. Emergency contact information including:

a. Name, home address, and telephone number of each parent who has custody;

b. Name, address and telephone number of each custodial parent's place of employment;

c. Name, office address and telephone number of the child's physician;

d. Name, address and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached;

e. Information on allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;

f. Name and policy number of the child's medical insurance, if applicable;

g. Names of persons other than the custodial parents who are authorized to pick up the child;

h. Appropriate legal paperwork when a custodial parent does not authorize the provider to release the child to the other parent; and

i. Chronic physical problems, pertinent developmental information, and any special accommodations needed;

3. First and last dates of attendance;

4. Parent's signed acknowledgement of the receipt of the information required by 22VAC40-111-70;

5. Proof of the child's age and identity and the names and addresses of previously attended child day care and schools as required by 22VAC40-111-80;

6. Immunization records for the child as required by 22VAC40-111-90;

7. Results of the health examination for the child as required by 22VAC40-111-100;

8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection to provision of medical treatment on religious or other grounds;

9. Written authorization if a caregiver is to administer prescription or nonprescription medication to the child as required by 22VAC40-111-700 A 2;

10. Written authorization if the child is to participate in swimming or wading activities as required by 22VAC40-111-660 B;

11. Written authorization if the child is taken off the premises of the family day home as required by 22VAC40-111-980;

12. Special instructions to the provider including, but not limited to, exception to an infant's sleeping position as required in 22VAC40-111-590 A, recommendations for the care and activities of a child with special needs as required in 22VAC40-111-620 A, and exception to an infant's being fed on demand as required in 22VAC40-111-960 A;

13. Record of any accidents or injuries sustained by the child while at the family day home as required by 22VAC40-111-840; and

14. Documentation of the review of the child's emergency contact information as required by 22VAC40-111-780 B.

**22VAC40-111-70. Written information for parents.**

A. Before the child's first day of attendance, parents shall be provided in writing the following information:

1. Operating information including the hours and days of operation, holidays or other times closed, and the telephone number where a message can be left for a caregiver;

2. Schedule of fees and payment plans;

3. Check in and check out procedures;

4. Policies for the administration of medications;

5. Whether or not there is liability insurance of at least \$100,000 per occurrence and \$300,000 aggregate in force on the family day home operation as required by § 63.2-1809.1 of the Code of Virginia;

6. Requirement for the family day home to notify the parent when the child becomes ill and for the parent to arrange to have the child picked up as soon as possible if so requested by the home;

7. Requirement for the parent to inform the family day home within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life-threatening diseases, which must be reported immediately;

8. Requirement for the child to be [ ~~age appropriately~~ adequately ] immunized [ as required by 22VAC-40-111-90 ];

9. Requirement for paid caregivers to report suspected child abuse or neglect according to § 63.2-1509 of the Code of Virginia;

10. Custodial parent's right to be admitted to the family day home any time the child is in care as required by § 63.2-1813 of the Code of Virginia;

11. General daily schedule that is appropriate for the age of the enrolling child;

12. Policies for the provision of food;

13. Presence of a pet or animal in the home;

14. Discipline policies including acceptable and unacceptable discipline measures;

15. Amount of time per week that an adult assistant or substitute provider instead of the provider is scheduled to care for the child and the name of the adult assistant or substitute provider;

16. Provisions of the family day home's emergency preparedness and response plan;

17. Parental notifications required in 22VAC40-111-650;

18. Policies for termination of care; and

19. Address of the website of the department, with a note that a copy of this regulation and additional information about the family day home may be obtained from the website, including compliance history that includes information after July 1, 2003.

B. The provider shall obtain the parent's written acknowledgement of the receipt of the information in this section.

**22VAC40-111-80. Proof of age and identity; record of child care and schools.**

A. Within seven business days of the child's first day of attendance at the family day home, the provider shall obtain from the parent:

1. Verification of the identity and age of the child; and



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2. Name and location of previous day care programs and schools the child has attended.

B. The provider shall verify the identity and age of a child by viewing one of the following:

1. Certified birth certificate;
2. Birth registration card;
3. Notification of birth, i.e., hospital, physician, or midwife record;
4. Passport;
5. Copy of the placement agreement or other proof of the child's identity from a child placing agency;
6. Original or copy of a record or report card from a public school in Virginia; [ ~~or~~ ]
7. Signed statement on letterhead stationery from a public school principal or other designated official that assures the child is or was enrolled in the school [ ~~is~~ or
8. Child identification card issued by the Virginia Department of Motor Vehicles. ]

C. The provider shall document in the child's record:

1. The method of verification of the child's age and identity; and
2. The names and locations of the previous child care programs and schools the child has attended.

D. The provider shall notify the local law-enforcement agency if the parent does not provide the information required in 22VAC40-111-80 A within seven business days of the child's first day of attendance at the family day home.

E. The proof of identity, if reproduced or retained by the family day home, shall be destroyed two years after termination of services to the child. The procedures for the disposal, physical destruction [ ~~is~~ ] or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by:

1. Shredding;
2. Erasing; or
3. Otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

## **22VAC40-111-90. Immunizations for children.**

A. Before a child may attend the family day home, the provider shall obtain documentation that the child has been adequately immunized according to [ the requirements of § 32.1-46 A of the Code of Virginia and applicable ] State Board of Health regulations.

[ ~~B. A child whose immunizations are incomplete may attend the family day home if the provider obtains documentation signed by a licensed physician, the physician's designee, or an official of a local health department that:~~

- ~~1. The child has received at least one dose of the required immunizations; and~~
- ~~2. There is a schedule for completion of the required immunizations within 90 days of the child's first day of attendance at the family day home.~~

~~C. At the end of 90 days from the child's first day of attendance at the family day home, the provider shall not allow the child to attend the family day home unless the provider obtains documentation signed by a licensed physician, the physician's designee, or an official of a local health department that:~~

- ~~1. The child's immunization schedule has been completed; or~~
- ~~2. A medical contraindication developed during the 90 day completion schedule.~~

~~D. B. ] Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:~~

- ~~1. Parent submits an affidavit to the family day home on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or~~
- ~~2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.~~

[ ~~E. C. ] The family day home shall obtain documentation of additional immunizations for a child who is not exempt from the immunization requirements according to subsection [ ~~D B~~ ] of this section:~~

- ~~1. Once every six months for children under the age of two years; and~~
- ~~2. Once between each child's fourth and sixth birthdays.~~

## **22VAC40-111-100. Physical examinations for children.**

A. The provider shall obtain documentation of a physical examination by or under the direction of a physician prior to a child's attendance or within 30 days after the first day of attendance.

B. The physical examination prior to attendance shall have been conducted [ within ]:

1. ~~[ Within two Two ]~~ months prior to attendance for children six months of age or younger;
2. ~~[ Within three Three ]~~ months prior to attendance for children age seven months through 18 months;
3. ~~[ Within six Six ]~~ months prior to attendance for children age 19 months through 24 months; ~~[ or ]~~
4. ~~[ Within 12 Twelve ]~~ months prior to attendance for children two years of age through five years of age ~~[ ; or ]~~
5. Twenty-four months prior to attendance for children six years of age and above. ]

~~[ C. ]~~ EXCEPTIONS:

1. A new physical examination is not required if a copy of the physical examination is available to the admitting family day home for a child transferring from a facility licensed by the Virginia Department of Social Services, approved by a licensed family day system, voluntarily registered by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or transferring from a Virginia Department of Education-approved child care program ~~[ ; or ]~~

2. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

~~[ 3. For a school age child, a copy of the physical examination required for his entry into a Virginia public kindergarten or elementary school is acceptable documentation. ]~~

**22VAC40-111-110. Form and content of immunization and physical examination reports for children.**

A. The current form approved by the Virginia Department of Health or a physician's form shall be used to record immunizations received and the results of the required physical examination.

B. Each report shall include the date of the physical examination and dates immunizations were received and shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

**22VAC40-111-120. Caregiver records.**

A. The provider shall maintain a record for each caregiver.

B. ~~[ Caregivers' Assistants' and substitute providers' ]~~ records shall contain the following:

1. Name;
2. Address;

3. Verification of age;

4. Job title;

5. Date of employment or volunteering;

6. Name address and telephone number of a person to be notified in an emergency;

7. For ~~[ caregivers assistants and substitute providers who are not the spouse, parent, sibling, or child of the provider and are ]~~ hired after ~~[ insert effective date of this regulation ]~~ June 30, 2010 ], documentation that two or more references as to character and reputation as well as competency were checked before employment. If a reference check is taken over the telephone, documentation shall include:

- a. Dates of contact,
- b. Names of persons contacted,
- c. Firms contacted,
- d. Results, and
- e. Signature of person making call;

8. Background checks as required by 22VAC40-111-130;

~~[ 9. Documentation of the time of arrivals and departures for substitute providers as required by 22VAC40-111-140 D; ]~~

~~[ 10. 9. ]~~ Documentation of tuberculosis screening as required by 22VAC40-111-170 and 22VAC40-111-180 A; and

~~[ 11. 10. ]~~ Documentation of the education and training as required by 22VAC40-111-230.

~~[ C. Substitute providers' records shall also contain documentation of the time of arrivals and departures as required by 22VAC40-111-140 D. ]~~

D. Providers' records shall contain the following:

1. Background checks as required by 22VAC40-111-130;
2. Documentation of tuberculosis screening as required by 22VAC40-111-170 and 22VAC40-111-180 A; and
3. Documentation of the education and training as required by 22VAC40-111-230. ]

**22VAC40-111-130. General qualifications for caregivers.**

Caregivers shall:

1. Be of good character and reputation;
2. Be physically and mentally capable of carrying out assigned responsibilities;
3. Be courteous, respectful, patient, and affectionate toward the children in care;

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4. Be able to speak, read, and write in English as necessary to:

- a. Carry out assigned job responsibilities, and
- b. Communicate effectively with emergency responders; and

5. Meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

## **22VAC40-111-140. Qualifications and requirements for providers and substitute providers.**

A. Providers and substitute providers shall be 18 years of age or older.

B. Providers licensed after and substitute providers employed after [ ~~insert effective date of this regulation~~ June 30, 2010, ] shall have:

1. (i) A high school program completion or the equivalent or (ii) evidence of having met the requirements for admission to an accredited college or university;

2. Three months of programmatic experience;

3. ~~Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, [ or ] the National Safety Council, or [ other designated program approved by the department~~ current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department ];

4. ~~Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or the National Safety Council, or [ other designated program approved by the department~~ current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department ].

EXCEPTION: A provider or substitute provider who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

C. Use of a substitute provider shall be limited to no more than a total of 240 hours per calendar year.

D. A substitute provider shall record and sign the time of arrivals and departures on each day that the substitute provider works.

## **22VAC40-111-150. Qualifications and requirements for assistants.**

A. Assistants shall [ be 16 years of age or older ].

[ ~~1. Be 16 years of age or older;~~

~~2. Have current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council, or other designated program approved by the department; and~~

~~3. Have current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council, or other designated program approved by the department.~~

EXCEPTION: An assistant who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification. ]

B. An assistant under the age of 18 years of age shall always work under the direct supervision of the provider or substitute provider. Direct supervision means being able to hear or see the assistant and children at all times.

C. An assistant 18 years of age or older shall not be left alone with children in care for more than two hours per day.

[ D. An assistant 18 years of age or older who is left alone with children in care shall have:

1. ~~Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department; and~~

~~2. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department.~~

EXCEPTION: An assistant who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification. ]

[ ~~D. E. ] An assistant 18 years of age or older who meets the requirements for a substitute provider may act as the substitute provider when the provider is absent from the home for more than two hours.~~

## **22VAC40-111-160. Attributes for household members.**

[ ~~Members of the family day household 14 years of age and older, including relatives and lodgers~~ Individuals 14 years of age and older who reside in the family day home ] shall:

1. Display behavior that demonstrates emotional stability;

2. Be of good character and reputation; and

3. Meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

**22VAC40-111-170. Initial tuberculosis screening for caregivers and household members.**

A. The provider shall obtain from each caregiver at the time of hire and each adult household member prior to coming into contact with children a current Report of Tuberculosis Screening form published by the Virginia Department of Health or a form consistent with it documenting the absence of tuberculosis in a communicable form.

B. The form shall have been completed within the last 30 days and be signed by a physician, physicians' designee, or an official of the local health department.

**22VAC40-111-180. Subsequent tuberculosis screening for caregivers and household members.**

A. The provider shall obtain for each caregiver and adult household member a current Report of Tuberculosis Screening form, in accordance with the requirements in 22VAC40-111-170, every two years from the date of the first screening or more frequently as recommended by a physician or the local health department.

B. Within 30 days of a caregiver's or adult household member's coming into contact with a known case of infectious tuberculosis, the provider shall obtain for the individual a new Report of Tuberculosis Screening form in accordance with the requirements in 22VAC40-111-170. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

C. The provider shall immediately obtain a new Report of Tuberculosis Screening form in accordance with the requirements in 22VAC40-111-170 for any caregiver or adult household member who develops chronic respiratory symptoms of three weeks duration. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

**22VAC40-111-190. Physical and mental health examinations for caregivers and household members.**

A. The provider or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's or household member's physical or mental health may endanger the health, safety, or well-being of children in care.

B. A caregiver or household member who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may

endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

**22VAC40-111-200. Orientation.**

A. The provider shall orient the substitute provider and assistant by the end of their first week of assuming job responsibilities.

B. The orientation shall cover the following topics:

1. Job responsibilities;
2. Requirements for parental notifications listed in 22VAC40-111-650;
3. Standards in this chapter that relate to the substitute provider's or assistant's responsibilities;
4. Emergency evacuation, relocation, and shelter-in-place procedures;
5. Location of emergency numbers, first aid kit, and emergency supplies;
6. Confidential treatment of information about children in care and their families; and
7. Requirement for reporting suspected child abuse and neglect.

C. Documentation of the orientation shall be signed and dated by the provider and substitute provider or by the provider and assistant.

**22VAC40-111-210. Annual training.**

A. In addition to satisfactory completion of first aid training and CPR training, caregivers shall obtain a minimum of eight clock hours of training annually in areas relevant to their job responsibilities.

1. [~~One year after [insert the effective date of this regulation]~~ Effective July 1, 2011 ], caregivers shall obtain 12 clock hours of training annually.
2. [~~Two years after [insert the effective date of this regulation]~~ Effective July 1, 2012 ], caregivers shall obtain 14 clock hours of training annually.
3. [~~Three years after [insert the effective date of this regulation]~~ Effective July 1, 2013 ], caregivers shall obtain 16 clock hours of training annually.

B. The annual training shall cover areas such as, but not limited to:

1. Physical, intellectual, social, and emotional child development;
2. Behavior management and discipline techniques;

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3. Health and safety in the family day home environment;
4. Art and music activities for children;
5. Child nutrition;
6. Recognition and prevention of child abuse and neglect;  
[ ~~or~~
7. Emergency preparedness as required by 22 VAC 40-111-800 C; or ]
- [ ~~7- 8. ] Recognition and prevention of the spread of communicable diseases.~~

## **22VAC40-111-220. Medication administration training.**

A. To safely perform medication administration practices listed in 22VAC40-111-710 whenever the family day home has agreed to administer prescription medications [ or nonprescription medications ], the administration shall be performed by a caregiver who:

1. Has satisfactorily completed a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or
2. Is licensed by the Commonwealth of Virginia to administer medications.

B. Caregivers required to have the training in subdivision A 1 of this section shall be retrained at three-year intervals.

[ ~~C. To safely perform medication administration practices listed in 22VAC40-111-720 whenever the family day home has agreed to administer nonprescription medications, the administration [ must ] shall be performed by a caregiver who:~~

1. ~~Has satisfactorily completed a training program for this purpose developed by the Department of Social Services; or~~
2. ~~Is licensed by the Commonwealth of Virginia to administer medications.~~

~~D. Caregivers required to have the training specified in subdivision C 1 of this section shall be retrained at three year intervals. ]~~

## **22VAC40-111-230. Documentation of education and training.**

A. The provider shall maintain written documentation of each caregiver's applicable education and programmatic experience, [ applicable ] first aid [ ~~certification~~, and ] CPR certification, orientation, annual training, and applicable medication administration training.

B. Written documentation of annual training shall include:

1. Name of the caregiver;

2. Name of the training session;

3. Date and total hours of the session; and

4. Name of the organization that sponsored the training and the trainer.

## **22VAC40-111-240. Home maintenance.**

A. Areas and furnishings of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include, but not be limited to, [ the presence of poisonous plants; tripping hazards; unstable heavy equipment, furniture, or other items that a child could pull down on himself; ] splintered, cracked [ , ] or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting [ , ] or breakage of any equipment; head entrapment hazards; and protruding nails, bolts, or other components that could entangle or could snag skin.

B. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

## **22VAC40-111-250. Hanging [ , suffocation ], and strangulation hazards.**

A. Hanging items including, but not limited to, window blind or curtain cords, appliance cords, and [ ~~tablecloths~~ ropes ] shall be out of reach of children under five years of age.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children under the age of three years.

C. Items tied across the top or corner of a crib or playpen or toys hung from the sides with strings or cords shall be removed when the child begins to push up on hands and knees or is five months of age, whichever occurs first.

D. Hood or neck drawstrings shall be removed from a child's clothing prior to a child's using climbing play equipment.

[ E. Latex gloves, balloons, and empty plastic bags large enough for a child's head to fit inside shall be inaccessible to children under five years of age. ]

## **22VAC40-111-260. Drowning hazards.**

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

Facilities licensed prior to [ ~~insert the effective date of this regulation~~ July 1, 2010, ] must comply fully with the requirement of this subsection [ ~~within one year of insert the effective date of this regulation~~ by July 1, 2011 ].

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and

2. When not in use during the family day home's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not potty trained.

E. Bathtubs, buckets, and other containers of liquid accessible to children shall be emptied immediately after use.

F. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and

2. Covered with safety covers while children are in care.

#### **22VAC40-111-270. Firearms and ammunition.**

A. Firearms of every type and purpose shall be stored unloaded in a locked container, compartment [ ] or cabinet, and apart from ammunition.

B. Ammunition shall be stored in a locked container, compartment [ ] or cabinet during the family day home's hours of operation.

C. If a key is used to lock the container, compartment [ ] or cabinet, the key shall be inaccessible to children.

#### **22VAC40-111-280. Poisonous materials.**

Potentially poisonous substances, materials and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

#### **22VAC40-111-290. Sharp objects.**

Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

#### **22VAC40-111-300. Body fluids contamination.**

When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

#### **22VAC40-111-310. Machinery.**

Machinery [ in operation ] such as lawnmowers and power tools shall be inaccessible to the children in care.

#### **22VAC40-111-320. Fire safety and shock prevention.**

A. Small electrical appliances such as, but not limited to, curling irons, toasters, blenders, can openers, and irons shall be unplugged [ ~~and placed in an area inaccessible to children~~ ] unless being used by the caregiver or with children under close supervision.

B. Child-resistant protective covers larger than 1-1/4 inches in diameter shall be installed on all unused electrical outlets [ ~~and surge protectors~~ ] accessible to children [ ~~under five years of age~~ ].

C. No electrical device accessible to children shall be placed so that it could be plugged into an electrical outlet while in contact with a water source, such as a sink, tub, shower area, toilet, or swimming or wading pool.

D. Electrical cords and electrical appliances and equipment with cords that are frayed and have exposed wires shall not be used.

E. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

F. Unvented fuel burning heaters shall not be used when children are in care. Unvented fuel burning heaters include, but are not limited to, portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces.

G. Wood burning stoves and fireplaces and associated chimneys shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the provider.

H. All flammable and combustible materials such as, but not limited to, matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans [ ], and alcohol shall be stored in an area inaccessible to children.

I. If there are open and obvious fire hazards, including the absence of fire extinguishers or smoke detectors as required by the Uniform Statewide Building Code and the Statewide Fire Prevention Code, the local fire prevention or building officials, or the State Fire Marshal's office shall be contacted by the department's representative. The provider shall comply with the requirements or recommendations made by the fire prevention or building officials to eliminate fire hazards.

#### **22VAC40-111-330. Telephones.**

A. A landline telephone, excluding a cordless or cell phone, shall be available, operable, and accessible during the family day home's hours of operation. An operable landline telephone is one that does not require electricity to operate.

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Cordless or cell phones may be used in addition to the landline telephone.

B. If the telephone number is unlisted, the provider shall ensure that parents and the department have been given the unlisted number in writing.

C. The provider shall inform the department within 48 hours and parents within 24 hours of a change of the telephone number.

## **22VAC40-111-340. Bathrooms.**

A. The home shall have an indoor bathroom.

B. The bathroom shall be easily accessible to children two years of age and older.

C. The bathroom shall be kept clean and contain a working toilet and sink, toilet tissue, liquid soap, and paper towels.

## **22VAC40-111-350. Water supply.**

A. The home shall have indoor running water.

B. When water is not obtained from a municipal supply, and the house is not connected to a municipal sewer line, the water supply and septic system of the family day home shall be inspected and approved by the local health official or a private laboratory if there are open and obvious symptoms of water or sewage system problems, such as evidence of cloudy, murky, or muddy water, or sewage back up.

C. Family day homes connected to a municipal water supply and sewer line that have open and obvious symptoms of water or sewage system problems shall have the problems corrected within a time frame established by the local public utility department.

D. There shall be an ample supply of hot and cold water available to children and caregivers for hand washing.

E. Hot water at taps available to children shall be maintained within a range of 105°F to 120°F.

## **22VAC40-111-360. Garbage.**

A. Garbage shall be removed on a daily basis from rooms occupied by children and removed from the premises at least once weekly or more often as needed.

B. There shall be a sufficient number of garbage and diaper containers.

C. Children shall not be allowed access to garbage storage areas.

D. Garbage storage areas shall be free of litter, odor, and uncontained trash.

## **22VAC40-111-370. Rodents and insects.**

A. The home shall be kept free from rodents and insect infestation.

B. No home shall maintain any receptacle or pool, whether natural or artificial, containing water in such condition that insects breeding therein may become a menace to public health.

## **22VAC40-111-380. Space.**

The home shall provide each child with adequate space to allow free movement and active play indoors and out.

## **22VAC40-111-390. Individual location.**

A. Each child who is two years of age and older shall have access to an individual location in which to keep clothing, toys, and belongings.

B. Each child who is under the age of two shall have an individual location in which to keep clothing, toys, and belongings that is accessible to the caregiver and parent.

## **22VAC40-111-400. Heating and cooling.**

A. The temperature in all inside areas occupied by children shall be maintained no lower than 65°F.

B. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

## **22VAC40-111-410. Electric fans.**

Portable electric fans shall be securely mounted out of the reach of children and shall be equipped with a mesh guard.

## **22VAC40-111-420. Lighting.**

A. [ ~~All rooms~~ Rooms ], halls, and stairways used by children in care shall be lighted with natural or electric lighting for the children's safety and comfort.

B. Entrance and exit ways shall be unobstructed and be lighted with natural or electric lighting.

## **22VAC40-111-430. Stairs.**

A. Children under two years of age and children over two years of age who are not developmentally ready to climb or descend stairs without supervision shall not have access to stairs.

B. Accordion expansion gates and pressure mounted gates shall not be used as protective barriers at stair openings.

C. Children over the age of two shall not have access to stairs with three or more risers that do not have protective barriers or guardrails on each side.

D. Protective barriers or guardrails on sides of stairs shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

## **22VAC40-111-440. Decks and porches.**

A. Children shall not have access to decks, porches, lofts, or balconies that do not have protective barriers or guardrails.

B. Protective barriers or guardrails shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

**22VAC40-111-450. Doors and windows.**

A. Doors with clear glass panels that reach within 18 inches of the floor shall be clearly marked with decorative objects such as pictures, art work, or decals at the eye level of children in care.

B. Closet [~~door~~ doors with ] latches shall be such that children can open the door from inside the closet.

C. Bathroom [~~door~~ doors with ] locks shall be designed to permit opening of the locked door from the outside with a readily accessible opening device.

D. Windows and doors used for ventilation shall be securely screened.

**22VAC40-111-460. Animals.**

A. Family pets shall not be allowed on any surfaces where food is prepared or served.

B. [ ~~Any A~~ ] pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The provider shall maintain documentation of the current rabies vaccination.

E. Caregivers shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, e.g., not to provoke or startle them or remove their food.

G. Animals that have shown aggressive behavior shall not be kept in the home or on the grounds.

H. Monkeys, ferrets, [~~turtles, iguanas~~ reptiles ], psittacine birds (birds of the parrot family), or [~~venomous and constricting snakes~~ wild or dangerous animals ] shall not be in areas accessible to children during the hours children are in care.

I. Animal litter boxes, toys, food dishes, and water dishes shall [ ~~not be located in areas accessible~~ be inaccessible ] to children.

J. All animal excrement shall be removed promptly, disposed of properly, and [ , if indoors, ] the soiled area cleaned.

**22VAC40-111-470. Smoking and prohibited substances.**

The provider shall ensure that:

1. No person smokes:

a. Indoors while children are in care;

b. In a vehicle when children are transported; or

c. Outdoors in an area occupied by children.

2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

**22VAC40-111-480. Play equipment and materials.**

A. The family day home shall provide a sufficient quantity and variety of play materials and equipment that shall be readily accessible to children.

B. Equipment and materials used by a child shall be appropriate to the age, size, ability, and interest of the child.

C. Materials and equipment available shall include, but not be limited to, arts and crafts materials, texture materials, construction materials, music and sound materials, books, social living equipment, and manipulative equipment.

D. Equipment used by children shall be assembled, maintained, and used in accordance with the manufacturer's instructions.

E. Equipment and materials used by children shall be clean, nontoxic, and free from hazards such as lead paint, sharp edges or points, loose parts, and rust.

F. Toys mouthed by children shall be cleaned and sanitized daily.

**22VAC40-111-490. Indoor slides and climbing equipment.**

The climbing portions of indoor slides and climbing equipment over 18 inches high shall not be over bare floor.

**22VAC40-111-500. Outdoor play area and equipment.**

A. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of hazards such as, but not limited to, streets with speed limits in excess of 25 miles per hour or with heavy traffic, or railroad tracks. Facilities licensed prior to [ ~~insert the effective date of this regulation~~ July 1, 2010, ] must comply fully with the requirement of this subsection [ ~~within one year of~~ ~~insert the effective date of this regulation~~ ] by July 1, 2011 .

B. The highest climbing rung or platform on outdoor climbing equipment or top of a slide shall not exceed six feet for school age children and four feet for preschool children.

C. Stationary outdoor playground equipment shall:

1. Not be installed over concrete, asphalt, or any other hard surface;

2. Be placed at least six feet from the perimeter of other play structures or obstacles; and



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3. Be firmly anchored with ground supports that are covered with materials to protect children from injury.

D. Outdoor play equipment shall meet the following requirements:

1. "S" hooks shall be tightly closed;

2. Swings shall have flexible seats of rubber, canvas, or nylon;

3. Nonflexible-molded seats shall be used only when a caregiver stays within arm's length of any hard-molded swing in use and is positioned to see and protect other children who might walk into the path of the swing;

4. Openings above the ground that are closed on all sides shall be smaller than 3-1/2 inches or larger than nine inches to prevent head entrapment hazards;

5. Ropes, loops [ , ] or any hanging apparatus that might entrap, close, or tighten upon a child shall not be used;

6. Equipment with moving parts that might pinch or crush children's hands or fingers shall not be used unless they have guards or covers; and

7. Equipment with platforms and ramps over 30 inches high shall have been designed with guardrails or barriers to prevent falls.

E. Sandboxes shall be covered when not in use.

F. Trampolines shall not be used during the hours children are in care.

## **22VAC40-111-510. Rest areas.**

A. A child shall be provided with an individual crib, cot, rest mat, or bed for resting or napping.

B. Upper levels of double-deck beds shall not be used.

C. Occupied cribs, cots, rest mats, and beds shall be:

1. At least three feet from any heat-producing appliance; and

2. At least 12 inches from each other.

D. Rest mats that are used must have at least an inch of cushioning.

E. Rest mats shall be cleaned and sanitized on all sides at least weekly and as needed.

## **22VAC40-111-520. Cribs.**

A. Cribs shall be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed.

B. Cribs shall not be used as a play space for infants.

C. Cribs shall:

1. Meet the U.S. Consumer Product Safety Commission standards at the time they were manufactured;

2. Not have been recalled;

3. Have no more than six centimeters or 2-3/8 inches of space between slats;

4. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib;

5. Not have end panel cutouts of a size to cause head entrapment; and

6. Not have mesh sides.

D. [ ~~Double-decker~~ Double-deck ] cribs shall not be used.

E. Crib bumper pads shall not be used.

F. Crib sides shall always be up and the fastenings secured when a child is in the crib, except when the caregiver is giving the child immediate attention.

## **22VAC40-111-530. Linens.**

A. Cribs, cots, rest mats, and beds when being used for sleeping or napping by children other than infants shall have linens consisting of a top cover and a bottom cover or a one-piece covering that is open on three edges.

B. Cribs when being used by infants shall have a tight-fitting bottom cover.

C. Linens shall be assigned for individual use.

D. Linens shall be clean and washed at least weekly or when soiled [ ; ~~crib sheets shall be cleaned and washed daily~~ ].

E. Clean linens shall be used each time a child rests on the bed of a family member.

F. No soft bedding of any kind shall be used under or around infants including, but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys.

G. Children under two years of age shall not use pillows or filled comforters.

H. Pillows, when used for children over two years of age, shall be assigned for individual use and covered with pillowcases.

I. Mattresses, when used, shall be covered with a waterproof material that can be cleaned and sanitized.

## **22VAC40-111-540. Infant and toddler equipment.**

A. Infant carrier seats, swings, strollers, feeding or activity tables, and high chairs shall be used according to the manufacturer's instructions and when occupied by a child, a safety strap shall be used and securely fastened.

B. Infant walkers shall not be used.

**22VAC40-111-550. Play pens.**

A play pen where used shall:

1. Have either mesh netting with mesh holes smaller than 1/4 inch or slats no more than 2-3/8 inches apart;
2. Have a firm floor with a secured, waterproof pad that is not more than one-inch thick;
3. Have the sides up and the fastenings secured when a child is in the play pen, except when the caregiver is giving the child immediate attention;
4. Be cleaned and sanitized each day of use or more often as needed;
5. Not be occupied by more than one child;
6. Not be used for the designated sleeping area;
7. Not have torn mesh sides or vinyl-covered or fabric-covered rails, protruding rivets on the rails, or broken hinges;
8. Not contain any pillows or filled comforters;
9. Not contain large toys and other objects that can serve as a stepping stool for climbing out when a child can pull to a standing position;
10. Not be used by children who weigh 30 pounds or more; and
11. Not be used by children who are 35 inches tall or taller.

**22VAC40-111-560. Supervision.**

~~[ A. Caregivers who are supervising children shall always ensure the children's care, protection, and guidance.~~

~~B. When awake, infants and toddlers shall always be within actual sight and sound of a caregiver.~~

~~C. When awake, preschoolers shall always be within actual sight or sound of a caregiver. If a preschool aged child is only within sound of a caregiver, the caregiver shall monitor the child by in person checks at least every 15 minutes and every five minutes if the child is in the restroom.~~

~~D. Sleeping infants, toddlers, and preschoolers shall be within actual sight or sound of a caregiver.~~

~~E. If a sleeping infant, toddler, or preschooler is only within sound of a caregiver, the caregiver shall monitor the child by observing the child at least every 15 minutes.~~

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
2. Monitoring of each sleeping infant in one of the following ways:

a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;

b. By in-person observation of each sleeping infant at least once every 15 minutes; or

c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors. ]

~~[ F. D. ] Infants shall be protected from older children.~~

~~[ G. School age children shall be supervised in a manner that ensures a caregiver is aware of what the children are doing at all times and can promptly assist, redirect, and intervene in activities when necessary.~~

H. In deciding how closely to supervise school age children, caregivers shall consider the following:

1. Ages of children;

2. Individual differences and abilities;

3. Layout of the house and play area;

4. Neighborhood circumstances or hazards; and

5. Risk of activities in which children are engaged.

~~[ E. ] No child under five years of age or a child older than five who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.~~

**22VAC40-111-570. Determining need for additional caregiver.**

A. The provider shall ensure that a caregiver does not exceed 16 points by using the following point system to determine if an additional caregiver is needed:

1. Children from birth through 15 months of age count as four points each;

2. Children from 16 months through 23 months of age count as three points each;

3. Children from two through four years of age count as two points each;

4. Children from five years through nine years of age count as one point each; and

5. Children who are 10 years of age and older count as zero points.

B. A caregiver's own children and resident children under eight years of age count in point maximums.

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## **22VAC40-111-580. General requirements for programs.**

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall:

1. Talk to the child;
2. Provide needed help, comfort, [ and ] support;
3. Respect personal privacy;
4. Respect differences in cultural, ethnic, and family backgrounds;
5. Encourage decision-making abilities;
6. Promote ways of getting along;
7. Encourage independence and self-direction; and
8. Use consistency in applying expectations.

B. Caregivers shall provide age-appropriate activities for children in care throughout the day that:

1. Are based on the physical, social, emotional, and intellectual needs of the children;
2. Reflect the diversity of enrolled children's families, culture, and ethnic backgrounds; and
3. Enhance the total development of children.

C. Daily age-appropriate activities shall include:

1. Opportunities for alternating periods of indoor active and quiet play depending on the ages of the children;
2. Opportunities for vigorous outdoor play daily, depending upon the weather, the ages, and the health of the children;
3. Opportunities for one or more regularly scheduled rest or nap periods. Children unable to sleep shall be provided time and space for quiet play;
4. Opportunities for children to learn about themselves, others, and the world around them;
5. Opportunities for children to exercise initiative and develop independence in accordance with their ages; and
6. Opportunities for structured and unstructured play time and provider-directed and child-initiated learning activities.

## **22VAC40-111-590. Requirements for sleeping and resting.**

A. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

B. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

C. School age children shall be allowed to nap if needed, but not forced to do so.

## **22VAC40-111-600. Daily activities for infants and toddlers.**

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;
2. Play with a wide variety of safe, age-appropriate toys;
3. Receive individual attention from caregivers including, but not limited to, holding, cuddling, talking, and reading; and
4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 minutes of consecutive time during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair or other confining piece of equipment. The intervening time period between confinements shall be at least one hour.

## **22VAC40-111-610. Television, computers, videos, and video games.**

A. Use of media such as, but not limited to, television, videos, video games, and computers shall be:

1. Limited to not more than a total of two hours per day; and
2. Limited to programs, tapes, websites, and software that are produced for children or are suitable for children.

B. Other activities shall be available to children during television or video viewing.

## **22VAC40-111-620. Care of a child with special needs.**

A. Caregivers shall provide a child with special needs with the care and activities recommended in writing by a physician, psychologist, or other professional who has evaluated or treated the child.

B. The written recommendation shall:

1. Include instructions for any special treatment, diet, or restrictions in activities that are necessary for the health of the child; and
2. Be maintained in the child's record.

C. The provider shall ensure the environment is appropriate for the child based on the plan of care and shall instruct other caregivers in the proper techniques of care.

D. A caregiver shall perform only those procedures and treatments for which he has the necessary training, experience, credentials [ , ] or license to perform.

E. Staffing shall be appropriate and adequate to meet the specific physical and developmental needs of a child with special needs in care.

F. The provider and the parent of the child with special needs shall mutually determine a recommendation for the level of staffing necessary to care for and supervise the child based on the child's chronological and functional age and degree of disability.

G. Within 30 days of the child's enrollment, the provider shall provide the department's representative a written recommendation for the level of staffing necessary to care for and supervise the child.

H. The department shall make the final decision regarding level of staffing or any capacity limitations necessary to care for, supervise, and protect all children in care when a child with special needs is receiving care.

I. The parent, provider, and department's representative shall review the staffing requirements annually.

J. A separate area shall be provided for the purpose of privacy for diapering, dressing, and other personal care procedures for a child above age three with special needs who requires assistance in these activities.

## **22VAC40-111-630. Behavioral guidance.**

A. Caregivers shall use positive methods of discipline. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied, appropriate, and understandable for the child's level of development;
2. Providing children with reasons for limits;
3. Giving positively worded direction;
4. Modeling and redirecting children to acceptable behavior;
5. Helping children to constructively express their feelings and frustration to resolve conflict; and
6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

B. When time out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall be appropriate to the child's developmental level and circumstances;
3. It shall not be used with infants or toddlers;
4. The child shall be in a safe, lighted, well-ventilated place, and within sight and sound of a caregiver; and

5. The child shall not be left alone inside or outside the home while separated from the group.

## **22VAC40-111-640. Forbidden actions.**

The following acts or threats thereof are forbidden:

1. Physical punishment including, but not limited to, striking a child, roughly handling or shaking a child, biting, pinching, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;
2. Enclosure in a small, confined space or any space that the child cannot freely exit himself, however, this does not apply to the use of equipment such as cribs, play pens, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;
3. Punishment by another child;
4. Withholding or forcing of food, water, or rest;
5. Verbal remarks that are demeaning to the child;
6. Punishment for toileting accidents; and
7. Punishment by applying unpleasant or harmful substances.

## **22VAC40-111-650. Parent notifications.**

A. The provider shall provide written notification to the parent within 10 business days after the effective date of the change when there is no longer liability insurance in force on the family day home operation [ § . ]

1. The provider shall obtain the parent's written acknowledgement of the receipt of this notification, and
2. A copy of the parent's written acknowledgement of the receipt of this notification shall be maintained in the child's record.

B. Caregivers shall provide information daily to parents about the child's health, development, behavior, adjustment, or needs.

C. The provider shall give parents prior notice when a substitute provider will be caring for the children.

D. Caregivers shall notify parents when persistent behavioral problems are identified and such notification shall include any disciplinary steps taken in response.

E. The provider shall notify the parent immediately when the child:

1. Has a head injury or any serious injury that requires emergency medical or dental treatment;
2. Has an adverse reaction to medication administered;
3. Has been administered medication incorrectly;
4. Is lost or missing; or

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5. Has died.

F. The provider shall notify a parent the same day whenever first aid is administered to the child.

G. When a child has been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the provider shall notify the parent within 24 hours or the next business day of the home's having been informed, unless forbidden by law, except for life-threatening diseases, which must be reported to parents immediately. The provider shall consult the local health department if there is a question about the communicability of a disease.

H. Parents shall be informed of any changes in the home's emergency preparedness and response plan.

I. Except in emergency evacuation or relocation situations, the provider shall inform the parent and have written permission as required by 22VAC40-111-980 whenever the child will be taken off the premises of the family day home, before such occasion.

J. If an emergency evacuation or relocation is necessary, the parent shall be informed of the child's whereabouts as soon as possible.

## **22VAC40-111-660. Swimming and wading activities.**

A. The level of supervision by caregivers required in 22VAC40-111-560 and the point system as outlined in 22VAC40-111-570 shall be maintained while the children are participating in swimming or wading activities.

B. The family day home shall [ annually ] obtain:

1. Written permission from the parent of each child who participates in swimming or wading activities, and

2. A written statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

C. Caregivers shall have a system for accounting for all children in the water.

D. Outdoor swimming activities shall occur only during daylight hours.

E. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and

2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times. The certification shall be obtained from an organization

such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

## **22VAC40-111-670. Exclusion of sick children.**

A. Unless otherwise approved by a child's health care professional, a child shall be excluded from the family day home if he has:

1. Both fever and behavior change. A fever means oral temperature over 101°F or armpit temperature over 100°F;

2. Diarrhea (more watery, less formed, more frequent stools not associated with a diet change or medication). Children in diapers who develop diarrhea shall be excluded, and children who have learned to use the toilet, but cannot make it to the toilet in time, shall also be excluded;

3. Recurrent vomiting (vomiting two or more times in 24 hours); or

4. Symptoms of a communicable disease listed in the Virginia Department of Health's current communicable disease chart.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. The parents or designated emergency contact shall be contacted immediately so that arrangements can be made to remove the child from the home as soon as possible; and

2. The child shall remain in a quiet, designated area and the caregiver shall respond immediately to the child until the child leaves the home.

## **22VAC40-111-680. Hand washing.**

A. Caregivers shall wash their hands with liquid soap and warm running water:

1. When their hands are dirty;

2. After toileting;

3. Before preparing and serving food;

4. Before feeding or helping children with feeding;

5. After contact with any body fluids;

6. After handling or caring for animals;

7. After handling raw eggs or meat; and

8. After diapering a child or assisting a child with toileting.

B. Caregivers shall ensure that [ ~~children wash their hands~~ children's hands are washed ] with liquid soap and warm running water:

1. When their hands are dirty;

2. Before eating;

3. After toileting [ or diapering ];

4. After handling or caring for animals; and

5. After contact with any body fluids.

**22VAC40-111-690. Diapering and toileting.**

A. A child shall not be left unattended on a changing table during diapering.

B. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.

C. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth, if the child is allergic to disposable wipes.

D. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;

2. Nonabsorbent and washable; and

3. Cleaned and sanitized after each use.

E. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

F. When cloth diapers are used, a separate leak-proof storage system as specified in subsection E of this section shall be used.

G. Children five years of age and older shall be permitted privacy when toileting.

H. Caregivers shall respond promptly to a child's request for toileting assistance.

I. The provider shall consult with the parent before toilet training is initiated.

J. Toilet training shall be relaxed and pressure free.

K. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

L. Toilet chairs, when used, shall be emptied promptly, cleaned and sanitized after each use.

**22VAC40-111-700. General requirements for medication administration.**

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies; and

2. Only with written authorization from the parent.

B. The parent's written authorization for medication shall expire or be renewed after 10 [ ~~work~~ working ] days.

EXCEPTION: Long-term prescription and nonprescription drug use may be allowed with written authorization from the child's physician and parent.

C. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days [ ~~will be disposed of by the family day home by either dissolving the medication down the sink or flushing it down the toilet~~ shall be taken to a pharmacy for proper disposal ].

**22VAC40-111-710. Prescription medication.**

The family day home may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements in 22VAC40-111-220 A;

2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

**22VAC40-111-720. Nonprescription medication.**

A. The family day home may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older who meets the requirements in 22VAC40-111-220 [ ~~C~~ A ];

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

B. Nonprescription medication shall not be used beyond the expiration date of the product.

**22VAC40-111-730. Storage of medication.**

A. Medications for children in care shall be stored separately from medications for household members and caregivers.

B. When needed, medication shall be refrigerated.

C. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

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D. Medication, except for those prescriptions designated otherwise by a written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children.

E. If a key is used, the key shall [ ~~not be accessible~~ be inaccessible ] to the children.

## **22VAC40-111-740. Medication records.**

The provider shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication administration error.

## **22VAC40-111-750. [ ~~Sunscreen, diaper ointment, and insect repellent~~ Topical skin products ].**

A. When [ topical skin products such as ] sunscreen, diaper ointment [ and lotion, oral teething medicine, ] and insect repellent are used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained [ at least annually ];
2. The product shall be in the original container [ and, if provided by the parent, ] labeled with the child's name;
3. Manufacturer's instructions for application shall be followed; and
4. Parents shall be informed immediately of any adverse reaction.

B. The product does not need to be kept locked, but shall be inaccessible to children.

C. Caregivers without medication administration training may apply the product unless it is a prescription medication, in which case the storing and administration must meet prescription medication requirements of this chapter.

D. The product shall not be used beyond the expiration date of the product.

[ E. Sunscreen shall have a minimum sunburn protection factor (SPF) of 15. ]

## **22VAC40-111-760. First aid and emergency medical supplies.**

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation and wherever children are in care:

1. A first aid kit that contains at a minimum:
  - a. Scissors;
  - b. Tweezers;
  - c. Gauze pads;
  - d. Adhesive tape;
  - e. Adhesive bandages, assorted sizes;
  - f. Antiseptic cleaning solution or pads;
  - g. Digital thermometer;
  - h. Triangular bandages;
  - i. Single use gloves such as surgical or examination gloves;
  - j. [ ~~Activated~~ In homes located more than one hour's travel time from a healthcare facility, activated ] charcoal preparation (to be used only on the direction of a physician or the home's local poison control center); and
  - k. First aid instructional manual.
2. An ice pack or cooling agent.

B. The first aid kit shall be readily accessible to caregivers and inaccessible to children [ . ]

## **22VAC40-111-770. Emergency flashlights and radios.**

A working battery-operated flashlight, a working portable battery-operated weather band radio, and extra batteries shall be kept in a designated area and be available to caregivers at all times.

## **22VAC40-111-780. Emergency information.**

A. The emergency contact information listed in 22VAC40-111-60 B 2 and the parent's written authorization for emergency medical care as required by 22VAC40-111-60 B 8 shall be made available to a physician, hospital, or emergency responders in the event of a child's illness or injury.

B. Annually, the provider shall:

1. Review with the parent the emergency contact information required in 22VAC40-111-60 B 2 to ensure the information is correct, and
2. Obtain the parent's signed acknowledgment of the review.

**22VAC40-111-790. Posted telephone numbers.**

The following telephone numbers shall be posted in a visible area close to the telephone:

1. A 911 or local dial number for police, fire, and emergency medical responders;
2. The responsible person for emergency backup care as required in 22VAC40-111-800 A 3; and
3. The regional poison control center.

**22VAC40-111-800. Emergency preparedness and response plan.**

A. The family day home shall have a written emergency preparedness and response plan that:

1. Includes emergency evacuation, emergency relocation, and shelter-in-place procedures;
2. Addresses the most likely to occur scenarios, including but not limited to [ ~~natural disasters, chemical spills, and an intruder~~ fire, severe storms, flooding, tornadoes, and loss of utilities ]; and
3. Includes provisions for a responsible person who is 18 years of age or older and is able to arrive [ at the family day home ] within 10 minutes for emergency backup care until the children can be picked up by their parents.

B. The provider shall review the emergency plan at least annually and update the plan as needed. The provider shall document in writing each review and update to the emergency plan.

C. The provider shall ensure that each caregiver receives training regarding the emergency evacuation, emergency relocation, and shelter-in-place procedures by the end of [ ~~their~~ his ] first week of assuming job responsibilities, on an annual basis, and at the time of each plan update.

**22VAC40-111-810. Evacuation and relocation procedures.**

Evacuation procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated primary and secondary routes out of the building;
3. Designated assembly point away from the building;
4. Designated relocation [ ~~sites~~ site ];
5. Methods to ensure all children are evacuated from the building and, if necessary, moved to a relocation site;
6. Methods to account for all children at the assembly point and relocation site;
7. Methods to ensure essential documents, including emergency contact information, medications, and supplies are taken to the assembly point and relocation site;

8. Method of communication with parents and emergency responders after the evacuation; and

9. Method of communication with parents after the relocation.

**22VAC40-111-820. Shelter-in-place procedures.**

Shelter-in-place procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated safe [ ~~locations~~ location ] within the home;
3. Designated primary and secondary routes to the safe [ ~~locations~~ location ];
4. Methods to ensure all children are moved to the safe [ ~~locations~~ location ];
5. Methods to account for all children at the safe location;
6. Methods to ensure essential documents, including emergency contact information, and supplies are taken to the safe location; and
7. Method of communication with parents and emergency responders.

**22VAC40-111-830. Emergency response drills.**

A. The emergency evacuation procedures shall be practiced monthly with all caregivers and children in care during all shifts that children are in care.

B. Shelter-in-place procedures shall be practiced a minimum of twice per year.

C. Documentation shall be maintained of emergency evacuation and shelter-in-place drills that [ ~~include~~ includes ]:

- ~~1. Date of the event;~~
- ~~2. Number and ages of children involved;~~
- ~~3. Weather conditions; and~~
- ~~4. Beginning and ending time of event;~~
1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of caregivers participating;
5. The number of children participating;
6. Any special conditions simulated;
7. The time it took to complete the drill;
8. Problems encountered, if any; and
9. For emergency evacuation drills only, weather conditions. ]



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D. Records of emergency evacuation and shelter-in-place drills shall be maintained for one year.

## **22VAC40-111-840. Injury records.**

A. The provider shall record in the child's record an injury or accident sustained by a child while at the family day home that requires first aid or emergency medical or dental treatment.

B. The information recorded shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Caregiver present and action taken;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Caregiver and parent signatures or two caregiver signatures; and
8. Documentation on how the parent was notified.

## **22VAC40-111-850. Reports to department.**

A. The provider shall report to the department within 24 hours of the circumstances surrounding the following incidents:

1. Lost or missing child when local authorities have been contacted for help;
2. Serious injury to a child while under the family day home's supervision; and
3. Death of a child while under the family day home's supervision.

B. A written report shall be completed and submitted to the department within five working days of the date the incident occurred.

## **22VAC40-111-860. Reports of suspected child abuse or neglect and disease outbreaks.**

A. A caregiver shall immediately call the local department of social services or call the toll free number of the Child Abuse and Neglect Hotline (1-800-552-7096/TDD) whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall immediately make or cause to be made a report of an outbreak of disease as defined by the Virginia Board of Health. Such report shall be made by rapid means to the local health department or to the Commissioner of the Virginia Department of Health.

## **22VAC40-111-870. General requirements for meals and snacks.**

A. Meals and snacks shall be served in accordance with the times children are in care, which include:

1. [ ~~Between the hours of 6 a.m. and 7 p.m., breakfast, lunch, and snacks~~ For family day homes operating less than four consecutive hours at least one snack ] shall be served.
2. [ ~~Between the hours of 2 p.m. and 10 p.m., an afternoon snack, supper and a bed time~~ For family day homes operating four to seven consecutive hours at least one meal and one ] snack shall be served.
3. [ ~~Between the hours of 7 p.m. and 6 a.m., a bed time snack and breakfast~~ For family day homes operating seven to 12 consecutive hours at least one meal and two snacks or two meals and one snack ] shall be served.
- [ 4. For family day homes operating 12 to 16 consecutive hours at least two meals and two snacks or three meals and one snack shall be served. ]

B. A family day home shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The family day home shall schedule snacks or meals so there is a period of at least 1-1/2 hours, but no more than three hours, between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Children shall be served small-sized portions.

E. Food shall be prepared, stored, [ served, ] and transported in a clean and sanitary manner.

F. Leftover food shall be discarded from individual plates following a meal or snack.

G. Tables and high chair trays shall be cleaned after each use, but at least daily.

## **22VAC40-111-880. Meals and snacks provided by family day home.**

When family day homes provide meals or snacks, the following shall apply:

1. Family day homes shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture [ ~~(UDSA)~~ (USDA) ].
2. Children shall be allowed second helpings of food listed in the child care food program meal patterns.

## **22VAC40-111-890. Meals and snacks brought from child's home.**

When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The family day home shall have extra food or shall have provisions to obtain food to serve to a child so the child can have an appropriate snack or meal as required in 22VAC40-111-880 if the child forgets to bring food from home or brings an inadequate meal or snack; and
3. Unused portions of food shall be discarded by the end of the day or returned to the parent.

## **22VAC40-111-900. Preventing choking.**

A. To assist in preventing choking, food that is hard, round, small, thick and sticky, or smooth and slippery such as whole hot dogs sliced into rounds, nuts, seeds, raisins, uncut grapes, uncut raw carrots, peanuts, chunks of peanut butter, hard candy, and popcorn shall not be served to children under four years of age, unless the food is prepared before being served in a manner that will reduce the risk of choking, i.e., hot dogs cut lengthwise, grapes cut in small pieces, and carrots cooked or cut lengthwise.

B. Children shall not be allowed to eat or drink while walking, running, playing, lying down, or riding in vehicles.

## **22VAC40-111-910. Drinking water and fluids.**

A. Water shall be available for drinking and shall be offered on a regular basis to all children in care.

B. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids.

C. Clean individual drinking cups shall be provided daily. Children shall not be allowed to share common drinking cups.

## **22VAC40-111-920. Menus.**

When meals or snacks are provided by the family day home, the menu for the current one-week period shall:

1. Be dated;
2. Be given to parents or posted or placed in an area accessible to parents;
3. List any substituted food; and
4. Be kept on file one week at the family day home.

## **22VAC40-111-930. Eating utensils and dishes.**

A. Eating utensils shall be appropriate in size for children to handle.

B. Chipped or cracked dishes shall not be used.

C. Eating utensils and dishes shall be properly cleaned by prerinsing, washing, and air drying [ . ] or using a dishwasher.

D. Eating utensils and dishes shall be stored in a clean dry place, and protected from contamination.

E. If disposable eating utensils and dishes are used, they shall be sturdy enough to prevent spillage or other health and safety hazards.

F. Disposable utensils and dishes shall be used once and discarded.

## **22VAC40-111-940. Food storage.**

A. Temperatures shall be maintained at or below 40°F in refrigerator compartments and at or below 0°F in the freezer compartments.

B. The provider shall have an operable thermometer available to monitor refrigerator and freezer compartment temperatures.

C. All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.

[ ~~D. Leftover food shall be discarded from individual plates following a meal or snack. ]~~

## **22VAC40-111-950. Milk.**

A. All milk and milk products shall be pasteurized.

B. Powdered milk shall be used only for cooking.

## **22VAC40-111-960. Feeding infants.**

A. Infants shall be fed on demand unless the parent provides other written instructions.

B. Infants who cannot hold their own bottles shall be picked up and held for bottle feeding. Bottles shall not be propped.

C. High chairs, infant carrier seats, or feeding tables with safety waist and crotch straps fastened according to the manufacturer's instructions shall be used for children under 12 months of age who are not held while being fed.

D. Infant formula shall be prepared according to the manufacturer's or physician's instructions.

E. Bottles shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care.

F. Refrigerated bottles of prepared formula and breast milk shall be discarded after 48 hours if not used.

G. Bottles shall not be heated in a microwave oven.

H. To avoid burns, heated formula and baby food shall be stirred or shaken and tested for temperature before being served to children.

I. A child's mother shall be granted access to a private area of the family day home to facilitate breast feeding.

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## J. Solid foods shall:

1. Not be fed to infants less than four months of age without parental consent; and
2. Be fed with a spoon, with the exception of finger foods.

## K. Baby food shall be served from a dish and not from the container.

## L. Baby food remaining in:

1. A serving dish shall be discarded;
2. Opened containers, from which a portion has been removed, shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care; and
3. Opened containers stored in the refrigerator shall be discarded if not consumed within 24 hours of storage.

## **22VAC40-111-970. Special feeding needs.**

A. The consistency of food provided for a child with special needs shall be appropriate to any special feeding needs of the child.

B. Necessary and adaptive feeding equipment and feeding techniques shall be used for a child with special feeding needs.

## **22VAC40-111-980. Written permission for transportation and field trips.**

A. General written permission shall be obtained from the parent of each child for the provider to take the child off the premises of the family day home. The general written permission shall be on a form that lists regularly scheduled trips (e.g., library, store, playground) and the driver, if the child is to be transported.

B. Special written permission shall be obtained from the parent of each child for the provider to take the child on special field trips (those not regularly scheduled). The written special permission shall specify destination, duration of trip, and driver, if the child is to be transported.

## **22VAC40-111-990. Requirements for drivers.**

A. Drivers must be 18 years of age or older.

B. The provider shall ensure that during transportation of children the driver has:

1. A valid driver's license;
2. The name, address [ . ] and telephone number of the family day home;
3. A copy of the parent's written permission to transport the child;
4. A copy of each child's emergency contact information as required in 22VAC40-111-60 B 2;

5. Emergency supplies as required in 22VAC40-111-760; and

6. A mechanism for making telephone calls to emergency responders and parents (e.g., change, calling card, cellular phone).

## **22VAC40-111-1000. Requirements for vehicles.**

The provider shall ensure that the vehicle used for transportation:

1. Meets the safety standards set by the Virginia Department of Motor Vehicles;
2. Is kept in satisfactory condition to assure the safety of children;
3. Is licensed and insured according to state law;
4. Was manufactured for the purpose of transporting people seated in an enclosed area; and
5. Has seats that are attached to the floor.

## **22VAC40-111-1010. Requirements for transportation.**

The provider shall ensure that during transportation of children:

1. Each child is in an individual car seat or individual and appropriate restraint in accordance with Virginia law;
2. Each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. No child is left unattended inside or outside a vehicle; and
5. Each child boards and leaves the vehicle from the curb side of the street.

## **22VAC40-111-1020. Nighttime care.**

A. For nighttime care during which a child sleeps more than two hours, the following is required:

1. A child shall have a rest area that meets the requirements of 22VAC40-111-510;
2. An infant shall have an individual crib that meets the requirements of 22VAC40-111-520; and
3. Linens shall be provided that meet the requirements in 22VAC40-111-530.

B. For children in nighttime care, quiet activities and experiences shall be available immediately before bedtime.

C. Providers shall establish a bedtime schedule for a child in consultation with the child's parent.

D. Separate sleeping and dressing areas shall be provided for children of the opposite sex over six years of age.

E. Each child shall have a toothbrush, and a comb or hair brush assigned for individual use.

F. Each child nine months of age or older shall have flame-resistant or snug-fitting sleepwear.

G. Bath towels and washcloths, when used, shall be assigned for individual use and laundered as needed, but at least weekly.

H. A child shall have a routine that encourages good personal hygiene practices including bathing (if needed) and teeth brushing.

I. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

J. A baby monitor shall be used if the caregiver is not sleeping in the room with the child or in a room adjacent to the room where the child is sleeping.

VA.R. Doc. No. R03-186; Filed November 9, 2009, 4:03 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 101 (2009)

### **DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO A SEVERE WEATHER EVENT THROUGHOUT THE COMMONWEALTH**

On November 11, 2009 I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on severe weather from prolonged periods of wet and windy weather from the remnants of Tropical Storm Ida and a coastal Nor'easter causing widespread power outages, flooding and transportation difficulties throughout the State.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued November 11, 2009, wherein I proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, to alleviate any conditions resulting from significant storm events and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency

Operations Plan, as amended, along with other appropriate state agency plans.

B. The activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of potential affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment

and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, in performing these missions shall be paid from state funds and/or federal funds. In addition, up to \$75,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

K. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs) and Citizen Emergency Response Teams (CERTS), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

L. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as any State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the

member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs and the Virginia Defense Force in performing these missions shall be paid from state funds.

The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia in performing these missions shall be paid from state funds.

This Executive Order shall be effective November 11, 2009 and shall remain in full force and effect until June 30, 2010 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 13th Day of November, 2009.

/s/ Timothy M. Kaine  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

November 16, 2009

Administrative Letter 2009-11

To: All Licensed Title Agents, Title Insurance Companies, and Other Interested Parties

Re: Remittance of Title Premium and Issuance of Title Policy

It has come to the Bureau of Insurance's attention that many title insurance agents are failing to remit premium to insurers and/or to issue corresponding lenders' and owners' title policies to policyholders in a timely manner. We have identified instances where agents have held title premium and failed to issue policies in excess of two years. The purpose of this letter is to remind all licensed title agents of the importance of remitting premium and issuing title policies in a timely manner.

Section 38.2-1813 of the Code of Virginia sets forth the requirements agents must adhere to when handling premiums. Specifically, the law states that funds must be paid to the insurer or other party entitled to payment in the "ordinary course of business." The Bureau considers the ordinary course of business to be equivalent to the length of time specified in the agency contract for remitting premium to the insurer. For example, if the contract provides that the agent must remit premium to the insurer within 30 days of receipt, this would be considered the ordinary course of business, and any payment that occurs after this time period would be a violation of the statute. If the agent's contract is silent on the matter, then the Bureau would expect the agent to remit the funds to the insurer as soon as is reasonably possible. If an agent holds funds for 30 days or more and is unable to provide a valid explanation for why the funds have not been remitted, this could be considered a violation.

The Bureau also expects agents to issue title insurance policies in a timely manner. This should typically occur at the same time the agent remits the premium to the insurer. Issuing policies in a timely manner ensures all requirements outlined in the title commitment have been met and affords protection to the consumer and lender who have paid premium and are entitled to receive a policy shortly after settlement.

The Bureau will continue to review and investigate any complaints it receives regarding an agent's failure to remit premium and issue policies in accordance with their respective contractual agreements, and it fully expects insurers to notify it when they become aware of any potential violations.

Access to the related Virginia insurance laws, regulations, administrative letters and the Consumer Real Estate

Settlement Protection Act statutes may be reviewed at [www.scc.virginia.gov/division/boi/webpages/boiadministrativeltr.htm](http://www.scc.virginia.gov/division/boi/webpages/boiadministrativeltr.htm).

Each organization to whom this letter has been sent should ensure that it is directed to the proper persons, including appointed representatives.

Any questions related to this administrative letter may be directed to: Virginia Bureau of Insurance, Steven Shipman, CRESPA Investigations Section, P.O. Box 1157, Richmond, VA 23218, (804) 371-9465.

/s/ Alfred W. Gross

Commissioner of Insurance

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load Study for Pettit Branch, Accomack County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Pettit Branch, located in Accomack County, on Monday, December 14, 2009.

The meeting will start at 7 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomack, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Pettit Branch (VAT-D02R-01) was identified in Virginia's 1998 303(d) TMDL priority list and report as impaired for not supporting the aquatic life use. The impairment is based on biological monitoring data of the stream's benthic community. Virginia agencies are working to identify the stressors that are affecting the benthic communities in this creek.

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 and subsequent water quality assessment reports.

During the study, DEQ will develop a Total Maximum Daily Load (TMDL) for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from December 14, 2009, to January 14, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).



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## General Notices/Errata

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\* Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### Notice to Restore Water Quality for Upper Rappahannock River

Public meeting: Tuesday, December 15, 2009, at the Richmond County YMCA, 13207 History Land Highway, Warsaw, VA 22572. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the completion of a study to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings on a study to restore water quality for shellfish growing areas along the Upper Rappahannock River near Tappahannock, Piscataway Creek, Jugs Creek, Little Carter Creek, Garret's Marina, and Mark Haven Beach located in Essex, Richmond, and portions of Northumberland and Westmoreland counties.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of these waterbodies and their tributaries. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	Counties Within Watershed	Area (miles <sup>2</sup> )	Impairment
Upper Rappahannock River, Piscataway Creek, Little Carter Creek, Jugs Creek	Essex, Richmond, Westmoreland, Northumberland	9.73	Shellfish Use (Fecal Coliform) bacteria
Mark Haven Beach	Essex	0.014	
Garret's Marina	Essex	0.029	

The study reports the status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, shellfish area condemnations, and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. The draft report for the study will be available on December 15, 2009, at <https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jsp>.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on January 14, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

### Total Maximum Daily Load Studies in Ware Creek, Taskinas Creek, and Skimino Creek; New Kent, James City, and York Counties

The Virginia Department of Environmental Quality will host a public meeting on water quality studies for Ware Creek (New Kent and James City counties), Taskinas Creek (James City County), and Skimino Creek (James City and York counties) on Monday, December 7, 2009.

The meeting will start at 7 p.m. in the James City County Library, 7770 Croaker Road, Cosby Room, Williamsburg, Virginia. The purpose of the meeting is to provide information and discuss the studies with interested local community members and local government.

Ware Creek (VAT-F26E-19) and Taskinas Creek (VAT-F26E-18) were identified in Virginia's 1998 § 303(d) TMDL priority list and report as impaired for not supporting the shellfishing use. The impairments are based on the shellfish harvesting condemnation of Growing Area 50-073 imposed by the Virginia Department of Health-Division of Shellfish Sanitation. Skimino Creek (VAT-F26E-17) was identified in Virginia's 1998 § 303(d) TMDL priority list and report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 50-087 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

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 and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load (TMDL) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from December 7, 2009, to January 7, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of

Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

\* Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

**Total Maximum Daily Load Study for Mattawoman Creek, Northampton County**

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Mattawoman Creek, located in Northampton County, on Monday, December 14, 2009.

The meeting will start at 7 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Mattawoman Creek (VAT-C14E-13) was identified in Virginia's 1998 § 303(d) TMDL priority list and report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 86 imposed by the Virginia Department of Health, Division of Shellfish Sanitation.

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 and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from December 14, 2009, to January 14, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

\* Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

**Notice to Restore Water Quality for Mill Creek and Courtney Millpond**

Public meeting: Wednesday, December 16, 2009, at the Northumberland Public Library located at 7204 Northumberland Hwy., Heathsville, VA 23473. An afternoon public meeting will be held from 12:30 p.m. to 2:30 p.m. and the evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for an impaired creek in Northumberland County, a public comment opportunity, and two public meetings.

Meeting description: First public meetings on a study to restore water quality of the recreation/swimming use of nontidal Mill Creek and Courtney Millpond, which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in Mill Creek. This impairment spans approximately 4 stream miles in Northumberland County. This stream is impaired for failure to meet the recreational (swimming) designated use because of bacterial water quality standard violations.

Stream	County	Impairment Length (mi)	Impairment
Mill Creek	Northumberland	3.94	Recreational (swimming) Use

The study reports the current status of the creek via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends Total Maximum Daily Loads (TMDLs) for the impaired creek. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on January 19, 2010. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [mjsmigo@deq.virginia.gov](mailto:mjsmigo@deq.virginia.gov).

**DEPARTMENT OF FORENSIC SCIENCE**

**Approved Breath Alcohol Testing Devices**

This list of approved breath alcohol testing devices replaces the list published in the Virginia Register (26:4) October 26, 2009.

Statutory Authority: §§ 9.1-1101, 18.2-267 and 18.2-268.9 of the Code of Virginia.

# General Notices/Errata

In accordance with 6VAC40-20-90 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following breath test devices are approved for use in conducting breath tests:

1. The Intox EC/IR II with the Virginia test protocol, manufactured by Intoximeters, Inc., St. Louis, Missouri, utilizing an external printer.
2. The Intoxilyzer, Model 5000, CD/FG5 [previously listed as the 768VA], equipped with the Virginia test protocol, simulator monitor, and external printer, manufactured by CMI, Inc., Owensboro, Kentucky.

In accordance with 6VAC40-20-100 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, for evidential breath test devices, mouthpieces that are compatible with the specific testing device are approved as supplies for use in conducting breath tests on approved breath test devices.

In accordance with 6VAC40-20-180 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following devices are approved for use as preliminary breath test devices:

1. The ALCO-SENSOR, ALCO-SENSOR II, ALCOSENSOR III, ALCO-SENSOR IV, and ALCO-SENSOR FST manufactured by Intoximeters, Inc., St. Louis, Missouri.
2. The CMI SD 2 and CMI SD 5, manufactured by Lyon Laboratories, Barry, United Kingdom.
3. The INTOXILYZER 400PA, manufactured by CMI, Inc., Owensboro, Kentucky.
4. The LIFELOC PBA 3000\*, LIFELOC FC10, LIFELOC FC10Plus and LIFELOC FC20, manufactured by Lifeloc Inc., Wheat Ridge, Colorado. \*When used in the direct sensing mode only.
5. The ALCOTEST 6510 and ALCOTEST 6810 manufactured by Draeger Safety Diagnostics, Inc., Durango, Colorado.

## DEPARTMENT OF HEALTH

### Virginia Physician Loan Repayment Program

The final regulation for implementing the Virginia Physician Loan Repayment Program (12VAC5-508) is in review in the Office of the Governor. This regulation establishes the eligibility criteria for the Virginia Physician Loan Repayment Program for primary care physicians and psychiatrists. It explains that recipients must practice in a designated medically underserved area as identified by the Board of Health, or in a federal Health Professional Shortage Area (HPSA) in Virginia designated by the Health Resources and Services Administration, or at an approved state or local

institution. It also sets penalties for a recipient's failure to fulfill the practice requirements of the program.

This regulation is intended to increase access to health care in medically underserved areas of the Commonwealth. The goal is to reduce the number of medical shortage areas and decrease health disparities in the Commonwealth.

The regulation was last published in the Register of Regulations on December 31, 2001, Volume 18, Issue 8. The only differences between what was published then and this notice are technical and designed to ensure consistency of language.

The 2000 General Assembly called for the establishment of the Virginia Physician Loan Repayment Program and for emergency regulations to implement the program. The Emergency regulation expired on January 22, 2002. Work on the proposed replacement regulation lapsed in the summer of 2002 and resumed in 2006. The Board of Health approved the adoption of a final regulation in October 2006. The Secretary of Health and Human Resources approved the regulation on April 3, 2007. While the regulation was undergoing review by the Governor's Office, text changes were recommended by the Office of Attorney General (OAG). In July 2007, the regulations were withdrawn to incorporate text changes requested by the OAG. In April 2009, the Board of Health adopted the final regulations with the technical changes recommended by the OAG; however, the regulation is not yet effective.

All changes are technical, not substantive in nature. The regulation is printed at the end of this general notice. It is being published again because of the eight year time lapse.

The technical changes are noted in the following table:

Section Number	Requirement at proposed stage	What has changed	Rationale for change
10	No inclusion of "accredited residency."	Inclusion of "accredited residency."	To delineate the criteria for eligibility.
10	N/A	Deletion of "medically underserved area."	Language was redundant.
10	N/A	Deletion of "or an eligible medical student" under the "participant/loan repayment" definition.	Technical change to ensure consistency.
10	N/A	Deletion of "Mental Health, Mental Retardation, and Substance Abuse" under the "State or local institution" definition.	Technical change to ensure consistency.

## General Notices/Errata

15	N/A	This section was added and became the "Authority for regulations" section.	Technical change to ensure consistency.	110-160	N/A	Starting with 110 the section became "Release of information" and ended with 160 being renamed as "Compensation during service."	Technical changes to ensure consistency.
20	N/A	This section became the "General information and purpose of chapter" section.	Technical change to ensure consistency.	170	N/A	This section became "tax implications" and "seek the advice of" was omitted from the section.	Technical changes to ensure consistency.
30	N/A	This section became the "Compliance with the Administrative Process Act" section. "Article 2" was deleted.	Technical change to ensure consistency.				
40	N/A	This section became the "Administration" section.	Technical change to ensure consistency.	180	N/A	This section became "monitoring during service" and "e.g., the," "etc." And "participants" were deleted from the section.	Technical changes to ensure consistency.
50	N/A	This section became the "Eligible applicants" section. "Or a medical student pursuing a degree as M.D. or D.O". was deleted. Letters "A,B,C..." delineating the requirements were replaced with numbers.	Technical change to ensure consistency.	190-200	N/A	Starting with 190 the section became "Change of practice site" and ended with 200 being renamed as "Terms of Service."	Technical change to ensure consistency.
				210	N/A	This section became "conditions of practice" and the language or both were omitted from the section.	Technical change to ensure consistency.
60	N/A	This section became "Application requirements and restrictions."	Technical change to ensure consistency.	220	N/A	This section became "Loan repayment contract."	Technical change to ensure consistency.
70	N/A	This section became "Selection criteria" and letters "A,B,C..." delineating the requirements was replaced with numbers. "Etc" was deleted from (5).	Technical change to ensure consistency.	230	N/A	This section became "breach of contract" and the language "or misrepresentation of information" was omitted. "Document" was omitted in favor of "Documents."	Technical change to ensure consistency.
80	N/A	This section became "loan repayment amount."	Technical change to ensure consistency.	240	N/A	This section became "Collection procedures" and the language "withholding" was omitted in favor of "withheld."	Technical change to ensure consistency.
90	N/A	This section became "loans qualifying for repayment" and letters "A,B,C..." delineating the requirements were replaced with numbers.	Technical change to ensure consistency.	250	N/A	This section became "waiver and suspension or both."	Technical change to ensure consistency.
100	N/A	This section became "payment restrictions"	Technical changes to ensure consistency.	260	N/A	This section became "Cash reimbursement and penalty" and the	Technical change to ensure consistency.

# General Notices/Errata

		language "Article 4" was deleted in favor of "Part IV."	
270	N/A	This section became "reporting requirements". The letters and numbers were used for bulleting were transcribed with one another.	Technical change to ensure consistency.

The most recent technical changes recommended by the OAG (2007) are shown below:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Article 1 - Definitions and General Information			Inclusion of "Accredited residency" definition.
	12VAC5-508-15		Authority for Regulations.
All			Several technical changes have been made within the document to ensure consistency of wording.

Please direct any questions, comments or concerns regarding these regulations by December 21, 2009, to Aileen Harris, M.S.A., Rural Health and Workforce Programs Manager, Virginia Department of Health, Office of Minority Health and Public Health Policy, P.O. Box 2448, Richmond, VA 23218-2448, telephone (804) 864-7436, or email [aileen.harris@vdh.virginia.gov](mailto:aileen.harris@vdh.virginia.gov).

The full text of the final regulation is available at: <http://www.vdh.virginia.gov/healthpolicy/policyanalysis/documents/lrp-general-notice.pdf>.

To obtain a paper copy, please contact Aileen Harris at the above address.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on November 13, 2009. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

#### Director's Order Number Seventy-Nine (09)

Virginia's Instant Game Lottery 1142 "\$200,000 Gold Rush" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty (09)

Virginia's Instant Game Lottery 1149 "Classic Cash" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty-One (09)

Virginia's Instant Game Lottery 1153 "Double Latte Cash" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty-Two (09)

Virginia's Instant Game Lottery 1157 "Happy Moo Year" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty-Three (09)

Virginia's Instant Game Lottery 1160 "Triple Fortune" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty-Four (09)

Virginia Lottery Retailer Incentive Program "Farm Fresh Holiday Incentive and 2nd Chance Super Bowl Party Pack Giveaway" Final Rules for Game Operation (effective 11/11/09)

#### Director's Order Number Eighty-Five (09)

Virginia Lottery Retailer Incentive Program "Be A VIP With The Redskins - Trip Drawings" Final Rules for Game Operation (effective 11/11/09)

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the

Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### SAFETY AND HEALTH CODES BOARD

Titles of Regulations: **16VAC25-90. Federal Identical General Industry.**

**16VAC25-100. Federal Identical Shipyard Employment.**

Publication: 26:3 VA.R. 311-312 October 12, 2009.

Correction to Final Regulation:

For the above regulatory action, page 311, the title should have been as follows:

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.95, 16VAC25-90-1910.120, 16VAC25-90-1910.440, 16VAC25-90-1910.1001, 16VAC25-90-1910.1003, 16VAC25-90-1910.1017, 16VAC25-90-1910.1018, 16VAC25-90-1910.1025, 16VAC25-90-1910.1027, 16VAC25-90-1910.1029, 16VAC25-90-1910.1030, 16VAC25-90-1910.1043, 16VAC25-90-1910.1044, 16VAC25-90-1910.1045, 16VAC25-90-1910.1047, 16VAC25-90-1910.1048, 16VAC25-90-1910.1050, 16VAC25-90-1910.1051).**

**16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1001).**

Page 312, the "Federal Terms and State Equivalents" chart should have read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 3, 2006	November 15, 2009

VA.R. Doc. No. R10-2145

### GOVERNOR'S EXECUTIVE ORDER

Title of Order: **Continuing the Commonwealth Consortium for Mental Health/Criminal Justice Transformation.**

Publication: 26:5 VA.R. 504 November 9, 2009.

Correction to Executive Order Number 98 (2009):

Executive Order Number 98 (2009) expires on July 1, 2011.

