

CHAPTER 421  
FOOD REGULATIONS

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CHAPTER 421

FOOD REGULATIONS

PART I

DEFINITIONS, PURPOSE AND ADMINISTRATION

Article 1

Definitions

12 VAC 5-421-10. 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 (12 VAC 5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12 VAC 5-590), accepted and approved by the director or the director's designee.

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

"Bed and breakfast" means a tourist home that serves meals.

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

"Board" means the State Board of Health.

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

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

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

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

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

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

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

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

"Comingle" means:

1. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or

2. To combine shucked shellfish from containers with different container codes or different shucking dates.

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

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

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

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

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

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

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

"Critical item" means a provision of these regulations that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

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

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

"Department" means the State Health Department.

"Director" means the district or local health director.

“Disclosure” means a written statement that clearly identifies the animal 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 for bacteria of the Virginia Waterworks Regulations (12 VAC 5-590). Drinking water is traditionally known as "potable water." Drinking water includes the term water except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

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

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

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

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

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

"Easily movable" means:

1. Portable (weighing 30 pounds or less); mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

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

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

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

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

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

"°F" means degrees Fahrenheit.

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

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

"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.

"Foodborne disease outbreak" also includes a single case of illness such as one person ill from botulism or chemical poisoning.

"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;
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 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 the 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 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 (2 VAC 5-585 or any regulations subsequently adopted) and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

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

"Game animal" means an animal, the products of which are food, that is not classified as: cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Part 301 Definitions, as poultry in 9 CFR Part 381 Poultry Products Inspection Regulation, 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.

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

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

"Highly susceptible population" means 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 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 in a beverage and a purée as an ingredient of a beverage.

"Kitchenware" means food preparation and storage utensils.

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

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

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12 VAC 5-421-330 A 3 and 4.

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

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

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Organization" means any one of the following:

1. A volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.2-955 of the Code of Virginia by an ordinance or resolution of the political subdivision where the volunteer fire department or rescue squad is located as being a part of the safety program of such political subdivision;
2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States;
4. A fraternal association or corporation operating under the lodge system;
5. A local chamber of commerce; or
6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

"Permit" means a license issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person, and possesses a valid permit to operate a food establishment.

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

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

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

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

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

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

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

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

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

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

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

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

Potentially hazardous food does not include:

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

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR Part 381, Poultry Products Inspection Regulations, and any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, 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.

"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 12 VAC 5-421-700-A through C, 12 VAC 5-421-710, or 12 VAC 5-421-730;
2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12 VAC 5-421-700 D1 and 2; or
3. Is prepared in accordance with a variance that is granted as specified under 12 VAC 5-421-700 D1 and 2

“Ready-to-eat” food includes:

1. Raw animal food that is cooked as specified under 12 VAC 5-421-700, or frozen as specified under 12 VAC 5-421-730;
2. Raw fruits and vegetables that are washed as specified under 12 VAC 5-421-510;
3. Fruits and vegetables that are cooked for hot holding as specified under 12 VAC 5-421-720;
4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under 12 VAC 5-421-700 and cooled as specified in 12 VAC 5-421-800;
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, and a process as specified in this definition that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

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

"Regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.

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

"Restrict" means to limit the activities of a food employee so that there is not 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 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" means any E. coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). This includes, but is not limited to, E. coli reported as serotype O157:H7, O157:NM, and O157:H-.

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

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

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12 VAC 5-421-960, 12 VAC 5-421-1080, and 12 VAC 5-421-1100 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.

## Article 2

### Purpose and Administration

12 VAC 5-421-20. (Reserved.)

12 VAC 5-421-30. Purpose.

This chapter has been promulgated by the State Board of Health to specify the following requirements to protect public health:

1. A procedure for obtaining a license (permit);

2. Criteria for assuring the safe preparation, handling, protection and/or temperature control for food;
3. Criteria for the safe and sanitary maintenance, storage, operation and use of equipment;
4. Requirements that food establishments be connected to, and use an approved water supply and sewage disposal system;
5. Requirements for toilet and cleansing facilities for employees and customers;
6. Criteria for vector and pest control;
7. Requirements for the sanitary maintenance and use of food establishment's physical plant;
8. Requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; and
9. A classification system for food establishments.

12 VAC 5-421-40. Administration of regulation.

This chapter is administered by the following:

1. The State Board of Health, hereinafter referred to as the board, has responsibility to promulgate, amend and repeal regulations necessary to protect the public health.
2. The State Health Commissioner, hereinafter referred to as the commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act within the scope of regulations promulgated by the board and for the board when it is not in session.
3. The district or local health director, hereinafter referred to as the director, is responsible for the permitting and inspection of food establishments located within the director's district and for assuring compliance with this part. The director is the duly designated officer or agent of the commissioner.

## PART II

### MANAGEMENT AND PERSONNEL

#### Article 1

#### Supervision

##### 12 VAC 5-421-50. Assignment of responsibility.\*

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.

##### 12 VAC 5-421-60. 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. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
2. 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. Describing the symptoms associated with the diseases that are transmissible through food;
4. Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;
5. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
6. Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;
7. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;
8. Describing the relationship between the prevention of foodborne illness and the management and control of the following:

- a. Cross contamination,
  - b. Hand contact with ready-to-eat foods,
  - c. Handwashing, and
  - d. Maintaining the food establishment in a clean condition and in good repair;
9. Explaining the relationship between food safety and providing equipment that is:
- a. Sufficient in number and capacity, and
  - b. Properly designed, constructed, located, installed, operated, maintained, and cleaned;
10. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;
11. 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. 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. 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. Explaining the details of how the person in charge and food employees comply with a HACCP plan if such a plan is a voluntary agreement between the regulatory authority and the establishment; and
15. Explaining the responsibilities, rights, and authorities assigned by this chapter to the:
- a. Food employee,
  - b. Person in charge, and
  - c. Regulatory authority.

12 VAC 5-421-70. Person in charge.

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 12 VAC 5-421-2990;
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);
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 are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and
12. Employees are properly trained in food safety as it relates to their assigned duties.

## Article 2

### Employee Health

12 VAC 5-421-80. Responsibility of the person in charge to require reporting by food employees and applicants.\*

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.,
  - 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 (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., 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, or

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.

12 VAC 5-421-90. 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 12 VAC 5-421-80;

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 12 VAC 5-421-80 subdivision 2 a (1), (2), (3) or (5), or subdivision 2b, or

2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12 VAC 5-421-80, but has a stool that yields a specimen culture that is positive for *Salmonella 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 in 12 VAC 5-421-80 subdivision 2 a (1), (2), (3), or (5) and meets a high-risk condition specified in subdivision 4 of 12 VAC 5-421-80.

2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12 VAC 5-421-80, 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; and

D. For a food employee who is jaundiced:

1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment, or
2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:
  - a. Exclude the food employee from a food establishment that serves a highly susceptible population, or
  - b. Restrict the food employee from activities specified in subdivision 2 of 12 VAC 5-421-90, if the food establishment does not serve a highly susceptible population.

12 VAC 5-421-100. Removal of exclusions and restrictions.

A. The person in charge may remove an exclusion specified under 12 VAC 5-421-90 A if:

1. The person in charge obtains approval from the regulatory authority; and
2. The person excluded as specified under 12 VAC 5-421-90 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 12 VAC 5-421-4070.

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

1. 12 VAC 5-421-90 B 1 if the restricted person:
  - a. Is free of the symptoms specified under 12 VAC 5-421-80 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 12 VAC 5-421-80 subdivision 2 a (1), (2), (3), or (5) and (ii) provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of

the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 12 VAC 5-421-4070; or

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

2. 12 VAC 5-421-90 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 12 VAC 5-421-4070 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 12 VAC 5-421-90 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 12 VAC 5-421-4070.

2. If the person is excluded under 12 VAC 5-421-90 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 12 VAC 5-421-90 D 1 and 12 VAC 5-421-90 D 2 a and a restriction specified in 12 VAC 5-421-90 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 12 VAC 5-421-4070; or

2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision 4 a and 4 b of 12 VAC 5-421-4070.

12 VAC 5-421-110. Responsibility of a food employee or an applicant to report to the person in charge.\*

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

1. In a manner specified in 12 VAC 5-421-80, report to the person in charge the information specified in 12 VAC 5-421-80; and

2. Comply with exclusions and restrictions that are specified in 12 VAC 5-421-90.

12 VAC 5-421-120. Reporting by the person in charge.\*

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

### Article 3

#### Personal Cleanliness

12 VAC 5-421-130. Clean condition of hands and arms.\*

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

12 VAC 5-421-140. Cleaning procedure of hands and arms.\*

A. Except as specified in subsection B of this section, food employees shall clean their hands and exposed portions of their arms (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 12 VAC 5-421-2190 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 12 VAC 5-421-3030.

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

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

12 VAC 5-421-150. (Reserved.)

12 VAC 5-421-160. When to wash\*

Food employees shall clean their hands and exposed portions of their arms as specified under 12 VAC 5-421-140 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

1. After touching bare human body parts or hair other than clean hands and clean, exposed portions of arms;
2. After using the toilet room;
3. After caring for or handling support animals as allowed under 12 VAC 5-421-250 B;
4. Except as specified in 12 VAC 5-421-220 B, after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
5. After handling soiled equipment or utensils;
6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
7. When switching between working with raw foods and working with ready-to-eat foods;
8. Before donning gloves for working with foods; and
9. After engaging in other activities that contaminate the hands.

12 VAC 5-421-170. Where to wash.

Food employees shall clean their hands in a handwashing lavatory or approved automatic handwashing facility and shall not clean their hands in a sink used for food preparation or utensil washing.

12 VAC 5-421-180. Hand sanitizers

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

1. Comply with one of the following:

a. Be an FDA approved drug based on safety and effectiveness; or

b. Have active antimicrobial ingredients that are approved by FDA as an OTC (over-the-counter) health-care antiseptic drug product that is safe and effective for application to human skin as an antiseptic handwash; and

2. Consist with components that are:

a. Listed for 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);

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

3. Be applied only to hands that are cleaned as specified under 12 VAC 5-421-140.

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

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

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

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

12 VAC 5-421-190. Maintenance of fingernails.

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

12 VAC 5-421-200. Prohibition of jewelry.

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

12 VAC 5-421-210. Clean condition of outer clothing.

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

#### Article 4

#### Hygienic Practices

12 VAC 5-421-220. Eating, drinking, or using tobacco.\*

A. Except as specified in subsection B of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean

equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result.

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

1. The employee's hands;
2. The container; and
3. Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

12 VAC 5-421-230. Discharges from the eyes, nose, and mouth.\*

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

12 VAC 5-421-240. Effectiveness of hair restraints.

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

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

12 VAC 5-421-250. Handling of animals prohibited.\*

A. Except as specified in subsection B of this section, food employees may not care for or handle animals that may be present such as patrol dogs, support animals, or pets that are allowed under 12 VAC 5-421-3310 B 2 through 4.

B. Food employees with support animals may handle or care for their support animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under 12 VAC 5-421-140 and subdivision 3 of 12 VAC 5-421-160.

PART III

FOOD

Article 1

Characteristics

12 VAC 5-421-260. Safe and unadulterated.\*

Food shall be safe and unadulterated.

Article 2

Sources, Specifications, and Original Containers and Records

12 VAC 5-421-270. Compliance with food law.\*

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

B. Food prepared in a private home shall not be used or offered for human consumption in a food establishment unless the home kitchen is inspected and approved by the Virginia Department of Agriculture and Consumer Services.

C. Packaged food shall be labeled as specified in law, including 21 CFR Part 101, Food Labeling; 9 CFR Part 317, Labeling, Marking Devices, and Containers; and 9 CFR Part 381, Subpart N-Labeling and Containers; and as specified under 12 VAC 5-421-400 and 12 VAC 5-421-410.

D. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under 12 VAC 5-421-700 D 1 may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under 12 VAC 5-421-730, or frozen on the premises as specified under 12 VAC 5-421-730, and records are retained as specified under 12 VAC 5-421-740.

E. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in 12 VAC 5-421-700 C shall be:

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

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

3. If individually cut in a food establishment:

- a. Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subdivision 1 of this subsection or identified as specified in subdivision 2 of this subsections;
- b. Prepared so they remain intact; and
- c. If packaged for undercooking in a food establishment, labeled to indicate that they meet the definition of whole-muscle, intact beef.

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

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

12 VAC 5-421-280. Food in a hermetically sealed container.\*

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

12 VAC 5-421-290. Fluid milk and milk products.\*

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

12 VAC 5-421-295. Juice treated.\*

Prepackaged juice shall:

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

12 VAC 5-421-300. Fish.\*

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

1. Commercially and legally caught or harvested; or

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

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

12 VAC 5-421-310. Molluscan shellfish.\*

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

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

12 VAC 5-421-320. Wild mushrooms.\*

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

B. This section does not apply to:

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

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

12 VAC 5-421-330. Game animals.\*

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

1. Commercially raised for food and:

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

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

c. Raised, slaughtered, and processed according to:

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

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

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

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

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

b. Slaughtered and processed according to:

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

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

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

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

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

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

12 VAC 5-421-340. Temperature.\*

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

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

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

D. Potentially hazardous food that is cooked to a temperature and for a time specified under 12 VAC 5-421-700 through 12 VAC 5-421-720 and received hot shall be at a temperature of 135°F (57°C) or above.

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

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

12 VAC 5-421-350. Additives.\*

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

12 VAC 5-421-360. 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 - Regulations Governing the Inspection of Eggs and Egg Products.

12 VAC 5-421-370. Eggs and milk products, pasteurized.\*

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

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

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

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

12 VAC 5-421-380. Package integrity.\*

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

12 VAC 5-421-390. Ice.\*

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

12 VAC 5-421-400. 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 or repacker of the molluscan shellfish; and
2. The "sell by" date for packages with a capacity of less than one-half gallon (1.87 L) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

B. A package of raw shucked shellfish that does not bear a label or which bears a label 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.

12 VAC 5-421-410. 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, 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.

12 VAC 5-421-420. Shellstock; condition.

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

12 VAC 5-421-430. 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 12 VAC 5-421-410 and recorded as specified under 12 VAC 5-421-440; 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 12 VAC 5-421-400 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.

12 VAC 5-421-440. Shellstock; maintaining identification.\*

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

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

1. Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and
2. If shellstock are removed from their tagged or labeled container:
  - a. Preserving source identification by using a recordkeeping system as specified under subdivision 1 of this subsection,
  - b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.

### Article 3

#### Protection from Contamination after Receiving

12 VAC 5-421-450. Preventing contamination.\*

A. Food employees shall wash their hands as specified under 12 VAC 5-421-140.

B. Except when washing fruits and vegetables as specified under 12 VAC 5-421-510 or as specified in subsection C, 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.<sup>S</sup>

12 VAC 5-421-460. Preventing contamination when tasting.\*

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

12 VAC 5-421-470. Packaged and unpackaged food - separation, packaging, and segregation.\*

A. Food shall be protected from cross contamination by:

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

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

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

- a. Using separate equipment for each type or arranging each type of food in equipment so that cross contamination of one type with another is prevented, and
- b. Preparing each type of food at different times or in separate areas;

3. Cleaning equipment and utensils as specified under 12 VAC 5-421-1780 A and sanitizing as specified under 12 VAC 5-421-1900;

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

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

6. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
7. Storing damaged, spoiled, or recalled food being held in the food establishment as specified under 12 VAC 5-421-3150; and
8. Separating fruits and vegetables, before they are washed as specified under 12 VAC 5-421-510 from ready-to-eat food.

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

1. Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;
2. Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
3. Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;
4. Food being cooled as specified under 12 VAC 5-421-810 B 2; or
5. Shellstock.

12 VAC 5-421-480. Food storage containers; identified with common name of food.

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

12 VAC 5-421-490. 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, and egg-fortified beverages that are not:

1. Cooked as specified in 12 VAC 5-421-700 A 1 or 2; or
2. Included in 12 VAC 5-421-700 D. The eggs are held before service following cooking.

12 VAC 5-421-500. Protection from unapproved additives.\*

A. As specified in 12 VAC 5-421-350, 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.

12 VAC 5-421-510. Washing fruits and vegetables.

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

B. Fruits and vegetables may be washed by using chemicals as specified under 12 VAC 5-421-3390.

12 VAC 5-421-520. Ice used as exterior coolant, prohibited as ingredient.

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

12 VAC 5-421-530. Storage or display of food in contact with water or ice.

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

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

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

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

12 VAC 5-421-540. Food contact with equipment and utensils.\*

Food shall only contact surfaces of equipment and utensils that are cleaned as specified under 12 VAC 5-421-1770 through 12 VAC 5-421-1870 and sanitized as specified under 12 VAC 5-421-1880 through 12 VAC 5-421-1900.

12 VAC 5-421-550. In-use utensils, between-use storage.

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

1. Except as specified under subdivision 2 of this section, in the food with their handles above the top of the food and the container;
2. In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under 12 VAC 5-421-1780 and 12 VAC 5-421-1890;
4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or
6. In a container of water if the water is maintained at a temperature of at least 135°F (57°C) and the container is cleaned at a frequency specified under 12 VAC 5-421-1780 D 7.

12 VAC 5-421-560. Linens and napkins, use limitation.

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

12 VAC 5-421-570. Wiping cloths; used for one purpose.

- A. Cloths that are in use for wiping food spills shall be used for no other purpose.
- B. Cloths used for wiping food spills shall be:
  1. Dry and used for wiping food spills from tableware and carry-out containers; or

2. Wet and cleaned as specified under 12 VAC 5-421-1920 D, stored in a chemical sanitizer at a concentration specified in 12 VAC 5-421-3380, 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.

12 VAC 5-421-580. Gloves; use limitation.

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

B. Except as specified in subsection C of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under 12 VAC 5-421-700 through 12 VAC 5-421-760 such as frozen food or a primal cut of meat.

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

D. Cloth gloves shall not be used in direct contact with food unless the food is subsequently cooked as required under 12 VAC 5-421-700 through 12 VAC 5-421-760 such as frozen food or a primal cut of meat.

12 VAC 5-421-590. Using clean tableware for second portions and refills.

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

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

C. Cups and glasses may be reused by self-service consumers or food employees if refilling is a contamination-free process as specified under subdivisions 1, 2, and 4 of 12 VAC 5-421-1230.

12 VAC 5-421-600. Refilling returnables.

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

B. Except as specified in subsection C of this section, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under 12 VAC 5-421-1870.

C. Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under subdivisions 1, 2, and 4 of 12 VAC 5-421-1230.

12 VAC 5-421-610. Food storage.

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

1. In a clean, dry location;
2. Where it is not exposed to splash, dust, or other contamination; and
3. At least 6 inches (15 cm) above the floor.

B. Food in packages and working containers may be stored less than 6 inches (15 cm) above the floor on case lot handling equipment as specified under 12 VAC 5-421-1420.

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

12 VAC 5-421-620. Food storage; prohibited areas.

Food shall not be stored:

1. In locker rooms;
2. In toilet rooms or their vestibules;
3. In dressing rooms;
4. In garbage rooms;
5. In mechanical rooms;

6. Under sewer lines that are not shielded to intercept potential drips;
7. Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
8. Under open stairwells; or
9. Under other sources of contamination.

12 VAC 5-421-630. Vended potentially hazardous food; original container.

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

12 VAC 5-421-640. Food preparation.

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

12 VAC 5-421-650. Food display.

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

12 VAC 5-421-660. Condiments; protection.

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

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

12 VAC 5-421-670. Consumer self-service operations.\*

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

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

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

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

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

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

12 VAC 5-421-680. 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 container of food that is not potentially hazardous may be transferred from one consumer to another if:

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

12 VAC 5-421-690. Miscellaneous sources of contamination.

Food shall be protected from contamination that may result from a factor or source not specified under 12 VAC 5-421-450 through 12 VAC 5-421-680.

#### Article 4

##### Destruction of Organisms of Public Health Concern

12 VAC 5-421-700. Raw animal foods.\*

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

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

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

b. Except as specified under subdivisions A 2 and 3 and subsection B of this section, fish, meat, and pork including game animals commercially raised for food as specified under 12 VAC 5-421-330 A 1 and game animals under a voluntary inspection program as specified under 12 VAC 5-421-330 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 12 VAC 5-421-330 A 1, and game animals under a voluntary inspection program as specified under 12 VAC 5-421-330 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 12 VAC 5-421-330 A 3, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

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

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

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs (4.5 kg)	10 lbs (4.5 kg) or more

Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <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	Time <sup>1</sup>	Temperature	Time <sup>1</sup>
°F (°C)	in minutes	°F (°C)	in seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		
<sup>1</sup> Holding time many 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 12 VAC 5-421-270 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 subdivision 3 a and b of 12 VAC 5-4221-950 the food establishment serves a population that is not a highly susceptible population and (ii) the consumer is informed as specified under 12 VAC 5-421-930 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 12 VAC 5-421-3570 based on a HACCP plan that:

a. Is submitted by the permit holder and approved as specified under 12 VAC 5-421-3570,

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.

#### 12 VAC 5-421-710. Microwave cooking.\*

Raw animal foods cooked in a microwave oven shall be:

1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

2. Covered to retain surface moisture;

3. Heated to a temperature of at least 165°F (74°C) in all parts of the food; and

4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

#### 12 VAC 5-421-720. Plant food cooking for hot holding.

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

12 VAC 5-421-730. Parasite destruction.\*

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

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.

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.

12 VAC 5-421-740. Records, creation and retention.

A. Except as specified in 12 VAC 5-421-730 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 12 VAC 5-421-730 may substitute for the records specified under subsection A of this section.

12 VAC 5-421-750. Reheating for immediate service.

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

12 VAC 5-421-760. Reheating for hot holding.\*

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

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

C. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory

authority that has jurisdiction over the plant, shall be heated to a temperature of at least 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 12 VAC 5-421-820 and 165°F (74°C) shall not exceed two hours.

E. Remaining unsliced portions of roasts that are cooked as specified under 12 VAC 5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12 VAC 5-421-700 B.

## Article 5

### Limitation of Growth of Organisms of Public Health Concern

#### 12 VAC 5-421-765. Treating Juice\*

Juice packaged in a food establishment shall be:

1. Treated under a HACCP plan as specified in subdivisions 2 through 5 of 12 VAC 5-421-3630 to attain a five-log reduction, which is equal to a 99.999% reduction of the most resistant microorganism of public health significance; or
2. Labeled, if not treated to yield a five-log reduction of the most resistant microorganism of public health significance;
  - a. As specified under 12 VAC 5-421-900, and
  - b. As specified in 21 CFR 101.17(g) with the phrase, “WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.”

#### 12 VAC 5-421-770. Frozen food.

Stored frozen foods shall be maintained frozen.

#### 12 VAC 5-421-780. Potentially hazardous food, slacking.

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

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
2. At any temperature if the food remains frozen.

#### 12 VAC 5-421-790. Thawing.

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

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
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 12 VAC 5-421-700 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 12 VAC 5-421-700 A or B or 12 VAC 5-421-710, 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.

12 VAC 5-421-800. Cooling.\*

- A. Cooked potentially hazardous food shall be cooled:
  1. Within two hours, from 135°F (57°C) to 70°F (21°C); and
  2. Within four hours, from 70°F (21°C) to 41°F (5°C) or less.
- B. Potentially hazardous 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 received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 12 VAC 5-421-340 B, shall be cooled within four hours to 41°F (5°C) or less.

D. Raw shell eggs shall be received as specified under 12 VAC 5-421-340 C and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

12 VAC 5-421-810. Cooling methods.

A. Cooling shall be accomplished in accordance with the time and temperature criteria specified under 12 VAC 5-421-800 by using one or more of the following methods based on the type of food being cooled:

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

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

1. Arranged in the equipment to provide maximum heat transfer through the container walls;  
and
2. Loosely covered, or uncovered if protected from overhead contamination as specified under 12 VAC 5-421-610 A 2, during the cooling period to facilitate heat transfer from the surface of the food.

12 VAC 5-421-820. 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 12 VAC 5-421-850, potentially hazardous food shall be maintained:

1. At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under 12 VAC 5-421-700 B or reheated as specified in 12 VAC 5-421-760 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.

12 VAC 5-421-830. 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.

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

12 VAC 5-421-840. Ready-to-eat, potentially hazardous food; disposition.\*

A. A food specified under 12 VAC 5-421-830 A or B shall be discarded if it:

1. Exceeds either of the temperature and time combinations specified in 12 VAC 5-421-830 A, except time that the product is frozen;
2. Is in a container or package that does not bear a date or day; or
3. Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in 12 VAC 5-421-830A.

12 VAC 5-421-850. 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. 12 VAC 5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

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

12 VAC 5-421-860. Variance requirement.\*

A food establishment shall obtain a variance from the regulatory authority as specified in 12 VAC 5-421-3570 and 12 VAC 5-421-3580 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 12 VAC 5-421-870 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;
7. Preparing food by another method that is determined by the regulatory authority to require a variance.

12 VAC 5-421-870. Reduced oxygen packaging; criteria.\*

A. Except for a food establishment that obtains a variance as specified under 12 VAC 5-421-860, 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 12 VAC 5-421-3630 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  $a_w$  of 0.91 or less,
  - b. Has a pH of 4.6 or less,
  - c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, or
  - d. Is a food with a high level of competing organisms such as raw meat or raw poultry;
3. Specifies methods for maintaining food at 41°F (5°C) or below;
4. Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
  - a. Maintain the food at 41°F (5°C) or below, and
  - b. Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
5. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
6. Includes operational procedures that:
  - a. Prohibit contacting food with bare hands,
  - b. Identify a designated area and the method by which:
    - (1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and
    - (2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and
  - c. Delineate cleaning and sanitization procedures for food-contact surfaces; and

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

- a. Concepts required for a safe operation,
- b. Equipment and facilities, and
- c. Procedures specified under subdivision 6 of this subsection and subdivision 4 of 12 VAC 5-421-3630.

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.

## Article 6

### Food Identity, Presentation, and On-Premises Labeling

12 VAC 5-421-880. Standards of Identity:

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

12 VAC 5-421-890. Honestly Presented.

- A. Food shall be offered for human consumption in a way that does not misleads or misinform the consumer.
- B. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

12 VAC 5-421-900. 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.

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.

12 VAC 5-421-910. Other forms of information.

A. If required by law, consumer warnings shall be provided.

B. Food establishment or manufacturers' dating information on foods shall not be concealed or altered.

12 VAC 5-421-920. (Reserved)

12 VAC 5-421-930. Consumption of Animal products that are raw, undercooked, or not otherwise processed to eliminate pathogens.

A. Except as specified in 12 VAC 5-421-700 C and D and under 12 VAC 5-421-950 C, if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw,

undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in subsections B and C of this section, using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

B. Disclosure shall include:

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

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

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

## Article 7

### Contaminated Food

12 VAC 5-421-940. Discarding unsafe, adulterated, or contaminated food.\*

A. A food that is unsafe, adulterated, or not from an approved source as specified under 12 VAC 5-421-270 through 12 VAC 5-421-330 shall be rendered unusable and discarded.

B. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under 12 VAC 5-421-90 shall be rendered unusable and discarded..

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

## Article 8

### Special Requirements for Highly Susceptible Populations

12 VAC 5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.\*

In a food establishment that serves a highly susceptible:

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 bearnaise sauce, mayonnaise, and egg-fortified beverages; and

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

3. The following foods 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
- 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.

## PART IV

### EQUIPMENT, UTENSILS, AND LINENS

#### Article 1

##### Materials for Construction and Repair

12 VAC 5-421-960. Multiuse, characteristics.\*

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

- 1. Safe;

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

12 VAC 5-421-970. Cast iron, use limitation.

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

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

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

12 VAC 5-421-980. Lead in ceramic, china, and crystal utensils, use limitation.

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

Utensil		Maximum Lead
Category	Description	Mg/L
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls 1.1 L (1.16 qt)	1
Small Hollowware	Bowls <1.1 L (1.16 qt)	2.0
Flat Utensils	Plates, Saucers	3.0

12 VAC 5-421-990. Copper, use limitation.\*

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

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

C. Copper and copper alloys may be used in contact with apple butter and molasses ingredients that have a pH below 6 in the preparation of these items provided the contact time is less than 24 hours.

12 VAC 5-421-1000. Galvanized metal, use limitation.\*

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

12 VAC 5-421-1010. Sponges, use limitation.

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

12 VAC 5-421-1020. Lead in pewter alloys, use limitation.

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

12 VAC 5-421-1030. Lead in solder and flux, use limitation.

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

12 VAC 5-421-1040. Wood, use limitation.

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

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

1. Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

2. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

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

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

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

12 VAC 5-421-1050. Nonstick coatings, use limitation.

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

12 VAC 5-421-1060. Nonfood-contact surfaces.

Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

12 VAC 5-421-1070. Single-service and single-use, characteristics.\*

A. Materials that are used to make single-service and single-use articles shall not:

1. Allow the migration of deleterious substances, or
2. Impart colors, odors, or tastes to food.<sup>N</sup>

B. Materials that are used to make single-service and single-use articles shall be safe and clean.

## Article 2

### Design and Construction

12 VAC 5-421-1080. Equipment and utensils.

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

12 VAC 5-421-1090. Food temperature measuring devices.\*

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

12 VAC 5-421-1100. Food-contact surfaces; cleanability.\*

Multiuse food-contact surfaces shall be:

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

12 VAC 5-421-1110. CIP equipment.

A. CIP equipment shall meet the characteristics specified under 12 VAC 5-421-1100 and shall be designed and constructed so that:

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

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

12 VAC 5-421-1120. "V" threads; use limitation.

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

12 VAC 5-421-1130. Hot oil filtering equipment.

Hot oil filtering equipment shall meet the characteristics specified under 12 VAC 5-421-1100 or 12 VAC 5-421-1110 and shall be readily accessible for filter replacement and cleaning of the filter.

12 VAC 5-421-1140. Can openers.

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

12 VAC 5-421-1150. Nonfood-contact surfaces.

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

12 VAC 5-421-1160. Kick plates; removable.

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

1. Removable by one of the methods specified under subdivision 5 of 12 VAC 5-421-1100 or capable of being rotated open; and
2. Removable or capable of being rotated open without unlocking equipment doors.

12 VAC 5-421-1170. Ventilation hood systems; filters.

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

12 VAC 5-421-1180. Temperature measuring devices; food.

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

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

12 VAC 5-421-1190. Temperature measuring devices; ambient air and water.

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

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

12 VAC 5-421-1200. Pressure measuring devices, mechanical warewashing equipment.

A. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pounds per square inch (7 kilopascals) or

smaller and shall be accurate to  $\pm 2$  pounds per square inch ( $\pm 14$  kilopascals) in the 15-25 pounds per square inch (100-170 kilopascals) range.

12 VAC 5-421-1210. Ventilation hood systems, drip prevention.

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

12 VAC 5-421-1220. Equipment openings, closures and deflectors.

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

B. An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least two-tenths of an inch (5 millimeters).

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

D. If a watertight joint is not provided:

1. The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

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

12 VAC 5-421-1230. 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.

12 VAC 5-421-1240. Vending machine, vending stage closure.

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

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

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

12 VAC 5-421-1250. Bearings and gear boxes, leakproof.

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

12 VAC 5-421-1260. 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.

12 VAC 5-421-1270. Ice units, separation of drains.

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

12 VAC 5-421-1280. Condenser unit, separation.

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

12 VAC 5-421-1290. Can openers on vending machines.

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

12 VAC 5-421-1300. Molluscan shellfish tanks.

A. Except as specified under subsection B of this section, molluscan shellfish life support system display tanks shall not be used to display shellfish that are offered for human consumption.

B. Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the regulatory authority as specified in 12 VAC 5-421-3570 and a HACCP plan that:

1. Is submitted by the permit holder and approved as specified under 12 VAC 5-421-3580; and
2. Ensures that:
  - a. Water used with fish other than molluscan shellfish does not flow into the molluscan tank,
  - b. The safety and quality of the shellfish as they were received are not compromised by the use of the tank, and
  - c. The identity of the source of the shellstock is retained as specified under 12 VAC 5-421-440.

12 VAC 5-421-1310. Vending machines, automatic shutoff.\*

A. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Part III (12 VAC 5-421-260 et seq.) of this chapter; and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

B. When the automatic shutoff within a machine vending potentially hazardous food is activated:

1. In a refrigerated vending machine, the ambient temperature 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.

12 VAC 5-421-1320. Temperature measuring devices.

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

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

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

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

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

12 VAC 5-421-1330. Warewashing machine, data plate operating specifications.

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

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

12 VAC 5-421-1340. Warewashing machines, internal baffles.

Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

12 VAC 5-421-1350. Warewashing machines, temperature measuring devices.

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

1. In each wash and rinse tank; and
2. As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

12 VAC 5-421-1360. Manual warewashing equipment, heaters and baskets.

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

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

12 VAC 5-421-1370. Warewashing machines, sanitizer level indicator automatic dispensing of detergents and sanitizers.

A. A warewashing machine installed after March 1, 2002 shall be equipped to:

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

B. Existing warewashing equipment shall be upgraded or replaced to meet the requirements of subsection A of this section.

12 VAC 5-421-1380. Warewashing machines, flow pressure device.

A. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine.

B. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch or 6.4 millimeter Iron Pipe Size (IPS) valve.

C. Subsections A and B of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

D. Subsections A and B of this section shall not apply to home model dishwashers used in bed and breakfast facilities serving 18 or fewer customers.

12 VAC 5-421-1390. Warewashing sinks and drainboards, self-draining.

Sinks and drainboards of warewashing sinks and machines shall be self-draining.

12 VAC 5-421-1400. Equipment compartments, drainage.

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

12 VAC 5-421-1410. Vending machines, liquid waste products.

A. Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

B. Vending machines that dispense liquid food in bulk shall be:

1. Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
2. Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

C. Shutoff devices specified under subdivision B 2 of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

12 VAC 5-421-1420. Case lot handling equipment, movability.

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

12 VAC 5-421-1430. Vending machine doors and openings.

A. Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the

cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch or 1.5 millimeters by:

1. Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch or 1.5 millimeters. Screening of 12 mesh to 1 inch (12 or more mesh to 2.5 centimeters) meets this requirement;
2. Being effectively gasketed;
3. Having interface surfaces that are at least one-half inch wide or 13 millimeters; or
4. Jambs or surfaces used to form an L-shaped entry path to the interface.

B. Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

12 VAC 5-421-1440. Food equipment, certification and classification.

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Articles 1 (12 VAC 5-421-960 et seq.) and 2 (12 VAC 5-421-1080 et seq.) of this part.

### Article 3

#### Numbers and Capacities

12 VAC 5-421-1450. Cooling, heating, and holding capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity and capable of providing food temperatures as specified under Part III.

12 VAC 5-421-1460. Manual warewashing, sink compartment requirements.

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

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

C. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

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

D. Before a 2-compartment sink is used:

1. The permit holder shall have its use approved; and
2. The permit holder shall limit the number of kitchenware items cleaned and sanitized in the two-compartment sink and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:

a. (i) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use; and (ii) use a detergent-sanitizer to sanitize and apply the detergent-sanitizer in accordance with the manufacturer's label instructions as specified under 12 VAC 5-421-1710; or

b. A hot water sanitization immersion step shall be used as specified in subdivision 3 of 12 VAC 5-421-1860.

E. A 2-compartment sink shall not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

12 VAC 5-421-1470. Drainboards.

Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

12 VAC 5-421-1480. Ventilation hood systems, adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

12 VAC 5-421-1490. Clothes washers and dryers.

A. Except as specified in subsection B of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

B. If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under 12 VAC 5-421-1970, a mechanical clothes washer and dryer need not be provided.

12 VAC 5-421-1500. Utensils, consumer self-service.

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

12 VAC 5-421-1510. Food temperature measuring devices.

A. Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Part III (12 VAC 5-421-260 et seq.) of this chapter.

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

12 VAC 5-421-1520. Temperature measuring devices, manual warewashing.

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

12 VAC 5-421-1530. Sanitizing solutions, testing devices.

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

## Article 4

### Location and Installation

12 VAC 5-421-1540. Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.

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

1. In locker rooms;

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

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

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

12 VAC 5-421-1550. 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 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 12 VAC 5-421-1560 D.

12 VAC 5-421-1560. 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 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 equipment may be:

1. 3 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. 2 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.

## Article 5

### Maintenance and Operation

12 VAC 5-421-1570. Good repair and proper adjustment.

A. Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Articles 1 (12 VAC 5-421-960 et seq.) and 2 (12 VAC 5-421-1080 et seq.) of this part. Unused or non-functioning equipment shall be removed from the premises.

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

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

12 VAC 5-421-1580. Cutting surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

12 VAC 5-421-1590. Microwave ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10.

12 VAC 5-421-1600. Warewashing equipment, cleaning frequency.

A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under 12 VAC 5-421-1470 shall be cleaned:

1. Before use;
2. Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
3. If used, at least every 24 hours.

12 VAC 5-421-1610. Warewashing machines, manufacturers' operating instructions.

A. A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

B. A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

12 VAC 5-421-1620. Warewashing sinks, use limitation.

A. A warewashing sink shall not be used for handwashing.

B. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under 12 VAC 5-421-1600 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Article 7 (12 VAC 5-421-1880 et seq.) of this part before and after using the sink to wash produce or thaw food.

12 VAC 5-421-1630. Warewashing equipment, cleaning agents.

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in 12 VAC 5-421-1460 C, shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

12 VAC 5-421-1640. Warewashing equipment, clean solutions.

The wash, rinse, and sanitize solutions shall be maintained clean.

12 VAC 5-421-1650. Manual warewashing equipment, wash solution temperature.

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

12 VAC 5-421-1660. Mechanical warewashing equipment, wash solution temperature.

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

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

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

12 VAC 5-421-1670. Manual warewashing equipment, hot water sanitization temperatures.\*

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

12 VAC 5-421-1680. Mechanical warewashing equipment, hot water sanitization temperatures.

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

1. For a stationary rack, single temperature machine, 165°F (74°C); or

2. For all other machines, 180°F (82°C).

B. The maximum temperature specified under subsection A of this section does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

12 VAC 5-421-1690. Mechanical warewashing equipment, sanitization pressure.

A. 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.

12 VAC 5-421-1700. Manual and mechanical warewashing equipment, chemical sanitization - temperature, pH, concentration, and hardness.\*

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified under 12 VAC 5-421-1900 C shall be listed in 40 CFR 180.940 Sanitizing solutions, shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;

Minimum Concentration	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 or less °F (°C)
25	120 (49)	120 (49)
50	100 (38)	75 (24)
100	55 (13)	55 (13)

2. An iodine solution shall have a:
  - a. Minimum temperature of 75°F (24°C),
  - b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and
  - c. Concentration between 12.5 mg/L(ppm) and 25 mg/L (ppm);
3. A quaternary ammonium compound solution shall:
  - a. Have a minimum temperature of 75°F (24°C),
  - b. Have a concentration as specified under 40 CFR 180.940 and as indicated by the manufacturer's use directions included in the labeling, and
  - c. Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;
4. If another solution of a chemical specified under subdivisions 1, 2 and 3 of this section is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or
5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

12 VAC 5-421-1710. Manual warewashing equipment, chemical sanitization using detergent-sanitizers.

If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

12 VAC 5-421-1720. Warewashing equipment, determining chemical sanitizer concentration.

Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

12 VAC 5-421-1730. Good repair and calibration.

A. Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Articles 1 (12 VAC 5-421-960 et seq.) and 2 (12 VAC 5-421-1080 et seq.) of this part or shall be discarded.

B. Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

C. Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

12 VAC 5-421-1740. Single-service and single-use articles, required use.\*

A food establishment without facilities specified under Articles 6 (12 VAC 5-421-1770 et seq.) and 7 (12 VAC 5-421-1880 et seq.) of this part for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

12 VAC 5-421-1750. Single-service and single-use articles, use limitation.

A. Single-service and single-use articles shall not be reused.

B. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

12 VAC 5-421-1760. Shells, use limitation.

Mollusk and crustacea shells shall not be used more than once as serving containers.

## Article 6

### Cleaning of Equipment and Utensils

12 VAC 5-421-1770. Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils.\*

A. Equipment food-contact surfaces and utensils shall be clean to sight and touch.

B. The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.<sup>N</sup>

C. Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.<sup>N</sup>

12 VAC 5-421-1780. Equipment food-contact surfaces and utensils.\*

A. Equipment food-contact surfaces and utensils shall be cleaned:

1. Except as specified in subsection B of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
2. Each time there is a change from working with raw foods to working with ready-to-eat foods;
3. Between uses with raw fruits and vegetables and with potentially hazardous food;
4. Before using or storing a food temperature measuring device; and
5. At any time during the operation when contamination may have occurred.

B. Subdivision A 1 of this section does not apply if the food contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under 12 VAC 5-421-700 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.

C. Except as specified in subsection D of this section, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

D. Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:

1. In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Part III (12 VAC 5-421-260 et seq.) of this chapter and the containers are cleaned when they are empty;
2. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and (i) the utensils and equipment are cleaned at the frequency in the following chart that corresponds to the

temperature; and (ii) the cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment:

Temperature	Cleaning Frequency
41°F (5.0°C) or less	24 hours
>41°F - 45°F (>5.0°C - 7.2°C)	20 hours
>45°F - 50°F (>7.2°C - 10.0°C)	16 hours
>50°F - 55°F (>10.0°C - 12.8°C)	10 hours

3. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Part III, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;

4. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Part III;

5. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

6. The cleaning schedule is approved based on consideration of:

- a. Characteristics of the equipment and its use,
- b. The type of food involved,
- c. The amount of food residue accumulation, and
- d. The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

7. In-use utensils are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

E. Except when dry cleaning methods are used as specified under 12 VAC 5-421-1810, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:<sup>N</sup>

- 1. At any time when contamination may have occurred;

2. At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
3. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers;
4. Equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, beverage dispensing lines or tubes, coffee bean grinders, and water vending equipment:
  - a. At a frequency specified by the manufacturer, or
  - b. Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

12 VAC 5-421-1790. Cooking and baking equipment.

A. The food-contact surfaces of in-use cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in 12 VAC 5-421-1780 D 6.

B. The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

12 VAC 5-421-1800. Nonfood-contact surfaces.

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

12 VAC 5-421-1810. Dry cleaning.

A. If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

B. Cleaning equipment used in dry cleaning food-contact surfaces shall not be used for any other purpose.

12 VAC 5-421-1820. Precleaning.

A. Food debris on equipment and utensils shall be scrapped over a waste disposal unit, or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

B. If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

12 VAC 5-421-1830. Loading of soiled items, warewashing machines.

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

1. Exposes the items to the unobstructed spray from all cycles; and
2. Allows the items to drain.

12 VAC 5-421-1840. Wet cleaning.

A. Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

B. The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

12 VAC 5-421-1850. Washing, procedures for alternative manual warewashing equipment.

If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in 12 VAC 5-421-1460 C in accordance with the following procedures:

1. Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
2. Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and
3. Equipment and utensils shall be washed as specified under 12 VAC 5-421-1840 A.

12 VAC 5-421-1860. Rinsing procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

1. Use of a distinct, separate water rinse after washing and before sanitizing if using:
  - a. A 3-compartment sink,
  - b. Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified in 12 VAC 5-421-1460 C, or

- c. A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;
- 2. Use of a detergent-sanitizer as specified under 12 VAC 5-421-1710 if using:
  - a. Alternative warewashing equipment as specified in 12 VAC 5-421-1460 C that is approved for use with a detergent-sanitizer, or
  - b. A warewashing system for CIP equipment;
- 3. Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a 2-compartment sink operation;
- 4. If using a warewashing machine that does not recycle the sanitizing solution as specified under subdivision 5 of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:
  - a. Integrated in the application of the sanitizing solution, and
  - b. Wasted immediately after each application; or
- 5. If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

12 VAC 5-421-1870. Returnables, cleaning for refilling.\*

A. Except as specified in subsections B and C of this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant.

B. A food-specific container for beverages may be refilled at a food establishment if:

- 1. Only a beverage that is not a potentially hazardous food is used as specified under 12 VAC 5-421-600 A;
- 2. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
- 3. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
- 4. The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and

5. The container is refilled by: an employee of the food establishment, or the owner of the container if the beverage system includes a contamination-free transfer process that can not be bypassed by the container owner.

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

## Article 7

### Sanitization of Equipment and Utensils

12 VAC 5-421-1880. Food-contact surfaces and utensils (non-debitable)

Equipment food-contact surfaces and utensils shall be sanitized.

12 VAC 5-421-1890. Before use after cleaning.\*

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

12 VAC 5-421-1900. Hot water and chemical.\*

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

1. Hot water manual operations by immersion for at least 30 seconds as specified under 12 VAC 5-421-1670;
2. Hot water mechanical operations by being cycled through equipment that is set up as specified under 12 VAC 5-421-1610, 12 VAC 5-421-1680, and 12 VAC 5-421-1690 and achieving a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or
3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under 12 VAC 5-421-1700 by providing:
  - a. Except as specified under subdivision 3 b of this section, an exposure time of at least 10 seconds for a chlorine solution specified under 12 VAC 5-421-1700 A,
  - b. An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 100°F (38°C) or a pH of 8 or less and a temperature of at least 75°F (24°C),
  - c. An exposure time of at least 30 seconds for other chemical sanitizing solutions, or

d. An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in 12 VAC 5-421-10.

## Article 8

### Laundrying

12 VAC 5-421-1910. Clean linens.

Clean linens shall be free from food residues and other soiling matter.

12 VAC 5-421-1920. Specifications.

A. Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

B. Cloth gloves used as specified in 12 VAC 5-421-580 D shall be laundered before being used with a different type of raw animal food such as beef, lamb, pork, and fish.

C. Linens and napkins that are used as specified under 12 VAC 5-421-560 and cloth napkins shall be laundered between each use.

D. Wet wiping cloths shall be laundered daily.

E. Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

12 VAC 5-421-1930. Storage of soiled linens.

Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

12 VAC 5-421-1940. Mechanical washing.

A. Except as specified in subsection B of this section, linens shall be mechanically washed.

B. In food establishments in which only wiping cloths are laundered as specified in 12 VAC 5-421-1490 B, the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under 12 VAC 5-421-1600.

12 VAC 5-421-1950. Use of laundry facilities.

A. Except as specified in subsection B of this section, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

B. Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

## Article 9

### Protection of Clean Items

12 VAC 5-421-1960. Equipment and utensils, air-drying required.

After cleaning and sanitizing, equipment and utensils:

1. Shall be air dried or used after adequate draining as specified in 40 CFR 180.940 before contact with food; and
2. Shall not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

12 VAC 5-421-1970. Wiping cloths, air-drying locations.

Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in 12 VAC 5-421-1490 B shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under 12 VAC 5-421-1700.

12 VAC 5-421-1980. Food-contact surfaces.

Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

12 VAC 5-421-1990. Equipment.

Equipment shall be reassembled so that food-contact surfaces are not contaminated.

12 VAC 5-421-2000. Equipment, utensils, linens, and single-service and single-use articles.

A. Except as specified in subsection D of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

1. In a clean, dry location;

2. Where they are not exposed to splash, dust, or other contamination; and
3. At least six inches (15 cm) above the floor.

B. Clean equipment and utensils shall be stored as specified under subsection A of this section and shall be stored:

1. In a self-draining position that allows air drying; and
2. Covered or inverted.

C. Single-service and single-use articles shall be stored as specified under subsection A of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

D. Items that are kept in closed packages may be stored less than 6 inches (15 cm) above the floor on dollies, pallets, racks, and skids that are designed as provided under 12 VAC 5-421-1420.

12 VAC 5-421-2010. Prohibitions.

A. Except as specified in subsection B of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles shall not be stored:

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

B. Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.

12 VAC 5-421-2020. Kitchenware and tableware.

A. Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

B. Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

C. Except as specified under subsection B of this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

12 VAC 5-421-2030. Soiled and clean tableware.

Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

12 VAC 5-421-2040. 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.

## PART V

### WATER, PLUMBING, AND WASTE

#### Article 1

##### Water

12 VAC 5-421-2050. Approved system.\*

Drinking water shall be obtained from an approved source that is:

1. A public water system; or
2. A nonpublic water system that is constructed, maintained, and operated according to law.

12 VAC 5-421-2060. System flushing and disinfection.\*

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

12 VAC 5-421-2070. Bottled drinking water.\*

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR Part 129 - Processing and Bottling of Bottled drinking water.

12 VAC 5-421-2080. Quality standards.\*

Except as specified under 12 VAC 5-421-2090:

1. Water from a public water system shall meet the applicable standards found in the Virginia Waterworks Regulations (12 VAC 5-590); and
2. Water from a nonpublic water system shall meet the bacteriological standards found in the Virginia Waterworks Regulations (12 VAC 5-590)

12 VAC 5-421-2090. Nondrinking water.\*

A. A nondrinking water supply shall be used only if its use is approved.

B. Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, fire protection, and irrigation.

12 VAC 5-421-2100. Sampling.

Except when used as specified under 12 VAC 5-421-2090, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.

12 VAC 5-421-2110. Sample report.

The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

12 VAC 5-421-2120. Capacity.\*

A. The water source and system shall be of sufficient capacity to meet the water demands of the food establishment.

B. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.

12 VAC 5-421-2130. Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under subdivisions 1 and 2 of 12 VAC 5-421-2160 to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

12 VAC 5-421-2140. (Reserved.)

12 VAC 5-421-2150. Distribution, delivery, and retention system.

Water shall be received from the source through the use of:

1. An approved public water main; or
2. One or more of the following that shall be constructed, maintained, and operated according to law:
  - a. Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,
  - b. Water transport vehicles, and
  - c. Water containers.

12 VAC 5-421-2160. Alternative water supply.

Water meeting the requirements specified under 12 VAC 5-421-2050 through 12 VAC 5-421-2130 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

1. A supply of containers of commercially bottled drinking water;
2. One or more closed portable water containers;
3. An enclosed vehicular water tank;
4. An on-premises water storage tank; or
5. Piping, tubing, or hoses connected to an adjacent approved source.

## Article 2

### Plumbing System

12 VAC 5-421-2170. Approved materials.\*

A. A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.

B. A water filter shall be made of safe materials.

12 VAC 5-421-2180. Approved system and cleanable fixtures.\*

A. A plumbing system shall be designed, constructed, and installed according to law.

B. A plumbing fixture such as a handwashing lavatory, toilet, or urinal shall be easily cleanable.<sup>N</sup>

12 VAC 5-421-2190. Handwashing lavatory, water temperature, and flow.

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

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

C. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

12 VAC 5-421-2200. Backflow prevention, air gap.\*

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and shall not be less than 1 inch (25 mm).

12 VAC 5-421-2210. Backflow prevention device, design standard.

A backflow or backsiphonage prevention device installed on a water supply system shall comply with the Virginia Statewide Building Code (13 VAC 5-63) for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

12 VAC 5-421-2220. Conditioning device, design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

12 VAC 5-421-2230. Handwashing lavatory.\*

A. Except as specified in subsection B of this section, at least one handwashing lavatory, or the number of handwashing lavatories necessary for their convenient use by employees in areas specified under 12 VAC 5-421-2280, and not fewer than the number of handwashing lavatories required by law shall be provided.

B. If approved, when food exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically-treated towelettes for handwashing.

12 VAC 5-421-2240. Toilets and urinals.\*

At least one toilet and not fewer than the toilets required by law shall be provided. If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified in law.

12 VAC 5-421-2250. Service sink.

At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

12 VAC 5-421-2260. Backflow prevention device, when required.\*

A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb (threaded faucet) if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law by:

1. Providing an air gap as specified under 12 VAC 5-421-2200; or
2. Installing an approved backflow prevention device as specified under 12 VAC 5-421-2210.

12 VAC 5-421-2270. Backflow prevention device, carbonator. \*

A. If not provided with an air gap as specified under 12 VAC 5-421-2200, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 1 inch (100 mesh to 25.4 mm) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

B. A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under A of this section

12 VAC 5-421-2280. Handwashing lavatory.\*

A handwashing lavatory 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.

12 VAC 5-421-2290. Backflow prevention device, location.

A backflow prevention device shall be located so that it may be serviced and maintained.

12 VAC 5-421-2300. Conditioning device, location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

12 VAC 5-421-2310. Using a handwashing lavatory.\*

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

B. A handwashing lavatory shall not be used for purposes other than handwashing.<sup>N</sup>

12 VAC 5-421-2320. Prohibiting a cross connection.\*

A. Except as specified in 9 CFR 308.3(d) for firefighting, a person shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

B. The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.<sup>N</sup>

12 VAC 5-421-2330. Scheduling inspection and service for a water system device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

12 VAC 5-421-2340. Water reservoir of fogging devices, cleaning.\*

A. A reservoir that is used to supply water to a device such as a produce fogger shall be:

1. Maintained in accordance with manufacturer's specifications; and

2. Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection B of this section, whichever is more stringent.

B. Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

1. Draining and complete disassembly of the water and aerosol contact parts;
2. Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
3. Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
4. Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L (ppm) hypochlorite solution.

12 VAC 5-421-2350. System maintained in good repair.\*

A plumbing system shall be:

- (i) repaired according to law; and
- (ii) maintained in good repair.<sup>S</sup>

### Article 3

#### Mobile Water Tank and Mobile Food Establishment Water Tank

12 VAC 5-421-2360. Approved materials.

Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

1. Safe;
2. Durable, corrosion resistant, and nonabsorbent; and
3. Finished to have a smooth, easily cleanable surface.

12 VAC 5-421-2370. Enclosed system, sloped to drain.

A mobile water tank shall be:

1. Enclosed from the filling inlet to the discharge outlet; and

2. Sloped to an outlet that allows complete drainage of the tank.

12 VAC 5-421-2380. Inspection and cleaning port, protected and secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

1. Flanged upward at least one-half inch (13 mm); and
2. Equipped with a port cover assembly that is:
  - a. Provided with a gasket and a device for securing the cover in place, and
  - b. Flanged to overlap the opening and sloped to drain.

12 VAC 5-421-2390. "V" type threads, use limitation.

A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

12 VAC 5-421-2400. Tank vent, protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

1. 16 mesh to 1-inch (16 mesh to 25.4 mm) screen or equivalent when the vent is in a protected area; or
2. A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

12 VAC 5-421-2410. Inlet and outlet, sloped to drain.

A. A water tank and its inlet and outlet shall be sloped to drain.

B. A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

12 VAC 5-421-2420. Hose, construction and identification.

A hose used for conveying drinking water from a water tank shall be:

1. Safe;
2. Durable, corrosion resistant, and nonabsorbent;
3. Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
4. Finished with a smooth interior surface; and
5. Clearly and durably identified as to its use if not permanently attached.

12 VAC 5-421-2430. Filter, compressed air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

12 VAC 5-421-2440. Protective cover or device.

A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

12 VAC 5-421-2450. Mobile food establishment tank inlet.

A mobile food establishment's water tank inlet shall be:

1. Three-fourths inch (19.1 mm) in inner diameter or less; and
2. Provided with a hose connection of a size or type that will prevent its use for any other service.

12 VAC 5-421-2460. System flushing and disinfection.\*

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

12 VAC 5-421-2470. Using a pump and hoses, backflow prevention.

A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

12 VAC 5-421-2480. Protecting inlet, outlet, and hose fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under 12 VAC 5-421-2440.

12 VAC 5-421-2490. Tank, pump, and hoses, dedication.

A. Except as specified in subsection B of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose.

B. Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

#### Article 4

##### Sewage, Other Liquid Waste, and Rainwater

12 VAC 5-421-2500. Mobile holding tank capacity and drainage.

A sewage holding tank in a mobile food establishment shall be:

1. Sized 15% larger in capacity than the water supply tank; and
2. Sloped to a drain that is 1 inch (25 mm) in inner diameter or greater, equipped with a shut-off valve.

12 VAC 5-421-2510. Establishment drainage system.

Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 12 VAC 5-421-2180 A.

12 VAC 5-421-2520. 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.

12 VAC 5-421-2530. Grease trap.

If used, a grease trap shall be located to be easily accessible for cleaning.

12 VAC 5-421-2540. Conveying sewage.\*

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

12 VAC 5-421-2550. Removing mobile food establishment wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

12 VAC 5-421-2560. Flushing a waste retention tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

12 VAC 5-421-2570. Approved sewage disposal system.\*

Sewage shall be disposed through an approved facility that is:

1. A public sewage treatment plant; or
2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

12 VAC 5-421-2580. Other liquid wastes and rainwater.

Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

## Article 5

### Refuse, Recyclables, and Returnables

12 VAC 5-421-2590. Indoor storage area.

If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 12 VAC 5-421-2790, 12 VAC 5-421-2810 through 12 VAC 5-421-2880, 12 VAC 5-421-2930, and 12 VAC 5-421-2940.

12 VAC 5-421-2600. 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.

12 VAC 5-421-2610. Outdoor enclosure.

If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

12 VAC 5-421-2620. Receptacles.

A. Except as specified in subsection B of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

B. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

12 VAC 5-421-2630. 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.

12 VAC 5-421-2640. Outside receptacles.

A. Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

B. Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

12 VAC 5-421-2650. Storage areas, rooms, and receptacles, capacity and availability.

A. An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

B. A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

C. If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

12 VAC 5-421-2660. Toilet room receptacle, covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

12 VAC 5-421-2670. Cleaning implements and supplies.

A. Except as specified in subsection B of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

B. If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

12 VAC 5-421-2680. Storage areas, redeeming machines, receptacles and waste handling units, location.

A. An area designated for refuse, recyclables, returnables, and, except as specified in subsection B of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

B. A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

C. The location of receptacles and waste handling units for refuse, recyclables, and returnables shall not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

12 VAC 5-421-2690. Storing refuse, recyclables, and returnables.

Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

12 VAC 5-421-2700. Areas, enclosures, and receptacles, good repair.

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

12 VAC 5-421-2710. Outside storage prohibitions.

A. Except as specified in subsection B of this section, refuse receptacles not meeting the requirements specified under 12 VAC 5-421-2620 A such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue shall not be stored outside.

B. Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

12 VAC 5-421-2720. Covering receptacles.

Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

1. Inside the food establishment if the receptacles and units (i) contain food residue and are not in continuous use or (ii) after they are filled; and
2. With tight-fitting lids or doors if kept outside the food establishment.

12 VAC 5-421-2730. Using drain plugs.

Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

12 VAC 5-421-2740. Maintaining refuse areas and enclosures.

A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under 12 VAC 5-421-3300, and clean.

12 VAC 5-421-2750. Cleaning receptacles.

A. Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under 12 VAC 5-421-2550.

B. Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

12 VAC 5-421-2760. Removal frequency.

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

12 VAC 5-421-2770. Receptacles or vehicles.

Refuse, recyclables, and returnables shall be removed from the premises by way of:

1. Portable receptacles that are constructed and maintained according to law; or
2. A transport vehicle that is constructed, maintained, and operated according to law.

12 VAC 5-421-2780. Community or individual facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

## PART VI

### PHYSICAL FACILITIES

#### Article 1

##### Materials for Construction and Repair

12 VAC 5-421-2790. 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.

12 VAC 5-421-2800. Outdoor areas; surface characteristics.

A. The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

B. Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

C. Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under 12 VAC 5-421-2600 and 12 VAC 5-421-2610.

## Article 2

### Design, Construction, and Installation

12 VAC 5-421-2810. Floors, walls, and ceilings - cleanability.

Except as specified under 12 VAC 5-421-2840, 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.

12 VAC 5-421-2820. Floors, walls, and ceilings, utility lines.

A. Utility service lines and pipes shall not be unnecessarily exposed.

B. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

C. Exposed horizontal utility service lines and pipes may not be installed on the floor.

12 VAC 5-421-2830. Floor and wall junctures, coved, and enclosed or sealed.

A. In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1/32 inch (1 mm). However, this subsection shall not apply to floor wall junctures in bed and breakfast facilities serving 18 or fewer customers.

B. The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

12 VAC 5-421-2840. Floor carpeting, restrictions and installation.

A. A floor covering such as carpeting or similar material shall not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

B. If carpeting is installed as a floor covering in areas other than those specified under subsection A of this section, it shall be:

1. Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
2. Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

12 VAC 5-421-2850. Floor covering, mats and duckboards.

Mats and duckboards shall be designed to be removable and easily cleanable.

12 VAC 5-421-2860. Wall and ceiling coverings and coatings.

A. Wall and ceiling covering materials shall be attached so that they are easily cleanable.

B. Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

12 VAC 5-421-2870. Walls and ceilings, attachments.

A. Except as specified in subsection B of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

B. In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

12 VAC 5-421-2880. Walls and ceilings, studs, joists, and rafters.

Studs, joists, and rafters shall not be exposed in areas subject to moisture. This requirement does not apply to temporary food establishments.

12 VAC 5-421-2890. Light bulbs, protective shielding.

A. Except as specified in subsection B of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

B. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

1. The integrity of the packages can not be affected by broken glass falling onto them; and
2. The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

C. An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

12 VAC 5-421-2900. Heating, ventilating, air conditioning system vents.

Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

12 VAC 5-421-2910. Insect control devices, design and installation.

A. Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

B. Insect control devices shall be installed so that:

1. The devices are not located over a food preparation area; and
2. Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

12 VAC 5-421-2920. 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.

12 VAC 5-421-2930. Outer openings, protected.

A. Except as specified in subsections B through E of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

1. Filling or closing holes and other gaps along floors, walls and ceilings;
2. Closed, tight-fitting windows; and
3. Solid self-closing, tight-fitting doors.

B. Subsection A of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

C. Exterior doors used as exits need not be self-closing if they are:

1. Solid and tight-fitting;
2. Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
3. Restricted so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

D. Except as specified in subsections B and E of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes of this section, the openings shall be protected against the entry of insects and rodents by:

1. 16 mesh to 1-inch (16 mesh to 25.4mm) screens;
2. Properly designed and installed air curtains to control flying insects; or
3. Other effective means.

E. Subsection D of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

12 VAC 5-421-2940. Exterior walls and roofs, protective barrier.

Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

12 VAC 5-421-2950. 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.

12 VAC 5-421-2960. 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.

12 VAC 5-421-2970. Outdoor walking and driving surfaces, graded to drain.

Exterior walking and driving surfaces shall be graded to drain.

12 VAC 5-421-2980. Outdoor refuse areas, curbed and graded to drain.

Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

12 VAC 5-421-2990. Private homes and living or sleeping quarters, use prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters shall not be used for conducting food establishment operations.

12 VAC 5-421-3000. Living or sleeping quarters, separation.

Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

### Article 3

#### Numbers and Capacities

12 VAC 5-421-3010. Handwashing lavatories, minimum number.

Handwashing lavatories shall be provided as specified under 12 VAC 5-421-2230.

12 VAC 5-421-3020. Handwashing cleanser, availability.

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

12 VAC 5-421-3030. Hand drying provision.

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

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

12 VAC 5-421-3040. 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 as specified under 12 VAC 5-421-3020 and 12 VAC 5-421-3030 and 12 VAC 5-421-2650 C.

12 VAC 5-421-3045. Handwashing signage.

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

12 VAC 5-421-3050. Disposable towels, waste receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 12 VAC 5-421-2650 C.

12 VAC 5-421-3060. Toilets and urinals, minimum number.

Toilets and urinals shall be provided as specified under 12 VAC 5-421-2240.

12 VAC 5-421-3070. Toilet tissue, availability.

A supply of toilet tissue shall be available at each toilet.

12 VAC 5-421-3080. Lighting, intensity.

The light intensity shall be:

1. At least 10 foot candles (110 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;
2. At least 20 foot candles (220 lux):
  - a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

- b. Inside equipment such as reach-in and under-counter refrigerators;
  - c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and
3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

12 VAC 5-421-3090. Ventilation, mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

12 VAC 5-421-3100. Dressing areas and lockers, designation.

A. Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

B. Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

12 VAC 5-421-3110. Service sinks, availability.

A service sink or curbed cleaning facility shall be provided as specified under 12 VAC 5-421-2250.

## Article 4

### Location and Placement

12 VAC 5-421-3120. Handwashing lavatories, conveniently located.

Handwashing lavatories shall be conveniently located as specified under 12 VAC 5-421-2280.

12 VAC 5-421-3130. 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.

12 VAC 5-421-3140. Employee accommodations, designated areas.

A. Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

B. Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles can not occur.

12 VAC 5-421-3150. Distressed merchandise, segregation and location.

Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

12 VAC 5-421-3160. Refuse, recyclables, and returnables - receptacles, waste handling units, and designated storage areas.

Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 12 VAC 5-421-2680.

## Article 5

### Maintenance and Operation

12 VAC 5-421-3170. Repairing.

The physical facilities shall be maintained in good repair.

12 VAC 5-421-3180. 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.

12 VAC 5-421-3190. Cleaning floors, dustless methods.

A. Except as specified in subsection B of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

B. Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

1. Without the use of dust-arresting compounds; and

2. In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

12 VAC 5-421-3200. Cleaning ventilation systems, nuisance and discharge prohibition.

A. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

B. If vented to the outside, ventilation systems shall not create a public health hazard or nuisance or unlawful discharge.

12 VAC 5-421-3210. Cleaning maintenance tools, preventing contamination.\*

Food preparation sinks, handwashing lavatories, and warewashing equipment shall not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

12 VAC 5-421-3220. Drying mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

12 VAC 5-421-3230. Absorbent materials on floors, use limitation.

Except as specified in 12 VAC 5-421-3190 B, sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used on floors.

12 VAC 5-421-3240. Maintaining and using handwashing lavatories.

Handwashing lavatories shall be kept clean, and maintained and used as specified under 12 VAC 5-421-2310.

12 VAC 5-421-3250. Closing toilet room doors.

Toilet room doors as specified under 12 VAC 5-421-2920 shall be kept closed except during cleaning and maintenance operations unless otherwise required by other regulations or law.

12 VAC 5-421-3260. Using dressing rooms and lockers.

A. Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

B. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

12 VAC 5-421-3270. Controlling pests.\*

The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

1. Routinely inspecting incoming shipments of food and supplies;<sup>N</sup>
2. Routinely inspecting the premises for evidence of pests;<sup>N</sup>
3. Using methods, if pests are found, such as trapping devices or other means of pest control as specified under 12 VAC 5-421-3360, 12 VAC 5-421-3440, and 12 VAC 5-421-3450 ; and
4. Eliminating harborage conditions.<sup>N</sup>

12 VAC 5-421-3280. Removing dead or trapped birds, insects, rodents, and other pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

12 VAC 5-421-3290. Storing maintenance tools.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

1. Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and
2. Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

12 VAC 5-421-3300. Maintaining premises, unnecessary items and litter.

The premises shall be free of:

1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
2. Litter.

12 VAC 5-421-3310. Prohibiting animals.\*

A. Except as specified in subsections B and C of this section, live animals may not be allowed on the premises of a food establishment.

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas,

b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and

c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.

C. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result.

D. In bed and breakfast facilities serving 18 or fewer customers, live animals shall be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

## PART VII

### POISONOUS OR TOXIC MATERIALS

#### Article 1

##### Labeling and Identification

12 VAC 5-421-3320. Original containers - identifying information, prominence.\*

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

12 VAC 5-421-3330. Working containers - common name.\*

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

#### Article 2

##### Operational Supplies and Applications

12 VAC 5-421-3340. Storage, separation.\*

Poisonous or toxic materials shall be stored so they can not contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;<sup>S</sup>
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This subsection does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles; and,
3. Detergents, sanitizers, related cleaning or drying agents and caustics, acids, polishes and other chemicals shall be stored separately from insecticides and rodenticides.

12 VAC 5-421-3350. Presence and use restriction.\*

A. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.<sup>S</sup>

B. Subsection A of this section does not apply to packaged poisonous or toxic materials that are for retail sale.

12 VAC 5-421-3360. Conditions of use.\*

Poisonous or toxic materials shall be:

1. Used according to:

- a. Law and this chapter,
- b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment,
- 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 regulatory authority; 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, covering the items with impermeable covers, or taking other appropriate preventive actions, and
  - (2) Cleaning and sanitizing equipment and utensils after the application.

3. A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC § 136(e) (Federal Insecticide, Fungicide and Rodenticide Act), or a person under the direct supervision of a certified applicator.

12 VAC 5-421-3370. Poisonous or toxic material containers.\*

A container previously used to store poisonous or toxic materials shall not be used to store, transport, or dispense food.

12 VAC 5-421-3380. Sanitizers, criteria.\*

Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940.

12 VAC 5-421-3390. Chemicals for washing fruits and vegetables, criteria.\*

Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315.

12 VAC 5-421-3400. Boiler water additives, criteria.\*

Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310.

12 VAC 5-421-3410. Drying agents, criteria.\*

Drying agents used in conjunction with sanitization shall:

1. Contain only components that are listed as one of the following:
  - a. Generally recognized as safe for use in food as specified in 21 CFR Part 182 - Substances Generally Recognized as Safe, or 21 CFR Part 184 - Direct Food Substances Affirmed as Generally Recognized as Safe,
  - b. Generally recognized as safe for the intended use as specified in 21 CFR Part 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe,
  - c. Approved for use as a drying agent under a prior sanction specified in 21 CFR Part 181 - Prior-Sanctioned Food Ingredients,
  - d. Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178, or
  - e. Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 - Threshold of Regulation for Substances Used in Food-contact Articles; and
2. When sanitization is with chemicals, the approval required under subdivisions 1 c or e of this section or the regulation as an indirect food additive required under subdivision 1 d of this section, shall be specifically for use with chemical sanitizing solutions.

12 VAC 5-421-3420. Lubricants - incidental food contact, criteria.\*

Lubricants shall meet the requirements specified in 21 CFR 178.3570 if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.

12 VAC 5-421-3430. Restricted use pesticides, criteria.\*

Restricted use pesticides specified under 12 VAC 5-421-3360 C shall meet the requirements specified in 40 CFR Part 152 Subpart I - Classification of Pesticides.

12 VAC 5-421-3440. Rodent bait stations.\*

Rodent bait shall be contained in a covered, tamper-resistant bait station.

12 VAC 5-421-3450. Tracking powders, pest control and monitoring.\*

A. A tracking powder pesticide shall not be used in a food establishment.

B. If used, a nontoxic tracking powder such as talcum or flour shall not contaminate food, equipment, utensils, linens, and single-service and single-use articles.<sup>N</sup>

12 VAC 5-421-3460. 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 12 VAC 5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

12 VAC 5-421-3470. Refrigerated medicines, storage.\*

Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

1. Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

2. Located so they are inaccessible to children.

12 VAC 5-421-3480. First aid supplies, storage.\*

First aid supplies that are in a food establishment for the employees' use shall be:

1. Labeled as specified under 12 VAC 5-421-3320;<sup>S</sup> and

2. Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.<sup>S</sup>

12 VAC 5-421-3490. Other personal care items, storage.

Except as specified under 12 VAC 5-421-3470 and 12 VAC 5-421-3480, employees shall store their personal care items in facilities as specified under 12 VAC 5-421-3100 B.

### Article 3

#### Stock and Retail Sale

12 VAC 5-421-3500. Storage and display, separation.\*

Poisonous or toxic materials shall be stored and displayed for retail sale so they can not contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning;<sup>S</sup> and
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

## PART VIII

### COMPLIANCE AND ENFORCEMENT

#### Article 1

##### Applicability of Chapter

12 VAC 5-421-3510. Public health protection.

A. The regulatory authority shall apply this regulation to promote its underlying purpose, as specified in 12 VAC 5-421-30, of safeguarding public health and ensuring that food is safe and unadulterated when offered to the consumer.

B. In enforcing the provisions of this regulation, the regulatory authority shall assess existing facilities or equipment that were in use before March 1, 2002, based on the following considerations:

1. Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
2. Whether food-contact surfaces comply with 12 VAC 5-421-960 through 12 VAC 5-421-1060;
3. Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with 12 VAC 5-421-1450.

12 VAC 5-421-3520. Preventing health hazards, provision for conditions not addressed.

A. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this regulation that are authorized by law.

B. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

12 VAC 5-421-3530. Application of Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ 2.2.4000 et seq. of the Code of Virginia) shall govern the procedures for rendering all case decisions, as defined in § 2.2-4001, and for issuing all orders and regulations promulgated pursuant to the authority of Title 35.1.

12 VAC 5-421-3540. (Reserved.)

12 VAC 5-421-3550. Food Service Advisory Committee.

The commissioner shall appoint a Food Service Advisory Committee (FSAC). He shall appoint to the FSAC as many members as he wishes, but a minimum of one individual each from the following: Department of Agriculture and Consumer Services, Department of Housing and Community Development, Department of Social Services, Virginia Hospitality and Travel Association, Virginia Retail Merchants Association, public at large, Virginia Public Health Association, Virginia Environmental Health Association, Virginia Caterers Association, Virginia Food Dealers Association, a consumer and/or civic organization representative, and an environmental health specialist.

Ex-officio members shall be the Director of the Division of Food and General Environmental Services and the Director of Health Facilities Regulation.

Appointed members of the FSAC shall serve at the discretion of the commissioner and shall make recommendation to the commissioner regarding food service policies, procedures and other food program operations. The FSAC shall meet at least annually.

12 VAC 5-421-3560. Exemptions to regulations.

A. The following are exempt from this chapter as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia.

1. Boarding houses that do not accommodate transients;
2. Cafeterias operated by industrial plants for employees only;
3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads which hold dinners and bazaars of not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;
4. Grocery stores, including the delicatessen which is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;
5. Churches which serve meals for their members as a regular part of their religious observance; and

6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2 VAC 5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

B. The governing body of any county, city or town may provide by ordinance that this chapter shall not apply to food booths at fairs and youth athletic activities, if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof. The ordinance shall provide that the director of the county, city, or town in which the fair and youth athletic activities are held, or a qualified person designated by the director, shall exercise such supervision of the sale of food as the ordinance may prescribe.

12 VAC 5-421-3570. Variances.

A. The commissioner or his designee may grant a variance to this chapter by following the appropriate procedures set forth in this section.

B. The commissioner may grant a variance if he finds that the hardship imposed, which may be economic, outweighs the benefits that may be received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution.

C. Any owner or permit holder who seeks a variance shall apply in writing within the time period specified in 12 VAC 5-421-4000. The request should be sent to the local health department. The application shall include:

1. A citation to the regulation from which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant analytical results including result of relevant tests conducted pursuant to the requirements of these regulations;
4. Statements or evidence which establishes that the public health, welfare and environment would not be adversely affected if the variance were granted;
5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
6. A HACCP plan if required as specified under 12 VAC 5-421-3620 A that includes the information specified under 12 VAC 5-421-3630 as it is relevant to the variance requested.
7. Other information believed pertinent by the applicant; and

8. Such other information as the district or local health department or commissioner may require.

12 VAC 5-421-3580. Evaluation of a variance application.

A. The commissioner shall act on any variance request submitted pursuant to 12 VAC 5-421-3570 B within 60 days of receipt of the request.

B. In evaluating a variance application, the commissioner shall consider such factors as the following:

1. The effect that such a variance would have on the operation of the food establishment.
2. The cost and other economic considerations imposed by this requirement;
3. The effect that such a variance would have on protection of the public health, safety, welfare and the environment;
4. Such other factors as the commissioner, deputy commissioner, or director of the office of environmental health services may deem appropriate.

12 VAC 5-421-3590. Disposition of a variance request.

A. The commissioner may grant the variance request and if the commissioner proposes to deny the variance he shall provide the owner an opportunity to an informal hearing as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity for an informal hearing the commissioner may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

B. If the commissioner proposes to grant a variance request submitted pursuant to this part, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, the food establishment involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the food establishment comes into compliance with the applicable regulation and may be terminated upon a finding by the commissioner that the food establishment has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be as noted in the variance letter.

C. All variances granted to any food establishment may be transferable unless otherwise stated. Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.

D. No owner or permit holder may challenge the terms or conditions of a variance after 30 calendar days have elapsed from the receipt of the variance.

E. Each variance shall be posted prominently in a conspicuous place for public view and in close proximity to the permit to which it relates. Each variance is revoked when the permit to which it is attached is revoked, or if the permit is not revalidated or renewed.

## Article 2

### Plan Submission and Approval

12 VAC 5-421-3600. Facility and operating plans - when plans are required.

A permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

1. The construction of a food establishment;
2. The conversion of an existing structure for use as a food establishment; or
3. The remodeling of a food establishment or a change of type of food establishment or food operation as specified under 12 VAC 5-421-3710 C if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this regulation.

12 VAC 5-421-3610. Contents of the plans and specifications.

The plans and specifications for a food establishment, including a food establishment specified under 12 VAC 5-421-3620, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with the provisions of this chapter:

1. Intended menu;
2. Anticipated volume of food to be stored, prepared, and sold or served;
3. Proposed layout, mechanical schematics, construction materials, and finish schedules;
4. Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
5. Evidence that standard procedures ensuring compliance with the requirements of this chapter are developed or are being developed; and
6. Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

12 VAC 5-421-3620. When a HACCP plan is required.

A. Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under 12 VAC 5-421-3630 and the relevant provisions of this chapter if:

1. Submission of a HACCP plan is required according to law;
2. A variance is required as specified under 12 VAC 5-421-860, 12 VAC 5-421-1300 B, or 12 VAC 5-421-700 D 2; or
3. The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under 12 VAC 5-421-3610, an inspectional finding, or a variance request.

B. A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under 12 VAC 5-421-870.

12 VAC 5-421-3630. Contents of a HACCP plan.

For a food establishment that is required under 12 VAC 5-421-3620 to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
  - a. Ingredients, materials, and equipment used in the preparation of that food, and
  - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
3. Food employee and supervisory training plan that addresses the food safety issues of concern;
4. A statement of standard operating procedures for the plan under consideration including clearly identifying:
  - a. Each critical control point,
  - b. The critical limits for each critical control point,

- c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,
  - d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,
  - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met, and
  - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
5. Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

12 VAC 5-421-3640. Confidentiality - trade secrets.

The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under 12 VAC 5-421-3610 and 12 VAC 5-421-3630.

12 VAC 5-421-3650. Preoperational inspections.

The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under subdivision 5 of 12 VAC 5-421-3610 and is in compliance with law and this chapter.

### Article 3

#### Permit to Operate

12 VAC 5-421-3660. Permits.

A. No person shall own, establish, conduct, maintain, manage, or operate any food establishment in this Commonwealth unless the food establishment is permitted as provided in this section. All permits shall be in the name of the owner or lessee. Permits shall not be issued to newly constructed or extensively remodeled food establishments until a certificate of occupancy has been issued by the Building Official. Only a person who complies with the requirements of this part shall be entitled to receive or retain such a permit.

B. Permits issued shall not be transferable from one person to another or from one location to another. A new owner shall be required to make a written application for a permit. The application forms are obtainable at all local health departments.

C. Any person operating a food establishment with a valid permit who desires to expand or modify the establishment, shall notify the director in the jurisdiction where the food establishment is located, and the director shall determine whether such expansion, modification, or reclassification is in compliance with the applicable sections of this chapter.

D. The permit shall be posted in every food establishment in a place where it is readily observable by the public transacting business with the establishment.

E. Permits shall expire annually.

12 VAC 5-421-3670. Application procedure, submission 30 calendar days before proposed opening.

An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility.

12 VAC 5-421-3680. Form of submission.

A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

12 VAC 5-421-3690. Qualifications and responsibilities of applicants.

To qualify for a permit, an applicant shall:

1. Be an owner of the food establishment or an officer of the legal ownership;
2. Comply with the requirements of this regulation; and
3. As specified under 12 VAC 5-421-3820, agree to allow access to the food establishment and to provide required information.

12 VAC 5-421-3700. Contents of the application.

The application shall include:

1. The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

3. A statement specifying whether the food establishment:
  - a. Is mobile or stationary and temporary or permanent, and
  - b. Is an operation that includes one or more of the following:
    - (1) Prepares, offers for sale, or serves potentially hazardous food:
      - (a) Only to order upon a consumer's request,
      - (b) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or
      - (c) Using time as the public health control as specified under 12 VAC 5-421-850,
    - (2) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,
    - (3) Prepares food as specified under subdivision 3 b (2) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,
    - (4) Prepares food as specified under subdivision 3 b (2) of this section for service to a highly susceptible population,
    - (5) Prepares only food that is not potentially hazardous, or
    - (6) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;
4. The name, title, address, and telephone number of the person directly responsible for the food establishment;
5. The name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under subdivision 4 of this section such as the zone, district, or regional supervisor;
6. The names, titles, and addresses of:
  - a. The persons comprising the legal ownership as specified under subdivision 2 of this section including the owners and officers, and
  - b. The local resident agent if one is required based on the type of legal ownership;
7. A statement signed by the applicant that:

- a. Attests to the accuracy of the information provided in the application, and
- b. Affirms that the applicant will:
  - (1) Comply with this chapter, and
  - (2) Allow the regulatory authority access to the establishment as specified under 12 VAC 5-421-3820 and to the records specified under 12 VAC 5-421-440 and 12 VAC 5-421-2330 and subdivision 4 of 12 VAC 5-421-3630; and

8. Other information required by the regulatory authority.

12 VAC 5-421-3710. New, converted, or remodeled establishments.

For food establishments that are required to submit plans as specified under 12 VAC 5-421-3600 the regulatory authority shall issue a permit to the applicant after:

- 1. A properly completed application is submitted;
- 2. Any required fee is submitted;
- 3. The required plans, specifications, and information are reviewed and approved; and
- 4. A preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter.

12 VAC 5-421-3720. Existing establishments, permit renewal, and change of ownership.

The regulatory authority may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, any fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

12 VAC 5-421-3730. Denial of application for permit, notice.

If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- 1. The specific reasons and chapter citations for the permit denial;
- 2. The actions, if any, that the applicant must take to qualify for a permit; and
- 3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

12 VAC 5-421-3740. Responsibilities of the regulatory authority.

A. At the time a permit is first issued, the regulatory authority shall provide to the permit holder a copy (or opportunity to obtain a copy) of this chapter so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under 12 VAC 5-421-3750, that are applicable to the permit.

B. Failure to provide the information specified in subsection A of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this chapter or an order, warning, or directive of the regulatory authority.

12 VAC 5-421-3750. 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 12 VAC 5-421-3590, and approved plans as specified under 12 VAC 5-421-3610;
3. If a food establishment is required under 12 VAC 5-421-3620 to operate under a HACCP plan, comply with the plan as specified under 12 VAC 5-421-3590;
4. Immediately contact the regulatory authority to report an illness of a food employee as specified under 12 VAC 5-421-120;
5. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 12 VAC 5-421-3910;
6. Allow representatives of the regulatory authority access to the food establishment as specified under 12 VAC 5-421-3820;
7. Replace existing facilities and equipment specified in 12 VAC 5-421-3510 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.

12 VAC 5-421-3760. Permits not transferable.

A permit shall not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under 12 VAC 5-421-3700 and the change in operation is not approved.

12 VAC 5-421-3770. Suspension of a permit.

The director may suspend without a hearing a permit to operate a restaurant if the director finds the continued operation constitutes a substantial and imminent threat to the public health, except the director may suspend the permit of a temporary restaurant as addressed under 12 VAC 5-421-3870. Upon receipt of such notice that a permit is suspended, the permit holder shall cease food operations immediately and begin corrective action.

Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity for a hearing. The request for a hearing shall be in writing. The written request shall be filed with the local department by the former holder of the permit. If written request for a hearing is not filed within 10 working days, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal hearing, within three working days of receipt of a request for the hearing. The director may end the suspension at any time if the reasons for the suspension no longer exist.

12 VAC 5-421-3780. Revocation of a permit.

The director may, after providing an opportunity for a hearing, revoke a permit for flagrant or continuing violation of any of the requirements of this part.

Prior to revocation, the director shall notify in writing the holder of the permit, or the person in charge, of the specific reason for which the permit is to be revoked. The permit shall be revoked at the end of the 15 days following service of such notice unless a written request for a hearing is

filed before then with the director from which the permit was obtained. If no request for a hearing is filed within the 15 day period, the revocation of the permit shall be final.

12 VAC 5-421-3790. Application after revocation.

Any person whose permit has been revoked, may apply for a new permit by following the procedures of this part outlined in 12 VAC 5-421-3670 through 12 VAC 5-421-3700.

## Article 4

### Inspection and Correction of Violations

12 VAC 5-421-3800. Periodic inspection.

Food establishments shall be inspected by the designee of the director. Inspections of the food establishments shall be performed as often as necessary for the enforcement of this part in accordance with the following:

1. Except as specified in subdivisions 2 and 3 of this section, the regulatory authority shall inspect a food establishment at least once every six months.
2. The regulatory authority may increase the interval between inspections beyond six months if:
  - a. The food establishment is fully operating under an approved and validated HACCP plan as specified under 12 VAC 5-421-3630;
  - b. The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction and at least once every six months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of the food operation are not changed; or,
  - c. The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not potentially hazardous such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.
3. The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged potentially hazardous food and that:
  - a. Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

- b. Has inexperienced food employees.

12 VAC 5-421-3810. Performance- and priority-based inspections.

Within the parameters specified in 12 VAC 5-421-3800, the regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

1. Past performance for nonconformance with this chapter or HACCP plan requirements that are critical;
2. Past performance for numerous or repeat violations of this chapter or HACCP plan requirements that are noncritical;
3. Past performance for complaints investigated and found to be valid;
4. The hazards associated with the particular foods that are prepared, stored, or served;
5. The type of operation including the methods and extent of food storage, preparation, and service;
6. The number of people served; and
7. Whether the population served is a highly susceptible population.

12 VAC 5-421-3815. 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.

12 VAC 5-421-3820. Access allowed at reasonable times after due notice.

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

12 VAC 5-421-3830. Refusal, notification of right to access, and final request for access.

If a person denies access to the regulatory authority, the regulatory authority shall:

1. Inform the person that:

- a. The permit holder is required to allow access to the regulatory authority as specified under 12 VAC 5-421-3820,
- b. Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under 12 VAC 5-421-3750 F, and
- c. If access is denied, the commissioner or his designee may apply to an appropriate circuit court for an inspection warrant authorizing such inspection, testing, or taking samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia; and

2. Make a final request for access.

12 VAC 5-421-3840. Refusal, reporting.

If after the regulatory authority presents credentials and provides notice as specified under 12 VAC 5-421-3820, explains the authority upon which access is requested, and makes a final request for access as specified in 12 VAC 5-421-3830, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

12 VAC 5-421-3850. Inspection warrants.

If denied access to a food establishment for an authorized purpose and after complying with 12 VAC 5-421-3830, the commissioner or his designee may apply to an appropriate circuit court for an inspection warrant authorizing such inspection, testing, or taking samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia.

12 VAC 5-421-3860. 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 12 VAC 5-421-3700, 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 12 VAC 5-421-60,

- 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 12 VAC 5-421-110 and 12 VAC 5-421-120,
- c. Nonconformance with critical items of this chapter,
- d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 12 VAC 5-421-60,
- 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 12 VAC 5-421-3630, and
- f. Nonconformance with critical limits of a HACCP plan.

12 VAC 5-421-3870. Specifying time frame for corrections.

The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under 12 VAC 5-421-3910, 12 VAC 5-421-3930, and 12 VAC 5-421-3950. In the case of temporary food establishments, all violations shall be corrected within a maximum of 24 hours or the permit shall be suspended. The establishment shall immediately cease food service operations until authorized to resume by the director.

12 VAC 5-421-3880. Issuing report and obtaining acknowledgment of receipt.

At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

12 VAC 5-421-3890. Refusal to sign acknowledgment.

The regulatory authority shall:

1. Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in 12 VAC 5-421-3880 that:
  - a. An acknowledgment of receipt is not an agreement with findings,
  - b. Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and
  - c. A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

2. Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

12 VAC 5-421-3900. Public records.

Except as specified in 12 VAC 5-421-3640, the regulatory authority shall treat the inspection report as a public record and shall make it available for disclosure to a person who requests it as provided in law.

12 VAC 5-421-3910. Imminent health hazard, ceasing operations and reporting.

A. Except as specified in subsection B of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

B. A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

12 VAC 5-421-3920. Resumption of operations.

If operations are discontinued as specified under 12 VAC 5-421-3910 or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

12 VAC 5-421-3930. Critical violation, timely correction.

A. Except as specified in subsection B of this section, a permit holder shall at the time of inspection correct a critical violation of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

B. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the permit holder to correct critical violations or HACCP plan deviations.

12 VAC 5-421-3940. Verification and documentation of correction.

A. After observing at the time of inspection a correction of a critical violation or deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

B. As specified under 12 VAC 5-421-3930 B, after receiving notification that the permit holder has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

12 VAC 5-421-3950. Noncritical violation, time frame for correction.

A. Except as specified in subsection B of this section, the permit holder shall correct noncritical violations by a date and time agreed to or specified by the regulatory authority but no later than 90 calendar days after the inspection.

B. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under subsection A of this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

12 VAC 5-421-3960. Examination for condemnation of food.

Food may be examined or sampled by the department as often as necessary for enforcement of this chapter. Also, the department may, upon written notice to the owner or permit holder or person in charge impound any food which it believes is in violation of Part III or any other section of this chapter. The department shall tag, label, or otherwise identify any food subject to impoundment. No food under conditions specified in the impoundment shall be used, served or moved from the establishment. The department shall permit storage of the food under conditions specified in the impoundment unless storage is not possible without risk to the public health in which case immediate destruction shall be ordered and accomplished. The impoundment shall state that a request for a hearing may be filed within 10 days and that if no hearing is requested, the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at the hearing, the impoundment may be vacated, or the owner or permit holder or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this part.

12 VAC 5-421-3970. Enforcement of regulation.

A. This chapter shall be enforced by the State Board of Health and the State Health Commissioner, as executive officer of the board.

B. The directors are appointed by the board and commissioner as duly designated officers and are responsible for the implementation and enforcement of this chapter.

C. All food establishments shall operate in compliance with the requirements set forth in this chapter and shall not operate without a valid permit.

D. The commissioner shall be vested with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.

E. Pursuant to the authority granted in §§ 32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require any owner or permit holder or other person to comply with the provisions of these regulations. The order may require the following:

1. The immediate cessation and correction of the violation;
2. Appropriate remedial action to ensure that the violation does not continue or recur;
3. The submission of a plan to prevent future violations;
4. The submission of an application for a variance; and
5. Any other corrective action deemed necessary for proper compliance with the regulations.

F. Before the issuance of an order, the commissioner must comply with the requirements of § 35.1-6 of the Code of Virginia.

G. All orders issued pursuant to 12 VAC 5-421-3970 C shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or permit holder or person violating these regulations. Violation of an order is a Class 3 misdemeanor. See § 35.1-7 of the Code of Virginia.

H. The commissioner may act as the agent of the board to enforce all effective orders and these regulations. Should any owner or permit holder fail to comply with any effective order or these regulations, the commissioner may:

1. Institute a proceeding to revoke the owner's or permit holder's permit in accordance with 12 VAC 5-421-3780;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

I. Not exclusive means of enforcement. Nothing contained in 12 VAC 5-421-3970 shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

J. Hearings before the commissioner or his designee shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

1. Informal hearings. An informal hearing is a meeting with a district or local health department with the district or local health director presiding and held in conformance with § 2.2-4019 of the Code of Virginia.

2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before the commissioner, or his designated hearing officer, and held in conformance with § 2.2-4020 of the Code of Virginia.

12 VAC 5-421-3980. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the district or local health department in the locality where the food establishment is located. Requests for hearings shall cite the reason(s) for the hearing request and shall cite the section(s) of these regulations involved and must be received within 30 days of the decision by the department that lead to the hearing request.

12 VAC 5-421-3990. Hearing as a matter of right.

Any owner or permit holder or named party whose rights, duties, or privileges have been, or may be affected by any case decision of the board or its subordinates in the administration of these regulations shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. Exception: No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of a permit to operate unless the person can demonstrate at an informal hearing that the minimum standards contained in these regulations have not been applied and that he will be injured in some manner by the issuance of the permit.

12 VAC 5-421-4000. Appeals.

Any appeal from a denial of a permit to operate a food establishment must be made in writing and received by the department within 30 days after service of the final order in the case decision. In the event that the service of a case decision upon a party is accomplished by mail, three days shall be added to the 30-day period. Notice shall be consistent with Part 2A of the Rules of the Supreme Court of Virginia.

1. Any request for hearing on the denial of an application for a variance pursuant to 12 VAC 5-421-3590 A must be made in writing and received within sixty days of receipt of the denial notice.
2. Any request for a variance must be made in writing and received by the department prior to the denial of the food establishment permit, or within 60 days after such denial.
3. In the event a person applies for a variance within the 60-day period provided by subdivision 2 of this section, the date for appealing the denial of the permit, pursuant to subdivision 1 of this section, shall commence from the date on which the department acts on the request for a variance.

4. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) an aggrieved owner or permit holder may appeal a final case decision of the commissioner to an appropriate circuit court.

12 VAC 5-421-4010. Penalties, injunctions, civil penalties and charges for violations.

1. Any person willfully violating, or refusing, failing, or neglecting to comply with any regulations or order of the board or commissioner, or any provision of this title, shall be guilty of a Class 3 misdemeanor unless a different penalty is specified. Each day of violation shall constitute a separate offense.

2. Any person violating, or failing, neglecting, or refusing to obey any order of the board or commissioner, or any provision of this part may be compelled, in a proceeding instituted in an appropriate court by the board or commissioner, to obey and comply with such regulations, order, or any applicable provision of Title 35.1 of the Code of Virginia. The proceeding may be by injunction, mandamus, or other appropriate remedy.

3. Without limiting the remedies which may be obtained pursuant to the above subsection, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to the above subsection shall be subject, in the discretion of the court, to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation shall constitute a separate offense.

4. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board or commissioner or any applicable provision of Title 35.1, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit set forth in the above subsection. Such civil charges shall be in place of any appropriate civil penalty which could be imposed under the above subsection.

12 VAC 5-421-4020. Compliance with the Uniform Statewide Building Code.

All buildings or structures utilized as restaurants constructed prior to the effective date of the Virginia Uniform Statewide Building Code shall be maintained in conformance with the Virginia Fire Safety Law or other code in effect at the time of construction.

12 VAC 5-421-4030. Local ordinance superseded; exception.

The regulations of the board shall supersede all local ordinances regulating restaurants other than those adopted pursuant to the provisions of § 35.1-26 of the Code of Virginia, except that any locality may adopt ordinances regarding (i) the sale, preparation, and handling of food provided such ordinances are equivalent to, or more stringent in regard to public health, than the applicable provisions of Title 35.1, and the regulations of the board. Where local ordinances prevail, local permits may be issued as required by the local ordinances. However, this does not preclude the requirement to issue a department permit before providing food services for the public.

12VAC5-421-4035. Exempt facilities that choose to be regulated.

Exempt facilities, as defined in subdivision 6 of 12VAC5-421-10 of the definition of a "food establishment," that choose to be regulated by this chapter, shall be exempt from the following requirements:

1. In lieu of 12VAC5-421-1200 A, home model dishwashers may be used in lieu of manual cleaning and drying of utensils;
2. 12VAC5-421-1340, the requirement for internal baffles in warewashing machines does not apply to home model dishwashers;
3. 12VAC5-421-1350, the requirement for temperature measuring devices does not apply to home model dishwashers;
4. 12VAC5-421-1360, manual warewashing equipment, heaters and baskets are not required but manual warewashing shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;
5. 12VAC5-421-1370, the requirement for a sanitizer level indicator does not apply to home model dishwashers;
6. 12VAC5-421-1380, the requirement for flow pressures device does not apply to home model dishwashers;
7. 12VAC5-421-1460, the requirement for sink compartments does not apply to exempt facilities. It shall include thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;
8. 12VAC5-421-1520, temperature measuring devices for manual warewashing are not required;
9. 12VAC5-421-1530, sanitizing solutions testing devices are not required;
10. 12VAC5-421-1620, warewashing sinks in exempt facilities may be used for handwashing, however, approved dispensers, soap, and single-use paper towels are provided;
11. 12VAC5-421-1640, clean solutions in warewashing equipment is not required for exempt facilities. It shall include, as a minimum, thorough washing with adequate soap or detergent, thorough rinsing, and drying before storage or use. Drying may be by clean towels used for no other purpose;
12. 12VAC5-421-1660, minimum wash solution temperature for mechanical warewashing equipment shall not be required for home model dishwashers;

13. 12VAC5-421-1670, minimum hot water sanitization temperatures for manual warewashing equipment shall not be required;
14. 12VAC5-421-1680, minimum hot water sanitization temperatures for mechanical warewashing equipment shall not be required for home model dishwashers;
15. 12VAC5-421-1690, sanitization pressure for mechanical warewashing equipment shall not be required;
16. 12VAC5-421-1700, minimum and maximum pressure, pH, sanitizer concentration, and hardness levels shall not be required for home model dishwashers;
17. 12VAC5-421-1710, chemical sanitization for manual warewashing using detergent sanitizers shall not be required;
18. 12VAC5-421-1720, determination of chemical sanitizer concentration shall not be required;
19. 12VAC5-421-1880, food-contact surfaces and utensils shall not be required to be sanitized;
20. 12VAC5-421-1890, before use after cleaning, utensils and food-contact surfaces shall not be required to be sanitized;
21. 12VAC5-421-1900, hot water and chemical sanitizing shall not be required;
22. 12VAC5-421-2790, floors, walls, and ceilings shall be in good repair and kept clean;
23. 12VAC5-421-2810, floors, walls, and ceilings in exempt facilities shall not be required to meet the cleanability requirements but shall be in good repair and kept clean;
24. 12VAC5-421-2820, the prohibition of exposed utility service lines and pipes shall not apply;
25. 12VAC5-421-2840, floor carpeting in exempt facilities may be installed in food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, refuse storage rooms or other areas, however they shall be kept in good repair and kept clean;
26. 12VAC5-421-2850, floor covering, mats and duckboards may be used in exempt facilities, however, they shall be kept clean and in good repair.
27. 12VAC5-421-2870, attachments to walls and ceilings in exempt facilities shall be kept in good repair and kept clean;
28. 12VAC5-421-3120, approved dispensers, soap and single-use paper towels shall be made available to accommodate hand washing;
29. 12VAC5-421-3310, live animals may be allowed in the facility but shall not be fed using the same equipment or utensils that are used to feed humans.

12 VAC 5-421-4040. 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:

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.

12 VAC 5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.

Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:

1. Restricting the food employee;
2. Excluding the food employee; or
3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

12 VAC 5-421-4060. Restriction or exclusion order: warning or hearing not required, information required in order.

Based on the findings of the investigation as specified in 12 VAC 5-421-4040 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

1. States the reasons for the restriction or exclusion that is ordered;
2. States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
3. States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
4. Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

12 VAC 5-421-4070. 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.